



**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**ODPC COMPLAINT NO. 1498 OF 2025**

**STEVE ONWONGA OMWENGA .....COMPLAINANT**

**-VERSUS-**

**CJ'S 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 Respondent used his personal data for promotional messages despite not giving prior consent and opting out.

**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 5<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 (861). 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. Provide any relevant materials or evidence in support of your response above
  - d. Details on how you obtained the Complainant's persona data;
  - e. 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

- f. 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 does not take place again; and
  - g. Any other relevant information they wish the Office to consider.
8. The Respondent submitted a response on 2<sup>nd</sup> December, 2025.
9. This determination is therefore as a result of analysis of the complaint as received, the Respondent's response and investigations conducted by the Office.

#### **D. NATURE OF THE COMPLAINT**

10. The Complaint relates to, alleged use personal data for promotional messages despite not giving prior consent and opting out option.

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

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

11. The Complainant avers that, on various dates in September 2025, the respondent sent unsolicited promotional messages to his mobile telephone number 07\*\*\*\*\*
12. He submits that he had not given consent, nor had the Respondent sought consent, for the sending of such messages, and that the Respondent had no lawful basis or justification for processing the Complainant's personal data in that manner.
13. Complainant further indicated concerns regarding how the Respondent obtained the telephone number, as the Complainant had never provided it to the Respondent. He avers that on 25<sup>th</sup> September 2025, after receiving a third promotional message, He contacted the Respondent by email to complain about the messages, requested the Respondent to acknowledge the unlawful processing of their personal data, and sought an amicable resolution, but no response had been received.
14. The Complainant therefore lodged a complaint against the Respondent for unlawful processing of personal data, attached screenshots of the messages

and the email correspondence in support, and sought compensation or general damages, noting that prior efforts to settle the matter directly with the Respondent had been unsuccessful.

**ii. THE RESPONDENT'S RESPONSE**

15. The Respondent submitted their response *vide* a letter dated 2<sup>nd</sup> December 2025.
16. They explained that the messages formed part of a general customer outreach and promotional campaign intended to inform the public about free delivery services during the festive season, and that there was no malicious intent.
17. Upon receipt of the complaint, the Respondent indicated that it initiated an internal inquiry on 26<sup>th</sup> September 2025 and confirmed that three promotional messages had been sent to the Complainant's number on 15<sup>th</sup>, 22<sup>nd</sup> and 25<sup>th</sup> September 2025. Following this confirmation, the Respondent stated that it immediately ceased all communications to the number, permanently deleted it from its database, and assured the Complainant that no further messages would be sent.
18. The Respondent further stated that it was surprised to learn that a complaint had nevertheless been filed, despite these mitigation measures. It indicated that, pursuant to the options provided by the Office, it invited the Complainant for an amicable meeting, which took place on 29<sup>th</sup> November 2025, during which the Respondent explained the actions taken, issued an apology, and offered a KES 10,000 dining voucher as a goodwill gesture.
19. The Respondent stated that the Complainant accepted the apology but sought time to consider the offer, and subsequently requested a better offer via SMS, which the Respondent declined, maintaining that its proposal was fair.
20. The Respondent added that it had since implemented corrective measures, including consent-based marketing controls, opt-out mechanisms, internal data handling policies, staff training, and had commenced the process of registration with the Office.

21. They maintained that the incident was isolated, that no personal data had been shared with third parties, expressed remorse for the breach, and requested the Office to issue guidance that balances data subject rights with protection of legitimate businesses from abuse of process, while reaffirming its commitment to comply with the Data Protection Act, 2019.

#### **F. ISSUES FOR DETERMINATION**

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

- i. Whether the Respondent established a lawful basis for processing the Complainant's personal data; and
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

#### **I. WHETHER THE RESPONDENT ESTABLISHED A LAWFUL BASIS FOR PROCESSING THE COMPLAINANT'S PERSONAL DATA**

23. Section 25(b) of the Act requires that personal data be processed lawfully, fairly, and transparently.

24. Section 30 of the Act stipulates that a data controller or data processor shall not process personal data unless the data subject consents to the processing for one or more specified purposes. The Respondents processed the Complainant's personal data without obtaining consent from the Complainant.

25. The Respondent failed to obtain a lawful basis for processing the Complainant's data for marketing purposes and did not inform the Complainant that his data would be used in this way. The processing was therefore unlawful, non-transparent, and unfair, as the Complainant had no opportunity to object or opt out prior to receiving the messages.

26. The Office therefore finds that the Respondent did not establish a lawful basis for processing the Complainant's personal data as per Section 30 of the Act.

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

27. 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.
28. The Complainant prays for Compensation from the Respondent for processing his data without his consent and causing him emotional distress.
29. 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."*
30. Further, Regulation 14(3)(e) provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
31. In considering whether to issue compensation, this Office takes into consideration the fact that the Respondent unlawfully processed the Complainant's personal data.
32. The Office notes that the Respondent subsequently took remedial measures, including reaching out to the Complainant, issuing an apology, offering a goodwill gesture of KES 10,000, ceasing further communications, and implementing consent-based marketing controls. While these actions mitigate the severity of the breach, they do not absolve the Respondent of liability.
33. In consideration of these mitigating factors, the Office hereby orders the Respondent to pay the Complainant **Kenya Shillings Seventy Five Thousand (KES 75,000/=)** as compensation.

## G. FINAL DETERMINATION

34. 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 Seventy Five Thousand (KES 75,000/=)** 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 2<sup>nd</sup> day of January 2026.



