



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1308 OF 2025

ERIC MUTUNE MWAMWEE.....**COMPLAINANT**

-VERSUS-

SOLID GAMING LIMITED T/A IMARABET.....**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 regarding the sending of direct marketing messages urging him to bet on Sports, Aviator, and Casino "without tax" and offering 100% tax cashbacks and a free bet of Kshs. 30 yet he has never interacted with the Respondent and had not consented to receiving gambling messages.

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 5th September 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 30th September, 2025 and referenced ODPC/CIE/CON/2/1 (672). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, they were in violation of various provisions of the Act. Further, the Respondent was 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 could provide further details as regards to this complaint;
 - c. Any relevant materials or evidence in support of their response above;
 - d. The lawful basis relied upon to process the Complainant's personal data for direct marketing;

e. A statement outlining an opt-out mechanism as provided for by Section 16 of the Data Protection (General) Regulations, 2021;

f. An elaborate representation of how data subjects can exercise their rights in relation to data protection;

g. A detailed procedure on how data subjects can exercise their data protection rights;

h. Their data protection policy;

i. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant and the mitigation measures adopted or being adopted ensure that such occurrence mentioned in the complaint does not take place again; and

j. Any other relevant information they wish the Office to consider.

8. On 11th November 2025, the Respondent submitted to the Office a Response to the Notification of Complaint.

9. On 17th November 2025, the Complainant submitted a rejoinder to the response.

10. Upon receipt of the correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.

11. This determination is therefore a result of analysis of the complaint as received and investigations conducted by the Office.

D. NATURE OF THE COMPLAINT

12. It is the Complainant's assertion that he has been receiving unsolicited promotional messages and calls from the Respondent despite multiple attempts to opt out of the same.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

13. The Complainant avers that on 19th July, 2025, he received a direct marketing message from the Respondent urging him to bet on Sports, Aviator and Casino without tax and offering 100% cashbacks and a free Kshs. 30 bet.

14. The Complainant indicated that the message contained a link to sign up and was sent to his personal number 07*****5.

15. The Complainant stated that the message did not include any choice or option to unsubscribe from future communications of similar content.

16. He maintained that he had not consented to receive such gambling-related communications.

17. He stated that he does not know the Respondent and has never interacted with them before.

18. According to the Complainant, the Act requires all direct marketing messages to carry an opt-out mechanism, which is mandatory, and the Respondent deliberately violated this requirement.

19. The Complainant stated that the message infringed his privacy and exposed his children to gambling content because his phone is accessible to his wife and children.

20. He averred that gambling harms families and society and that the message caused him stress over possible future impacts on his children.

21. The Complainant sought the following remedies from this Office:

- i) Compensation of Kshs 150,000 for distress caused;
- ii) Compensation of Kshs. 200,000 for violation of his rights under the Act;
- iii) Compensation of Kshs. 100,000 for indirectly introducing his family to gambling;
- iv) Erasure of his number from the Respondent's database as soon as possible.

22. The Complainant provided screenshots of the promotional messages originating from the Respondent.

ii. THE RESPONDENT'S RESPONSE

23. The Respondent submitted a response to the notification dated 11th November 2025 in which they averred that the Complainant registered on its website on 17th July 2025 using phone number 07*****9 and provided device information.

24. They stated that registration required acceptance of the Terms and Conditions and Privacy Policy, which included consent for marketing.

25. They averred that the onboarding message sent on 19th July 2025 was part of its standard "Sign Up & Win" process targeting unverified accounts. Further, they state that promotional messages are sent only to users who have already given consent and have not withdrawn it.

26. The Respondent acknowledged that the message sent did not include the opt-out feature due to a system error by its SMS vendor.

27. According to the Respondent, users may opt out *via* Safaricom DND or by contacting its customer care or updating preferences, but the Complainant made no such request.

28. The Respondent stated that it has now initiated erasure of the Complainant's marketing data and blacklisted his number.

iii. THE COMPLAINANT'S REJOINDER

29. The Complainant submitted a rejoinder dated 17th November 2025.

30. He stated that the mendacious and spurious attempts by the Respondent to present false information before this Office should not be entertained in totality.

31. The documents provided by the Respondent are not genuine and are meant to mislead this Office's determination.

32. He draws the attention of this Office to paragraph 4 (b) of the Respondent's response. A keen perusal of the phone number 07*****9 in paragraph 4 (b), which the Respondent alleges he provided after being prompted, does not belong

to him, and after trying to transact to get the registered name, he found out that the number belongs to somebody by the name J*** N***.

33. The number alleged to have been registered and the number alleged to have been provided after being prompted is not the same, do not relate and there is no clear linkage between the number alleged to have been registered 07*****5 and the number alleged to have been provided 07*****9 after being prompted as per paragraph 4 (b) of the Respondent's response.
34. The Respondent stated that it would be impossible for them to register 07*****5 and prompt a different phone number 07*****9.
35. If it's true that he registered himself with the Respondent through his phone number 07*****5, then the same number could have been prompted.
36. That If he had provided 07*****9 as per the Respondent's response in paragraph 4 (b), how did the Respondent file ingenuine evidence showing a different number 07*****5 was the one registered with the Respondent's platform?
37. The Respondent never provided a sign-up verification code or a pre-verification code sent to him as proof before this office, if indeed he registered/ attempted to register with the Respondent on that material day as alleged by them.
38. The Respondent manipulated its system to edit and fix his number to look like it was registered in their platform without proof as evidenced by the Respondent's misleading information in paragraph 4 (b) where it alleges that he provided 07*****9 when he was prompted, yet the alleged registered number is 07*****5 according to the Respondent's document number 4 in its list of documents.
39. He avers that he does not know the number alleged to have been provided 07*****9 upon being prompted, and if he was indeed prompted and gave out 079*****4, then that number 07*****9 ought to have been the one purported to have been registered and not 07*****5. That inconsistency of information has disclosed the Respondent's calculated move to mislead this office into running away from liability arising from data violation.

40. He reiterates that he did not register with the Respondent, and he does not know the Respondent or its agents. No proof has been provided by the Respondent to prove the contrary, and as such, his complaint, as it stands, remains unchallenged.

41. He urges this office to disregard the Respondent's response and throw it away for lack of genuineness, consistency, transparency, and honesty.

42. He attached a screenshot showing the alleged registered number, the alleged phone number provided during registration, and the registered name under which the purported number is alleged to have been provided during registration.

F. ISSUES FOR DETERMINATION

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

- i. Whether there was a violation of the Complainant's rights under the Act and attendant regulations.
- ii. Whether the Respondent fulfilled its obligation under the Act.
- iii. 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 RIGHTS UNDER THE ACT

28. Section 26(c) of the Act provides for the right to object to processing of personal data. Further Section 36 of the Act states that, "*a data subject has a right to object to the processing of their personal data, unless the data controller or data processor demonstrates compelling legitimate interest for the processing which overrides the data subject's interests, or for the establishment, exercise or defence of a legal claim.*"

29. Regulation 8 further specifies "*that a data Subject may request a data controller or processor not to process all or part of their personal data, for a specified purpose or in a specific manner.*"

30. It is worth noting that the right to object to processing is an **absolute right** where processing is for direct marketing purposes.

31. In this case, the Complainant could not exercise his right to object because the Respondent's message did not have an opt-out mechanism to facilitate the same.

32. The Respondent was obligated to include in their marketing messages, an opt-out mechanism to allow data subjects the opportunity to exercise their right to object to processing of their data.

33. Based on the above, this Office concludes that the Respondent violated the Complainant's right to object under Section 26 (c) of the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

34. The Respondent is a data controller within the definitions of the Act and therefore has obligations pursuant to the Act.

35. Section 25 of the Act obligates every data controller or processor to process personal data in adherence to the set principles which includes inter alia;

- i. Processing in accordance with their right to privacy and
- ii. Process lawfully, fairly and in a transparent manner in relation to data subjects

36. It is evident from the screenshots provided by the Complainant that he received unsolicited marketing text messages from the Respondent regarding gambling without his consent.

37. The unsolicited promotional messages regarding gambling and betting with no prior consent or clear purpose explained to the Complainant, violate the principle of lawfulness, transparency and fairness.

38. Furthermore, the Respondent did not inform the Complainant about the purpose of data collection or how his data was obtained, which contravenes the principle of transparency.

39. 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. In this case, the Respondents processed the Complainant's personal data without obtaining consent from the Complainant as required under section 30 and 32 of the Act.

40. Furthermore, with regards to the unsolicited promotional messages, 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 has sought and obtained express consent from a data subject.*"

41. The Office therefore finds that the Respondent did not fulfil its obligations under the Act.

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

42. 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.

43. 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.

44. 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.

45. In considering whether to issue compensation, this Office takes into consideration the fact that the Complainant's right to object processing under Section 26(c) of the Act was infringed upon by the Respondent and use of the Complainant's data for commercial purposes.

46. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000)** for the infringement of his rights under the Act.

47. Having found that the Respondent failed to fulfill its obligations under the Act and attendant regulations, **an Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations.

G. FINAL DETERMINATION

48. The Data Commissioner therefore makes the following final determination: -

- i. The Respondent is hereby found liable.
- ii. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred and Fifty Thousand (KES 250,000)** as compensation.
- iii. An Enforcement Notice to hereby be issued to the Respondent.
- iv. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 8th day of December 2025.



IMMACULATE KASSAIT, MBS
DATA COMMISSIONER



KENYA