OFFICE OF THE DATA PROTECTION COMMISSIONER

ODPC COMPLAINT NO. 1864 OF 2026

ANTHONY MWENDA KINOTI..... COMPLAINANT

-VERSUS-

MURANG'A SOUTH WATER
AND SANITATION COMPANY LIMITED.....RESPONDENT

DETERMINATION

(Pursuant to Section 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. This Complaint is in respect of the Complainant's claim that the Respondent has been sending him continuous unsolicited messages regarding an outstanding water bill which is not registered under the Complainant.

B. LEGAL BASIS

2. Article 31 (c) and (d) of the Constitution of Kenya 2010 provides for the right to privacy. Consequently, to further guarantee the same, the Data Protection Act, 2019 (hereinafter 'the Act') was enacted.

3. The Office of the Data Protection Commissioner (hereinafter 'this Office' 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 (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.

C. BACKGROUND OF THE COMPLAINT

5. On 4th May 2026, the Office, pursuant to Section 56 of the Act and Regulation 4 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 (hereinafter the 'Enforcement Regulations'), received a complaint from the Complainant, who is the aggrieved data subject after an order from the court No. (HCJR/E077/2026) on 20th April 2026 which directed ODPC to issue a determination within 30 days.
6. Pursuant to Regulation 11 of the Enforcement Regulations, the Office, notified the Respondent of the complaint filed against it vide a letter dated 6th May 2026, and referenced ODPC/CIE/CON/2/1 VOL.2 (296). In the Notification of the Complaint, the Respondent was informed that if the allegations by the Complainant were true, it was 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 it by the Complainant;
    b. A contact person who can provide further details as regards the Complaint;
    c. Any relevant materials or evidence in support of the response;
    d. The lawful basis relied upon to the processing and storage of the Complainant's personal information

e. Any relevant materials or evidence in support of the response;

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 complaint do not take place again.

g. Any other information that the they wish to consider.

7. On 12th May 2026, the Respondent responded to the said notification.

D. NATURE OF THE COMPLAINT

8. The complaint concerns the allegation that the Respondent was sending him continuous unsolicited promotional messages regarding an outstanding water bill for an account belonging to a third party.

E. SUMMARY OF RELEVANT FACTS AND EVIDENCE ADDUCED

I. COMPLAINANT'S CASE

9. It was the Complainant's case that the Respondent has continuously been sending him unsolicited text messages regarding an outstanding water bill for account no. 2652xxxxxxxxx50 which is registered under a third party's name.
10. That on diverse dates in October and November 2024, the Complainant made several requests to the Respondent to erase his contact from its systems.
11. That despite the Respondent exercising his right to erasure, the Respondent has ignored the Complainant's requests for erasure and continues to send the messages hence violating his rights under the Act.

II. RESPONDENT'S CASE

12. The Respondent stated that, on the 19th June 2025, they received a letter from the Complainant's Advocates.
13. That in the aforesaid letter, the Complainant's Advocates raised an issue that on diverse dates, their client had received text messages from our Company reminding him to settle water bills. They indicated that the Complainant was not a customer

of the Company and that it was their wish that the same messages would cease from being sent to their client.

14. That upon receipt of the letter, the Company did internal investigations and found out that indeed, there was an anomaly on the its end.
15. That the Company traced the information relating to one of its actual customer, A****, with the intention of making an amendment.
16. That the Company found out that due to the fact that A****, had requested to have a change of her mobile phone number for purposes of exchanging various correspondences, the company made an error while supplying it with the number by a single digit.
17. That once it was ascertained, the Company moved to make amends and had the data of the Complainant expunged from their records and database.
18. That the phone number of their actual customer is 07xxxxx861 while the number of the Complainant is 07xxxxx561 which shows a variance of only one digit.
19. The Respondent contended that "5" and "8" may look similar depending on an individual's handwriting which may have caused the confusion to begin with.
20. That Immediately upon rectification of the issue the company sent the Complainant's Advocates a letter confirming the same was rectified.
21. The Respondent contended that they had no prior knowledge of the aforesaid occurrence up until they received communication from the Complainant's Advocates vide the aforesaid letter dated 19th June 2025.
22. That upon receipt of the said communication, they immediately rectified their systems in good faith.

G. INVESTIGATION UNDERTAKEN

23. On 11th May 2026, this Office conducted an investigation upon the Respondent's premises.
24. The on-site investigations established that:
    a) The phone number used to send the water bill reminders belonged to the Respondent.

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b) The Respondent indicated that the number used by the Complainant was being manned at one of their satellite offices and that the employee responsible did not escalate the matter to the headquarters for investigation and correction. The Respondent further stated that the said employee is no longer their employee.

c) Upon receipt of the Complainant's advocate letter dated 19th June 2025, the Respondent had to do an internal investigation to ascertain the real owner to avoid deleting the true number of their customer.

d) The deletion/ rectification of the Complainant's data was effected on 23rd June 2025 in the Respondent's systems.

H. ISSUES FOR DETERMINATION

25. It is uncontested that the Respondent was sending the Complainant reminders to pay water bills. The water bill reminders do not constitute direct marketing which require an opt-out marketing as envisaged under regulations 15 and 16 of the Data Protection (General) Regulations, 2021.

26. That being said, having considered the nature of the complaint, the evidence adduced by all parties to the complaint, and the investigations conducted by this Office, the following issues fall for determination:

i. Whether there was a violation of the Complainants' rights under the Act;
ii. Whether the Respondent fulfilled its obligations under the Act; and
iii. Whether the Complainant is entitled to any remedy 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 Complainant's position that despite the Complainant exercising his right to object to further processing of his personal data, by lodging a request for the Respondent to stop sending him the water bill messages for a defaulted loan which he had no knowledge of, the Respondent continued sending the message reminders.

28. That on diverse dates in October and November 2024, the Complainant made several requests by replying to the number used by the Respondent to erase his contact from its systems to no avail. This made the Complainant to engage his Advocates on record who sent a letter dated 19th June 2025 to the Respondent.

29. It was the Respondent's position that it addressed the Complainant's complaint promptly upon receipt of the Complainant's advocate's letter dated 19th June 2025. The Respondent further stated that upon conducting the internal investigations, it rectified the problem and informed the Complainant about resolving the problem on 23rd June 2025.

30. 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.

31. 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.

32. 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.

33. From the evidence adduced, it is evident that the Complainant first communicated his objection via the Respondent's number used to send the impugned messages sometime in 2024. The said requests were never actioned by the Respondent in time. This inaction on the part of the Respondent made the claimant to procure the services of the Advocates on record who wrote to the Respondent on 19th June 2025. It was upon receiving the Complainant's Advocates letter that the Respondent effected the change.

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34. This Office therefore finds that with respect to issue **(i)** that the Respondent's action of not actioning the Complainant's correspondence sent in 2024, the Respondent violated the Complainant's rights as envisaged under the Act.

II. WHETHER THE RESPONDENT FULFILLED ITS OBLIGATIONS UNDER THE ACT

28. In addressing this issue, the Office will address the following questions –

    a. Did the Respondent process the Complainant's personal data in accordance with the principles of data protection?

    b. Did the Respondent process the Complainant's personal data in accordance with the principles of data protection?

Did the Respondent process the Complainant's personal data in accordance with the principles of data protection?

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

29. 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

30. From the evidence adduced, the Complainant demonstrated that he has been receiving unsolicited messages from the Respondent. The receipt of unsolicited messages despite the objection of the same violates the principle of lawfulness, transparency and fairness.

Did the Respondent establish a lawful basis for processing the Complainant's personal data?

31. Section 30 of the Act stipulates that a data controller or data processor shall not process personal data unless such processing is founded on a lawful basis

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recognized under the Act. Among the lawful bases contemplated under Section 30(1)(b) are processing necessary for the performance of a contract, compliance with a legal obligation, or for purposes of legitimate interests pursued by a data controller or third party, provided that such interests are not overridden by the rights and freedoms of the data subject.

32. The Respondent stated that after their internal investigations, they found an anomaly on their end and when they traced the information relating to their actual customer (A****) with the intention of making an amendment. The Respondent further avers that they found out that due to the fact that (A****) their client had requested to have a change of her mobile phone number for purposes of exchanging various correspondences, they then made an error with the number by a single digit which resulted in the Complainant getting the said messages. In view of the foregoing, the Office finds that the Respondent has not demonstrated that they had a lawful basis in line with section 30 of the Act in processing the Complainant's personal data.
33. The Office therefore finds that the Respondent did not fulfil its obligations under the Act.

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

35. 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.

36. Section 58 of the Act as read together with Regulations 14 and 16 of the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021 further contemplates, as a remedy, the issuance of enforcement notices against an entity that has failed or is failing to comply with any provisions of the Act and the attendant regulations thereto.

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37. This Office is guided accordingly, and an Enforcement Notice shall issue upon the Respondent

I. FINAL DETERMINATION

38. In the ultimate, the Data Commissioner therefore makes the following final determination;

i. The Respondent is hereby found liable.

ii. An Enforcement Notice shall hereby be issued upon 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 **25th** day of **May** 2026.

IMMACULATE KASSAIT, SC, MBS

DATA COMMISSIONER