



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1779 OF 2024

BOSCO OTIENO.....COMPLAINANT

-VERSUS-

TAIFA DT SACCO SOCIETY 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 on 4th November, 2024 alleging that he has constantly been receiving credit and debit alert messages from the Respondent yet he is not a member of the Respondent's SACCO.

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 (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 4th November, 2024. 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 Respondent of the complaint filed against it *vide* a letter dated 12th November, 2024 referenced ODPC/CONF/1/5 VOL II (298). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, it was 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 it by the Complainant;
 - b. Any relevant materials or evidence in support of the response;
 - c. The lawful basis relied upon to process and engage with the Complainant's personal data;
 - d. A detailed procedure on how data subjects can exercise their data protection rights;
 - e. Its data protection policy;
 - f. 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

- g. Any other relevant information it wishes the Office to consider.
8. The Respondent submitted its response to the Notification of Complaint letter *vide* a letter dated 2nd December, 2024 and also submitted a further response dated 31st December, 2024.
9. This determination is therefore as a result of analysis of the complaint as received, the response from the Respondent and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

10. The complaint relates to the alleged sending of credit and debit alert messages to the Complainant despite the fact that he was not a member of the Respondent's SACCO.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANTS' CASE

11. The Complainant alleged that he has constantly and consistently been receiving credit and debit alert messages from the Respondent since 2022, yet he is not a member of the Respondent's SACCO. He provided screenshots of the messages received as proof.
12. The Complainant stated that he did a cautionary SMS and email to the Respondent and instructed it to stop and rectify the issue at hand but they ignored him and he is still receiving credit and debit alerts from them. He provided a screenshot of an email dated 23rd October, 2024 and SMS dated 19th October, 2024 as proof.
13. The Complainant in his rejoinder response dated 27th December, 2024, stated that the Respondent submitted wrong information to this Office by claiming that it had since investigated and sorted the issue yet he was still receiving the SMS alerts. He provided photos of the messages received as proof.
14. In conclusion, the Complainant prayed for an award of punitive damages as against the Respondent and any other appropriate award this Office deems fit for the violation of his privacy and refusing to correct thereof.

ii. THE RESPONDENT'S RESPONSE

15. The Respondent stated that it had addressed the concerns raised in the complaint by responding to the Complainant *via* a letter dated 18th November, 2024 where it indicated that thorough investigations had been carried out and the findings implemented. The Respondent provided a letter dated 18th November, 2024 addressed to the Complainant as proof.
16. In the letter addressed to Complainant, the Respondent stated that it took up the matter after receiving his email on 29th October, 2024 and immediately established that his mobile phone number was initially allocated to one of its members who used it to receive credit and debits alerts.
17. Additionally, it stated that the member inadvertently stopped using the number and eventually the same number was allocated to someone else by third parties where it has no control of and therefore that is the reason he continued to receive the alerts and messages.
18. The Respondent further stated that, having found the source of the problem, it immediately resolved the issue and the Complainant will no longer receive any further notifications.
19. The Respondent apologized for the inconvenience caused.
20. The Respondent *via* a letter dated 20th December, 2024 forwarded the following documents requested by this Office after the Office conducted a site visit at the Respondent's premises: -
- i) Statement request form
 - ii) Agreement for service provision
 - iii) Transfer form of member savings/shares/deposits
 - iv) Account opening application
 - v) ICT policy extract on data protection
21. The Respondent *via* a letter dated 31st December, 2024 stated that it contacted its customer, one Z***** W***** and she confirmed that the subject mobile number used to contact the Complainant was initially hers but she

changed her number and the initial number was allocated to the Complainant. She further stated that she did not inform the Respondent after changing her mobile number which she has learnt was allocated to the Complainant.

22. The Respondent averred that it has implemented a prompt whereby any person not intending to receive a message can use to cease getting any future communication.

F. INVESTIGATIONS UNDERTAKEN

23. The Office analysed the complaint as lodged, the Respondent's response, and all the supporting documents provided by both parties.

24. The Office also visited the Respondent's premises on 18th December, 2024 to conduct further investigations into the matter.

25. During the site visit, the Respondent stated that they couldn't confirm that the Complainant contacted them demanding them to stop sending the said messages, since the only channel they communicate and send responses to their members is through email.

26. The Respondent also confirmed that the mobile phone number 078*****00 that the Complainant used to object to the processing of his personal data belonged to them.

27. The Respondent emphasized that the Complainant was a total stranger to them and that they didn't process or control his personal data.

28. In regard to SMS alerts, the Respondent stated that on 31st October, 2024 it stopped processing the bulk SMS for the affected phone number. This was also confirmed by system logs which showed that the member's account and phone number was updated, and the Complainant's mobile number removed.

29. However, the Complainant still received messages from the Respondent on 19th December, 2024 indicating that the Respondent had not stopped processing the Complainant's personal data.

30. The Respondent confirmed that it only implemented an opt-out mechanism to the messages it sends out after it received the Notification of Complaint Letter from this Office.

31. The Office established that the Complainant indeed received credit and debit alerts from the Respondent.

G. ISSUES FOR DETERMINATION

32. It is not in contention that the Complainant received debit and credit alert messages from the Respondent despite the fact that he did not have an account at the Respondent's SACCO.

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;
- ii. Whether the Respondent fulfilled its obligations under the Act; and
- 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. The Complainant is a data subject as per the definition under the Act and has rights as provided for under the Act.

35. Section 2 of the Act defines a data subject as *"an identified or identifiable natural person who is the subject of personal data."*

36. Section 2 of the Act also defines personal data as *any information relating to an identified or identifiable natural person.*

37. The Complainant's mobile phone number is therefore his personal data.

38. 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."

39. The Complainant objected to the further processing of his personal data *via* an SMS message sent to the Respondent on 19th October, 2024 and an email sent to the Respondent on 23rd October, 2024. However, he still received a message from the Respondent on 19th December, 2024.

40. The Respondent ought to have complied with the Complainant's objection request within fourteen days of the request as provided for under Regulation 8(3) of the Data Protection (General) Regulations, 2021 and stopped processing his personal data. The Respondent intentionally or negligently ignored the Complainant's objection request and continued sending messages to him even after the 14-day period provided for under the above regulation had lapsed.

41. From the foregoing, this Office finds that the Respondent violated the Complainant's right to object to the processing of his personal data.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

42. The Respondent is a data controller within the definitions of the Act and therefore has obligations pursuant to the Act.

43. The Respondent had an obligation under Section 25 of the Act to ensure that it takes every reasonable step to ensure that any inaccurate personal data in its custody is erased or rectified without delay.

44. The Respondent stated that the Complainant's mobile number was removed from its systems and that the Complainant will not receive any further notifications. However, the Complainant still received messages from the Respondent on 19th December, 2024 indicating that the Respondent had not rectified the inaccurate personal data in its custody, and erased the Complainant's personal data from its systems/database.

45. From the above, this Office finds that the Respondent did not fulfil its obligations as it did not erase or rectify inaccurate data in its custody in accordance with the accuracy principle of data protection.

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

46. 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.
47. The Complainant sought punitive damages against the Respondent and any other appropriate award this Office deems fit, for the violation of his privacy and refusing to correct thereof.
48. The Respondent is hereby **ordered to erase the Complainant's personal data from its database/records within the next seven (7) days and to stop sending messages to the Complainant.**
49. Section 65 of the Act provides for compensation to data subjects 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."*
50. Section 65(4) of the Act states that, *"damage includes financial loss and damage not involving financial loss, including distress."*
51. 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.
52. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondent either intentionally or negligently violated the Complainant's right to object to the processing of his personal data. Moreover, even after the intervention of this Office, the Respondent still hasn't addressed the issue and continues to send messages to the Complainant.
53. This Office therefore awards the Complainant **Kenya Shillings two hundred and fifty thousand (KES 250,000)** as compensation for the violation of his right to object to the processing of his personal data.

54. The Respondent is directed to ensure that personal data collected from its customers is accurate and where necessary kept up to date. The Respondent is also directed to ensure that inaccurate personal data is erased or rectified without delay to avoid complaints of this nature and administrative fines that may be imposed upon it in the event this Office receives similar complaints.

H. FINAL DETERMINATION

55. The Data Commissioner therefore makes the following final determination:

- i. The Respondent is hereby found liable for violating the Complainant's right to object to the processing of his personal data.
- ii. The Respondent is hereby ordered to erase the Complainant's personal data from its database/records within the next seven (7) days and to stop sending messages to the Complainant, failure to which an enforcement notice shall issue.
- iii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000) as compensation.**
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 31st day of January 2025



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

