

# LIGHTS, CAMERA... LAWSUIT?

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If you do not get the 'I do',  
Do not assume you can post too!



## BACKGROUND

On 22nd January 2025, the Office of the Data Protection Commissioner (the ODPC) issued a determination against a hotel for the unauthorized commercial use of photographs taken during a private wedding at its premises. The Complainant was aggrieved by the commercial use of his, his spouse's, his child's and his guests' images and videos in advertising by the Hotel, without written consent.

The Complainant, who had reserved the hotel's premises for purposes of hosting his wedding reception lodged a complaint after discovering that the hotel had, on two separate occasions, published images and videos featuring him, his spouse, child and guests for marketing and promotion of their facility on Facebook and Instagram – without their knowledge or consent. The Complainant asserted breach of their privacy, a result of which he and his family suffered significant distress, emotional suffering and reputational harm. Despite issuing a demand for the removal/erasure of the data, the hotel's management failed do so prompting the claim.

## ODPC DETERMINATION

The ODPC analyzed four key issues as summarized below:

- The first issue for determination was in respect of the right of erasure of the Complainant. The ODPC found that the hotel was in breach for failing to comply with the Complainant's request to delete the images and videos from its social media platforms.
- The second issue was in regard to the duty of a data controller or a data processor to notify the data subject of the use of their data. The hotel, in the absence of evidence that it obtained consent, was further found liable for failing in its duty to notify the Complainant of his rights, that his data was collected, nor of how this data would be used.
- In determining the third issue, the ODPC delved into the commercial use of personal data wherein it held that the hotel was 'advancing their commercial interests' by posting the Complainant's images and videos on their Facebook and Instagram accounts, to 'market its services to the general public'. The ODPC found this use unlawful for the fact that the hotel did not obtain the Complainant's express consent.
- The final issue was in regard to the appropriate remedy for the breach of data rights of the Complainant. The ODPC ordered the hotel to delete the Complainant's data and to pay KShs. 750,000.00 to the Complainant as compensation for the commercial use of his data without his express consent and for the violation of his right to the erasure of his data.

## TAKE-AWAY

This decision is yet another clarion call to organizations to audit their internal conventional practices to determine whether they are up to date with the evolving legal landscape on data governance. Organizations across various sectors are increasingly being found liable for data rights breaches and incurring unnecessary costs to remedy preventable missteps. Personal data is not just a goldmine to be exploited, but it is recognized by law as a valuable item that belies human identity and human dignity, thus deserving of conscious and intentional decision making by organizations to prevent being on the wrong side of the law.

A picture may be worth a thousand words—but without consent, it could cost you a whole lot more.

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