



MIND QUEST LIMITED v M. & 2 OTHERS

[2025] KEHC 3891 (KLR) • Civil Appeal E674 of 2024

 High Court of Kenya at Nairobi |  Hon. S. N. Mutuku J. |  5 March 2025

On appeal from ODPC Complaint No. 151 of 2024, decided 22 April 2024

THE CASE AT A GLANCE

 FORUM	High Court of Kenya at Nairobi – Civil Appeal
 OUTCOME	Appeal allowed; Commissioner's determination and compensation set aside
 COMPENSATION	KES 1,500,000 award set aside; each party to bear own costs
 CORE QUESTION	Whether an unproven model-release agreement could establish a time-limited consent



PRINCIPAL DOCTRINE

A complainant alleging that consent was contractually confined to a fixed period must prove the existence and terms of that limitation; the Data Protection Act's burden on controllers to show consent does not excuse a complainant from proving the contractual restriction relied upon.



ISSUES

- 1 Whether a valid contract existed between Mind Quest and the Respondents.
- 2 Whether the evidence established the scope and duration of consent.
- 3 Whether the Commissioner properly weighed the documents presented.
- 4 Whether the continued commercial use of the images was unlawful.
- 5 Whether the compensation award could stand.



BRIEF FACTS

- MIND QUEST LIMITED used photographs of the Respondents taken at a commercial photoshoot for its "Accessorize with Style" brand, engaged through Couture Magazine and evidenced by an invoice dated 17 May 2017; the Respondents had each already been paid KES 5,000 for their images.
- The Respondents alleged Mind Quest continued using the photographs beyond the period to which they said they had agreed, and claimed KES 700,000 per year of unauthorised use — KES 6.3 million in total — together with cessation and removal of the images.
- On complaint, the Data Commissioner found Mind Quest liable for commercial use without express consent and awarded KES 1.5 million. Mind Quest appealed, disputing the finding of no consent and arguing the Commissioner had wrongly relied on an unexecuted draft contract to infer a three-year limit on the permitted use.



HOLDING

Appeal allowed. The High Court set aside both the Commissioner's determination and the KES 1,500,000 award; each party was ordered to bear its own costs.



COURT'S REASONING

The Respondents relied on a model-release agreement but produced no signed copy — the record held only a blank template. The Court could not determine whether a binding contract existed, its terms, or whether it truly limited image use to three years.

- Section 32(1) of the Data Protection Act places the burden of proving consent on the controller, but that burden does not relieve a complainant of proving the factual foundation of a contractual restriction they themselves allege.



RATIO DECIDENDI

A complainant alleging that consent was contractually confined to a fixed period must prove the existence and terms of that limitation; the controller's statutory burden to demonstrate consent does not substitute for that proof.



SIGNIFICANCE

Clarifies that the Data Protection Act's burden-shifting on consent operates alongside, not instead of, ordinary evidentiary rules: a complainant who alleges a specific contractual limit must still prove it.



KEY TAKEAWAY

An unsigned template proves nothing.

If you rely on a model-release period to challenge continued use, produce the signed agreement — not a blank draft.



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OUTCOME

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CORE QUESTION

Whether an unproven model-release agreement could establish a time-limited consent

PRINCIPAL DOCTRINE

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