



OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 2024 OF 2025

CLAVERS LEMEIN TANYASSISCOMPLAINANT

-VERSUS-

BLUESKY DRYCLEANERSRESPONDENT

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 alleges that the Respondent persistently contacted him to market its services despite his objections.

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 9th December 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 January, 2026 and referenced ODPC/CIE/CON/2/1 (1029). 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. Any relevant materials or evidence in support of their response above;
 - c. Details on how they obtained the Complainant's personal data;
 - d. Whether the Complainant consented to receiving promotional messages;
 - e. The mitigation measures adopted or being adopted to address the complaint to the satisfaction of the Complainant; and
 - f. Any other relevant information the Respondent wishes the Office to consider.

8. On 20th January 2026, the Respondent submitted to the Office a Response to the Notification of Complaint.
9. Upon receipt of the aforementioned correspondences and documents, investigations were conducted as required by Regulation 13(1) of the Complaints Handling Procedures, 2021.
10. 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

11. It is the Complainant's assertion that the Respondent persistently contacted him to market its services despite his objections.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

i. THE COMPLAINANT'S CASE

12. The Complainant stated that the Respondent had persistently been sending him promotional messages in violation of the Data Protection Act, 2019 and other applicable legal provisions. He indicated that the messages had been sent continuously from 12th December 2022 to as recently as 3rd December 2025. He further stated that he had previously requested the Respondent to stop sending the promotional messages, but his request had allegedly been ignored or neglected.
13. The Complainant sought the following remedies from this Office:
 - i) A declaration that the Respondent violated the Complainant's rights under the Data Protection Act;
 - ii) The Respondent be ordered to delink the Complainant's personal data from their systems; and
 - iii) An award of Compensation.
14. The Complainant provided screenshots of the SMS messages sent by the Respondent.

ii. THE RESPONDENTS' RESPONSE

15. The Respondents submitted a response to the notification dated 20th January 2026.
16. The Respondent stated that its records showed that the Complainant's customer account had been created on 29th October 2022 at 15:53:55 under Order No. 117830 after he voluntarily engaged its services, during which two suits and two half coats were received for cleaning. It further stated that upon creation of the order, an automated transactional SMS had been issued, followed by another notification on 1st November 2022 at 12:09:06 informing him that the garments were ready for collection. According to the Respondent, these communications were strictly service-related.
17. They stated that after the transaction, the Complainant's contact details remained in its system and promotional messages were subsequently issued in accordance with the communication procedures that were in place at the time. It stated that upon receiving the complaint, the matter had been reviewed internally and, while it did not admit to any breach of law or policy, it acknowledged the concerns raised.
18. The Respondent further stated that, as a goodwill, corrective, and preventive measure and without prejudice, it had implemented enhanced controls to separate transactional communications from promotional messages. It indicated that a dedicated promotional sender ID, "BlueSkyInfo," had been registered and that all promotional messages now included a clear opt-out mechanism: STOP4569*5#.
19. Additionally, the Respondent confirmed that, without admission of liability, the Complainant's customer account had been closed and his contact details removed from all promotional distribution lists. It added that should he wish to resume services in the future, the account could be reactivated upon his express request.
20. The Respondent concluded that the measures had been undertaken in good faith and in the interest of transparency and customer choice and therefore considered the matter fully addressed and resolved without prejudice to its rights.

F. ISSUES FOR DETERMINATION

21. 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 there was unlawful processing by the Respondent, for commercial purposes;
- 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

22. Section 26 (c) of the Act provides for the right to object to the processing of all or part of one's personal data.

23. From the evidence adduced, it is evident that the Complainant exercised their right to object of their data by sending a text SMS to the Respondent. Once the Complainant exercised his rights, the Respondent ought to have responded to the Complainant's request, they did not.

24. In view of the foregoing, the Complainant's right to object under Section 26 (c) was violated by the Respondent.

II. WHETHER THERE WAS UNLAWFUL PROCESSING, BY THE RESPONDENT, FOR COMMERCIAL PURPOSES

25. Section 37 (a) of the Act provides 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.

26. Regulation 15 (1) (c) of the General Regulations further state that a data controller or processor may use personal data other than sensitive personal data, concerning a data subject for the purpose of direct marketing where, *inter alia*, the data subject has consented to the use or disclosure of the personal data for the purpose of direct marketing.

27. The Respondent did not demonstrate that the Complainant consented to the direct marketing of its products.

28. Additionally, based on the evidence adduced and the response received, the Complainant made an opt-out request *via* SMS, to the Respondent. Despite these requests, the Complainant still received marketing texts from the Respondent.

29. Based on the above, the Office finds that there was unlawful processing by the Respondent, for commercial purposes.

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

31. 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.

32. The Respondent has stated that they have put in place measures such as enhanced controls separating transactional and promotional communications and a clear opt-out mechanism has also been put in place. In that regard, the Office will issue an Enforcement Notice for purposes of ensuring that the said measures are in place.

G. FINAL DETERMINATION

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

- i. The Respondent is hereby found liable.
- 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 11th day of March 2026



**IMMACULATE KASSAIT SC, MBS
DATA COMMISSIONER**