



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0917 OF 2025

ELIAS CHERUIYOT KORIR COMPLAINANT

-VERSUS-

THIKA WATER AND SEWERAGE COMPANY 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 filed a Complaint against the Respondent, alleging that his mobile number was being wrongly used to send billing messages linked to a deceased third party's account. He avers that he never consented to the use of his personal data, and he objected to the continued use of his number. Despite this objection, the messages persisted on multiple occasions causing him emotional distress.

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 24th June 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 28th July, 2025 and referenced ODPC/CIE/CON/2/1(505). In the Notification of the Complaint, the Respondents were informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondents were 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 this complaint
 - c. Any relevant materials or evidence in support of your response above

- d. Details of how you obtain, store and process personal data, and whether the Complainant consented to the processing of their personal data.
 - e. The lawful basis relied upon to process the Complainants personal data.
 - f. Evidence as to whether the Complainant consented to receiving messages from you, with messages of transactions made through accounts named A/C 6***** for A.K.
 - g. An elaborate representation of how data subjects can exercise their rights in relation to data protection.
 - h. The mitigation measures adopted or being adopted to address the Complaint to the satisfaction of the Complainant and to ensure that such occurrence mentioned in the complaint does not take place again; and
 - i. Any other relevant information they wish the Office to consider.
8. The Respondent submitted a response to the Notification of Complaint vide a letter dated 8th August 2025.
 9. 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

10. The nature of the Complaint is that the Respondent unlawfully processed the Complainant's personal data by continuing to send him billing messages intended for a deceased third party despite his express objection.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant avers that they have been receiving unsolicited messages from the Respondent relating to transactions conducted through an account belonging to a Third Party, namely A/C 6*****, from 26th March 2025 to date.
12. The Complainant states that on 26th March 2025, he reached out to the Respondent *via* the Respondent's official WhatsApp number, requesting that the Respondent amend the details of the said third party in its billing system.

The Complainant notes that the message was delivered, read, and subsequently ignored on 27th March 2025, and no corrective action was undertaken.

13. The Complainant contends that at no point have they ever interacted with the Respondent nor given any form of consent for the use or processing of their personal data by the Respondent. Moreover, despite raising the matter with the Respondent, the Complainant has continued to receive messages on 10th April 2025, 24th April 2025, 6th May 2025, and 27th May 2025.
14. The Complainant purports that on 27th May 2025, the Respondent merely responded by directing them to visit its offices with a photocopy of his identification card. However, the Complainant avers that this response was not only inadequate but also shifted the burden of correcting the Respondent's system errors onto them, notwithstanding that they are not the Third Party whose details were erroneously linked to their personal information.
15. The Complainant avers that on 24th June 2025, they once again received a similar message intended for the Third Party and notified the Respondent of the unresolved issue. The Complainant contends that the persistence of these unsolicited communications amounts to a nuisance.
16. Furthermore, the Complainant avers that this continuous infringement has caused him emotional distress, anxiety, and disruption of his routine and general well-being. The Complainant states that this apprehension and emotional drainage are now at a high level due to the Respondent's failure to address the matter conclusively.

ii. THE RESPONDENTS' RESPONSE

17. The Respondents submitted their response *vide* a letter dated 8th August 2025.
18. The Respondent submitted that it recognizes the continued transmission of customer billing information to the Complainant's mobile number constituted an unintended disclosure of personal data, which is taken seriously under the Data Protection Act, 2019.

19. The Respondent further states that upon thorough review, it confirmed that the mobile number in question previously belonged to the late third party and was subsequently reassigned by the service provider, Safaricom.
20. The Respondent notes that, unfortunately the number remained erroneously linked to the third party's account within its billing system, thereby leading to the erroneous communication to the Complainant.
21. The Respondent contends that, in compliance with the principles of accuracy and integrity of personal data under the Data Protection Act, it has since undertaken corrective measures including:
- i. The immediate removal of the Complainant's mobile number from the third party's customer account;
 - ii. Conducting a system audit to identify and update any similar legacy records; and
 - iii. Sensitization of its staff on the proper handling of personal data, particularly in relation to deceased customers or reassigned contacts.

iii. THE COMPLAINANT'S REJOINDER

22. The Complainant submitted a rejoinder dated 24th September 2025.
23. The Complainant confirms that he is no longer receiving SMS notifications from the Respondent, the last such notification having been received on 24th July 2025 at 1626hrs.
24. The Complainant notes that he has held Safaricom mobile number 0***** continuously since the year 2006. However, he only began receiving SMS notifications from the Respondent in March 2025. These notifications purport to relay both monthly consumption readings/bills and payment acknowledgements in respect of account number 6***** belonging to the third party.
25. The Complainant avers that the Respondent's assertion that the said mobile number had previously belonged to the late Third Party and was subsequently reassigned by Safaricom is untenable. This is because, if indeed true, it would

imply that the number fell dormant prior to 2006 and was only reassigned thereafter. Moreover, this position raises serious questions as to who has been servicing the referenced account in the intervening years and under which contact details, given that the Complainant only began receiving the impugned notifications in March 2025.

26. The Complainant further states that he has never made any payments to account number 6##### from the mobile number 0#####, and the payment acknowledgments linked to his number are therefore wholly erroneous

27. The Complainant avers that the unlawful use of his personal data has caused significant distress, anguish, inconvenience, and delay. Moreover, it amounts to a violation of his constitutional right to privacy and constitutes a personal data breach within the meaning of the Data Protection Act. Accordingly, the Complainant maintains his position that appropriate compensation ought to be awarded as a remedy for the harm occasioned.

F. ISSUES FOR DETERMINATION

28. It is not uncontroverted that the Respondent continued to send unsolicited communication to the Complainant and provided access to another individual's transaction details, despite the Complainant's repeated objections and requests for cessation.

29. 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 and its attendant regulation.
- 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

30. Section 26(c) of the Data Protection Act grants the data subject the right to object to the processing of all or part of their personal data.
31. In this present matter, the Complainant avers that he never consented to the processing of his personal data by the Respondent. He further states that despite notifying the Respondent directly of the error and objecting to the continued use of his number on several occasions, he persistently received billing messages intended to the late third party.
32. The Respondent, on the other hand contends that the transmission of billing information to the Complainant's mobile number was inadvertent, arising from the fact that the number previously belonged to a deceased third party and was later reassigned by the service provider. The Respondent avers that this amounted to an unintended disclosure of personal data.
33. Section 26(c) of the Data Protection Act places an obligation on data controllers and processors to respect Complainants right to object to processing of their personal data. In the present matter, the Office notes that the Complainant objected to the processing as early as 26th March 2025, yet the billing messages persisted up to 24th June 2025.
34. While the Respondent has admitted that the communication was inadvertent and linked to a deceased third party's account, the continued persistence of the messages despite notification shows that the Respondent failed to uphold the Complainant's right under Section 26(c) of the Act.
35. Accordingly, the Office finds that the Complainant's rights under Section 26(c) of the Data Protection Act was violated.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATION UNDER THE ACT.

36. In addressing this issue, the Office will consider whether the Respondent processed the Complainant's personal data in accordance with the principles of data protection.

37. Section 25(f) of the Act obligates data controllers and processors to ensure that personal data is accurate and, where necessary, kept up to date. It further requires that every reasonable step be taken to erase or rectify inaccurate personal data without delay.

38. Pursuant to Section 40 of the Act, a data subject has the right to request a data controller or processor to rectify their personal data which is untrue, inaccurate, outdated, incomplete or misleading. In addition, Regulation 10(4) of the Data Protection (General) Regulations, 2021 requires that a data controller or processor, within fourteen days of such a request, rectify the entry of personal data where satisfied that a rectification is necessary.

39. In addition, Regulation 34 of the Data Protection (General) Regulations set out the elements necessary to implement the principle of accuracy, that is, -

- (a) ensuring data sources are reliable in terms of data accuracy;
- (b) having personal data particulars being accurate as necessary for the specified purposes;
- (c) verification of the correctness of personal data with the data subject before and at different stages of the processing depending on the nature of the personal data, in relation to how often it may change;
- (d) erasing or rectifying inaccurate data without delay;
- (e) mitigating the effect of an accumulated error in the processing chain;
- (f) giving data subjects an overview and easy access to personal data in order to control accuracy and rectify as needed;
- (g) having personal data accurate at all stages of the processing and carrying out tests for accuracy at critical steps;
- (h) updating personal data as necessary for the purpose; and

(i) the use of technological and organisational design features to decrease inaccuracy.

40. In this Complaint, the Complainant, by raising his objection on 26th March 2025, expressly notified the Respondent that his number was being wrongly used for billing messages linked to a deceased third party's account, thereby requiring the Respondent to take corrective action. However, despite this notification, the billing messages persisted until 24th June 2025.

41. The Respondent later admitted that it only discovered the error after conducting a system check, following which it removed the Complainant's number. This admission came long after the Complaint had been raised, and despite the expectation that regular and proactive system checks should have ensured that customer records remained accurate and up to date. The rectification was therefore effected well beyond the fourteen days required by law.

42. The Office therefore finds that the Respondent failed to meet its duty to keep data accurate and to correct mistakes quickly, as required under Sections 25(f) and 40 of the Act, and Regulations 10(4) and 34 of the Data Protection (General) Regulations.

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

43. 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.

44. 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.

45. 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.

46. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right under Section 26 (c) was infringed upon by the Respondent. Despite being expressly notified of the objection on 26th March 2025, the Respondent allowed the billing messages to continue until 24th June 2025, and only took corrective action after a belated system check.

47. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000)** for the infringement of her rights under the Act.

48. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

49. 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 Two Hundred and Fifty Thousand (Kshs. 250,000)** as compensation.
- i. An **enforcement notice** to hereby be issued to the Respondent.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 22nd day of September 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER