

Case NoteCASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

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

[2026] KEHC 8674

Recording evidence isn't thrown out on a Data Protection Act objection at the preliminary stage

Shah v Shah t/a John Cumming and Company & Another

OBJECTION DISMISSED CASE NOTED DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

A shareholding dispute turned on a recording of a meeting the objecting party had willingly attended; the objection invoked Article 31 and the Data Protection Act to keep it out. The Court held that an objector must actually demonstrate how their privacy was infringed — a bare invocation of the Act isn't enough — and that questions about how evidence was procured are for full trial, not a preliminary skirmish. It also noted, usefully, that the Act's Regulations only commenced on 14 January 2022, which matters for recordings made before then.

PRACTICE POINT

A Data Protection Act objection to evidence needs a specific, demonstrated privacy harm — not just a citation to Article 31 — and timing matters if the recording predates the Regulations.

Cite this page: Muchangi Patrick & Co. Advocates, "Recording evidence isn't thrown out on a Data Protection Act objection at the preliminary stage: Shah v Shah t/a John Cumming and Company & Another" (dataprivacyadvocates.co.ke, 2026) <<https://dataprivacyadvocates.co.ke/case-shah-v-shah-ta-john-cumming-and-company-and-anot.html>>.

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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