

Case NoteCASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

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

[2026] KEHC 3415

Consent to the old company does not transfer to whoever buys the business

Tulia Amboseli Safari Camp Limited v Opiyo & 2 Others

QUANTUM REDUCED ON APPEALCASE NOTEDATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

A company that had acquired a going concern — including its website and digital assets — continued to display images of two former employees of the previous business for commercial promotion. The ODPC awarded each complainant Kshs 500,000. On appeal, the Court held that continued hosting and public display of the images was itself "processing" under the Act, that the acquiring company had produced no evidence of consent for that continued, post-acquisition use, and that consent given to the previous company did not automatically transfer to the new owner or extend to a new commercial purpose. The Court did, however, find the quantum excessive and reduced each award to Kshs 300,000, while confirming that the absence of an oral ODPC hearing had not itself denied the appellant a fair hearing.

PRACTICE POINT

Buying a business as a going concern does not buy the consent that came with its old employees' images — due diligence on digital assets should specifically flag any personal data or images still in active commercial use.

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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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The citation is provided so readers can access the full judgment on Kenya Law; organisations should consult qualified legal counsel before acting on any point summarised here.

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