



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0403 OF 2025

ERIC MUTUNE MWAMWEE.....COMPLAINANT

-VERSUS-

ROSKY CREDIT LIMITED .....RESPONDENT

### DETERMINATION

*Under 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 sent him unsolicited text message without his consent and despite him not having subscribed to any of its services.

#### **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 15<sup>th</sup> 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 Respondent of the complaint filed against it *vide* a letter dated 11<sup>th</sup> April 2025 and referenced ODPC/CIE /CON/2 / 1 (077). 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. Provide any relevant materials or evidence in support of your response.
  - c. The Contractual agreement with the Complainant, if any
  - d. Details of how collected the Complainants personal data,
  - e. Whether the Complainant consented to receive marketing calls and messages from yourselves.
  - f. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any

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g. An elaborate representation of how data subjects can exercise their rights in relation to personal data protection.

h. Any other information you wish the Office to Consider

8. The Respondent responded to the Notification of Complaint letter *vide* a letter dated 8<sup>th</sup> May 2025.

9. This determination is therefore a result of analysis of the complaint as received, the response by the Respondent and investigations conducted by the Office.

#### **D. NATURE OF THE COMPLAINT**

10. The Complainant asserts that the Respondent sent him unsolicited text message without his consent and despite him not having subscribed to any of its services.

#### **E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED**

##### **i. THE COMPLAINANT'S CASE**

11. The Complainant purports that the Respondent sent its marketing messages via his phone number **0701XXXXXX** with the intention of attracting him into their business.

12. He contends that he is aggravated and depressed by the Respondent's actions, considering that he has never been their customer.

13. Further, the Complainant asserts that he has never subscribed to the Respondent's marketing messages and did not give express consent for the same.

14. The Complainant avers that the action by the Respondent, *ab initio*, amounts to a serious infringement of his personal data rights under Sections 26, 29, and 37 of the Data Protection Act.

15. He notes that the Respondent failed to notify him at the time of collection of his personal data, and moreover, never sought his express consent to use the said personal data for their commercial purposes, despite being aware that such use was unlawful.

16. The Complainant prays for compensation of Kenya Shillings Six Million (KES 6,000,000).

17. The Complainant provided screenshot of the said message.

## **ii. THE RESPONDENT'S RESPONSE**

18. The Respondent submitted a response to the notification of complaint in a letter dated 8<sup>th</sup> May 2025.

19. The Respondent purports to be engaged in the business of credit financing and contends that it offers its services exclusively to individuals who have submitted written loan application forms and satisfied certain eligibility criteria.

20. It asserts that, like many other businesses, it promotes its products and services to the general public through appointed agents and employees.

21. The Respondent avers that during such marketing exercises, its agents maintain a record of persons who express interest in their financial products and who indicate willingness to receive further information.

22. In relation to the present matter, the Respondent notes that the Complainant voluntarily provided his personal details to one of its agents whose identity and contact were included in the message complained of during a lawful marketing activity. The Respondent contends that during this interaction, the agent clearly explained the purpose of collecting the said personal data and, further, that the Complainant consented to receive a one-time marketing message.

23. The Respondent further asserts that the message in question was sent in the year 2023, and the Complainant did not raise any concern or objection for nearly two years. It notes that it was only in March 2025 that the Complainant demanded compensation of Kenya Shillings Four Hundred Thousand (KShs. 400,000), and before the Respondent could issue a formal response to the demand, the Complainant lodged the present complaint.

24. The Respondent provided a letter responding to the allegations dated 8<sup>th</sup> May 2025.

## **F. INVESTIGATIONS UNDERTAKEN**

25. The Office examined the complaint lodged by the Complainant, including screenshot of text messages and calls adduced in support thereof, the

Respondent's written response, and all documents submitted by both parties as evidence.

## **G. ISSUES FOR DETERMINATION**

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

- i. Whether the Respondent violated the Complainant's rights under the Act and attendant Regulations.
- ii. 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**

27. Section 26 of the Data Protection Act, 2019 outlines the rights of a data subject, including the right: 26 (a) *to be informed of the use to which their personal data is to be put.*

28. This right places a duty on data controllers and processors to inform individuals about the specific purposes for which their personal data is being collected or processed.

29. In this case, the Respondent, through its agent acting at the material time, processed the Complainant's personal data for marketing purposes without demonstrating that the Complainant was properly informed in accordance with the legal standard. While the Respondent asserts that verbal notification and consent were given, no verifiable evidence has been produced to support that position.

30. Although the facts indicate that the processing occurred only once, was not repeated, and did not result in any profiling, tangible harm, or commercial exploitation of the Complainant's data, the Respondent's failure to provide objective and adequate notification at the point of collection constitutes a clear breach of its legal duty under Section 26(a). The obligation to inform is not discretionary and must be fulfilled regardless of the scope or frequency of processing.

31. Notwithstanding the Respondent's position, it is clear that the Complainant's personal data was processed for marketing purposes. The fact that the agent

who collected the data was, at the material time, acting as an employee or agent of the Respondent, imputes responsibility directly to the Respondent. Accordingly, the Respondent is held liable for failing to meet its duty to inform the Complainant at or before the time of data collection.

32. In light of the above the Respondent is held liable under Section 26(a) of the Act for failing to inform the Complainant of the intended use of his personal data at the point of collection. Despite the one-time nature of the processing, the absence of any verifiable notification renders the act non-compliant with the statutory duty to inform.

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

33. Pursuant to Regulation 14 (2) of the Enforcement Regulations, a determination shall state the remedy to which the complainant is entitled. The remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

34. 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.

35. 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.

36. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right under Section 26 (a) were infringed upon by the Respondent. Also, the Office takes cognizance that the Respondent sent the Complainant promotional text once in 2023.

37. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Twenty Thousand (KES 20,000)** for the infringement of his rights under the Act.

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## H. FINAL DETERMINATION

39. The Data Commissioner therefore makes the following final determination;

- i. The Respondent is hereby found liable for violating of the Complainant's rights right to be informed under Section 26(a) of the Act.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Twenty Thousand (KES 20,000)** as compensation.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 12<sup>th</sup> day of June 2025.



