



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1201 OF 2025

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

KENTEX CARGO.....**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 his personal data for marketing purposes without a lawful basis.

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 17th August, 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 23rd September, 2025 referenced ODPC/CIE/CON/2/1(691). 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 against you by the Complainant and, a contact person who can provide further details as regards this complaint;
 - b) Provide any relevant materials or evidence in support of your response above;
 - c) 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) Details on how you obtained the Complainant's other email address;
 - e) The lawful basis relied upon to deny the Complainant the right to object to the processing of her personal data;

- 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 the Office to consider.

8. The Respondent responded to the allegations made against it vide a letter dated 22nd October, 2025.

D. NATURE OF THE COMPLAINTS

9. The Complainant alleges that, without his knowledge, the Respondent unlawfully collected and processed his personal data for commercial purposes without any lawful basis. He further contends that, despite having successfully opted out of such communications, the Respondent continued to send him marketing messages, including to an alternative email address which he asserts he has never shared with the Respondent.

10. The Complainant maintains that this conduct amounts to a failure by the Respondent to respect his statutory right to object to the processing of his personal data for direct marketing purposes, and constitutes a breach of the principles of lawfulness, fairness, and transparency as set out under the Act.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant claims that the Respondent, either directly or through its agents, repeatedly sent him direct marketing and promotional messages despite having exercised his right to object by opting out.

12. The Complainant states that in 2021, he attempted to purchase an item from Amazon and was directed to a process facilitated by the Respondent, whereby he would send a product link via email, receive a quotation covering product and shipping costs, and upon payment, the Respondent would procure and deliver the item. Using his email address om*****ga@gmail.com he sent the product link and received the quotation. He emphasizes that this was the extent of his engagement with the

Respondent and that he never created an account, subscribed to any mailing list, nor consented to receive marketing or promotional messages.

13. He asserts that despite this single interaction, the Respondent began sending him unsolicited marketing and promotional emails encouraging him to register as a member. These communications allegedly continued intermittently for about three years until 6th August 2025, when he unsubscribed. However, on 12th August 2025, he received another promotional email this time sent to his alternate email address, om*****w@gmail.com which he states he has never shared with the Respondent nor used in any past communication. He denies having consented to any processing or promotional use of that address.

14. The Complainant further explains that upon receiving the unsolicited message to his alternate address, he wrote to the Respondent on 12th August 2025 requesting deletion of his personal data. The Respondent replied on 13th August 2025 acknowledging the request but merely advised him to unsubscribe, which he argues failed to meet the Respondent's statutory obligations to delete the data or provide reasons for refusal. Despite this, on 15th August 2025 he received yet another promotional email from the Respondent.

15. He contends that the Respondent's actions constitute violations of his rights under the Act. He further expresses concern that the Respondent may possess or obtain additional undisclosed email addresses belonging to him and continue processing his data without consent, causing him emotional distress and anxiety.

16. As evidence, the Complainant attached email correspondence between himself and the Respondent, the initial quotation request, and screenshots of promotional emails.

ii. THE RESPONDENT'S RESPONSE

17. The Respondent pleads it lawfully collects all contact details directly from its data subjects.

18. The Respondent states that its internal review confirms the complainant's email address was obtained through the standard sign-up process used by the company. It

maintains that no additional or alternative email address belonging to the complainant was sourced, accessed, or used by the Respondent.

19. The Respondent adds that if any additional email address appears in its system, it may have been voluntarily provided by the complainant during registration or interaction with its platform. It asserts that all communications sent to the complainant were made on a legitimate business basis using data voluntarily provided by the client, and that such communications did not result in any financial or other gain to the company beyond normal promotional activity.

20. The Respondent further explains that clients, including the complainant, have the option to unsubscribe from promotional communications at any time, and the complainant retained the ability to exercise this right to stop receiving such messages.

21. Lastly, the Respondent affirms its commitment to complying with the Act and notes that no further promotional communications have been sent to the complainant pending the resolution of this matter.

F. INVESTIGATIONS UNDERTAKEN

22. Based on the materials reviewed and the information available, the Office notes that the Complainant received marketing and/or promotional messages from the Respondent, including communications reportedly sent after an attempt to unsubscribe.

23. From the documents provided, the Office has not identified clear evidence demonstrating the basis upon which the Respondent may have relied to process the Complainant's personal data for marketing and/or promotional purposes, nor has it identified documentation confirming any signup or subscription by the Complainant.

24. The Office further observes that, from the information currently before it, there is no clear indication of any follow-up communication by the Respondent regarding the Complainant's request for erasure of his personal data.

G. ISSUES FOR DETERMINATION

25. 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 unlawfully processed the Complainant's personal data
- 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 UNLAWFULLY PROCESSED THE COMPLAINANT'S PERSONAL DATA

26. Section 25 of the Act requires that personal data must be processed in accordance with the right to privacy, processed lawfully, fairly, and transparently, collected for explicit, specified, legitimate purposes and adequate, relevant, and limited to what is necessary.

27. The Complainant asserts he provided his primary email address solely for a one-time quotation inquiry, yet the Respondent subsequently used this data for undisclosed and unconsented marketing purposes, contrary to Sections 25(b) and (c) of the Act. The continued sending of promotional messages even after the Complainant unsubscribed underscores a lack of fairness and transparency. Additionally, the use of a secondary email address never shared with the Respondent raises concerns regarding the source of the data and conflicts with Sections 25(a) and 25(b) of the Act.

28. An assessment of the Respondent's compliance with Section 29 of the Act shows that no evidence was provided to demonstrate that the Complainant was informed, prior to the collection of his email address, of any intention to use his data for marketing or promotional communication.

29. No evidence has been submitted before this Office demonstrating that the Complainant opened an account with the Respondent, or signed up to any service, or agreed to any terms governing the collection and use of his data. The Respondent's

claim of a “standard sign-up process” remains unsubstantiated. Accordingly, the Respondent failed to discharge its statutory duty to inform the data subject of the purpose for which his data was being collected.

30. With respect to Section 30, the Respondent did not establish any lawful basis for processing the Complainant’s personal data. No proof of consent was provided, despite Section 32(1) placing the burden of establishing consent squarely upon the data controller. The unsolicited promotional messages could not be justified under any of the lawful bases including contract, legal obligation, vital interests, public interest, or exercise of official authority and no legitimate interest assessment was demonstrated that could override the Complainant’s rights, particularly given that the Complainant had opted out. The processing therefore lacked a lawful basis within the meaning of Section 30(1) of the Act.
31. Further, the Respondent failed to honor the Complainant’s explicit withdrawal through unsubscribing and later through a deletion request. The continued dissemination of promotional emails after unsubscribing contravenes Section 32(2) of the Act, which requires a controller to cease processing immediately upon withdrawal and to demonstrate that consent existed in the first instance.
32. The Respondent also failed to restrict or cease processing following the Complainant’s request for erasure made on 12th August 2025. Rather than suspending processing or initiating deletion. Additionally, evidence before this Office demonstrates that processing continued thereafter. The Respondent did not demonstrate any internal mechanism for restriction or review as mandated under Section 34 of the Act.
33. Section 37 of the Act as read together with Regulations 14 and 15 of the Data Protection (General) Regulations, 2021 governs the commercial use of personal data and direct marketing. The Respondent’s promotional emails urging registration and subscription constitute direct marketing under Regulation 14(2) of the General Regulations. No express consent was obtained for such use contrary to Section 37(1)(a) of the Act and Regulation 15(1)(c) of the General Regulation.

34. As per the evidence before this Office, the un-subscription mechanism was also ineffective contrary to Regulation 15(1)(d) of the General Regulations.

35. These findings collectively demonstrate that the Respondent processed personal data for commercial and marketing purposes.

36. In view of the foregoing, the Office finds that the Respondent unlawfully processed the Complainant's personal data for commercial purposes, in contravention of the provisions of the Act and the attendant Regulations.

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

37. Section 40(1)(b) of the Act provides that a data subject has the right to request the erasure of personal data that is no longer necessary, obtained unlawfully, or being processed without consent.

38. The Act at Section 40(2) further obligates the data controller or processor to comply with such a request without undue delay and to inform any third parties to whom the data has been disclosed, or, if retention is necessary for evidentiary purposes, to restrict processing and provide timely notification to the data subject as per Section 40(3).

39. Regulation 12 of the General Regulations, reinforces this right by setting out that a data subject may request erasure where the data is no longer necessary, consent is withdrawn, the individual objects to processing, processing is for direct marketing without consent, or processing is otherwise unlawful. Pursuant to subsection (3) thereof, The controller or processor is required to respond to such requests within fourteen days.

40. In the present matter, the Complainant exercised his right to erasure on 12th August 2025, requesting that the Respondent delete his personal data from its records. The Respondent acknowledged the request on 13th August 2025, but rather than deleting the data or providing a legally sufficient explanation for refusal, it advised the Complainant to "unsubscribe at his convenience."

41. Notwithstanding this request, the Complainant continued to receive unsolicited promotional communications, including to an email address he never provided. These actions demonstrate that the Respondent failed to act on the Complainant's lawful request within the statutory time frame, in direct contravention of Sections 40(1)(b) and 40(3) of the Act and Regulation 12(3) of the General Regulations.

42. In light of the above, the Office finds that there was a violation of the Complainant's rights as per the Act.

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

43. 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.

44. As a remedy, the Complainant prayed for monetary compensation for the violation of his rights as a data subject.

45. 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.

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

47. Having found that the Respondent failed to uphold the rights of the Complainant as a data subject, and the Respondent as a data controller processed the Complainant's personal data for commercial purposes without a lawful basis, it then follows that the Complainant is entitled to compensation. The Respondent is hereby directed to compensate the Complainant **KES 400,000 (Four Hundred Thousand Kenya Shillings).**

48. 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 and the conduct of the Respondent.

49. Further, having found that the Respondent failed to uphold their obligations under the Act, an Enforcement Notice to issue.

H. FINAL DETERMINATION

50. 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 400,000 (Four Hundred Thousand Kenya Shillings)**.
- 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 15th day of November 2025.



Immaculate Kassait, MBS
DATA COMMISSIONER