



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0303 OF 2025

ABRAHAM OWEN GUMBA OTIENO..... COMPLAINANT

-VERSUS-

360 DEGREES COURT APARTMENT

RESIDENT ASSOCIATION.....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 with the Office, asserting that the Respondent has been consistently sending him unsolicited emails. He emphasizes that, despite multiple requests made via text messages and phone calls for the Respondent to halt these emails and remove his address from their mailing list, the unsolicited messages persist without fail.

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 3rd March 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 13th March 2025 and referenced ODPC/CIE/CON/2/1 (148). 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; and contact person who can provide further details as regards to this complaint
 - b. Any relevant materials or evidence in support of your response above
 - c. The lawful basis relied upon to process the Complainants personal data.

- d. An elaborate representation of how data subjects can exercise their rights in relation to data protection.
 - e. 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
 - f. Any other relevant information they wish the Office to consider.
8. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Regulation 11(2) of the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021 states that, "*where a respondent does not take any action as contemplated in the notification of complaint, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and the Enforcement Regulations.*"
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 Complainant alleges that the Respondent has continued to send him emails despite repeated requests via email, text message, and attempted phone calls to cease the communication and remove his address from their mailing list.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant contends that the Respondent has persisted in sending him emails despite his repeated requests made via email, text message, and attempted phone calls for the Respondent to cease communication and remove his address from their mailing list.
12. He avers that the Respondent has further sent him access to another individual's transactions, thereby purporting to disclose personal information in violation of that individual's privacy rights.
13. The Complainant avers that he has made several attempts to communicate with the Respondent through the contact details provided, including multiple

emails, text messages, and phone calls, all instructing the Respondent to stop contacting him.

14. The Complainant prayed for the following remedies.

- i. Compensation for the Respondent continued emailing and failure to remove his email address from their mailing list
- ii. A directive compelling the Respondent to remove his email address and cease all further communication.

15. The Complainant provided the following documents in support his complaint:

- i. A screenshot of the call log.
- ii. Screenshots of email correspondence between the complainant and the Respondent; Screenshot of call log dated 29th January 2025;

ii. THE RESPONDENTS' RESPONSE

16. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Therefore, the allegations made in the Complaint remain undisputed.

F. ISSUES FOR DETERMINATION

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

18. 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.
- 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

19. 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.

20. In this matter, the Complainant repeatedly exercised this right by sending multiple requests via email, text message, and phone calls demanding that the Respondent stop sending unsolicited emails and remove his email address from their mailing list. Despite these clear objections, the Respondent continued to send emails to the Complainant. This conduct demonstrates a failure on the Respondent's part to respect and uphold the Complainant's right to object, which is protected by law.

21. Therefore, the Respondent's continued processing of the Complainant's data, despite clear objection amounts to an infringement of the Complainant right under of Section 26(c) of the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

22. In addressing this issue, the Office will address the following two fundamental questions –

- a. Did the Respondent process personal data in accordance with the principles of processing personal data?

Did the Respondent process personal data in accordance with the principles of processing personal data?

23. Section 25(f) requires that personal data be accurate and kept up to date, with the data controller taking every reasonable step to ensure that inaccurate personal data is either erased or corrected without delay.

24. In this case, the Respondent sent the Complainant access to transaction information relating to another individual the person who purchased the Complainant's house. This clearly indicates that the Respondent failed to update their records to reflect the change in ownership, thus continuing to process inaccurate data related to the Complainant. The Respondent's failure

to promptly rectify or erase such outdated information constitutes a breach of their duty under Section 25(f).

25. In conclusion, the Respondent clearly failed to meet its statutory obligations under the Data Protection Act. It disregarded the Complainant's clear and lawful right to object to the processing of his personal data as set out in Section 25(f).

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

26. 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.

27. The Complainant prays for compensation from the Respondent for failing to honour his right to object to the processing of his personal data, in violation of Section 26(c) of the Data Protection Act.

28. With regards to the award of compensation, Section 65 of the Act provides for compensation to data subjects and states, *"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."*

29. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.

30. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondents either Failed to act on the Complainant's right to object to the processing of his personal data under Section 26(c) of the Data Protection Act.

31. The Respondent is hereby found liable for processing the Complainant's personal data for without a lawful basis and for denying him an opportunity to exercise his right to object processing of his personal data. The Office hereby orders the Respondent to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES. 250,000/=)** as compensation.

32. The Complainant further prayed for a directive compelling the Respondent to remove his email address and cease all further communication.

33. 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 to compel the Respondent to erase all data relating to the Complainant and furnish proof of the same.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty thousand (KES. 250,000/=)** as compensation;
- iii. An **enforcement notice** to hereby be issued to the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 30th day of May 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

