



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1314 OF 2025

PHERICK RODA MWAZONGACOMPLAINANT

-VERSUS-

ZAGREUS LIMITED T/A 4 COINS APP.....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 the Respondent has been sending her unsolicited direct messages without her 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 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 8th 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 15th September, 2025 and referenced ODPC/CIE /CON/2/1(652). 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. Proof of consent from the Complainants to send her messages in regards to the loan offers.
 - d. Provide any relevant materials or evidence in support of your response above;
 - e. A detailed procedure on how data subjects can exercise their data protection rights;

- 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 complainant do not take place again; and
- g. Any other information you wish the Office to consider.

8. The Respondent was non-responsive and did not submit a response to the Notification of Complaint. Regulation 11(2) of the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021 states that, "*where a respondent does not take any action as contemplated in the notification of complaint, the Data Commissioner shall proceed to determine the complaint in accordance with the Act and the Enforcement Regulations.*"

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

D. NATURE OF THE COMPLAINT

10. The complaint stems from the Complainant lodging a complaint against the Respondent sent her unsolicited marketing messages without her consent.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant avers that she is an adult female resident of Kilifi County who began receiving direct marketing messages through her mobile number from an unfamiliar sender identified as "Fauricash." She states that the link embedded in each message redirected her to the 4Coins App, a platform she had never interacted with.

12. The Complainant notes that she has no existing loan facility with the Respondent, nor has she ever expressed interest in any of its loan products. She submits that she has never engaged with Fauricash, 4Coins, or their agents in any capacity, and therefore the Respondent had no lawful basis to process her personal data.

13. She further asserts that the Respondent engaged in unlawful direct marketing for two key reasons:

- i. For failing to obtain her prior consent before sending the messages; and

ii. For failing to provide an opt-out mechanism, or any instruction on how an aggrieved data subject may object to such processing, contrary to Regulation 15(1)(d) of the Data Protection (General) Regulations, 2021.

14. The Complainant notes that the Respondent repeatedly sent four direct marketing messages dated 29/04/2025, 28/06/2025, 28/07/2025, and 28/08/2025, all of which lacked an opt-out mechanism. Consequently, the Respondent not only violated Regulation 15(1)(d), but also denied her the statutory right to object to the processing of her personal data or to opt out of future marketing communications.

15. The Complainant states that the omission of an opt-out mechanism contravenes the Data Protection General Regulations, 2021, which require every data controller or data processor to provide a clear opt-out option in each direct marketing message. By failing to do so, the Respondent had already breached the law and impeded her ability to exercise her rights as a data subject.

16. She further avers that her right to privacy under Article 31 of the Constitution of Kenya was infringed, in addition to her rights under the Data Protection Act, owing to the Respondent's unlawful processing activities. She purports that these infringements warrant legal redress.

17. The Complainant also states that her own inquiries revealed that the *4Coins App* is managed by the Respondent, and therefore the Respondent is the entity trading as *4Coins* in Kenya.

18. In light of the foregoing, the Complainant requests this Office, being the regulator mandated to safeguard the manner in which personal data is processed in Kenya, to intervene and provide redress. She seeks the following remedies:

- i. Compensation of KES 600,000 for distress, turmoil, and infringement of her privacy;
- ii. Permanent deletion of her personal data from the Respondent's systems; and
- iii. Proof of deletion of her personal data from its database.

ii. THE RESPONDENTS' RESPONSE

19. The Respondents were non-responsive and did not submit a response to the Notification of Complaint. Therefore, the allegations made in the Complaint remain undisputed.

F. ISSUES FOR DETERMINATION

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

- i. Whether there was lawful processing of Complainant's processing of Complainant's personal data under the Act.
- ii. Whether the Complainant is entitled to any remedies under the Act and the attendant Regulations.

I. WHETHER THERE WAS LAWFUL PROCESSING OF THE COMPLAINANT'S PERSONAL DATA UNDER THE ACT.

21. The Complainant contends that she received unsolicited direct marketing messages from an unfamiliar sender, identified as "Fauricash," which redirected her to the 4Coins App, a platform she had never interacted with. She asserts that she has no existing loan facility with the Respondent nor has she expressed interest in any of its products and has never engaged with Fauricash 4Coins or their agents in any capacity. In light of these facts, any processing of her personal data by the Respondent for marketing purposes can be characterized as unlawful since it was carried out without her knowledge or consent.

22. Section 2 of the Data Protection Act, 2019, provides that "consent" means any manifestation of the data subject's wishes that is express, unequivocal, free, specific, and informed, either by a statement or by a clear affirmative action, indicating agreement to the processing of personal data relating to the data subject.

23. In other words, consent must be actively given, fully understood by the data subject, specific to the purpose of the processing, freely provided without coercion, and clearly indicate agreement to the use of personal data.

24. Further, Section 32(1) assigns the burden of proof to the data controller to show that a data subject has consented to the processing of their personal data for a specified purpose. In this instance, the Respondent has not provided any evidence demonstrating that the Complainant consented to her data being used for marketing purposes. As such, the processing was carried out without a lawful basis rendering it unlawful under the Act.

25. Moreover, Section 37 prohibits the use of personal data for commercial purposes unless express consent has been obtained from the data subject or statutory authorisation applies. Regulation 14(1) further clarifies that a data controller or processor uses personal data for commercial purposes when it is used to advance commercial or economic interests, including inducing a person to purchase, subscribe, or engage in services, directly or indirectly. The unsolicited messages sent to the Complainant clearly fall within this definition, as they were intended to promote the Respondent's financial products via the 4Coins App. Therefore, the Respondent's use of the Complainant's personal data for marketing constitutes commercial processing without consent, which is unlawful.

26. In addition, Regulation 15(1)(d) of the Data Protection (General) Regulations, 2021, mandates that every direct marketing communication must provide a simplified opt-out mechanism. The Complainant received four messages, dated 29/04/2025, 28/06/2025, 28/07/2025, and 28/08/2025, all of which lacked an opt-out option. This failure reinforces the conclusion that the Respondent processed her data unlawfully. Furthermore, despite the Complainant's inquiries and attempts to seek clarification, the Respondent was non-responsive, which further demonstrates disregard for the Complainant's rights and statutory obligations.

27. It is also established that the 4Coins App is managed by the Respondent, confirming that the Respondent, as the data controller, is accountable for these communications. Consequently, the Respondent is responsible for ensuring that all personal data processing complies with the law, which, in this case, it clearly did not.

28. Based on the foregoing analysis, it is evident that the Respondent's processing of the Complainant's personal data for marketing purposes was unlawful.

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

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. 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.

31. 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.

32. In considering whether to issue compensation, this Office notes that the Respondent failed to obtain the Complainant's consent before processing her personal data for marketing purposes, used her data for commercial purposes without lawful justification.

33. In this context, the Respondent is hereby ordered to pay the Complainant **Kenya Shillings Two Hundred Thousand (KES 200,000)**

34. **An Enforcement Notice shall issue against the Respondent** pursuant to Section 58 of the Act and Regulation 16 of the Enforcement Regulations for failure to respond to the Notification of Complaint and to attend the scheduled site visit. This Enforcement Notice is issued to reinforce accountability and ensure adherence to the statutory obligations under the Data Protection Act.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- i. The Respondent to pay the Complainant a sum of **Kenya Shillings Two Hundred Thousand (KES 200,000)** as compensation.

- ii. An **Enforcement notice** to hereby be issued to the Respondent.
- iii. 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.

