



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 0385 OF 2025

SAMUEL KADZUGA NYAMAWI COMPLAINANT

-VERSUS-

FIN AFRICA T/A TRUSTGRO SCA 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 with the Office, asserting that the Respondent persistently sent him unsolicited text messages 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 23rd 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 24th March 2025 and referenced ODPC/CIE/CON/2/1 (182). 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) Evidence as to whether the Complainant consented to his personal data being used for marketing purposes.

- (e) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any
- (f) The mitigation measures adopted or being adopted to ensure that such occurrence mentioned in the complaint does not take place again; and
- (g) Any other relevant information they wish the Office to consider.

- 8. The Respondent submitted their response vide a letter dated 10th April 2025.
- 9. This determination is therefore 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 averments that the Respondent persistently sent him unsolicited text messages without his consent and in the absence of any subscription or prior engagement with its services."

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

- 11. The Complainant states that on or about 5th March 2025, he began receiving repeated and unsolicited marketing messages from people claiming to be agents of the Respondent. The constant nature of the messages became bothersome and they were annoying.
- 12. He asserts that due to these intrusions and growing concern that his personal data might have been shared or used without his permission, he wrote an email to the Respondent on 19th March 2025. In the email, he raised the issue that his personal data could be at risk of falling into the wrong hands, including fraudsters, which could expose him to identity theft.
- 13. The Complainant notes that the Respondent replied, saying they did not have any of his data because he was not their customer. They also claimed that the individuals sending the messages were not working for them and that he had no grounds to raise the issue.
- 14. Despite this, the Complainant contends that he decided to find out more by investigating further on his own. He began engaging with the individuals who

had contacted him through WhatsApp to learn more about who they were and whether they were actually linked to the Respondent.

15. Through these conversations, the Complainant purports that he found out that the person who had called him and sent multiple marketing messages was indeed working on behalf of the Respondent.

16. He further asserts that he explains that the individual even gave him the contact details of her supervisor. The Complainant then wrote to the supervisor, asking whether the individual was officially associated with the Respondent.

17. The Complainant confirms that the supervisor responded by email and confirmed that the person was indeed working with the Respondent.

18. Based on this, the Complainant believes it is clear that the individual was acting as a representative of the Respondent and was promoting its services. He therefore states that the Respondent should take responsibility for the actions of its agents.

19. The Complainant further believes that by sending him marketing messages and using his personal information without permission, the agent—and by extension, the Respondent—violated his rights under Sections 26, 29, and 37 of the Data Protection Act, 2019.

20. He concludes that the Respondent, through its agents and for its own benefit, unlawfully interfered with his right to privacy and failed to follow key data protection rules.

21. The Complainant prayed for the following remedies.

- i. Compensation of Kshs 500,00 for emotional distress and exposed financial fraudsters and phishing.

22. The Complainant provided screenshot of the text messages and email correspondences in support his complaint.

ii. THE RESPONDENTS' RESPONSE

23. The Respondent avers that it received a notification of complaint from the Office of the on 10th April 2025, although this was not the first time it had encountered the matter.

24. It contends that the Complainant had previously contacted the Company directly via email on 19th March 2025, raising concerns that a person by the name of using mobile number 0***** had sent him unsolicited messages offering a loan while allegedly representing the Respondent. In the same email, the Complainant attached a copy of his national identity card, which the Company asserts was the only piece of personal data it ever received or possessed in relation to the Complainant.
25. Moreover, the Respondent asserts that on the following day, 20th March 2025, the Complainant sent a second email, this time demanding a sum of KES 250,000 as compensation, based on the claim that the said agent was affiliated with the Company and had misused his personal data. However, the Respondent purports that before it could fully engage with the Complainant and clarify the situation, it received a formal letter from the Office on 24th March 2025 concerning the same allegations.
26. Subsequently, the Respondent responded to the Office on 28th March 2025, informing the Office those internal investigations had commenced and expressing its willingness to engage the Complainant directly in order to resolve the matter amicably.
27. Nonetheless, the Respondent avers that the Complainant, instead of cooperating further, declined to continue direct communication and insisted that all future responses be addressed exclusively through the Office. It further contends that after the matter was escalated, the Complainant revised his compensation demand significantly—from the initial KES 250,000 to KES 5,000,000.
28. Following its internal review, the Respondent asserts that it was able to confirm that the Complainant is not listed in any of its customer records, nor was any of his personal data in its custody prior to the complaint. It avers that the only information in its possession was voluntarily submitted by the Complainant himself when initiating the complaint process.
29. In relation to the said agent, the Respondent purports that she is an independent referral agent who has worked with several financial institutions over the years, including the Respondent. However, she is not employed by the

Company, does not have any employment contract with it, and has no access to its internal systems or customer data.

30. The Respondent further contends that an email exchange between the Complainant and its staff member, was misinterpreted. In the Complainant's own words, he had written to the staff member asking whether the said agent worked at the Company or if she was merely an online scammer. The Respondent avers that any response from the staff member did not confirm that agent was an employee. Rather, it clarified that while she may have referred clients to the Company in the past, she was not and has never been officially employed or authorized to act on its behalf beyond general referral activities.
31. The Company asserts that since the Complainant was never its customer and since it never collected or processed his data prior to his direct email, no breach of the Data Protection Act, 2019, could have occurred. It purports that the said agent, acted as an independent agent, operates separately and does not manage personal data on behalf of the Company in any way that would create legal responsibility under the Act.
32. Therefore, the Respondent contends that it cannot be held liable under the doctrine of vicarious liability, as it had no control over the agent's communication methods or the content of her outreach, nor could it be expected to monitor every channel used by external agents. It further asserts that no grounds exist for the compensation sought by the Complainant, as there is no evidence to suggest that the Company processed, disclosed, or misused his data in contravention of the law.
33. Nevertheless, the Respondent reiterates its commitment to data protection compliance and affirms that this commitment is based purely on good regulatory practice and not as an admission of any liability. It maintains that it continues to review and improve its internal procedures to ensure that referral arrangements and any agent interactions align with the requirements of the Data Protection Act. It concludes by stating that any personal information now in its possession namely the Complainant's national ID has been retained solely

for the purpose of complying with regulatory obligations under Section 39 of the Act and to respond to inquiries by the Office.

F. ISSUES FOR DETERMINATION

34. 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 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

35. Section 26(a) of the Data Protection Act, 2019 guarantees a data subject the right to be informed of the use to which their personal data is to be put. This provision is designed to ensure transparency and empower individuals to control the use of their personal information.

36. In the present case, the Complainant was never informed by the Respondent, either directly or through its representatives, about how his personal data was obtained, for what purpose it was being used, or that it would be used for targeted marketing messages. Instead, it was through his own follow-up and investigation that he discovered the link between the sender and the Respondent.

37. The Respondent's position that the Complainant's personal data was never in its custody is undermined by the confirmation from its own staff that the individual sending the messages was affiliated with the Company. Further, even if the person was acting as a referral agent, she was acting in the interest of the Respondent, and her conduct can be reasonably associated with the Respondent's operations.

38. In light of the facts presented and the applicable provision of the law, it is evident that the Complainant's right under Section 26(a) of the Act was violated.

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

39. 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.
40. The Complainant seeks compensation from the Respondent for the alleged violation of his right under Section 26(a) of the Data Protection Act, which guarantees a data subject the right to be informed of the use to which their personal data is to be put, asserting that his information was used without his knowledge or consent.
41. 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."*
42. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
43. In considering whether to issue compensation, this Office takes into account the fact that the Respondent failed to inform the data subject of the use to which his personal data was being put, as required under Section 26(a) of Act when an agent working from them sent unsolicited marketing messages to the Complainant.
44. The Respondent is hereby found liable for processing the Complainant's personal data without a lawful basis and without informing him of its intended use, as required under Section 26(a) of the Data Protection Act. The Office hereby orders the Respondent to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000/=)** as compensation.
45. The Complainant further prayed for a directive compelling the Respondent to remove his email address and cease all further communication.

G. FINAL DETERMINATION

46. 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. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this th 10 day of June 2025.



