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Civil Appeal No. E014 of 2024 – Credit Watch Investment Limited v. Peter Mbugua & 2 Ors. – The act of contacting persons on a loan defaulter's contact list is a violation of privacy rights

Summary of Facts

Peter Mbugua, Timothy Ngome and Aggrey Timothy (the Respondents) brought a complaint before the Office of the Data Protection Commissioner (ODPC) in September 2023. The Respondents alleged that Credit Watch Limited (CWL) had listed them as guarantors or emergency contacts of loan applicants without their respective consents. When the loan applicants defaulted, CWL's agents sent several text messages and made several calls to the Respondents, asking them to ensure that the loan defaulters repaid the defaulted loans and notified them of impending unspecified consequences if the same was not done.

CWL argued that the customers were required to provide emergency contacts during the loan application process, and it was the responsibility of the loan applicants to ensure that those contacted consented. The ODPC had ruled in favor of the Respondents, ruling that CWL violated their privacy rights by using their personal data without consent and failing to fulfill its obligations under the Data Protection Act. The ODPC also awarded compensation of Kshs. 300,000 to each Respondent and issued an Enforcement Notice against the Appellant. Aggrieved by the decision, the Appellant appealed to the High Court of Nairobi (Milimani Law Courts).

Notable Issue for Determination

An issue that was distilled for determination was whether CWL met its obligations under the Data Protection Act, 2019 and whether the Respondents' rights to be informed of the use of their personal data under Section 26(a) of the Data Protection Act were violated by CWL.

Arguments

Counsel for CWL argued that as part of the conditions before the loan facilities would be advanced, the borrowers were required to provide the emergency contacts. They further argued that the obligation to obtain the consent of the emergency contacts lies with the loan applicants and that the sole purpose of the emergency contacts was to ascertain the whereabouts of the borrowers if they were unable to reach them.

Counsel to the Respondents argued that CWL messages to them was a breach of their personal data as they did not consent to be guarantors to the loan defaulters. They posited that CWL ought to seek their consent before sending messages to them.

Decision of the Court

In resolving this issue, the Court held that CWL did not directly obtain consent from the Respondents for the use of their personal data. Its reliance on the borrowers to obtain consent was deemed insufficient. By virtue of Section 26 of the Data Protection Act, data subjects are required to be informed about the purpose for which their data is being used, a requirement that CWL failed to meet. Additionally, Section 28 mandates that personal data should be collected directly from the data subject, which Credit Watch Limited did not do.

Comments

This case underscores the importance of direct consent when it comes to collecting and using personal data under the Data Protection Act, 2019. It also reinforces the purpose limitation principle which requires that personal data should only be collected for specified, legitimate purposes and should not be used in ways that are not disclosed to the data subject.



Civil Suit No. 206 of 2021 – Knight Frank Uganda Limited v. Broll Uganda Limited and Broll Valuation & Advisory Services (Pty) Limited (delivered on 21 November 2024) UGCommC 339 – An author who creates a piece of work on a commission basis, retains only the moral rights and not the copyright of that piece of work

Summary of Facts

Knight Frank Uganda Limited (Knight Frank) is a company engaged in the business of property management and valuation in Uganda. In December 2019, one of its clients Lexington Properties Limited (Lexington) retained the services of Broll Valuation & Advisory Services (Pty) Limited (Broll) to conduct the valuation of Acacia Mall which is one of its properties. Broll submitted the valuation report to Lexington which was deemed unsatisfactory upon review, and Lexington requested that Knight Frank review and correct the inaccuracies in the report.

Upon review of the report, Knight Frank discovered that Broll had without its knowledge or consent, copied and pasted a significant portion of its Retail Market Study showing the existing and upcoming commercial retail projects in and around Kampala City at the time. As at the time the Retail Market Study Report was made, it was only Knight Frank that had knowledge of the upcoming projects because of its expansive outreach and resources.

Knight Frank claimed that although it was paid for the Retail Market Study Report, the copyright remained with it. In a bid to get to the root of the issue, it notified the Group CEO of Broll Property Group who is the parent company of Broll (Defendants) about the issue and they were told that an investigation will be done. The Defendants responded that the outcome of their investigation was that their valuation reports contained the Map Extract from the Retail Market Study Report, but it does not qualify for copyright protection in law. As such, Knight Frank cannot establish copyright in that information as it was in the public domain.

Following this, Knight Frank instituted the suit against the Broll and its parent company on the basis that its copyright and trade secrets in the Retail Market Study Report were infringed.

Notable Issue for Determination

An issue raised for determination was whether in the instance that Knight Frank has copyright in the Retail Market Study Report, Broll and its parent company can be said to have infringed on its copyright.

Arguments

The Counsel to Knight Frank argued that one its former employees who worked on the Map Extract had worked with Broll when the valuation report was created and is believed to have leaked the map to Broll. It was also argued that Knight Frank was paid to create the map and the infringement of its work has led to huge loss for its business as some of its clients have cancelled current and potential contracts on the premise that their data and personal information is not safe.

Counsel for Broll and its parent company argued that the map was in public records and could thus have not infringed Knight Frank's copyright. He also argued that Broll is a reputable property valuer in the country that could have had the requisite knowledge to create the map in question.

Decision of the Court

In resolving the issue, the Court held that by collective reading of Sections 8, 9 & 10 of the Copyright and Neighbouring Rights Act,

(CNRA), for all commissioned works, the commissioner of the works is entitled to economic rights while the creator is entitled to moral rights. It further stated that the name or pseudonym of the creator must be mentioned and or acknowledged each time the work is copied, reproduced, distributed, broadcast, performed or transcribed.

In application of these provisions to the case at hand, the court held that it was quite clear that the Retail Market Study Report was a commissioned work within the meaning of Section 8 of the CNRA which means that its several versions as tweaked by Knight Frank from time to time, still attribute moral rights of the copyright to Knight Frank.

In conclusion, the court held that Broll and its parent company were jointly and severally liable for breach of Knight Frank's moral rights to the copyright in the Retail Market Study Report.

Comments

This case showcases the importance of respecting the moral rights of a creator in a commissioned work that is a service or work rendered in return for payment. This means that the permission of the creator of a copyright should be sought before making use of it in any form as unlicensed use leads to the exposure of the creator to exposing the creator's business to risks and revealing of its trade secrets. In this case a former employee of the creator who worked on the infringed work happened to also work with the 1st Defendant and was suspected of being the person who revealed the creator's trade secret. This highlights the importance of non-disclosure agreements which not only take effect during his employment with the creator but also after he leaves the employments and goes on to work at another company.

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