



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1642 OF 2025

PHERICK RODA MWAZONGA..... COMPLAINANT

-VERSUS-

TINYCOST CREDIT LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 8 (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. This Complaint is in respect of the Complainant's claim that the Respondent unlawfully stored and processed the Complainant's personal data by using it for direct marketing by sending unsolicited promotional messages.

B. LEGAL BASIS

2. Article 31 (c) and (d) of the Constitution of Kenya 2010 provides for the right to privacy. Consequently, to further guarantee the same, the Data Protection Act, 2019 (hereinafter 'the Act') was enacted.
3. The Office of the Data Protection Commissioner (hereinafter 'this Office' 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 (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.

C. BACKGROUND

5. The Office received the Complainant's complaint on 28th October 2025, pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations') from the Complainant who is the aggrieved data subject.
6. Pursuant to Regulation 11 of the Enforcement Regulations, on 31st October 2025, this Office notified the Respondent of the complaint filed against it *vide* a letter referenced ODPC/CIE/CON/2/1 (817).
7. As at the date of this determination, the Respondent had failed, refused, and/or neglected to respond to the Notification of Complaint.
8. This determination is therefore pursuant to Regulation 11(2) of the Enforcement Regulations which provides that where a Respondent does not take any action as contemplated under sub-regulation, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and these Regulations.

D. NATURE OF THE COMPLAINT

9. The complaint concerns the allegation that the Respondent unlawfully stored and processed the complainant's personal data.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

10. The Complainant alleged that the Respondent has unlawfully processed her personal data by using it for direct marketing through sending of unsolicited promotional messages.

ii. THE RESPONDENT'S RESPONSE

11. The Respondent was non-responsive and did not respond to the Notification of Complaint filed against him. Therefore, the allegations levelled against him remain uncontroverted.

F. ISSUES FOR DETERMINATION

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

- i. Whether the Complainant's personal data was lawfully processed; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THE COMPLAINANT'S PERSONAL DATA WAS LAWFULLY PROCESSED

13. From the allegations put forth by the Complainant, it is evident that the complaint relates to the processing of the Complainant's personal data wherein the Complainant alleges that the Respondent was sending her unsolicited messages without her permission and knowledge.

14. This Office will thus consider whether the processing of the Complainant's personal data was lawful.

15. Section 30 of the Data Protection Act provides the lawful bases for processing personal data. It provides:-

30. Lawful processing of personal data

(1) A data controller or data processor shall not process personal data, unless

(a) the data subject consents to the processing for one or more specified purposes;

or

(b) the processing is necessary-

(i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;

(ii) for compliance with any legal obligation to which the controller is subject;

- (iii) in order to protect the vital interests of the data subject or another natural person;*
- (iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*
- (v) the performance of any task carried out by a public authority;*
- (vi) for the exercise, by any person in the public interest, of any other functions of a public nature;*
- (vii) for the legitimate interests pursued by the data controller or data processor by a third party to whom the data is disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject; or*
- (viii) for the purpose of historical, statistical, journalistic, literature and art or scientific research.*

(2).....

16. The above-stated are the lawful bases upon which the data controller, the Respondent herein, should have processed the Complainant's personal data.
17. Despite being given an opportunity to respond to the Complaint, the Respondent did not file a response to the allegations brought by the Complainant. As stated above the Respondent was duly notified of the complaint and was required to respond to the allegations against it within the prescribed timelines contained in the notification letter. As such, the Complainant's allegations remain uncontroverted.
18. This Office therefore finds that in as far as issue no. **(i)** is concerned the Respondent has failed to establish the lawful basis for processing the Complainant's personal data.

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

19. Under 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. As her relief, the Complainant sought compensation.

20. Section 65 (1) of the Act provides for compensation to a data subject and states 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. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.

21. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.


22. Having found that the Complainant's claim is uncontroverted, and it therefore stands, the Respondent is hereby directed to compensate the Complainant the amount of **KES 50,000/= (Fifty Thousand Shillings Only)**, for unlawful processing of the Complainant's personal data.

G. FINAL DETERMINATION

23. The Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to compensate the Complainants **KES 50,000/= (Fifty Thousand Kenya Shillings Only)**.
- iii. The Respondent is hereby ordered to erase the complainant's personal data from their database and adduce proof thereof within **fourteen (14) days** from the date of this determination or an Enforcement Notice to issue.
- iv. 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 January 2026.



**IMMACULATE KASSAIT SC, MBS
DATA COMMISSIONER**

