



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1395 OF 2025

STEVE ONWONGA OMWENGA.....COMPLAINANT

-VERSUS-

EGM SECURITIES LIMITED T/A FX PESA.....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 Office received a complaint from the Complainant with the allegation that despite the Complainant's request for the Respondent to stop sending him promotional messages, the Respondent continued sending the same.

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 20th September 2025. The complaint was lodged pursuant to Section 56 of the Act and Regulation 4 of the Enforcement Regulations.
7. Pursuant to Regulation 11 of the Enforcement Regulations, the Office notified the Respondent of the complaint filed against her *vide* letter dated 24th October 2025. The notification letter was referenced ODPC/CIE/CON/2/1 (779). The Office in the said Notification of Complaint for the complaints requested the Respondent to furnish the Office with –
 - a) A response to the allegations made against her by the Complainant;
 - b) Any relevant materials or evidence in support of its response, including internal policies and procedures on data deletion, consent withdrawal, marketing communications, and handling of data subject objections to processing;
 - c) Details of the steps taken to action the Complainant's request for deletion of his personal data and account, including supporting evidence of when and how such requests were received and processed.

- d) The lawful basis relied upon for continuing to process or use the Complainant's personal data after he unsubscribed from promotional communications and objected to further processing.
- e) Any actions taken or mitigation measures implemented to address the issues raised in the complainant and to prevent recurrence of similar breaches in future.
- f) Any other information it wished the Office to consider.

8. In the interest of fair justice, and pursuant to Regulation 11 of the Data Protection (Complaints Handling Procedures and Enforcement) Regulations, 2021, the Office further informed the Respondent of the options of -

- a. Reviewing the complaint and summarily resolving the same to the satisfaction of the Complainant, or
- b. Resolving the complaint through mediation, negotiation and/or conciliation, as the alternative dispute resolution (ADR) mechanisms provided for by the Act and the Regulations.

9. The Respondent responded to the notification letter vide a letter dated 29th October 2025.

D. NATURE OF THE COMPLAINT

10. The Complaint concerns the Complainant's allegations that the Respondent continued sending him promotional messages despite him opting out and or objecting from receiving them.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

11. The Complainant stated that the Respondent unlawfully processed his personal data by repeatedly sending him promotional emails, WhatsApp messages, and SMS communications without his consent and despite his clear objection to such processing.

12. The Complainant states that after registering an account with the Respondent in 2024, he began receiving persistent calls and WhatsApp messages from the Respondent's agents urging him to fund his trading account. He maintains that

although he expressed his disinterest and subsequently stopped engaging, the Respondent resumed contact in July 2025 by sending unsolicited promotional newsletters to his email address.

13. The Complainant contends that on 28th July 2025, he withdrew his consent and unsubscribed from the Respondent's promotional emails, receiving confirmation that his unsubscribe was successful. However, the Respondent continued to send him promotional messages, including an email on 1st August 2025 and a promotional SMS on 12th September 2025, contrary to his explicit objection.

14. The Complainant further states that on 20th August 2025, he exercised his right to erasure by requesting the deletion of his personal data, which the Respondent acknowledged receiving. He asserts that the Respondent failed to inform him whether his data had been erased and continued to process his personal data thereafter, amounting to a violation of his right to erasure under the Data Protection Act, 2019.

15. The Complainant maintains that the Respondent's continued processing of his personal data, despite his withdrawal of consent, objection to processing, and request for erasure, subjected him to distress and demonstrated disregard for his rights and the obligations imposed on data controllers.

ii. THE RESPONDENT'S RESPONSE

16. The Respondent confirmed that the Complainant's request to close his account and cease receiving promotional communications was received on 20th August 2025 under Case Reference No. 5497.

17. Following receipt of the request, the Respondent contacted the Complainant seeking a reason for the account closure, which forms part of its client retention and service review process. The Complainant, however, did not provide a response to this follow-up communication.

18. The Respondent stated that it received the Notification of Complaint from the Office on 27th October 2025 and thereafter re-reviewed the Complainant's records to ensure full compliance with his requests.

19. Upon review, the Respondent confirmed that the Complainant's trading account was closed on 29th October 2025 and his communication preferences updated to reflect a complete opt-out from all promotional and marketing communications. The Complainant was notified of the account closure via email.

20. The Respondent submitted that the Complainant's request has been fully implemented and that no further promotional messages will be sent to him.

21. The Respondent indicated that the Complainant voluntarily registered his account and accepted the Client Agreement dated 30th April 2024 together with the Privacy Policy, which informed him of the lawful bases for processing, including contractual obligations, regulatory compliance, and consent-based marketing communications.

22. The Respondent stated that withdrawal of consent for marketing was honored, and that any personal data retained after account closure is strictly limited to what is required for statutory, audit, and regulatory purposes as mandated under applicable laws.

23. The Respondent clarified that, in line with Regulation 21(4) of the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017, certain records relating to the Complainant's account are required to be maintained for a minimum period of seven (7) years, and such retention does not constitute continued marketing or misuse of personal data.

24. The Respondent further submitted that it has implemented appropriate technical and organizational safeguards, including controlled access rights, centralized consent management, manual verification of unsubscribe requests, and regular staff training on data protection compliance.

25. The Respondent contends that it acted lawfully and in compliance with the Data Protection Act, 2019, and maintains that the matter has been resolved following

closure of the Complainant's account and cessation of all promotional communication.

H. ISSUES FOR DETERMINATION

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

- i. Whether there was a violation of the Complainant's rights under the Act; and
- ii. 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

27. It was the Complainants position that in as much as he opted out of the Respondent's promotional messages and exercised his right to object the Respondent from continuing to use his personal data, the Respondent continued processing the same.

28. It was the Respondent's position that in as much as they received the request from the Complainant to seize sending him the promotional messages, they did not action the request immediately. Instead the Respondent stated that it contacted the Complainant seeking the reason for the account closure which forms part of its client retention and service review process. To the Respondent the complainant did not provide a response to the follow-up communication and it only acted upon the Complainant's request when it received the notification of complaint from this office.

29. Section 26 (c) & 26 (e) of the Act provides for the right to object to the processing of all or part of one's personal data and the right to deletion of false or misleading data, respectively.

30. Section 40 (1)(b) of the Act also provides for the right of rectification and erasure and states that a data subject may request a data controller or processor to erase or destroy without undue delay personal data that the data controller or data

processor is no longer authorized to retain, irrelevant, excessive or obtained unlawfully.

31. Further to the above, Regulation 12 (3) of the General Regulations provides that a data controller or data processor shall respond to a request for erasure within fourteen days of the request.
32. From the evidence adduced and also from the Respondent's response, it is clear that despite the Complainant's withdrawal of consent and the request for erasure and deletion, the Respondent continued sending the Complainant promotional messages.
33. This Office therefore finds and determines that as far as issue no (i) is concerned, the Respondent violated the Complainant's rights as envisaged under the Act.

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

34. Under 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.
35. Having considered the merits of the Complaint, the evidence adduced by the Complainant and the Respondent, it therefore follows that there has been a violation of the Act and the attendant regulations by the Respondent to that extent.
36. Section 65 (1) of the Act provides for compensation to a data subject and states 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. Section 65 (4) of the Act states that "damage" includes financial loss and damage not involving financial loss, including distress.
37. Regulation 14 (3) (e) of the Enforcement Regulations further provides that the Data Commissioner may make an order for compensation to the data subject by the Respondent.
38. The Complainant claimed compensation as a remedy against the Respondent.

39. Having found that the Respondent did not accord to the Complainant his rights within the stipulated time, and the fact that it accorded the said rights soon thereafter, the Office hereby directs the Respondent to compensate the Complainant nominal compensation in the amount of **Kenya Shillings Twenty Thousand only (KES 20,000/-)**.

I. FINAL DETERMINATION

40. In the ultimate, the Data Commissioner therefore makes the following final determination:

- i. The Respondent is hereby found liable.
- ii. The Respondent is hereby ordered to compensate the Complainant a nominal amount of **KES 20,000/= (Twenty Thousand Kenya Shillings Only)**.
- iii. Parties have the right to appeal this determination to the High Court of Kenya within thirty (30) days.

DATED at NAIROBI this 11th day of December 2025.


IMMACULATE KASSAIT, SC, MBS

DATA COMMISSIONER