

Data Protection Newsletter

January 2025

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01. Recent Judgments on Data Protection:

i. Frank Ijege v Nigeria Data Protection Commission

Suit No: FHC/KD/CS/34/2024

Summary of the Action:

Frank Ijege (“the Applicant”) instituted a fundamental rights enforcement action against the Nigeria Data Protection Commission (“the NDPC”) at the Federal High Court sitting in Kaduna. The core of the action was a challenge to the Guidance Notice on Registration of Data Controllers and Data Processors of Major Importance (“the Guidance Notice”) issued by the NPDC on the 14th of February 2024. Among other reliefs, the Applicant sought that:

- The Court declares that Paragraph 1(2), paragraph 2(2) (f &h), paragraph 2(3) (g & i), paragraph 3(1)(e)(i); and paragraph 3(1)(e)(iv) of the Guidance Notice are null and void, and consequently, strikes those provisions out.
- The Court orders the NDPC to prescribe entities that fall under the category of Controllers/Processors **not of major importance**, in accordance with section 48(3) (b) of the Nigeria Data Protection Act 2023.

- The Court issues a perpetual injunction restraining the NDPC from mandating individuals and/or entities to register without first identifying data controllers/processors not of major importance.

The paragraphs of the Guidance Notice contested by the Applicant in this suit are those that designate as Data Controllers/Processors of major importance entities that (a) are in a fiduciary relationship with a data subject, (b) have the legal competence to generate revenue on a commercial scale, or (c) are bound by the need for accountability. Furthermore, the Applicant also contested paragraphs 3(1) (e)(i) & (iv) which stated that Data Controllers/Processors of major importance include small and medium scale enterprises and agents, contractors, and vendors who engage with data subjects on behalf of other organizations.

Specifically, the Applicant argued that these provisions were vague and contrary to the provisions of the Nigeria Data Protection Act (“NDPA”). The Applicant noted that Sections 3 and 65 of the NDPA already define “Data Controller or Data Processor of major importance” and provide for the extent of the NDPA’s application. Therefore, the Applicant contended that the Guidance Notice’s provisions introduce additional, unanticipated elements into this definition. The Court’s Judgment.

Finding merit in the Applicant’s position, the Court declared that all the contested paragraphs of the Guidance Notice were null and void and struck them out accordingly. The Court also ordered the NDPC to prescribe which entities fall under the category of Data Controllers/Processors **not of major importance** and to refrain from compelling registration until this is done.

Implications for Businesses

The judgment is a welcome development, providing much-needed clarification on the registration requirement with the NDPC. The expunged provisions of the Guidance Notice cease to be criteria for registration, subject to any appeal decision that may overturn the judgment. Nonetheless, the remaining provisions of the Guidance Notice remain in full force, and the Court’s judgment does not suspend the registration regime. Therefore, entities that meet the threshold for registration should ensure compliance.

Following this decision, the NDPC is expected to issue supplementary guidance to explicitly identify exempt entities in line with the judgment.

ii. Tokunbo Olatokun v Polaris Bank Limited

Suit No. LD/17392MFHR/2024

Summary of the Action:

Mr. Olatokun (“the Applicant”) sued Polaris Bank (“the Respondent”) in a Fundamental Rights Enforcement action, seeking the following reliefs:

- A declaration that the Respondent’s repeated sending of unsolicited emails to the Applicant constitutes a breach of the Applicant’s right to privacy as guaranteed by the 1999 Constitution.
- A declaration that the Respondent breached Section 36(1) and (2) of the NDPA (the right to object to the processing of one’s personal data) and Section 34(1) of the NDPA (the rights of a data subject) by failing to delete the Applicant’s account, upon request and continuing to send unsolicited emails.
- A perpetual injunction restraining the Respondent from further sending the Applicant unsolicited emails.

The facts and circumstances surrounding the lawsuit are that the Applicant, a former customer of the Respondent, sent several emails requesting that the Respondent delete his bank account and cease sending unsolicited emails. However, the Applicant continued to receive numerous emails, including advertising materials, from the Respondent. In its defence, the Respondent claimed that the emails had been pre-scheduled before the Applicant’s instruction and included an “opt-out provision” that allowing him to unsubscribe from the mailing list. Furthermore, the Respondent argued that the Central Bank of Nigeria’s (CBN) Consumer Protection Framework Guidelines on Disclosure and Transparency permit financial institutions in Nigeria to send unsolicited advertisements to the public, provided they are at no cost to the recipient and contain an opt-out feature.

The Court’s Judgment

The Court granted all the Applicant’s reliefs in the suit, as stated above. In arriving at this landmark decision, the Court aligned with the Applicant’s position that the Respondent should have ceased sending him further unsolicited messages after he instructed that his account be deleted. The Court held that the Applicant had taken all necessary steps by sending the email instruction and could not be expected to unsubscribe from the Respondent’s mailing list. Furthermore, the Court ruled that the CBN’s Framework Guidelines were subsidiary to the NDPA.

Implications for Businesses

The decision underscores the importance of organizations establishing rigorous procedures for managing data subjects' requests. As more individuals become empowered to enforce their privacy rights, organisations must be prepared to respond promptly and effectively to requests related to their personal data. Furthermore, organizations operating in regulated industries must prioritize data protection compliance and recognize that industry-specific guidelines do not supersede the NDPA, which remains the primary law governing data protection issues.

02. | The NDPC's 2025 Strategy

Dr. Vincent Olatunji, the Honourable Commissioner of the NDPC, ("the Honourable Commissioner"), recently shared the agency's strategy for 2025 through a media release on their official LinkedIn account. Here are the notable areas of focus:



- **Massive Enforcement:** The Honourable Commissioner has disclosed that the NDPC will intensify its enforcement efforts in 2025. To this end, the Commission has cautioned Data Controllers/Processors that heavy fines will be imposed on erring companies this year. Consequently, Data Controllers/Processors are advised to ensure maximum compliance.
- **Second Phase of the 2023-2027 Roadmap:** The Honourable Commissioner also noted that 2025 marks the second phase of the NDPC's 5-year strategic roadmap for 2023-2027. A key aspect of achieving its objectives is the creation of jobs through the data protection experts trained by the NDPC in 2024. The goal is to build a large pool of globally competitive data protection experts who will drive the development of the ecosystem.
- **Awareness initiatives:** The NDPC also pledged to intensify its efforts to promote data protection awareness among data subjects and Data Controllers/Processors. It reiterated the importance of Data Controllers/Processors completing their registration and submitting their audit reports by the March 15th deadline.

03. | Highlights of the NDPC's Meeting with Data Protection Compliance Organizations (DPCOs) and how it Impacts Data Processors/Controllers

On January 10, 2025, the NDPC held a meeting with Data Protection Compliance Organizations (DPCOs) which our firm, as a key player in the industry, attended. The key developments disclosed by the NDPC during the meeting are:

- **Increase in the Cost of Filing the Compliance Audit Report:** The Honourable Commissioner of the NDPC announced that Data Controllers/Processors should anticipate an increase in the cost of filing their audit returns due to the prevailing economic circumstances. Although the Commissioner did not disclose the new costs or their implementation date, He assured that the revised fees would be considerate of Data Controllers/Processors financial situations.
- **Stricter Standards for DPO Certification:** The NDPC announced plans to introduce stricter standards for recognizing Data Protection Officers' (DPOs) certification. The goal is to ensure DPOs possess verifiable credentials demonstrating their expertise. To alleviate the financial burden of foreign certifications, the NDPC revealed that the Institute of Information Management, Nigeria's sole authorized data protection certification body, has launched its certification examinations.
- **Issuance of the General Application and Implementation Directives ("GAID"):** Following the publication of the draft GAID in May 2024 and subsequent stakeholder engagement, the NDPC confirmed that the final GAID will be issued in early 2025. The GAID will provide Data Processors/Controllers with guidance on fulfilling their legal obligations, particularly regarding emerging technologies.

04. | Data Privacy Day 2025

January 28th marks Data Privacy Day, a global initiative dedicated to raising awareness about the importance of protecting individuals' personal data in our increasingly digital society. Established in 2007, Data Privacy Day promotes respect for privacy, data safeguarding, and trust enhancement.

This day also commemorates the signing of the "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data," by the Council of Europe on January 28, 1981. Notably, this treaty was the first legally binding international instrument focused on data protection and privacy.

Stay tuned for JEE's Data Privacy Day celebrations!

Conclusion

2025 is poised to be a pivotal year for data protection, with several significant developments on the horizon. Firstly, a surge in data protection-related litigation is expected, involving both Data Controllers/Processors and the NDPC. This will contribute to the growth of data protection jurisprudence, crucial aspect of the field's maturation. Secondly, the NDPC has indicated its intention to continue robust enforcement efforts while strengthening the ecosystem through regulations and alignment with global best practices. As a result, data protection is rapidly transitioning from a niche concern to a primary focus for modern organizations. To avoid attracting unwanted attention from data subjects and regulators, companies must stay informed about these developments.

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