



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0766 OF 2025**

**TIMOTHY MURITHI KAUNG'U .....COMPLAINANT**

**-VERSUS-**

**MYCREDIT LIMITED .....RESPONDENT**

**DETERMINATION**

*(Pursuant to Section 8(1)(f) and 56 of the Data Protection Act, 2019 and Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021)*

**A. INTRODUCTION**

1. The Complainant lodged a complaint with the Office on 25<sup>th</sup> May 2025. He avers that the Respondent, without any lawful basis or consent, sent promotional messages to his personal number and subsequently subjected him to frequent marketing calls and messages.

**B. LEGAL BASIS**

2. Article 31(c) and (d) of the Constitution of Kenya provides for the right to privacy. Consequently, as an effort to further guarantee the same, the Data Protection Act, 2019 (hereinafter known as 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter as 'this Office' and/or 'the Office') was established pursuant to Section 5 of the Act and is mandated with the responsibility of regulating the processing of personal data; ensuring that the processing of personal data of a data subject is guided by the principles set out in Section 25 of the Act; protecting the privacy of individuals; establishing the legal and institutional mechanism to protect personal data and

providing data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act.

4. Section 8(1)(f) of the Act provides that the Office can receive and investigate any complaint by any person on infringements of the rights under the Act. Furthermore, Section 56(1) of the Act provides that a data subject who is aggrieved by a decision of any person under the Act may lodge a complaint with the Data Commissioner in accordance with the Act.
5. This determination is premised on the provisions of Regulation 14 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter as 'the Enforcement Regulations') which states that the Data Commissioner shall, upon the conclusion of the investigations, make a determination based on the findings of the investigations.

### **C. BACKGROUND OF THE COMPLAINT**

6. This Office received a complaint from the Complainant on 25<sup>th</sup> May 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations by the Complainant, who was an aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondents of the complaint filed against them *vide* a letter dated 17<sup>th</sup> February, 2025 and referenced ODPC/CIE/CON/2/1 (419). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondent was asked to provide this Office with the following:
  - a. A response to the allegations made against them by the Complainant;
  - b. Any relevant materials or evidence in support of their response above, including internal policies governing promotional communication, customer data handling, consent verification and data privacy safeguards;
  - c. Details on how and why the Complainant's personal contact information was obtained and used for promotional purposes, including the names

and roles of any personnel or third-party service providers involved in sourcing or utilizing such data;

- d. A contractual agreement with the complainant, if any;
  - e. Proof of consent from the Complainant authorizing the use of his personal contact details for promotional communications, and any record of withdrawal or objection to such consent, if any;
  - f. Clarification on whether their promotional messages include an opt-out option and the measures, if any, that have been taken to ensure that recipients can easily withdraw from further communications;
  - g. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant. Including steps taken to cease the unsolicited communications and prevent further unauthorized use of his personal data; and
  - h. Any other relevant information the Respondent wishes the Office to consider.
8. On 10<sup>th</sup> July 2025, the Respondent submitted to the Office a request to have the Complaint settled by ADR. ADR subsequently did not bear fruit and the matter was referred back to the Office for determination.
  9. On 4<sup>th</sup> August 2025, following the failed ADR, the Complainant submitted to the Office a statement with further evidences.
  10. On 15<sup>th</sup> August 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.
  11. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
  12. This determination is therefore as a result of analysis of the complaint as received and investigations conducted by the Office.

#### **D. NATURE OF THE COMPLAINT**

13. It is the Complainant's assertion that he has been receiving unsolicited promotional messages and calls from the Respondent despite raising concerns about the same and said concerns being ignored.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANT'S CASE**

14. The Complainant avers that he is the registered user of mobile number 07\*\*\*\*\*80 which he has used as his personal line.

15. That the Respondent, without any lawful basis or consent, sent unsolicited promotional messages to the Complainant.

16. That after receiving the initial promotional message, the Complainant began receiving frequent marketing calls and additional messages from the Respondent's agents.

17. That the messages and calls caused annoyance, distress, and mental strain to the Complainant.

18. That the Respondent failed to obtain the Complainant's express consent as required under Section 37 of the Data Protection Act, 2019, before using his personal data for commercial purposes.

19. That the Complainant reached out to the Respondent, but the Respondent ignored his complaint.

20. That the Respondent's actions violated Sections 26, 29, 37 and 40 of the Data Protection Act, 2019, as well as Regulation 15 of the Data Protection (General) Regulations, 2021.

21. The Complainant sought the following remedies from this Office:

- i) Compensation of Kshs. 2,000,000.

22. The Complainant provided screenshots of the promotional messages to support their complaint.

##### **ii. THE RESPONDENTS' RESPONSE**

23. The Respondents submitted a response to the notification dated 15<sup>th</sup> August 2025 in which they averred as follows;

24. That there was only one screenshot attached, of a message sent from MyCredit to the Complainant.
25. That 7 months later, the Complainant filed a Complaint with the Office. That the Respondent was shocked to receive a Notification of Complaint without any prior communication with the Complainant.
26. That the data subject did not exhaustively exercise his rights before making a complaint to the Commission including his right to be forgotten.
27. That had the Complainant withdrawn his consent from MyCredit in January, the Respondent would have deleted his data.
28. That despite the Complainant not making the Complaint directly to the Respondent, they have deleted his data from the system and he is forgotten.
29. The Respondent prayed that the Complainant's complaint be discontinued on the basis that he did not exhaust his right to be forgotten and went directly to the Office of the Data Protection Commissioner.
30. That the Office, before making any determination to investigate whether the Complainant does indeed have the message from the Respondent as they are doubtful and suspicious that he might be working with others.
31. That in any case, should the Commission find against the Respondent for any reason, they pray that the Commission finds compensation for an apology and deletion of his data and Kshs. 5,000 as adequate damages to compensate the Complainant against the one message sent.

### **iii. THE COMPLAINANT'S REJOINDER**

32. The Complainant submitted a statement dated 4<sup>th</sup> August 2025 in which he averred as follows;
33. That the Respondent sent another marketing message to the Complainant via 07\*\*\*\*\*30 on 19<sup>th</sup> March 2025.
34. That none of the marketing messages had an opt-out option or any instruction that could attract the Complainant's attention to be able to follow the instructions to unsubscribe or opt-out or object to the processing of his personal data.

35. That one I\*\* N\*\*\*\* of phone number 07\*\*\*\*\*30, stated that she is employed by the Respondent as a customer service agent and her email address was [j\\*\\*\\*\\*\\*@mycredit.co.ke](mailto:j*****@mycredit.co.ke).

36. That by distancing themselves from the agents sending marketing messages to the Complainant, the Respondents presented false and misleading information to the Office.

37. That the Complainant received messages on 29<sup>th</sup> January 2025, 19<sup>th</sup> March 2025, 14<sup>th</sup> June 2025 and on 1<sup>st</sup> August 2025.

#### F. ISSUES FOR DETERMINATION

38. In light of the above, the following issues fall for determination by this Office:

- i. Whether there was a violation of the Complainant's rights under the Act and attendant regulations.
- ii. Whether the Respondent fulfilled its obligation under the Act.
- iii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

#### I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT

28. Section 26(c) of the Act provides for the right to object to processing of personal data. Further Section 36 of the Act states that, "*a data subject has a right to object to the processing of their personal data, unless the data controller or data processor demonstrates compelling legitimate interest for the processing which overrides the data subject's interests, or for the establishment, exercise or defence of a legal claim.*"

29. Regulation 8 further specifies "*that a data Subject may request a data controller or processor not to process all or part of their personal data, for a specified purpose or in a specific manner.*"

30. It is worth noting that the right to object to processing is an **absolute right** where processing is for direct marketing purposes.

31. In this case, the Complainant exercised his right to object to the processing of his data, by contacting the Respondent's agents and informing them that he was not interested in their products.
32. The Respondent was obligated to honour the Complainant's request to cease processing his personal data. However, the Respondent disregarded this objection and continued to send messages, even after this Complaint was filed with the Office.
33. Further, despite Respondent, in their Response dated 10<sup>th</sup> July 2025, stating that they had taken measures to ensure that the Complainant will not receive any further marketing messages, the Complainant still continued to receive marketing messages from the Respondents.
34. Based on the above, this Office concludes that the continued sending of messages, despite the Complainant's clear objections, constitutes a direct violation of the Complainant's right to object under Section 26 (c) of the Act.

## **II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT**

35. The Respondent is a data controller within the definitions of the Act and therefore has obligations pursuant to the Act.
36. Section 25 of the Act obligates every data controller or processor to process personal data in adherence to the set principles which includes inter alia;
- i. Processing in accordance with their right to privacy and
  - ii. Process lawfully, fairly and in a transparent manner in relation to data subjects
37. It is evident from the evidence provided by the Complainant that he has been receiving unsolicited marketing text messages from the Respondent without his consent.
38. The unsolicited marketing messages with no prior consent or clear purpose explained to the Complainant, violate the principle of transparency and fairness. The failure to stop communication after multiple requests shows a lack of fairness in processing.

39. Furthermore, the Respondent did not inform the Complainant about the purpose of data collection or how his data was obtained, which contravenes the principle of transparency.

40. Regulation 15 (1) (d) and (e) of the Data Protection (General) Regulations spells out the conditions for permitted commercial use of data;

*15 (1) A data controller or data processor may use personal data other than sensitive personal data, concerning a data subject for the purpose of marketing where:*

*(d) The data controller or data processor provides a simplified opt-out mechanism for the data subject to request not to receive direct marketing communications; or*

*(e) The data subject has not made an opt-out request*

41. From the evidence submitted by the Complainant, the marketing messages received from the Respondent do not contain any opt-out mechanisms thereby limiting the ability of the Complainant to exercise their right to object to receiving further communication.

42. Further, Regulation 17 of the General Regulations stipulates the measures that must be taken by Data Controllers and Processors in order to comply with opt-out requirements:

*17. (1) In communicating with a data subject on direct marketing, a data controller or data processor shall include a statement which is prominently displayed, or otherwise draws the attention for the data subject to the fact that the data subject may make an opt-out request.*

*(2) A data Controller or data processor may, in complying with an opt-out requirement;*

*(a) Clearly indicate, in each direct marketing message, that a data subject may opt-out of receiving future messages by replying with a single word instruction in the subject line;*

*(b) Ensure that a link is prominently located in the email, which takes a data subject to a subscription control centre;*

*(c) Clearly indicate that a data subject may opt-out of future direct marketing by replying to a direct marketing text message with a single word instruction;*

*(d) Inform the recipient of a direct marketing phone call that they can verbally opt-out from any future calls; and*

*(e) Include instructions on how to opt-out from future direct marketing, in each message*

43. The Respondent in this case did not provide any opt-out mechanisms in any of their marketing messages to the Complainant and as such were not compliant with the above regulation.

44. Section 30 of the Act stipulates that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes. In this particular case, the Respondents processed the Complainant's personal data without obtaining consent from the Complainant as required under section 30 and 32 of the Act.

45. Furthermore, with regards to the unsolicited marketing messages, Section 37(1) of the Act states that, "a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person has sought and obtained express consent from a data subject."

46. The Office therefore finds that the Respondent did not fulfil its obligations under the Act.

### **III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.**

42. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. Further, the remedies are provided for in Regulation 14(3) of the Enforcement Regulations.

43. The Complainant requested this Office to issue an award of compensation. Section 65 of the Act provides that a person who suffers damage by reason of a contravention of a requirement of the Act is entitled to compensation for that

damage from the data controller. The Section indicates that damage included financial loss and damage not involving financial loss including distress.

44. Further, Regulation 14 (3) (e) of the Enforcement Regulations provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

45. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right to object processing under Section 26(c) of the Act was infringed upon by the Respondent and use of the Complainant's data for commercial purposes.

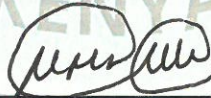
46. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Fifty Thousand (KES 50,000)** for the infringement of his rights under the Act. The Office has considered the Respondent's deletion of the Complainant's data from their system.

#### **G. FINAL DETERMINATION**

47. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Fifty Thousand (KES 50,000)** as compensation.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 24<sup>th</sup> day of August 2025.



**IMMACULATE KASSAIT, MBS**  
**DATA COMMISSIONER**