



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1752 OF 2025

GACHIRI NDUNGO.....COMPLAINANT

-VERSUS-

NAIROBI CITY WATER & SEWERAGE COMPANY.....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 against the Respondent, claiming that the Respondent has continued to send him unsolicited messages even after he sent a cease-and-desist email to the Respondent. Additionally, the Complainant asserts that he is not a client of the Respondent.

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 10th 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 Respondents of the complaint filed against them *vide* a letter dated 18th December, 2025 and referenced ODPC/CIE /CON/2/1(971). 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 the Respondent by the Complainant;
 - b. A contact person who was to provide further details as regards to the Complaint.
 - c. Proof of consent from the Complainant to send him unsolicited messages.

- d. The lawful basis relied upon to engage and process the Complainant's personal data
 - e. Provide any relevant materials or evidence in support of your response above.
 - f. A detailed procedure on how data subjects can exercise their data protection rights.
 - g. 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 do not take place again.
 - h. Any other information the Respondent wishes the Office to consider.
8. 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

9. The complaint stems from the Complainant's allegation that Respondent allegedly unlawfully continued to send him unsolicited text message despite his objection and request for erasure.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

I. THE COMPLAINANT'S CASE

10. The Complainant avers that despite writing a cease-and-desist email asking Nairobi City Water and Sewerage Company to stop spamming him with SMS messages from "NCWSC Maji" to his mobile number, the same continues to be done unabated.
11. The Complainant states that he feels aggrieved that his privacy and private communications have been repeatedly violated.
12. The Complainant submits that the Respondent sent a response via email indicating that his request was being attended to, but nothing has changed.
13. The Complainant notes that the repeated and unwarranted messaging causes him distress and anxiety, as the messages keep stating that he owes the Respondent money, which he simply does not.

14. The Complainant states that the persistent and unwarranted messages have caused him distress and anxiety, particularly because the messages repeatedly allege that he owes the Respondent money, which he does not.
15. The Complainant seeks the following remedies;
- i. The Respondent to stop spamming his mobile number with SMSs.
 - ii. The Respondent to compensate him for breach of his privacy and violation of his personal data.

II. THE RESPONDENTS' RESPONSE

16. The Respondent submitted a response to the notification vide a letter dated 28th January 2026.
17. The Respondent avers that the mobile number referenced in the complaint was captured during legitimate, account-related inquiries made by the Complainant through the Respondent's customer service channels.
18. It asserts that the number was used solely for service-related communications, including customer support follow-ups and dissemination of service information, and not for unlawful or unsolicited marketing purpose.
19. The Respondent further acknowledges that the Complainant subsequently communicated an objection requesting that communication to the said mobile number cease. However, it submits that due to an inadvertent internal handling lapse, the objection was not implemented immediately upon receipt.
20. The Respondent states that upon discovering the lapse, the mobile number was permanently removed from all its communication systems on 8th January 2026 in order to prevent any further messages being sent to the Complainant.
21. They confirm that consent for unsolicited messages was not given due to an error.

F. ISSUES FOR DETERMINATION

22. In light of the above, the following issues fall for determination by this Office:
- i. Whether there was a violation of the Complainant's right under the Act.
 - 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 RIGHT UNDER THE ACT.

23. Section 26 of the Data Protection Act, 2019 grants a data subject specific rights in relation to the processing of their personal data, including the right to object to the processing of all or part of their personal data under Section 26.
24. The Complainant exercised his right to object to the processing of his personal data under Section 26(c) of the Data Protection Act by issuing a cease and desist request to the Respondent, requesting that SMS communications to his mobile number be stopped. Despite this clear objection, the Respondent continued to send messages, thereby disregarding the Complainant's statutory right.
25. Section 36 of the Act reinforces this right by providing that a data controller may only continue processing after an objection if it can demonstrate a compelling legitimate interest that overrides the data subject's rights, or where processing is necessary for the establishment, exercise, or defence of a legal claim. The burden therefore shifts to the Respondent to justify any continued processing once an objection has been made.
26. In the present case, the Respondent has failed to demonstrate any such legitimate interest, nor has it shown that the continued processing was necessary for any legal purpose.
27. Further, the Respondent's explanation that the objection was not actioned due to an internal lapse does not absolve it from responsibility, as the Act requires data controllers to put in place effective organisational and technical measures to ensure compliance with data subjects' rights without undue delay. Continued processing after an objection reflects a failure of accountability and compliance.
28. The Respondent's in continuing to process the Complainant's personal data without lawful justification, the Respondent violated the Complainant's right to object, as guaranteed under Section 26(c) and reinforced by Section 36 of the Data Protection Act.

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

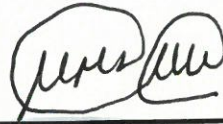
29. Pursuant to Regulation 14(2) of the Enforcement Regulations, a determination shall state the remedy to which the Complainant is entitled. Further, the remedies are provided for in Regulation 14(3) of the Enforcement Regulations.
30. The Complainant requested this Office to issue an award of compensation. 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.
31. 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.
32. In considering whether to issue compensation, this Office notes that the Respondent failed to honour the Complainant's right under Section 26(c) of the Data Protection Act, 2019 to object to the processing of his personal data.
33. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)**
34. An Enforcement Notice will not be issued in the circumstances since the Respondent has put in place corrective measures such as removing the Complainant's number from its systems.

G. FINAL DETERMINATION

35. The Data Commissioner therefore makes the following final determination: -
- i. The Respondent is hereby found liable.
 - i. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)** as compensation.

- ii. 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



