



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0492 OF 2025

JACQUELINE NJOKI WANJOHI..... COMPLAINANT

-VERSUS-

MY DAWA T/A ION KENYA LTD 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 this Office, stating that the Respondent has continued to send her numerous unsolicited promotional messages despite repeated requests to stop.

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 5th 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 15th April 2025 and referenced ODPC/CIE/CON/2/1 (237). 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. The lawful basis relied upon to process the Complainants personal data.
 - e. Evidence as to whether the Complainant consented to her personal data being used for promotional purposes.

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- f. The mitigation measures adopted or being adopted to address the Complaint to the satisfaction of the Complainant, if any
 - g. The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint does not take place again; and
 - h. 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. It is the Complainant's assertions that the Respondent has been sending her numerous unsolicited text messages despite a cease and desist request from her.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant stated that she received promotional text messages from the Respondent almost every day despite her request to be removed from their database.
12. The Complainant provided a screenshot of the text messages and the email correspondence sent.

ii. THE RESPONDENTS' RESPONSE

13. The Respondents were 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

14. It is not uncontroverted that the Respondent continued to send unsolicited text messages, despite the Complainant's objections and requests for cessation.

15. 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

16. Section 26(c) of the Data Protection Act grants every data subject the right to object to the processing of all or any part of their personal data.

17. In this matter, the Complainant exercised this right by sending an email to the Respondent and by using the *456*9*5# opt-out mechanism to request the erasure of her data, but to no avail.

18. Despite these clear and repeated objections, the Respondent continued to send promotional messages to the Complainant. This conduct demonstrates the Respondent's failure to respect and uphold the Complainant's right to object, as guaranteed by the Act.

19. Therefore, the Respondent's continued processing of the Complainant's data despite an explicit objection constitutes an infringement of the Complainant's right under Section 26(c) of the Act.

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

- a) In addressing this issue, the Office will address the following question Did the Respondent process the Complainant's personal data in accordance with the principle of data protection?

20. Section 25 provides that every data controller or data processor shall ensure that personal data is:

- (a) processed in accordance with the right to privacy of the data subject;
- (b) processed lawfully, fairly and in a transparent manner in relation to any data subject;
- (c) collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes.

21. In this case, the Respondent failed to demonstrate the legal basis of processing the complainant's personal data in line with section 30 of the Act and further failed to demonstrate the aspect of purpose limitation. Moreover, the Respondent in failing to respect the Complainant's right to object and continued sending of promotional messages constitutes unfair and unlawful processing, in breach of Section 25.

22. In light of the above, the Respondent failed to fulfill its obligations under the Act.

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

23. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination must state the remedy to which the Complainant is entitled. The available remedies are set out in Regulation 14(3) of the Enforcement Regulations.

24. The Complainant prays for deletion of all her details from their contacts or database. 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.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- i. An **enforcement notice** to hereby be issued to the Respondent.
- ii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 26th day of June 2025.



**IMMACULATE KASSAIT, MBS
DATA COMMISSIONER**

