



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1563 OF 2025

**MICHAEL RASHID MWAKIO.....COMPLAINANT**

**-VERSUS-**

**KINGS COMMODITIES 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 against the Respondent alleging that they unlawfully continued to use his mobile phone number on their website as their contact detail despite his objection and request for erasure.

#### **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 14<sup>th</sup> October, 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 14<sup>th</sup> November, 2025 and referenced ODPC/CIE /CON/2/1(697). 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. Provide any relevant materials or evidence in support of their response above;
  - c. Details on how they obtained the Complainant's personal number;
  - d. Whether the Complainant was notified and consented to the use of his personal data;
  - e. The lawful basis relied upon to deny the Complainants the right of rectification and erasure;

- 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 to 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. The complaint stems from the Complainant's allegation that Respondent allegedly unlawfully continued to use his mobile phone number on their website as their contact detail despite his objection and request for erasure

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

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

11. The Complainant averred that in 2021, he visited Telkom Offices (GPO) and purchased a Telkom wireless line for his personal use, upon which he was allocated telephone number 020-##### after making the requisite payment.
12. He submitted that approximately two weeks after activation of the line, he began receiving numerous calls from various individuals enquiring whether they had reached Kings Commodities Limited. He stated that he consistently informed the callers that the number was his personal line and was not associated with Kings Commodities Limited or any other company.
13. The Complainant noted that, due to the persistent nature of the calls, he conducted a search of the Kings Commodities Limited website to establish whether his number was listed there. He further stated that callers informed him that they had obtained the number from the company's website.

14. The Complainant averred that he initially assumed the number may previously have belonged to Kings Commodities Limited and was subsequently repossessed by Telkom Limited for failure to comply with applicable line agreement obligations, after which it was reassigned to him. He submitted that he gave the company sufficient time to remove the number from its website and any other materials where it was listed as a contact number. He further stated that in mid-2022, he contacted the company and explained the issue, and was informed that the manager was abroad, which had caused the oversight, and was assured that the number would be removed from the website.

15. The Complainant further averred that he waited for an additional year up to mid-2023, during which period he continued to receive calls from customers and business prospects of Kings Commodities Limited. He stated that on 20<sup>th</sup> July 2023, he wrote an email to info@kingscommodities.com, addressed to the General Manager, formally requesting the removal of the number from the website. He submitted that he did not receive any response to the email and was of the view that the company either ignored his complaint or deliberately failed to comply with its obligations under data protection law.

## **II. THE RESPONDENTS' RESPONSE**

16. 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**

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

- i. Whether there was a violation of 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.**

18. 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.
19. The Complainant exercised his right under Section 26(c) of the Data Protection Act, 2019 to object to the processing of his personal data by first raising the issue informally through a telephone call to the Respondent in mid-2022, and subsequently making a formal objection through an email dated 20<sup>th</sup> July 2023. These communications clearly notified the Respondent that the telephone number in question was his personal number and that he objected to its continued use and publication as a company contact.
20. Consequently, despite being placed on notice, the Respondent failed to act on the Complainant's objection. The number remained listed on the Respondent's website, and the Complainant continued to receive calls intended for the Respondent.
21. The Respondent did not provide any response to the Complainant's formal request, nor did it demonstrate that steps were taken to remove the number or cease further processing. This failure to act amounts to continued processing of the Complainant's personal data in disregard of an express objection, contrary to the protections afforded under Section 26(c) of the Data Protection Act, 2019.

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**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 shall state the remedy to which the Complainant is entitled. Further, the remedies are provided for in Regulation 14(3) of the Enforcement Regulations.
24. 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.

25. 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.

26. In considering whether to issue compensation, this Office notes that the Respondent failed to honour the Complainants right under Section 26(c) of the Data Protection Act, 2019 to object to the processing of his personal data.

27. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)**

28. **An Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations for failure to respond to the Notification of Complaint and to attend the scheduled site visit. This Enforcement Notice is issued to reinforce accountability and ensure adherence to the statutory obligations under the Data Protection Act.

#### **G. FINAL DETERMINATION**

29. 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. 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 13<sup>th</sup> day of January 2026.



**IMMACULATE KASSAIT, SC, MBS**

**DATA COMMISSIONER**