



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0567 OF 2025

AMAAN KASSAMCOMPLAINANT

-VERSUS-

NADIANO WONDER WORLD FITNESS CENTER & SPA.....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, asserting that the Respondent has continued to send him marketing messages on available deals despite his repeated requests for the messages to cease.

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

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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 17th April 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 3rd June, 2025 and referenced ODPC/CIE/CON/2/1 (250). 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. 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. The lawful basis relied upon to continue processing the Complainant personal contact.

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- e. Evidence as to whether the complainant consented to receive marketing messages from you;
- f. An elaborate representation of how data subjects can exercise their rights in relation to data protection;
- g. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant if any;
- h. Any other relevant information they wish the Office to consider.

- 8. The Respondent submitted their response vide a letter dated 16th 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. It is the Complainant's assertion that the Respondent has persistently sent him marketing messages on available deals, despite his numerous written requests asking the Respondent to stop sending such messages.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

- 11. The Complainant contends that he continues to receive marketing messages via WhatsApp from the number 072 **** which he avers is associated with the Respondent.
- 12. He purports that the messages relate to offers and promotions from the Respondent's business.
- 13. The Complainant further avers that he made repeated requests to the sender to stop sending the messages and to delete his number from their records and that despite these requests, the messages allegedly persisted.
- 14. He contends that he eventually issued a final warning to the sender, indicating that he would escalate the matter to this Office if the messages continued, but the said warning was ignored.
- 15. In addition to the complaint, the complainant sought the following redress;

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- i. The complainant seeks deletion of his personal data from the Respondent's systems.
- ii. The complainant seeks to stop receiving any further messages, particularly of a marketing, promotional, or commercial nature.

ii. THE RESPONDENTS' RESPONSE

16. The Respondents submitted a response to the notification dated 16th June, 2025 in which they averred as follows;
17. The Respondent submitted that the complainant was their client and has then interacted with their staff including masseurs, trainers and others.
18. The Respondent purports that during these interactions, the Complainant may have voluntarily shared his contact details, which may have subsequently been used for communication.
19. The Respondent avers that continued communication may have been made through phone numbers not under their direct control, particularly those belonging to individual staff members.
20. The Respondent further avers that the number used belongs to one of their staffs that had a close relation with the complainant rather than the Respondents business.
21. The Respondent states that they regret any inconvenience caused to the Complainant and confirms that they have taken steps to address the issue by deleting the Complainant's details from their system, database, and the two referenced numbers.
22. The Respondent further states that they advised the Complainant to utilize phone blocking features to avoid further unwanted messages and recommended that the Complainant refrain from visiting the facility.

i. THE COMPLAINANT'S REJOINDER

23. The Complainant notes that he was a client of the Respondent sometime in 2015 and had chosen the facility due to its proximity to his then workplace.
24. The Complainant states that upon joining the facility, he provided his phone number and email address to the Management as their official contact information.
25. The Complainant avers that he was particularly cautious about the use and disclosure of his phone number and alleges that the claim suggesting he shared his number with personal trainers, masseuses, or cleaners is entirely false.
26. He contends that he would attend the gym solely for his workouts, which he did unassisted, and would leave immediately afterward. He further notes that he relocated his workplace in 2016 and consequently ceased being a member of the Respondent's facility.
27. The Complainant purports that in 2025, nearly nine years after his last visit to the facility, he began receiving messages from an unknown number not saved in their contacts, with copies of the messages already shared with this Office.
28. He states that the messages were promotional in nature and avers that he repeatedly and politely requested the sender to delete his number, affirming that he had not consented to the use of his personal data for commercial marketing purposes. He alleges that despite issuing a warning that he would escalate the matter to the Office of the Data Protection Commissioner, the messages continued.
29. He further contend that the messages did not address him by name nor did the messages indicate any prior knowledge of the claimant nor did the messages suggest an acquaintance or friendship of any kind. The messages were purely marketing in nature.
30. He contends that even after informing the sender that the matter had been escalated to the ODPC, he still received additional commercial messages.
31. The Complainant alleges that his personal data was accessed and shared with a third party whether an employee, agent, or marketer without his knowledge or

consent, and purports that such use constitutes a violation of his data protection rights given the long lapse of time since his last interaction with the Respondent.

F. ISSUES FOR DETERMINATION

33. 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

34. Section 26 of the Data Protection Act, 2019 provides for the rights of a data subject. Relevant to this case is the right:

- i. *To be informed of the use to which their personal data is to be put [Section 26(a)];*
- ii. *To object to the processing of all or part of their personal data [Section 26(c)]*

35. The Complainant alleges that he received unsolicited marketing messages via WhatsApp in 2025, nearly nine years after ceasing to be a client of the Respondent, despite having never consented to such use of his data and after repeatedly requesting the messages to stop.

36. The Respondent acknowledges the Complainant was a former client and suggests the contact details may have been shared during past interactions with staff. The Respondent adds that the messages may have come from staff using personal numbers and later apologized and deleted the Complainant's data from their records.

37. Section 26(a) imposes an obligation on data controllers to inform data subjects of the use to which their personal data will be put. There is no evidence to suggest that the Complainant was informed or consented to the use of his data for marketing purposes, especially given the lapse of time since his last interaction with the Respondent in 2016.

38. Under Section 26(c), a data subject has the right to object to the processing of their personal data. The Complainant exercised this right by clearly and repeatedly requesting that the messages stop and that his number be deleted. The continued messaging after these objections constitutes a disregard of this right.

39. The Respondent was obligated to honor the Complainant's request to cease processing his personal data. However, the Respondent disregarded this objection and continued to send messages.

40. In view of the foregoing, the Complainant's right to be informed under Section 26(a) of the Act and the right to object under Section 26(c) of the Act were violated by the Respondent.

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

42. Section 25 of the Data Protection Act, 2019 outlines the data protection principles to be observed by data controllers and processors, *inter alia*

- i. Section 25(a): Personal data must be processed in accordance with the right to privacy of the data subject.*
- ii. Section 25(b): Processed lawfully, fairly, and in a transparent manner.*
- iii. Section 25(c): Collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes.*
- iv. Section 25(d): Adequate, relevant, and limited to what is necessary in relation to the purposes for which it is processed.*

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- v. *Section 25(g): Kept in a form which identifies the data subjects for no longer than is necessary for the purposes for which the data was collected.*

43. Under Section 25(a) and (b), the Respondent has a duty to ensure personal data is processed lawfully, fairly, and in accordance with the right to privacy. Continuing to send unsolicited marketing messages without consent nearly a decade after the service relationship ended regardless of whether the number used was directly owned by the Respondent undermines the Complainant's privacy and reflects a lack of transparency in the data handling process.
44. Section 25(c) emphasizes that data should only be collected for specific, legitimate purposes and not processed in a manner incompatible with those purposes. The original purpose facilitating client services had long lapsed. Processing the data for commercial marketing, years after the relationship ended, without fresh consent, was incompatible with the original purpose of collection.
45. Section 25(d) and (g) require that data be adequate, relevant, and retained only as long as necessary. In this case, the retention and use of the Complainant's data long after their membership ceased raises concerns about excessive retention and lack of data minimization. Even if the data resided on personal devices of staff, the messages promoting the Respondent's business indicate a continued commercial interest linked to the organization. The Respondent cannot absolve itself of responsibility by distancing itself from the phone number while benefiting from the outreach.
46. Furthermore, the context of the message (i.e., marketing of fitness offers) was clearly tied to the Respondent's services. This supports the view that the processing even if indirect was for the Respondent's benefit and within its accountability.
47. In light of the above the Respondent failed to fulfil its obligations under Section 25(a), (b), (c), (d), and (g) of the Data Protection Act, 2019. The continued processing of the Complainant's data for marketing purposes was neither lawful, fair, nor compatible with the original purpose for which the data was collected. The Respondent also failed to ensure proper control over data related communications

promoting its business, thereby breaching the data minimization, purpose limitation, and storage limitation principles under the Act.

48. 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.* Sending of promotional messages constitute a commercial purpose. The Respondent has not shown that they obtained the Complainant's consent.

49. In addition, a perusal of the messages sent to the Complainant reveal that no opt out mechanism was provided for the Complainant to request not to receive the promotional messages, contrary to Regulation 15(1)(d) of the Data Protection (General) Regulations, 2021.

50. Regulation 15(1)(d) of the Data Protection (General) Regulations, 2021 states that *a data controller or data processor may use personal data, concerning a data subject for the purpose of direct marketing where the data controller or the data processor provides a simplified opt out mechanism for the data subject to request not to receive direct marketing communications.*

51. Regulation 17(1) of the Data Protection (General) Regulations, 2021 provides that 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 of the data subject to the fact that the data subject may make an opt out request.

52. The promotional messages sent by the Respondent did not comply with the above regulation.

53. In view of the foregoing, the Respondent did not comply with its obligations.

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

54. 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.

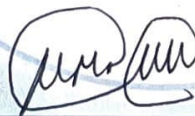
55. The Complainant prays for deletion of all his details from their contacts or data base. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, an **Enforcement Notice** shall issue against the Respondent pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. 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 15th day of July 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**