

Case NoteCASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

ONE RULING, DIGESTED ON ITS OWN – THE FACTS, THE HOLDING, AND THE PRACTICE POINT

[2026] KEHC 7257

Undisclosed witness evidence sinks a KES 400,000 award

Platinum Credit Limited v Data Protection Commissioner & Another

APPEAL ALLOWED CASE NOTED DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

A lender's sales agent allegedly obtained a complainant's vehicle details from the company's own database and used them to cold-call him about a loan he had never sought. The ODPC investigated, found the agent had indeed accessed the data without consent, and ordered KES 400,000 in compensation plus a recommendation to prosecute the company's directors. On appeal, the fatal flaw was not the finding of liability — it was that the Commissioner relied on additional evidence from the sales agent that was never served on the lender, and never gave it a chance to cross-examine or rebut that evidence before deciding the case. The Court held that Articles 47 and 50 are "the bedrock of Kenyan jurisprudence," not a technicality to be waived, and set the whole determination aside on that basis alone — while also flagging that KES 400,000 looked high absent proof of actual loss.

PRACTICE POINT

If the ODPC relies on evidence a respondent has not seen — a witness statement, a site-visit note, an internal memo — that alone is enough to unwind the entire determination on appeal, regardless of how strong the underlying case looks.

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HOW THIS TOUCHES A LIVE ODPC MATTER

Whether you are defending a complaint, appealing a determination, or bringing a privacy claim of your own, the forum you choose and the procedural record you build early usually decide the outcome.

Muchangi Patrick & Co. Advocates represents complainants and respondents before the Office of the Data Protection Commissioner and on appeal, judicial review and constitutional petition before the High Court.

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