



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1763 OF 2025

CHIKOLOLO MMBETSACOMPLAINANT

-VERSUS-

CERES TECH LIMITEDRESPONDENT

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 reinstated a complaint against the Respondent alleging that the Respondent sent him promotional messages to market their products and services despite him not giving prior consent.

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 11th November 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 17th November 2025 and referenced ODPC/CIE /CON/2 / 1 (951). 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; and a contact person who can provide further details as regards the Complaint.
 - b. Provide any relevant materials or evidence in support of the response.
 - c. Details on how the Respondent obtained the Complainants personal data.

- d. Whether the Complainant was notified and gave express consent for the use of his personal data for commercial purposes pursuant to section 37 of the Act.
 - e. The lawful basis for denying the Complainant her right to object to the processing of her personal data,
 - f. The mitigation measures adopted or being adopted to address the Complaint to the Satisfaction of the Complainant, if any;
 - g. Any other information you wish the Office to Consider
8. The Respondent responded to the Notification of Complaint letter *vide* a letter dated 4th February 2026.
 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 reinstated the complaint against the Respondent on the basis that notwithstanding his express objection, the Respondent has persistently continued to send him unsolicited text messages.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant avers that his personal phone number had been shared with other parties, resulting in multiple individuals sending similar messages to him. The Complainant reported receiving frequent calls and constant marketing and promotional messages from different phone numbers and indicated that his requests for the communications to stop had been ignored.
12. The Complainant prays that the Respondent immediately cease all communication with him.

MK

ii. THE RESPONDENT'S RESPONSE

13. The Respondent notes that the Complainant voluntarily registered on its platform on 27th October 2025 and, at the point of registration, was clearly informed that his personal data would be processed for defined purposes, including service-related communication and the marketing of the Respondent's own products and services.
14. The Respondent submits that the Complainant expressly consented to such processing during registration and that this consent formed the lawful basis for any subsequent communication.
15. Moreover, the Respondent maintains that any processing of the Complainant's personal data was carried out strictly in accordance with the Data Protection Act, 2019, and was based on lawful grounds under Section 30(1)(a) on consent of the data subject and Section 30(1)(f) on legitimate interest limited to the marketing of its own services.
16. The Respondent further submits that at all material times it acted within the scope of the purposes disclosed to the Complainant at the point of data collection.
17. Additionally, the Respondent unequivocally avers that the Complainant's personal data was never sold, transferred, shared, or disclosed to any third party, and that all processing remained internal and limited strictly to the Respondent's operations.
18. The Respondent notes that each marketing communication issued contained a clear and accessible opt-out mechanism, enabling the Complainant to withdraw consent at any time in line with the requirements of the Data Protection Act and ODPC guidelines.
19. Moreover, the Respondent submits that upon receipt of the Complainant's request to stop receiving marketing communications on 14th November 2025, it acted promptly and removed the Complainant from its marketing list.
20. The Respondent maintains that no further marketing messages were sent thereafter and that this action was taken immediately and in full compliance with Section 32 of the Data Protection Act, 2019.

21. However, the Respondent asserts that at no time did it unlawfully or continuously process the Complainant's personal data beyond the purposes consented to at registration.

22. In conclusion, the Respondent submits that valid consent was provided by the Complainant, marketing communications were limited to the Respondent's own services, clear opt-out rights were provided, and withdrawal of consent was honoured without delay.

23. The Respondent therefore maintains that there was no unlawful or continued marketing communication in breach of the Data Protection Act, 2019 and respectfully urges the Office to find that it acted in compliance with the Act.

F. INVESTIGATIONS UNDERTAKEN

24. 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

25. 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 Respondent fulfilled its obligations under the Act and the attendant Regulations.
- 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

26. Section 26 of the Data Protection Act, 2019 grants a data subject the right to object to the processing of all or part of their personal data which is reinforced under section 36 of the Act.

27. Section 36 reinforces this right by stipulating that personal data cannot be used for commercial purposes, including marketing, unless the data controller can

demonstrate a compelling legitimate interest that overrides the data subject's objection, or where processing is necessary for the establishment, exercise, or defence of a legal claim.

28. In the present case, the Complainant exercised his right to object, yet continued to receive unsolicited promotional messages and calls.

29. As a result, the repeated marketing communications constitute a clear violation of the Complainant's statutory rights, reflecting a deliberate and persistent failure to respect the objection and an unlawful use of personal data for commercial purposes.

30. This conduct demonstrates non-compliance with both Section 26 and Section 36 of the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

31. In addressing this issue, the Office will address the following questions –

- a. Did the Respondent establish a lawful basis for processing the Complainant's personal data?
- b. Did the Respondent use the Complainant's personal data for marketing purposes?

Did the Respondent establish a lawful basis for processing the Complainant's personal data?

32. The Respondent is a data controller as per the definitions of the Act and is therefore mandated to fulfil its obligations as such under the Act.

33. Under Section 30 of the Data Protection Act, the processing of personal data must be based on a lawful basis, including the consent of the data subject or a legitimate interest that does not override the data subject's rights.

34. Section 32 clarifies that the data controller or processor bears the burden of proof in establishing that valid consent was obtained and that the consent was specific to the purpose of processing.

35. In this case, the Respondent asserts that the Complainant provided consent at registration and that the marketing communications were limited to their own services.

36. The Complainant's continued receipt of unsolicited messages after requesting communications to stop demonstrates that, the Respondent failed to operationalize the withdrawal of consent effectively.

37. Moreover, despite the Respondent claiming to have a functional opt-out mechanism, the investigation established that the messages did not contain a functional opt-out mechanism or a withdrawal mechanism.

38. Consequently, the Respondent did not fulfill its obligations under the Act.

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. The remedies are provided for in Regulation 14 (3) of the Enforcement Regulations.

40. 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.

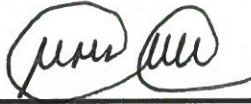
H. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- ii. An Enforcement Notice to hereby be issued to the Respondent.

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

DATED at NAIROBI this 9th day of February 2026.



IMMACULATE KASSAIT, SC, MBS
DATA COMMISSIONER

