



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 0626 OF 2025**

**AK.....COMPLAINANT**

**-VERSUS-**

**STANBIC BANK KENYA 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 Office received a complaint on 2<sup>nd</sup> May 2025 alleging that despite the complainant exercising his right to erasure, by lodging a request for erasure of his personal data with the Respondent, the Respondent ignored and or refused to erase the said personal data.

**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 '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 (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 2<sup>nd</sup> May 2025. The complaint was lodged according to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainants on behalf of the aggrieved data subject.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it. The notification of complaint to the Respondent was served upon it on 12<sup>th</sup> May 2025 vide letter referenced **ODPC/CIE/CON/2/1 (285)**. In the notification of the complaint, the Respondent was among other things asked to provide this Office with the following:
  - a) A response to the allegations made against them by the Complainant;
  - b) A contact person who can provide further details as regards to the complaint;
  - c) Provide any relevant materials or evidence in support of the response;
  - d) A detailed procedure on how data subjects can exercise their data protection rights;
  - e) The Respondent's data protection policy;

- f) Mitigation measures adopted or being adopted to address the dispute to the satisfaction of the Complainant and to ensure such occurrences do not recur.
  - g) Any other information that it may wish the Office to consider.
8. The Respondent provided a response to the notification letter on 18<sup>th</sup> June 2025.
9. This determination is therefore as a result of analysis of the complaint as received, the respondent responses and investigations conducted by the Office.

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

10. The Complainant concerns the complainants' allegations that the Respondent ignored and or refused to erase the complainant's personal data despite the complainant exercising his right to erasure, by lodging a request for erasure of personal data with the Respondent.

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

##### **i. THE COMPLAINANTS' CASE**

11. The Complainant stated that he closed his Stanbic Bank Kenya account on July 4<sup>th</sup>, 2023. Despite this, he continued to receive unsolicited SMS messages from the bank, even though he was no longer a customer.
12. The Complaint stated that on March 31<sup>st</sup>, 2025, he sent a formal request via email to the Respondent asking them to erase his personal data, particularly his phone number, from their records. He further stated that the Respondent acknowledged receipt of his request on 2<sup>nd</sup> April and subsequently responded on 3<sup>rd</sup> April, claiming the issue had been resolved. However, he stated that the Respondent failed to confirm the actual erasure of his data.
13. The Complainant further contended that he followed up again on 11<sup>th</sup> April, providing a screenshot of a message that he received after the Respondent's claim of resolution. He stated that on April 15<sup>th</sup>, the Respondent advised him to opt out using the short code \*456\*9\*5#, which he complied with the instruction and confirmed doing so.
14. However, he further stated that he received another unsolicited message on

April 30th, 2025. To him this demonstrated that the Respondent has not erased his personal data and continues to use it in violation of his rights.

## **ii. THE RESPONDENT'S RESPONSE**

21. In response to the allegations made against it, the Respondent stated that the Complainant held three accounts with it, which he requested to close in 2023. The closure was processed on 6<sup>th</sup> September 2023 and communicated to him. Despite this, he continued receiving SMS alerts and notified the bank.

22. The Respondent further stated that the Complainant was advised to opt out via USSD code \*456\*9\*5#. However, this opt-out option only stopped marketing the messages, but the client continued to receive general informational alerts, which triggered the complaint herein.

## **F. ISSUES FOR DETERMINATION**

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

- i. Whether there was a violation of the complainants' rights under the Act; and
- ii. Whether the Complainants are entitled to any remedies under the Act and the attendant Regulations.

### **I. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANTS' RIGHTS UNDER THE ACT**

16. It was the Complainant's position that despite him closing his accounts with the respondent and requesting the respondent to erase his personal data from their records, he continued receiving unsolicited messages and communications from the Respondent.

17. It was the Respondent's position that indeed the Complainant closed his accounts with it and that, despite the closure, request for erasure and use of the opt-out option, the Complainant continued receiving general informational alerts.

18. Section 26 (e) of the Act provides for the right to deletion of false or misleading data.

19. Section 40 (1)(b) of the Act also provides for the right of rectification and erasure and states that a data subject may request a data controller or processor to erase or destroy without undue delay personal data that the data controller or data processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.
20. Further to the above, Regulation 12 (3) of the General Regulations provides that a data controller or data processor shall respond to a request for erasure within fourteen days of the request.
21. From the evidence adduced and also from the Respondent's response, it is evident that the Complainant continued receiving the impugned messages from the Respondent even after exercising his right to erasure. This trend continued for more than fourteen days after the request.
22. Further, the Respondent acknowledged through its response letter dated 17<sup>th</sup> June 2025 that as much as the Complainant's closure was processed on 6<sup>th</sup> September 2023 and communicated to the Complainant, he continued the said messages inform of general informational alerts.
23. This Office therefore finds and determines that as far as issue no (i) is concerned, the Respondent violated the Complainant's right to deletion and erasure as envisaged under the Act.

**II. WHETHER THE COMPLAINANTS ARE ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.**

24. Under 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.
25. As his reliefs, the Complainant sought that: the Respondent be fined for unlawful retention and processing of personal data; he be awarded damages for the

violation of his right and misuse of his personal data, and the Respondent be compelled to confirm in writing the full and permanent erasure of the Complainant's data from all its systems.

26. Section 65 (1) of the Act provides for compensation to a data subject and states 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. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.

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

28. Having found that the Respondent violated the Complainant's right to erasure and deletion, the Respondent is hereby directed to compensate the **Complainant KES 50,000/- (Fifty Thousand Shillings Only)**. The Office takes cognisance of the mitigation measures taken by the Respondent in factoring in compensation.

29. The Office takes cognisance that despite the violation of the complainant's right to deletion and erasure, the Respondent took the following mitigation measures to address the complaint:

- a. Its records and systems were updated on 14<sup>th</sup> May 2025; therefore, the customer is not expected to receive any further SMS communications from the Bank.
- b. The customer complaints handling process was re-engineered to identify and address data privacy-related issues for special consideration and ensure timely and complete closure.
- c. It has conducted refresher training on data subject rights management for all staff members handling customer complaints and rectification requests.
- d. It has implemented a monthly monitoring process for review of all data privacy related complaints to ensure timely and complete closure.

30. As such, considering the above mitigation measures implemented by the Respondent, an Enforcement Notice shall not issue against it in the circumstances.

### G. FINAL DETERMINATION

31. In the ultimate, the Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable.
- ii. The Respondent is ordered to compensate the Complainant **KES 50 000/= (Fifty Thousand Kenya Shillings Only)**.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

**DATED** at **NAIROBI** this 30<sup>th</sup> day of July 2025.



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

