



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0665 OF 2025

SIMON MUOKI MUINDICOMPLAINANT

-VERSUS-

COOPERATIVE BANK1ST RESPONDENT

IMAGE REGISTRARS LIMITED2ND 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 averring that the Respondent agent has been sending him unsolicited emails inviting him to attend Annual General Meeting without his consent.

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 9th 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 24th March, 2025 and referenced ODPC/CIE/CON/2/1(331). 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 contact person who can provide further details as regards to this complaint;
 - c. Provide any relevant materials or evidence in support of your response above;
 - d. The relationship / contractual agreement if any with the Image Registrars (K) LIMITED;

- e. The lawful basis relied upon to process and engage with the complainant's personal data;
 - f. A detailed procedure on how data subjects can exercise their data protection rights;
 - g. Your data protection policy addressing issues on data accuracy, rectification and erasure;
 - h. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint does not take place again; and
 - i. Any other relevant information the Respondent wishes the Office to consider.
8. On 20th June 2025 the Respondent submitted to the Office a Response to the Notification of Complaint.
9. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
10. 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

11. It is the Complainant's assertion that he has been receiving unsolicited emails from the Respondent agent inviting him to attend the Banks Annual General Meeting without his consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainant avers that on diverse hours of 8th May 2025, he received a series of unsolicited emails from the Respondent and continued intermittently until approximately 6:30 pm.
13. The Complainant avers that alarmed and disturbed by the persistent messages sent two cease-and-desist emails at 2:00pm, followed by a further follow-up at approximately 2:30pm requesting the immediate removal of his personal data

(email address and phone number) from their system. These requests were ignored and communication persisted.

14. The complainant avers that his personal data was unlawfully obtained without any notice, justification or prior interactions.

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

- i) The immediate removal/deletion of Claimants personal details from all Respondents platforms.
- ii) Provision of proof of 1 above.
- iii) Monetary compensation for emotional distress, invasion of privacy, annoyance and unlawful possession/use of personal data

16. The Complainant provided screenshots of the unsolicited email as sent to the Respondent to support their complaint.

ii. THE 1ST RESPONDENT'S RESPONSE

17. The 1st Respondent submitted a response to the notification dated 20th June, 2025 in which they averred as follows;

18. The 1st Respondent submitted that the message was sent to the claimant through his email as he was a shareholder of 10 shares with the bank at the time of calling for the Cooperative Bank Annual General Meeting.

19. That through Section 92(1) companies Act, 2015 requires that the company keeps a register of its members. Consequently the 1st Respondent avers to have kept a register of its members and membership of the complainant was accordingly kept.

20. That through Section 275A (1) of companies Act, 2015, they called for an Annual General Meeting and issued notice to all members entitled to attend the AGM as per the act.

21. That they had out sourced the management of its virtual annual General Meeting (AGMs) to Image Registrars Limited (The Agent) on a principal-agent basis.

22. That the Complainant having opted to invest in 1st Respondent as a shareholder was entitled to receives notification of the AGM and the customer care service alerts pertaining to the AGM.

23. The 1st Respondent avers to have established a customer rights management process to facilitate the exercise of data rights.

24. The 1st Respondent further avers that the complaint is not well founded as the complainant received communication from the 2nd Respondent on the basis that he was a shareholder.

iii. THE 2ND RESPONDENT'S RESPONSE

25. The 2nd Respondent did respond to the notification of the complaint on 9th July 2025 and stated as follows;

26. The 2nd Respondent stated that as at the date of the scheduled AGM, the Complainant was a registered Shareholder of the company under Shareholder No. 102381 holding 10 shares, thus he was entitled to receive notice of the means of joining and participating in the AGM pursuant to Section 285BA of the Companies Act.

27. The 2nd Respondent also stated that by virtue of being shareholder, the Complainant's particulars and details were submitted to them by the company to facilitate provision of the AGM services.

28. Further, the 2nd Respondent stated that all the email and SMS notifications sent, were solely to ensure that Shareholders, including the Complainant, were informed about the AGM proceedings and did not constitute use of the Complainant's data for commercial purposes.

THE COMPLAINANT'S REJOINDER

29. On the 28th July 2025 the Complainant filed a rejoinder.

30. The Complainant maintained that the processing of his personal data was neither in compliance with the Data Protection Act nor the Companies act. He averred that the Companies Act provides multiple permissible modes of notification, including hard copy notices, website postings, and electronic communication.

31. The Complainant contends that no advance notice was issued to the complainant informing him that AGM notices would be issued via email and SMS, nor was he notified that his data would be shared with a third party (IRL) for these purposes.

32. He further purports that failure for the Respondent to transparently disclose both the mode of notice and the fact of third-party involvement renders its action non-compliant with Sections 25(c) and (d) and Section 26(a) and (c).

33. The Complainant notes that despite the Respondent's own admission that the Complainant's personal data was shared with Image Registrars Limited for AGM, there has been no attempt to remedy the breach or to offer any apology, explanation, or commitment to prevent recurrence.

34. Further, the Complainant states that upon receiving repeated and unsolicited messages from IRL, he objected to the processing of his data and sought to withdraw any implied consent; however, these objections were disregarded in contravention of the law.

35. The Complainant purports that IRL had no lawful basis for processing his personal data, thereby breaching Section 30(1) of the Act, and continued to process the data despite the express withdrawal of consent, contrary to Sections 32(1), (2), and (3). He further asserts that IRL's explanation, that the breach was caused by a technical issue, only serves to confirm the absence of adequate technical and organizational safeguards, in breach of Section 41.

36. Consequently, the Complainant contends that the Respondents' actions amount to violations of the following provisions of the Data Protection Act, 2019:

- i. Section 25(c) & (d) – for failure to ensure transparency and unauthorized sharing with third parties;
- ii. Section 26(a) & (c) – for failing to inform and act on objection;
- iii. Section 30(1) – for lacking a lawful basis for processing;
- iv. Section 32(1), (2), (3) – for processing without consent and ignoring withdrawal;
- v. Section 41 – for lacking safeguards to prevent unauthorized access or use.

37. The Complainant purports that the persistent and intrusive communications interfered with his peace, professional routine, and personal dignity. He states that as an Advocate of the High Court, the breach was particularly egregious given the obligations of confidentiality and data integrity inherent in his profession.

38. Moreover, the Complainant asserts that neither of the Respondents has demonstrated any remorse, offered any apology, nor taken proactive steps to remedy the breach, which aggravates the injury suffered.

39. Accordingly, the Complainant prays that the Office of the Data Protection Commissioner finds the complaint well-founded, issues enforcement directions against both Respondents, and awards general damages of **Kshs. 5,000,000**. He relies on precedents where courts have awarded compensation for similar privacy breaches, including:

- i. *MWK v Attorney General* – Kshs. 4,000,000
- ii. *Ann Njoki Kumena v KTDA* – Kshs. 1,500,000
- iii. *Mutuku Ndambuki Matingi v Rafiki Microfinance Bank* – Kshs. 2,000,000
- iv. *David Gicheru v Gicheha Farms Ltd* – Kshs. 1,500,000

40. In conclusion, the Complainant asserts that the Respondents' conduct reflects a blatant disregard for data protection principles, and thus regulatory sanction and compensation are warranted.

F. ISSUES FOR DETERMINATION

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

- i. Whether there was a lawful basis for processing the Complainant's personal data.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS A LAWFUL BASIS FOR PROCESSING THE COMPLAINANT'S PERSONAL DATA

42. Section 30(1)(b)(ii) of the Act provides for the lawful basis of legal obligation. It provides that a data controller or data processor shall not process personal data, unless the processing is necessary for compliance with any legal obligation to which the controller is subject.

43. The Complainant avers that his personal data was obtained and processed without any notice, justification, or prior interaction. However, evidence adduced demonstrates that the Complainant is in fact a shareholder of the 1st Respondent.

The Office takes cognizance of the fact that the Complainant omitted to this disclosure.

44. Consequently, the 1st Respondent submitted that the message was sent to the Complainant through his email was for purposes of calling for an Annual General Meeting for its shareholders.

45. Section 92(1) Companies Act, 2015 requires that the company keeps a register of its members. Consequently the 1st Respondent avers to have kept a register of its members and membership of the Complainant was accordingly kept.

46. Furthermore, Section 275A (1) of companies Act, 2015, they called for an Annual General Meeting and issued notice to all members entitled to attend the AGM as per the act.

47. In this regard, the 1st Respondent demonstrated that they had the legal obligation to process the Complainant's personal data.

48. With regards to the processing of personal data that was done by the 2nd Respondent, Section 30 (1)(b)(vii) of the Act provides for the lawful basis of legitimate expectation. It provides that:

"...for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject."

49. The 1st Respondent avers that they had out sourced the management of its virtual annual General Meeting (AGMs) to Image Registrars Limited (The Agent) on a principal-agent basis.

50. That the Complainant having opted to invest in 1st Respondent as a shareholder was entitled to receive notification of the AGM and the customer care service alerts pertaining to the AGM.

51. The Complainant maintains that no advance notice was issued informing him that AGM notices would be disseminated via email and SMS, nor that his data would be shared with Image Registrars Limited (IRL). He purports that the failure to

transparently disclose both the selected mode of communication and the involvement of a third party (IRL) contravened Section 26(a) of the Act.

52. The Office observes that the Complainant in his complaint alleged that the 2nd Respondent invited him to attend the Bank's annual General Meeting (AGM) despite not being a member, customer, shareholder or affiliate of the 1st Respondent. The Complainant however, changed this position after the disclosure by the 1st Respondent that he was indeed a member and was entitled to receive the said AGM Notice.
53. Additionally, the role of the 2nd Respondent was limited to sending notifications and updates about crucial AGM activities falls under legitimate interests protecting the rights of Shareholders and communicating important information to Shareholders regarding the AGM.
54. Moreover, it was demonstrated that as at the date of the scheduled AGM, the Complainant was a registered Shareholder of the Company under Shareholder No. 102381 holding 10 shares thus he was entitled to receive notice of the means of joining and participating in the AGM pursuant to Section 285BA of the Companies Act. By virtue of being shareholder, the Complainant's particulars and details were submitted to the 2nd Respondent by the Company to facilitate provision of the AGM services.
55. The Complainant contends that the processing was done for commercial purposes. However, the evidence adduced demonstrates that all the email and SMS notifications sent, were solely to ensure that Shareholders, including the Complainant, were informed about the AGM proceedings and did not constitute use of the Complainant's data for commercial purposes as is defined under Section 14 of the Data Protection (General) Regulations.
56. Without prejudice to the foregoing, the 2nd Respondent acknowledged that the repeated email notifications sent to the Complainant was attributed to a technical issue from their email platform. The 2nd Respondent has demonstrated that the same was resolved. The Office takes cognizance of the said technical issues and the mitigation thereafter.
57. In view of the foregoing, the Respondents' have demonstrated that they had the lawful basis of processing the Complainant's personal data. Moreover, despite the

technical issues, the Respondents' have further demonstrated that the Complainant's personal data has not been issued in any other way apart from the intention of calling an AGM.

II. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT AND THE ATTENDANT REGULATIONS.

58. 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.

59. Having found that there existed a lawful basis for processing the Complainant's personal data, the Complaint is hereby dismissed.

G. FINAL DETERMINATION

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

- i. The Complaint against the 1st and 2nd Respondent is dismissed.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 6th day of August 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER