



## OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1348 OF 2025

**TITUS ESAU BARUA.....COMPLAINANT**

**-VERSUS-**

**CERESTECH LIMITED  
T/A CHAPAA LOAN .....**RESPONDENT

### **DETERMINATION**

*(Pursuant to Sections 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. The Complainant alleges that the Respondent processed and/or continues to process his personal data for marketing purposes without his 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 '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 (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 13<sup>th</sup> September, 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations from the Complainant who was the 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 8<sup>th</sup> October, 2025 referenced ODPC/CIE/CON/2/1(737). In the notification of the complaint, the Respondent was informed that if the Complainant's allegations were true, they would be in violation of various sections of the Act. Additionally, the Respondent was asked to provide this Office with the following:
  - a) A response to the allegations made by the Complainant and, a contact person who can provide further details as regards this complaint;
  - b) Any relevant materials or evidence in support of the statement of response;
  - c) Proof of whether the complainant was notified and gave express consent for the use of his personal data for commercial purposes pursuant to Section 37 Act;
  - d) The lawful basis for denying the complainant his right to object to the processing of his personal data;

- e) The lawful basis for denying the complainant his right to deletion;
- f) The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant, if any;
- g) Any other information

8. The Respondent failed, refused, or neglected to respond to the Notification of Complaint. Consequently, the Complainant's allegations remain uncontroverted.

#### **D. NATURE OF THE COMPLAINTS**

9. The Complainant alleges that the Respondent processed his personal data by sending unsolicited marketing messages without his consent. He further contends that, upon being persistently contacted by one of the Respondent's agents for marketing purposes, he requested the deletion of his personal data, but the Respondent neither acknowledged nor acted upon this request.

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

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

10. The Complainant states that on 3<sup>rd</sup> September 2025, he created an account on Chapaa Loan application and applied for a loan, which he repaid. He claims that he sought to delete his account but despite several attempts, the application only logged him out instead of deleting the account.

11. The Complainant further alleges that after attempting to delete the account, he began receiving numerous spam messages and calls from the company, allegedly urging him to apply for new loans.

12. The Complainant claims that he repeatedly requested the deletion of his account and personal data, and the cessation of the spam communications, but the Respondent refused to comply. He proceeded to inform the Respondent of his right to have his personal data erased, as he no longer required its services, and that he possesses voice recordings of the calls and copies of the spam messages sent.

13. The Complainant claims that the spam messages and calls disrupted his peace of mind and that of his family, causing him mental distress.

## ii. THE RESPONDENT'S RESPONSE

14. The Respondent requested that the Complaint be resolved through Alternative Dispute Resolution facilitated by a neutral mediator appointed by the Office. The matter was accordingly admitted to mediation; however, the parties were unable to reach a settlement, and the process was unsuccessful.

15. Notwithstanding the foregoing, the Respondent failed, refused, or neglected to respond to the Notification of Complaint. As a result, the Complainant's allegations remain unchallenged.

## F. ISSUES FOR DETERMINATION

16. In light of the above, the complaint, the Respondent's responses and evidence adduced together with the investigations conducted, the following issues fall for determination by this Office:

- i. Whether the Respondent fulfilled its obligations under the Act;
- ii. Whether there was a violation of the Complainant's rights under the Act; and
- iii. Whether the Complainant is entitled to any remedies under the Act.

## I. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

17. In considering this issue, the Office will examine whether the Complainant consented to the use of his personal data for direct marketing purposes.

18. Section 25(c) of the Act provides, that every data controller or data processor shall ensure that personal data is collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes.

19. The Complainant submitted that he registered for an online facility via one of the Respondent's digital lending applications. The information was required for verification of identity, legal age and among others disbursement of the loan. He pleads that such

information was provided solely for the purpose of facilitating receipt and repayment of the loan. Any further processing for promotional or marketing purposes, without obtaining additional and specific consent, contravenes Section 25(c) of the Act, which establishes the principle of purpose limitation, requiring that personal data be collected for explicit, specified, and legitimate purposes and not further processed in a manner incompatible with those purposes.

20. Section 37(1) of the Act states that, "*a person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person –*

- a) Has sought and obtained express consent from a data subject; or*
- b) Is authorised to do so under any written law and the data subject has been informed of such use when collecting the data from the data subject."*

21. Regulation 14(1) of the General Regulations provides the interpretation of 'commercial purposes' and provides that for the purposes of Section 37(1) of the Act, *a data controller or data processor shall be considered to use personal data for commercial purposes where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting directly or indirectly, a commercial transaction.*

22. By constantly sending messages to the Complainant's phone number to market its products to him, the Respondent was processing the Complainant's personal data for commercial purposes as defined above.

23. Regulation 15 of the General Regulations sets out the permitted commercial use of personal data and states that, "*a data controller or data processor may use personal data, other than sensitive personal data, concerning a data subject for the purpose of direct marketing where—*

- a) the data controller or data processor has collected the personal data from the data subject;*

- b) a data subject is notified that direct marketing is one of the purposes for which personal data is collected;
- c) the data subject has consented to the use or disclosure of the personal data for the purpose of direct marketing;
- d) the data controller or data processor provides a simplified opt out mechanism for the data subject to request not to receive direct marketing communications; or
- e) the data subject has not made an opt out request."

24. It was upon the Respondent to demonstrate that it had notified the data subject that direct marketing is one of the purposes for which the personal data is collected, obtained express consent from the Complainant before reaching out to him to market their services and provided a simplified opt out mechanism. This burden was not discharged by the Respondent as it failed to prove that it obtained consent from the Complainant.

## **II. WHETHER THERE WAS A VIOLATION OF THE COMPLAINANT'S RIGHTS UNDER THE ACT.**

25. The Complainant submitted evidence demonstrating that he exercised his right to object to the processing of his personal data for commercial purposes, as provided under Section 26(c) of the Act, as read together with Sections 36 and 40(1)(b) of the Act. The exercise of this right imposed a legal obligation on the Respondent to act on the erasure request without undue delay and cease further processing of the Complainant's personal data for direct marketing purposes.

26. Despite the Complainant exercising his right to object he continued to receive marketing and promotional messages from the Respondent and no response or action from the Respondent's end with regard to the exercise of his rights as a data subject.

27. Additionally, the Respondent failed to respond to the notification of complaint therefore the evidence furnished by the Complainant remains unopposed.

28. From the above, this Office finds that the Complainant's rights under Sections 26(a) & (c), 36 and 40(1) of the Act were violated by the Respondent.

### **III. WHETHER THE COMPLAINANT IS ENTITLED TO ANY REMEDIES UNDER THE ACT**

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. As a remedy, the Complainant requested that the Respondent erase his personal data from its records / systems and database and any other record and monetary compensation for the violation of his right as a data subject.

31. Section 65(1) of the Act provides, that a person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or the data processor. Section 65(2) provides, a data controller involved in processing of personal data is liable for any damage caused by the processing.

32. Section 65(4) of the Act provides that "damage" includes financial loss and damage not involving financial loss, including distress.

33. Having found that the Respondent failed to uphold the rights of the Complainant as a data subject as envisaged under Section 26 (a) & (c), and the Respondent as a data controller unlawfully processed the Complainant's personal data, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 200,000 (Two Hundred Thousand Kenya Shillings)**.

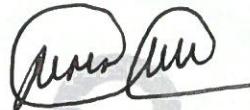
34. In so doing, this Office takes into account the nature and extent of violation with regard to unlawful processing of the Complainant's personal data, the relationship between the Complainant and the Respondent and the conduct of the Respondent.

## G. FINAL DETERMINATION

35. In consideration of all the facts of the complaints, the evidence tendered and the investigations conducted, the Data Commissioner makes the following determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is ordered to compensate the Complainant **KES 200,000 (Two Hundred Thousand Kenya Shillings).**
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at **NAIROBI** this 11 day of December 2025



**Immaculate Kassait, SC, MBS**  
**DATA COMMISSIONER**