

Case Note

CASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

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

📅 [2026] KEHC 114

Never being heard at all is the exception that unlocks judicial review

Republic v Office of the Data Protection Commissioner; BVB Lounge (Ex Parte); EKM (Interested Party)

PRELIMINARY OBJECTION DISMISSED CASE NOTED DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

The ODPC proceeded to determination on the mistaken premise that the applicant had never responded to a complaint, when in fact a response had been emailed weeks earlier. The regulator argued the applicant should have appealed under Section 64 instead of seeking judicial review. The Court drew a precise line: where a party has been heard but disputes the outcome, the statutory appeal is the route; where a party alleges it was never heard at all, that is an exceptional circumstance under Section 9(4) of the Fair Administrative Action Act that justifies bypassing the appeal mechanism entirely.

PRACTICE POINT

"I was heard but I disagree" goes to appeal. "I was never given the chance to be heard" can go straight to judicial review — the distinction is the whole case.

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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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