


THE ETHICS AND ANTI-CORRUPTION COMMISSION

THE 2<sup>nd</sup> QUARTERLY REPORT COVERING THE PERIOD FROM  
1<sup>ST</sup> APRIL 2020 TO 30<sup>th</sup> JUNE 2020

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	05 NOV 2020
	DAY: Thursday
TABLED BY:	The Majority whip Hon. Emmanuel Wangwe
CLERK-AT THE TABLE:	Anna Mvlandu

JUNE 2020

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## PREAMBLE

The Ethics and Anti-Corruption Commission (the Commission) is required under section 36 of the Anti-Corruption and Economic Crimes Act, 2003 (ACECA), to prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions (DPP) under Section 35 of the ACECA, 2003 as read with Section 11(1)(d) of the Ethics and Anti-Corruption Commission Act, 2011, (EACCA).

Section 36 of ACECA provides that:

1. The Commission shall prepare quarterly reports setting out the number of reports made to the DPP under section 35 and such other statistical information relating to those reports, as the Commission considers appropriate.
2. A quarterly report shall indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was accepted or not accepted.
3. The Commission shall give a copy of each quarterly report to the Attorney General.
4. The Attorney General shall lay a copy of each quarterly report before the National Assembly.
5. The Commission shall cause each quarterly report to be published in the Gazette.

This report is therefore made pursuant to section 36 of ACECA. The report covers the Second Quarter and is for the period commencing 1<sup>st</sup> April, 2020 to 30<sup>th</sup> June, 2020.

1. EACC/MSA/FI/09/2019

**INQUIRY INTO ALLEGATIONS OF CORRUPTION AND VIOLATION OF THE PROVISIONS OF PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015 IN THE AWARD OF TENDER FOR CONSTRUCTION OF A MULTI-STOREY OFFICE BLOCK IN MBARAKI-MOMBASA BY KENYA MARITIME AUTHORITY (KMA) DURING THE FINANCIAL YEAR 2016/17**

The Commission commenced investigations following a complaint that there were suspected malpractices in the tender for construction of office Block by the Kenya Maritime Authority (KMA) vide tender No. KMA/RFP/001/OFFICE BLOCK/2016/17-Proposed Development of Office Block on Plot No. Block XLVIII/128 in Mombasa. According to the allegations the contract for the aforesaid tender was awarded to EPCO Builders Ltd at Kshs. 1,825,239,939.34 as opposed to the sum of Kshs. 1,728,176,418 read out during the tender opening resulting to a possible loss of Kshs. 97,063,521.34.

Investigations revealed that there were other two sub contracts relating to the electrical works and plumbing (Tender No. KMA/005/PLUMBING/2016-17-Plumbing, Drainage & Fire Fighting Works and Tender no. KMA/003/ELECTRICAL/2016-17-Electrical Works) where the contracts were awarded at corrected tender sums of Kshs. 224,292,876.11 and Kshs. 79,841,217.50 respectively as opposed to the tender sums of Kshs. 115,976,976 and Kshs. 80,625,000 amounts which had been read out during the tender opening.

Investigations further revealed the following; that the Tender Evaluation Committee breached Section 82 of the Public Procurement and Asset Disposal Act(PPADA), 2015 by correcting sums of the bids that were submitted; the Acting Director General breached Section 44(2) (g), PPADA, 2015 by failing to ensure the proper procurement procedures were followed and that the Procurement Manager breached Section 41(2) of ACECA by giving his principal a misleading professional opinion recommending award of the tender in question at corrected tender sums.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendation to charge members of the Evaluation Committee the Acting

Director General and Procurement Manager with 5 counts of wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of the ACECA and 3 counts of deceiving principal contrary to Section 41(2) as read with Section 48 (1) of the ACECA.

On 3<sup>rd</sup> June 2020, the DPP returned the inquiry file accepting recommendation for prosecution and the case is already lodged before Court.

## **2. EACC/PI/INQ/454 (A)/2017**

### **INQUIRY INTO PROCUREMENT IRREGULARITIES AT RURAL ELECTRIFICATION AUTHORITY (REA) FOR PREQUALIFICATION OF SOLAR CONTRACTORS IN PHASE III- ELECTRIFICATION OF PUBLIC PRIMARY SCHOOLS IN KENYA.**

The Commission commenced investigations after receipt of a complaint dated 13<sup>th</sup> November 2017 which alleged procurement irregularities for Tender No. REA/2014-2015/PQ/010 for prequalification of solar contractors in the Phase III Electrification of Public Primary Schools in Kenya amounting to Kshs. 103,391,910/= by the Rural Electrification Authority (REA).

Investigations established that the Rural Electrification Authority (REA) procurement plan for the Financial Year 2014/2015, had planned to spend Kshs. 200,000,000.00 on solar projects in off grid areas and that the procurement method to be used was national open tender. Investigations further revealed that in the financial year 2014/2015, REA had an approved budget for renewable energy projects.

Investigations further revealed that the evaluation exercise was conducted and that two companies which had not bid and did not appear in the Tender Opening Minutes, the Evaluation Committee Report and Tender Committee Minutes, yet they appeared in the Project Allocation Committee memos.

A report was compiled and forwarded to the DPP on 29<sup>th</sup> May 2020 with a recommendation that the Chief Executive Officer REA, the Tender Evaluation Committee members and the solar contractors be charged with the following offences; Conspiracy to commit an economic crime contrary to Section 47A(3) as read with Section 48 of the ACECA; 4 counts of abuse of office contrary to Section 46 as read with section 48 (1) of the ACECA; 12 counts of wilful failure to comply

with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of the ACECA and failure to comply with procurement procedures contrary to Section 45 (2)(b) as read with Section 48(1) of the ACECA.

Awaiting the DPP's response.

### **3. EACC/FI/INQ/43/2019**

#### **INQUIRY INTO ALLEGATION OF EMBEZZLEMENT OF PUBLIC FUNDS AND ABUSE OF OFFICE BY THE CHAIRMAN OF LARI NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND (NG-CDF), CLERK OF WORKS AT THE LARI NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND (NG-CDF), PROPRIETOR OF OSHOANN GENERAL MERCHANT AND OSHLAND GREENS VENTURES AND DIRECTOR OF NDEMEKI COMPANY.**

Investigations commenced following an anonymous report on allegation of embezzlement of public funds and abuse of office against officials of the Lari National Government Constituency Development Fund (NG-CDF). It was further alleged that the chairperson of Lari- NG-CDF, fraudulently received Kshs.10, 106,000 from the NG-CDF through his companies namely; Claymug General Suppliers, Kienjeku Textiles and Uniforms Suppliers and Rumuli Company Limited.

Investigations established that in the financial year 2017/2018 Lari NG-CDF received a budget allocation of Kshs. 91,889,655.89, while in the financial year 2018/2019, Lari NG-CDF was allocated Kshs. 105, 440,875.52.

Investigations revealed that 22 projects which were proposed and approved for implementation by the members of the NG-CDFC during the financial period 2017/2018 and 2018/2019, were undertaken without adhering to the procurement laws. It was further discovered that the Lari NG-CDFC chairperson and other employees of the Lari NG-CDFC used their positions to irregularly award themselves contracts. Investigations further revealed that the Lari NG-CDFC Chairperson and the Clerks of Works attended tender award meetings and participated in the proceedings by making decisions to award contracts to their respective firms in which they held private interest without disclosing their said interests. In addition, investigations also established that the area Member of Parliament also benefitted from the said CDF contracts.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations to charge the Member of Parliament of Lari Constituency, the Funds Account Manager, the Chairman of the Lari NG-CDFC, Clerks of Work at Lari NG-CDF and directors/proprietors of firms awarded contracts for projects under investigation by the Commission with the following offences; conspiracy to commit an economic crime contrary to Section 47(A) (3) as read with Section 48 of ACECA; conflict of interest contrary to Section 42(3) as read with Section 48 of the ACECA; unlawful acquisition of public property contrary to Section 45(1)(a) as read with Section 48 of the ACECA; wilful failure to comply with applicable procedures and guidelines relating to procurement of goods contrary to Section 45(2)(b) as read with Section 48 of the ACECA; abuse of office contrary to Section 46 as read with Section 48 of the ACECA; Failing to comply with a written notice to provide information contrary to Section 27(3) as read with Section 27(4) of the ACECA.

On 16<sup>th</sup> July 2020, the DPP returned the file and advised that further investigations be carried out.

#### **4. EACC/MLD/FI/INQ/2/2018**

#### **INVESTIGATION INTO ALLEGATIONS OF IRREGULAR PROCUREMENT PROCESS IN THE AWARD OF TENDER FOR SUPPLY AND DELIVERY OF 200ML PACKAGED BRANDED MILK FOR ECD SCHOOLS IN KILIFI COUNTY.**

The Commission commenced investigations following a complaint of an irregular procurement process in the award of tender for supply and delivery of two million packets of 200ml packaged branded milk for ECD (Early Childhood Education) schools in Kilifi County for tender No. KCG/ED/473/2015-2016. The said procurement resulted in award of tender to Double A Connections in the sum of Kshs. 49,950,000/=.

Investigations revealed that Double A Connections' bid document was adjudged the lowest evaluated responsive bidder yet it did not have the capacity to execute the contract. It was further established that the documents that were attached to the bid document of the said bidder were forgeries. Investigations further revealed that only 1,897,122 packets of milk were delivered as opposed to 2,000,000 packets of milk. Investigations also established that the inspection and acceptance committee issued false Inspection and Acceptance Certificates

signifying delivery of 2,000,000 million packets of milk. Investigations also established that no VAT was deducted from the total contract sum paid to the bidder that was awarded the tender and the bidder did not also pay the requisite taxes.

On 19<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendation to charge the Chief Officer of the County Government of Kilifi, members of the Tender Evaluation Committee, Head of Supply Chain Management, County Secretary, members of the Inspection and Acceptance Committee, Procurement Assistant, acting Chief Officer for Development of Education, Youth Affairs and Sports, Document Examiner in the Department of Education and ICT and Proprietor of Double A Connections with 3 counts of wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of the ACECA; 3 counts of deceiving principal contrary to Section 41(2) as read with Section 48 (1) of the ACECA; abuse of office contrary to Section 46 as read with Section 48(1) of the ACECA; fraudulent payment for goods not supplied contrary to Section 45(2)(a)(ii) as read with Section 48(1) of the ACECA; unlawful acquisition of public property contrary to Section 45(1)(a) as read with Section 48(1) of the ACECA and fraudulent failure to pay taxes contrary to Section 45(1)(d) as read with Section 48 of the ACECA, 2 counts of failure to comply with the conditions of the seventh schedule of the value added tax Act 2012 contrary to Section 39 of the Value Added Tax Act 2012; engaging in fraudulent practice contrary to Section 66(2) as read with Section 177 of the Public Procurement and Asset Disposal Act, 2015; forgery contrary to Section 345 as read with Section 349 of the Penal Code; uttering a false document contrary to Section 353 of the Penal Code;

On 4<sup>th</sup> September 2020, the DPP returned the inquiry file for further investigations.

#### **5. EACC/FI/INQ/25/2019**

**INQUIRY INTO ALLEGATIONS OF CONFLICT OF INTEREST AGAINST A DIRECTOR OF ICT AT SAMBURU COUNTY ASSEMBLY, THROUGH SIPAT LIMITED, A COMPANY HE HAS AN INTEREST, WHICH WAS PAID KSHS 60,204,772/=.**

The Commission commenced investigations upon receipt of a report indicating that a Director of Information Communication Technology (ICT) at Samburu County Assembly was trading with Samburu County Government through Sipat Limited, a company with which he held a private interest. Sipat Limited through several tenders was contracted by Samburu County Government between 2015-2018 and was paid Kshs. 60,204,772/=.

Investigations revealed that the Samburu County Government had prequalified Sipat Limited for civil engineering and construction works and supply and delivery of water pumps and motors. Sipat Limited was registered as a company on 11<sup>th</sup> June 2014, with the Director of ICT at Samburu County Assembly being one of the directors. Investigations further revealed that from 2014 to 2018, Sipat Limited traded with Samburu County Government in thirteen tenders. 21 payment vouchers from the County Government of Samburu were further made in favour of Sipat Limited. Upon receipt of the money, Sipat Limited transferred money to Samburu County Assembly officials. The Speaker and a former nominated Member of Samburu County Assembly received Kshs 6,300,000/= and Kshs 1,000,000/= respectively from M/S Sipat Limited and provided false sale agreements to EACC investigators to substantiate their receipt of money from Sipat Limited.

On 19<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendation to charge the Director of ICT at Samburu County Assembly, the Speaker of the County Assembly of Samburu, a former nominated Member of County Assembly and Director of Sipat Limited with 13 counts of conflict of interest contrary to Section 42(3) as read with Section 48 of the ACECA; unlawful acquisition of public property contrary to Section 45(1)(a) as read with Section 48(1) of the ACECA; 2 counts of uttering a false document contrary to Section 353 of the Penal Code and dealing with suspect property contrary to Section 47 (2)(a) as read with Section 48 of the ACECA.

On 7<sup>th</sup> September 2020, the DPP returned the inquiry file for further investigations.

## **6. EACC/FI/INQ/37/2018**



**INQUIRY INTO ALLEGATIONS OF MISAPPROPRIATION/EMBEZZLEMENT OF PUBLIC FUNDS BY THE FORMER CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF NANDI BY PAYING HIMSELF THROUGH M/S MAKIKI AGENCIES, A COMPANY HE OWNS, A SUM OF KSHS. 19, 781,551/= FOR ALLEGED SUPPLY OF WATER DISPENSERS AND CONSTRUCTION WORKS.**

The Commission commenced investigations following a report that the former Chief Officer Finance Nandi County Government, had paid to himself through M/S Makiki Agencies Limited a sum of Kshs. 19,781,551.00 a company he owns, for alleged supply of water dispensers and construction work. The payments were made between April 2013 and August 2017.

Investigations established that on various dates between 28<sup>th</sup> February 2014 and 26<sup>th</sup> May 2014 Nandi County Government entered into contractual agreement with Makiki Agencies Limited for three road works. Investigations further revealed that all the contracts totalling to Kshs. 12, 156,162.00 were executed between June 2014 and August 2014 when the former Chief Officer Finance County Government of Nandi was a Director of Makiki Agencies as well as an employee of the Nandi County Government. Investigations also established that apart from him being the Head of Budget at the County, he was also appointed to sit in the evaluation/processing committee of the roads and fencing of market tenders. He did not disclose his interest in the said Company.

On 8<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendation to charge the Director of Makiki Agencies Ltd, Secretary of the Tender Opening Committee, Chairman of the Tender Evaluation Committee, Head of Supply Chain Management, Director Budget and Economic Planning and the acting Chief Officer Finance with conspiracy to commit an offence of corruption contrary to Section 47A as read with Section 48 of the ACECA; 3 counts of deceiving principal contrary to Section 41(2) as read with Section 48 of the ACECA; 2 counts of abuse of office contrary to Section 46 as read with Section 48 of the ACECA; conflict of interest contrary to Section 42(3) as read with Section 48 of the ACECA and fraudulent acquisition of public property contrary to Section 45(1)(a) as read with Section 48 of the ACECA.

On 7<sup>th</sup> July 2020, the DPP returned the inquiry file accepting recommendation for prosecution, and case is already in court.

## **7. EACC/FI/INQ/44/2019**

### **INVESTIGATIONS INTO ALLEGATIONS THAT OFFICIALS OF THE MINISTRY OF AGRICULTURE LIVESTOCK AND FISHERIES IRREGULARLY AUTHORIZED A WITHDRAWAL OF KSHS. 1.8 BILLION FROM THE BANK ACCOUNT OF THE STRATEGIC FOOD RESERVE TRUST FUND (SFR).**

The Commission commenced investigations following a report that employees of the Ministry of Agriculture, Livestock and Fisheries (MOALF) had irregularly authorized a withdrawal of Kshs. 1.8 billion from the bank account of the Strategic Food Reserve (SFR) that is domiciled at the Central Bank of Kenya (CBK). It was further alleged that after the authorization of the withdrawal of the Kshs. 1.8 billion, it was transferred to the bank account of Commodity House Ltd which is a private Limited Liability Company that is associated with maize importation in Kenya without the approval of the Strategic Food Oversight Board (SFROB) contrary to the Public Finance Management Act Regulations, 2015.

Investigations established that on 11<sup>th</sup> April 2018, the State Department was granted an additional funding of Kshs. 2 billion for the SFR and maize subsidy programme debts. Investigations revealed that vide a memo dated 31<sup>st</sup> May 2017, the Head of Procurement Unit recommended the use of restricted tendering method based on the fact that drought had been declared a national disaster by the President through Executive Order No. 1 of 2017. The Head of Procurement Unit therefore recommended the procurement of maize from 10 firms and the same was approved by the PS of State Department for Crops Development in the MOALF.

Investigations revealed that there were variances between the quantities indicated in the tender documents provided by the MOALF for six bidders and the quantities indicated in the tender opening minutes. Investigations further revealed that the tender opening committee members did not sign on the first page of each tender document submitted as well as the page with the price quotation as required by the PPADA, 2015. Investigations established that the variances between the price and quantity indicated in the tender documents and the

quantity indicated in the tender opening minutes were also replicated in the tender evaluation report. Investigations further revealed that Blackstone Investment Limited had not been invited to tender, yet it was contracted to supply maize contrary to the PPAD Act. Blackstone Investment Limited received a payment of Kshs. 792, 532, 000.00. Investigations also established that a Member of Parliament associated with Blackstone Investment Limited benefitted from the proceeds paid to the Company.

On 19<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendation to charge the Principal Secretary, Head of Procurement, Accountants at the Ministry of Agriculture, Livestock and Fisheries, Member of Parliament of Lungalunga Constituency, Director of Blackstone Investment Limited and Blackstone Investment Limited with conspiracy to commit an offence of corruption contrary to Section 47A as read with Section 48 of the ACECA; 2 counts of abuse of office contrary to Section 46 as read with Section 48 of the ACECA, 2003; 4 counts of wilful failure to comply with the law relating to management of public funds contrary to Section 45(2) (b) as read with Section 48 of the ACECA; acquisition of proceeds of crime contrary to Section 4 of the Proceeds of Crime and Money Laundering Act 2009; engaging in fraudulent practice in a procurement contrary to Section 66(1) as read with Section 177 of the Public Procurement and Asset Disposal Act, 2015; fraudulent acquisition of public property contrary to Section 45(1)(a) as read with Section 48 of the ACECA and making improper payment of public money contrary to Section 198(1)(o)(i) as read with Section 199 of the Public Finance Management Act, 2012.

Awaiting the DPP's response.

#### **8. EACC/FI/INQ/99/2015**

#### **INQUIRY INTO ALLEGATIONS OF PROCUREMENT IRREGULARITIES AND CONFLICT OF INTEREST IN THE SUPPLY AND DELIVERY OF EQUIPMENT AND MACHINES TO NATIONAL YOUTH SERVICE BY M/S FAHAZA LTD.**

Investigations commenced following a report received at the Commission on allegations of embezzlement/misappropriation of public funds at the National Youth Service (NYS) through irregular procurement of foodstuffs and machines by

various companies. The report listed Fahaza Ltd as one of the companies, suspected to have been irregularly awarded contract under the restricted tendering.

Investigations revealed that in the financial year 2014/2015 the Ministry of Devolution and Planning planned to procure new and modern Machines/ equipment at an estimated cost of Kshs. 6,200,000,000/-. In the financial year 2014/2015 the NYS was allocated Kshs.422, 940, 000/- for the purchase of specialized Plant, Equipment and Machinery. In the same financial year, the National Treasury allocated Kshs. 1,853,568,944/- in the supplementary estimates for the purchase of specialized Plant Equipment and Machinery.

Investigations further revealed that M/s Fahaza Ltd was awarded the contract to supply ten (10) Cutter Grinder and Accessories amounting to a total of Kshs. 58,345,000/-. Investigations revealed that the evaluation committee members failed to carry out a technical evaluation of the tender. The evaluation committee went ahead to recommend the award of tender to Fahaza Ltd whilst knowing that a technical evaluation had not been undertaken. It was also established that the Ministerial Tender Committee relied on an incomplete and unsigned evaluation report to award the tender to Fahaza Ltd. It was further established that the company was associated to the then Chairperson of the Ministerial Tender Committee which awarded Fahaza Limited the tender. Investigations also revealed that upon payment of the tender to Fahaza Limited part of the said payment was transferred to Chairperson of the Ministerial Tender Committee's bank accounts and companies associated to him.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations to charge the then Chairperson of the Ministerial Tender Committee and members of the Evaluation and Ministerial Tender Committee with conflict of interest contrary to Section 42(3) as read with Section 48 of the ACECA; 3 counts of abuse of office contrary to Section 46 as read with Section 48 of the ACECA; 2 counts of failure to disclose a private interest to one's principal contrary to Section 42(1) (a) and (b) as read with Section 48 (1) of the ACECA; 3 counts of wilful failure to comply with the applicable procedures and guidelines to

procurement of goods contrary to Section 45(2) (b) as read with Section 48 (1) of the ACECA.

On 24<sup>th</sup> June 2020, the DPP recommended that further investigations be carried out.

#### **9. EACC/ELD/FI/INQ/34/2016**

#### **INQUIRY INTO ALLEGATION OF ABUSE OF OFFICE, CONFLICT OF INTEREST AND GROSS CONTRAVENTION OF PROCUREMENT LAW/REGULATIONS BY THE FUND ACCOUNT MANAGER, TURKANA SOUTH CONSTITUENCY DEVELOPMENT FUND (CDF), IN THE AWARD OF TENDERS TO SHENSHEN LTD, A COMPANY UNDER HIS DIRECTORSHIP DURING 2014/2015 FINANCIAL YEAR**

The Commission commenced investigations following a complaint of abuse of public office, conflict of interest and gross contravention of procurement law by the Fund Account Manager, Turkana South CDF, in the award of tenders to Shenshen Ltd, a company under his directorship during the Financial Year 2014/2015.

Investigations established that Namantalem Community Water Project, Project No. 4-023-127-2640504-106-2014/2015-001, was allocated Kshs. 2,000,000 by the National Government Constituency Fund Board to drill and install a bore hole during the Financial Year 2014/2015. On 20<sup>th</sup> June 2015, Namantalem Community Water Project Committee held a meeting when it was resolved that a project account be opened, and that Kshs. 1,890,000 be paid to Shenshen Limited (the Company that was contracted to drill the borehole and install hand pump).

Investigations further reveal that no known method of procurement was used in selecting Shenshen Ltd for drilling a borehole and installing a water pump. The Company was further associated with the wife of the Fund Account Manager. The Fund Account Manager also participated in the procurement process knowing very well that he would influence the members of the Project Management Committee to award his wife's company the said tender. He also knowingly acquired an indirect private interest of Kshs. 1,890, 000 in the award of the said tender to Shenshen Limited.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations to charge the Fund Account Manager, Director of Shenshen Limited and Shenshen Limited with wilful failure to comply with the applicable procedures and guidelines to procurement of goods contrary to Section 45(2) (b) as read with Section 48 of the ACECA; Conflict of interest contrary to Section 42(3) as read with Section 48 of the ACECA and Unlawful acquisition of public property contrary to Section 45(1) (a) as read with Section 48 of the ACECA.

On 15<sup>th</sup> June 2020, the DPP returned the inquiry file accepting recommendation for prosecution.

#### **10. EACC/MCKS/FI/INQ/02/2015**

#### **INVESTIGATIONS INTO ALLEGATIONS ON IRREGULARITIES IN THE PROCUREMENT OF DRILLING RIGS SETS VIDE TENDER NO. CGOKTI/262/2013-14 IN KITUI COUNTY IN THE FINANCIAL YEAR 2013/2014.**

The Commission commenced investigations following a report that there were probable irregularities in the awarding of a contract to supply and commission drilling rig sets to Kitui County. The said tender was awarded to m/s Qara Agencies Limited yet it was not the lowest evaluated bidder. The Company was a general contractor who did not possess any machinery for drilling and equipping.

Investigations established that the Kitui County government floated a tender to supply three drilling rigs. The bids were opened, evaluated and the Tender Processing Committee recommended Dimensional Services Ltd for award. However, the Tender Committee awarded the tender to M/s Qara Agencies Limited instead of Dimensional Services Ltd

Investigations further revealed that as at the time of evaluation of the tenders, Qara Agencies Limited had submitted a bid bond of Kshs 986,000 which was below 2% of the Company's tender sum (as per the criteria in the advertisement). Investigation established that Qara Agencies Ltd.'s bid bond of Kshs 986,000 was replaced with that of Kshs 2,880,000 and the evaluation report amended to reflect the enhanced value of the bid bond. Investigations revealed that the bid bond valued at Kshs 2,880,000 was obtained after the evaluation exercise had been completed.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations to charge the Head of Supply Chain Management, Tender Committee Members and two private citizens with the following offences; wilful failure to comply with the applicable procedures and guidelines relating to procurement contrary section 45(2) (b) as read with Section 48(1) of the ACECA; abuse of office contrary to Section 46 as read with Section 48(1) of the ACECA; Knowingly using a false/misleading statement to one's principal contrary to Section 41(2) as read with Section 48(1) of the ACECA; conspiracy to commit an offence corruption contrary to section 47A(3) as read with Section 48(1) of the ACECA; colluding to change a tender document contrary to Section 42(1) (b) as read with Section 137 of the Public Procurement and Disposal Act, 2005(Repealed).

Awaiting the DPP's response.

#### **11. EACC/KSM/FI/INQ/25/2015**

#### **INVESTIGATIONS IN RESPECT OF ALLEGATIONS OF PROCUREMENT IRREGULARITIES IN THE PURCHASE OF TRACTORS AND MOTOR CYCLES BY THE COUNTY GOVERNMENT OF MIGORI AT A CONTRACT SUM OF KSHS. 15,368,216/-ALLEGED TO HAVE BEEN PROCURED THROUGH RESTRICTED TENDERING WITHOUT PROPER JUSTIFICATION.**

The Commission commenced investigations following a report received on 24<sup>th</sup> March 2015 alleging that officers from the County Government of Migori procured two New Holland Tractors at a price of Kshs. 9,600,000/- and fourteen motorcycles at a price of Kshs. 5,768,216/- through restricted tendering process without any justifiable reason for doing so being put forward.

Investigations revealed that the County Government of Migori opted to use the National Government's Ministry of Works Supplies Branch Contracts for the procurement of both the tractors and the 14 motor cycles. The procurement of the tractors was via an LPO on 4<sup>th</sup> December 2013 in favour of CMC Motors Group Limited. This was in accordance with the Supplies Branch Circular No. R31/2011-2012. Investigations further revealed that the motor cycles procurement was initiated vide LPO dated 30<sup>th</sup> December 2013 in favour of Toyota Kenya Limited based on Supplies Branch Circular No. R/211-2012 which was extended for another

three months vide letter dated 23<sup>rd</sup> December 2013 from the Secretary of the Ministerial Tender Committee.

Investigations further revealed that the use of the Supplies Branch Contracts precluded the need to invite bids, evaluate and award a successful bidder since the supplier would be picked directly from the list in the Circulars aforesaid.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations that the inquiry file be closed without any further action.

On 21<sup>st</sup> September 2020, the DPP accepted the recommendation for closure.

## **12. EACC/ISL /FI/INQ/38/2016**

### **INQUIRY INTO ALLEGATIONS OF MISAPPROPRIATION AND EMBEZZLEMENT OF PUBLIC FUNDS AND IRREGULAR EMPLOYMENT BY THE SECRETARY, MERU COUNTY PUBLIC SERVICE BOARD.**

The Commission received complaints that the Meru County Public Service Board (CPSB) had embezzled Kshs. 8,139,401.00. The Commission also received a complaint of irregular employment, conflict of interest and nepotism against the CPSB of Meru.

Investigations established that the allegations of specific recruitments that were done met the requirements that were placed in the advertisements and that the trainings that the named officers attended were approved by the Board. Investigations further established that two officers were paid a per diem for seven nights i.e. from the night of 7<sup>th</sup> – 13<sup>th</sup> February 2016 at a rate of Kshs. 11,200 per night. While surrendering their imprest, they provided receipts indicating that they had travelled to Mombasa on 7<sup>th</sup> February 2016. Investigations however established that their first night out in Mombasa was on Tuesday 8<sup>th</sup> February 2016.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations that that the inquiry file be closed. The report further recommended that the employment of all the officers who were employed at the same time for the positions of Forest Resources Supervisor and Water Quality Technologist respectively be regularized accordingly, that the per diem paid to two employees of the Meru County Public Service Board amounting to Kshs.



11,200/- each for the night of 7<sup>th</sup> February 2016 be recovered in full and that an advisory to issue for the CPSB to appraise themselves with the Employment Laws, Rules and Regulations for strict compliance.

On 18<sup>th</sup> September 2020, the DPP accepted the recommendation for closure.

### **13. EACC/FI/INQ/105/2015**

#### **INQUIRY INTO ALLEGATIONS THAT LAND VALUED AT TEN MILLION SHILLINGS WAS IRREGULARLY DOUBLE ALLOCATED TO A RETIRED CIVIL SERVANT AND GASKI INVESTMENT LTD WITHOUT FOLLOWING THE LAID DOWN PROCEDURES IN THIKA.**

Investigations commenced when the Commission received a report indicating that Land Block No. 6/1062 Thika Municipality worth Kshs. 10,000,000.00 was irregularly allocated to a retired Civil Servant and Gaski Investment Ltd by Lands Official without following the laid down procedures.

Investigations established that whereas there was double registration of the land in question, there are inconsistencies in the evidence that would render it difficult to sustain the allegations of criminal culpability on the part of the suspects for the reasons that the ownership of the said parcel of land had been decided by the judgment delivered at the High Court in ELC No. 192/2017. The Environment & Land Court in its judgment held that the retired Civil Servant had demonstrated that his certificate of lease was acquired through a process that was legal, formal and free from any encumbrances. The court further decided that the retired Civil Servant was the sole and bonafide registered owner of the land in question.

On 27<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the inquiry file be closed as the evidence available is insufficient to mount any charges against the Civil Servant and Gaski Investment Ltd.

On 10<sup>th</sup> June 2020 the DPP advised that further investigations be carried out.

### **14. EACC/MCKS/INQ/FI/23/2018**

#### **INQUIRY INTO ALLEGATIONS THAT THE CLERK TO THE COUNTY ASSEMBLY OF KITUI ENGAGED IN EMBEZZLEMENT OF FUNDS MEANT FOR CAR AND MORTGAGE LOANS FOR THE MEMBERS OF COUNTY ASSEMBLY OF KITUI.**

The Commission commenced investigations following an anonymous report alleging that the Clerk to the County Assembly of Kitui engaged in mismanagement, embezzlement and/or misappropriation of funds meant for car and mortgage loans facilities/scheme for Members of County Assembly of Kitui.

Investigations revealed that the County Treasury to the Kitui County Assembly Car Loan and Mortgage fund disbursed the sum of Kshs. 25.3 Million to deserving Members of County Assembly through a process of Committee deliberations and vetting of applications. The amounts were fully recovered, three months to the August 2017 General elections hence there was no loss of public funds. Investigations further revealed that during the current County Assembly, the Fund has disbursed Kshs. 140,489,600/- again to deserving members using the same process.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations for closure of the inquiry file.

On 29<sup>th</sup> June 2020, the DPP advised that further investigations be carried out.

#### **15. EACC/NYR/FI/INQ/09/2017**

##### **INVESTIGATIONS INTO ALLEGATIONS OF IRREGULAR AMALGAMATION OF A PUBLIC ACCESS ROAD WITH A PRIVATE LAND BY THE NYERI DISTRICT LAND REGISTRAR.**

The Commission commenced this investigation on receipt of a complaint of irregularities in closure of a public access road by the Nyeri Land Registrar. It was also alleged that the Nyeri Land Registrar had failed to open a public access road which existed between the parcels of land known as Nyeri/Mweiga/ 389 and Mwiyo/Labura/Block 2/34) despite having been ordered by the Chief Land Registrar and the Court to do so.

Investigations revealed that a public access road existed between the said parcels of land. The said public access road was irregularly closed and amalgamated with Mwiyo/Labura/Block2/34 making the adjacent parcels of land inaccessible. Investigations further revealed that there were pending proceedings in court between the owner of Mwiyo/Labura Block 2/34 and some of the owners of the parcels of land that had been rendered inaccessible.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the file be closed with no further action.

On 6<sup>th</sup> July 2020, the DPP accepted the Commission's recommendation for closure.

#### **16. EACC/PI/INQ/172/2014**

#### **INQUIRY INTO AN ALLEGATION THAT THE PROCUREMENT PROCESS OF RENOVATING THE SCHOOL BUS OF NAKURU DAY SECONDARY WAS NOT DONE IN ACCORDANCE WITH THE LAW AS IT WAS NOT ADVERTISED.**

Investigations commenced following a judgement by the Nakuru Employment and Labour Court dated 11<sup>th</sup> July 2014 and order dated 16<sup>th</sup> July 2014 directing that EACC and the Ministry of Education investigate the alleged breach of procurement laws in renovating the school bus of Nakuru Day Secondary School and the ban on holiday tuition raised by the Petitioner in Nakuru Industrial Claim No. 8 of 2014 and letter dated 29<sup>th</sup> April 2014 addressed to the Secretary, Teachers Service Commission (TSC) copied to EACC.

Investigations established that the Project of renovating the 62-seater bus was a Parents Teachers Association (PTA) project proposal for the year 2014 and the monies for renovating the school bus were authorized and sourced through the PTA AGM (Annual General Meeting) held on 12<sup>th</sup> November, 2013.

Investigations revealed that the tender was advertised vide a letter dated 4<sup>th</sup> November 2013 and it attracted no bids. Further that the School Board Management (BOM) undertook the procurement process in bus renovation. From the investigation findings the bus renovation was a PTA project funded through PTA funds sourced from parents and levied on the student's fees structure. The funds were thus not government appropriations to be termed as public funds pursuant to section 3 of the PPDA, 2006 and hence not subject to Public Procurement Rules and Regulations.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that inquiry file be closed with no further action.

On 8<sup>th</sup> July 2020, the DPP accepted the Commission's recommendation for closure.

**17. EACC/MCKS/FI/INQ/22/2018**

**INQUIRIES INTO AN ALLEGATION THAT THE CLERK, KITUI COUNTY ASSEMBLY IRREGULARLY AWARDED TENDER NO. CAKITUI/T/41/2018-2019 SUPPLY AND DELIVERY OF 40 PRINTERS TO HASHTECH COMPUTERS LTD, A COMPANY OWNED BY THE MAJORITY LEADER.**

Investigations commenced following a report received at the Commission alleging that the County Assembly of Kitui through the Clerk, irregularly awarded tender no. CAKITUI/T/41/2018-2019 supply of IT equipment to Fashtech Computers Ltd, a company owned by the wife to the Leader of Majority at the said County Assembly.

Investigations revealed that Fashtech Computers Ltd is owned by the wife of the Majority Leader of the County Assembly of Kitui. Further investigations revealed that the said Majority Leader is neither a Director of the Company nor a signatory of the company bank accounts. Investigations further revealed that the Majority Leader did not in any way participate in the subject tender process such as to bring him to conflict of interest. Investigations and analysis thereto revealed that the tender was awarded within the required standards of the Public Procurement and Asset Disposal Act, 2015.

On 10<sup>th</sup> April 2020, a report was compiled and forwarded to the DPP with recommendations that the file be closed with no further action.

On 8<sup>th</sup> July 2020, the DPP accepted the Commission's recommendation for closure.

**18. EACC/AT/INQ/99/2016**

**INQUIRY INTO ALLEGATIONS OF ABUSE OF OFFICE, BRIBERY, MONEY LAUNDERING AND TAX EVASION BY THE CHIEF OFFICER FINANCE AT THE NAIROBI CITY COUNTY.**

The Commission commenced investigations following an anonymous report made at EACC alleging that the Chief Officer Finance at the Nairobi City County was involved in bribery and tax evasion.

Investigations revealed that on 26<sup>th</sup> February, 2013 the firm of Kwanga Mboya and Company Advocates received a sum of Kshs. 9 Million from the Nairobi City Council (as it then was) alleged to be legal fees in respect to court case ELC No.

99 of 2011 Taj Mall Limited versus City Council of Nairobi. The said payment was made vide a cheque dated 21<sup>st</sup> February, 2013. The same had been signed by the Chief Officer Finance at the Nairobi City County. On 26<sup>th</sup> February, 2013 an amount of Kshs. 3 million was transferred from Kwanga Mboya and Associates account held at Co-operative Bank to the personal account of the Chief Officer Finance domiciled at Co-operative Bank.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the Chief Officer Finance and the Managing Partner in the firm of Kwanga Mboya and Company Advocates be charged with corruptly offering and receiving a benefit contrary to Section 39(3) (b) as read with Section 48 of the ACECA and Section 27 of the Bribery Act.

Awaiting the DPP's response.

#### **19. EACC/EL/INQ/3/2015**

#### **INQUIRY INTO ALLEGATIONS OF IMPROPER CONDUCT AGAINST THE DIRECTOR OF AIR ACCIDENT INVESTIGATIONS DEPARTMENT (AAID), MINISTRY OF TRANSPORT AND INFRASTRUCTURE.**

The Commission commenced investigation following two reports that the Director of Air Accident Investigations Department (AAID), Ministry of Transport and Infrastructure had travelled to Canada for the 38<sup>th</sup> International Civil Aviation Organization (ICAO) Conference but extended his stay without authorization. Further that the Director of AAID, had surrendered imprest using forged taxi receipts, extra baggage receipt and a receipt of a computer RAM purchased in 2013. It was further alleged that the said Director had also claimed reimbursement for an air ticket and subsistence allowance to Mombasa while on leave and that he was also misusing his official vehicle.

Investigations established that the Director AAID, had sought the approval of the PS, Ministry of Transport and infrastructure, to attend the 38<sup>th</sup> ICAO Conference scheduled for 24<sup>th</sup> September to 4<sup>th</sup> October 2013. Investigations further revealed that on 19<sup>th</sup> September 2013, the PS issued a travel clearance letter to the Director AAID, as per his request and in addition a tour visit planned for Transport Safety Board of Canada and National Research Council Canada for a possible partnership in accident investigation matters. Investigations further revealed that

the Director AAID, later submitted receipts and other pertinent documents as proof to reconcile account records in respect to the Canada trip.

In relation to the Mombasa-Ukunda trip, where it was alleged that the Director AAID, claimed for an air ticket for Mombasa and subsistence allowance in December 2013 while on leave and a further follow up visit in January 2014. Investigations established that the allegations were unfounded since the trip had been approved by the PS. Following the approval, the Director AAID lodged a claim for reimbursement of Kshs. 84,000/= being per diem.

Lastly, on the allegation of misuse of official motor vehicle GK A610T for drop off and pick up by the Director AAID yet he earned a commuter allowance, investigations established that the motor vehicle work tickets for the month of October 2014 to April 2015 established that the route details of the said motor vehicle mostly commenced at Jogoo Road and not his residence.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the file be closed in respect to per diem claims. However, in respect to alleged administrative injustices, it was recommended that the inquiry file be forwarded to the Commission on Administrative Justice (CAJ) for thorough investigations on each of the claims for appropriate action and recommendation.

On 9<sup>th</sup> July 2020, the DPP accepted the Commission's recommendation to have the file forwarded to CAJ for appropriate action.

## **20. EACC/MKS/EL/INQ/13/2017**

### **INQUIRY INTO ALLEGATIONS OF ABUSE OF OFFICE BY A CLERICAL OFFICER IN KAJIADO LAND REGISTRY.**

The Commission commenced investigations following a complaint that a Clerical Officer at Kajiado Land Registry and Secretary to Kajiado Central Sub-County Land Board was involved in unethical conduct while discharging her official duties.

Investigations established that a Clerical Officer from the land registry also sits as a Secretary to the Land Control Board. The Secretary/ Clerical Officer assists the Board in making decisions as to whether the search documents attached to the documents forwarded to the Board originate from the land registry. Investigations

further established that all the applications for consents are done at the land registry by the Secretary/Clerical Officer.

Investigations further revealed that consent books recovered from the Clerical Officer, Kajiado land registry indicated the dates when the consents were issued and the name of the parties. Investigations revealed that the consents allegedly issued on certain dates were not reflected in the minutes of the Land Control Board.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP recommending administrative action against the Clerical Officer attached to Kajiado Land Registry.

On 2<sup>nd</sup> September 2020, the DPP returned the inquiry file for further investigations.

## **21. EACC/GSA/EL/2/2016**

### **INQUIRY INTO ALLEGATIONS OF CONFLICT OF INTEREST AGAINST A PROCUREMENT OFFICER, GARISSA COUNTY REFERRAL HOSPITAL.**

The Commission commenced investigations following a complaint it received on 21<sup>st</sup> March, 2016, to the effect that Maima Investment Company Limited belonging to a Procurement Officer at Garissa Provincial General Hospital was doing business with Garissa Provincial General Hospital. The said Procurement Officer had not disclosed nor declared his interest to the procuring entity.

Investigations established that Maima Investment was overpaid for supply of packets of milk it never delivered to the Garissa Hospital. It was further established that the Procurement Officer was one of the Directors of Maima Investment. Investigations further revealed that the said Procurement Officer sat in the tender committee of the procurement in question and never disclosed his interest in the procurement. Further in all the tenders the LPOs were raised after the goods had been delivered.

A report was compiled and forwarded to the DPP on 7<sup>th</sup> May 2020, recommending to charge the Heads of Accounts at Garissa Referral Hospital, Maima Investment Limited, Directors of Maima Investment Limited, Members of the Inspection and Acceptance Committee and the Procurement Officer with the following offences; abuse of office contrary to Section 46 as read with Section 48(1) of the ACECA;

unlawfully making excess payment from goods not supplied contrary to Section 45(2)(a)(ii) as read with Section 48(1) of the ACECA; unlawful acquisition of public property contrary to Section 45(1)(a)(ii) as read with Section (48)(1) of the ACECA; 2 counts of wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read together with Section 48 of the ACECA; 2 counts of knowingly giving a misleading document to one's principal contrary to Section 41(1)(2) as read with Section 48(1) of the ACECA; 2 counts of Conflict of interest contrary to Section 43(1)(a) as read with Section 137(1) of the Public Procurement and Disposal Act, 2005.

The report further indicated that the Asset Recovery Department of the Commission will pursue recovery proceedings for the excess amounts of money paid to Maima Investment Limited.

On 1<sup>st</sup> July 2020, the DPP advised that further investigations be carried out.

## **22. EACC/EL/INQ/44/2018**

### **AN INQUIRY INTO ALLEGATIONS OF FALSIFICATION OF ACADEMIC DOCUMENTS BY AN EMPLOYEE AT THE RURAL ELECTRIFICATION AUTHORITY (REA) WHEN SHE WAS SECURING EMPLOYMENT.**

Investigations commenced following a complaint received on 17<sup>th</sup> August 2018 that an employee at the Rural Electrification Authority (REA) had relied on forged academic documents to obtain employment at REA.

Investigations established that the employee had secured employment from initial subordinate positions and promotions to various positions in the upper ranks at REA. The employee's applications for employment and promotion were supported with false academic certificates. Investigations further revealed that the employee had previously secured employment at Kenya Wildlife Services using the same forged academic certificates. The documents were purportedly from United States International University. The false documents included a forged academic degree certificate and the transcripts thereof for a Bachelor's degree in International Business Administration, Kenya National Exam Certificate and an exemption letter from KASNEB.



A report was compiled and forwarded to the DPP on 7<sup>th</sup> May, 2020, with recommendation to charge the employee at REA with the following offences; 3 counts of forgery contrary to Section 345 as read with section 349 of the Penal Code; making a document without authority contrary to section 357(a) of the Penal Code; giving false information to a person employed in the public service; 2 counts of Fraudulent acquisition of public property contrary to Section 45(1)(a) as read with Section 48 of the ACECA; 4 counts of providing false information to REA contrary to Section 46(2)(1)(d) as read with section 46(2) of the Leadership and Integrity Act; uttering a false document contrary to section 353 of the Penal Code of Kenya.

On 8<sup>th</sup> July 2020, the DPP returned the inquiry file accepting recommendation for prosecution.

### **23. EACC/ISL/FI/INQ/31/2016**

#### **INVESTIGATION INTO ALLEGATIONS OF IRREGULAR LEASING OF BUFFALO SPRINGS AND SHABA NATIONAL GAME RESERVES BY THE COUNTY GOVERNMENT OF ISIOLO**

The Commission commenced investigations following a complaint of public procurement irregularity by the Isiolo County Executive in selection of an Investor to partner with the County Government of Isiolo (CGI) in managing Buffalo Springs and Shaba Game Reserves, facilities of the CGI.

Investigations revealed that there were attempts to lease the reserves without following the applicable law and procedures. It was established that since the action/omission the suspects are said to have committed or failed to do was not completed, the evidence gathered may not be enough to sustain the required standard (beyond reasonable doubt) that the suspects committed a corruption and/or economic offence in their bid to look for an investor to partner with in managing the reserves herein.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations that the inquiry file be closed and that the Commission do issue an advisory to the County Government of Isiolo on the need to strictly adhere to the applicable law and procedures in engaging an investor to partner with in managing the reserves.

On 17<sup>th</sup> September 2020, the DPP accepted the recommendation for closure.

**24. EACC/EL/INQ/69/2018**

**INQUIRY INTO ALLEGATIONS THAT AN EMPLOYEE AT RURAL ELECTRIFICATION AUTHORITY USED FORGED ACADEMIC CERTIFICATES TO GAIN EMPLOYMENT.**

The Commission commenced investigations following receipt of a complaint that an employee at Rural Electrification Authority (REA) working as a Receptionist had used a forged academic certificate to gain employment.

Investigations established that the suspect presented a copy of Diploma in Archives and Records Management serial no. 121437 to REA purporting that it was a genuine document issued by Kenya Institute of Management (KIM) therefore acquired a public benefit by being appointed as a Receptionist and earning a salary using a forged Certificate.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations to charge the suspect with the following offences; uttering a false document contrary to Section 353 as read with Section 349 of the Penal Code; forgery of an official document contrary to Section 351 of the Penal Code; Deceiving a public entity contrary to Section 46(1) (b) as read with Section 46(2) of the Leadership and Integrity Act, 2012 and Fraudulent acquisition of public benefit contrary to Section 45(1) (a) as read with Section 48 of the ACECA. The Commission further recommended the recovery of salary and benefits paid to the suspect from 16<sup>th</sup> April 2018 and for an advisory to be issued to the Rural Electrification Authority to conduct vetting and academic verification of certificates for all the staff.

On 2<sup>nd</sup> September 2020, the DPP returned the inquiry file for further investigations.

**25. EACC/MLD/FI/INQ.23/2020**

**INVESTIGATIONS INTO ALLEGATIONS THAT THE KILIFI COUNTY GOVERNMENT OFFICIALS OBSTRUCTED ETHICS AND ANTI-CORRUPTION COMMISSION OFFICERS BY FAILING TO PROVIDE THEM WITH INFORMATION AND DOCUMENTS IN THEIR CUSTODY RELATING TO VARIOUS INVESTIGATIONS.**

The Commission commenced investigations upon receiving a report at the Upper Coast Regional Office-Malindi that the County Government of Kilifi made irregular

legal fees payment to firms of advocates during the financial years 2017/2018 and 2018/2019. It was further alleged that some firms paid were not in the prequalified law firms for those years. The Commission requested for documents from various officials involved but they declined to provide the documentation.

The Commission further received another report on allegations of irregular procurement in the construction and equipping of the Kilifi County Covid-19 medical complex. A letter was written to the Kilifi County Secretary in that regard requesting for information and documents. EACC investigators were however denied the documents. The County Government of Kilifi officials further failed to provide the sought documents even after notices under Section 27(3) of the ACECA were issued to them.

A report was compiled and forwarded to the DPP on 21<sup>st</sup> May 2020 recommending that the County Attorney, the Chief Officer in the Department of Finance and the Head of Supply Chain Management be charged with 3 counts of failing to comply with a written notice to provide information/documents contrary to Section 27(3) as read with Section 27(4) of the ACECA, No.3 of 2003.

On 8<sup>th</sup> July 2020, the DPP recommended that further investigations be carried out.

**26. EACC/MCKS/EL/INQ/03/2016**

**INQUIRY INTO ALLEGATIONS THAT THE DEPUTY COMMISSIONER MUTOMO SUB-COUNTY AND THE ACTING HUMAN RESOURCE OFFICER RECEIVED A BRIBE IN THE RECRUITMENT OF THE CHIEF FOR VOO LOCATION.**

The Commission received a complaint on allegations of unethical conduct in regard to irregular recruitment and receiving of gifts/bribes against the Deputy Commissioner and the Acting Human Resource Officer at Mutomo Township, Mutomo Sub-County, Kitui County.

Investigations established that the recruitment process for the Chief of Voo was in order; the post was advertised and conducted competitively. Investigations also revealed that there was no exchange of money/bribe between the suspects and the candidate who was appointed for the position of Chief for Voo Location.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations that the inquiry file be closed.

On 2<sup>nd</sup> September 2020, the DPP returned the inquiry file for further investigations.

**27. EACC/OPS/INQ/109/2019**

**INQUIRY INTO ALLEGATIONS OF BRIBERY AGAINST TRAFFIC POLICE OFFICERS ATTACHED TO EMBU POLICE STATION.**

The Commission commenced investigations after receiving anonymous complaints from motor vehicle operators that police officers were mounting random traffic checks at the entrance to Embu town along the Embu/Meru highway for the purpose of collecting bribes.

The Commission's undercover surveillance operation established that traffic officers from Embu Police Station were collecting bribes from motorists along the Embu-Meru Highway for unspecified offences and without inspection. However, the Commission did not carry out a sting operation. The Commission further conducted financial investigations of the suspects' Mpesa statements and bank accounts which revealed that huge amounts of money were being deposited into the suspects' account.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP recommending that administrative disciplinary action against Embu Police Station officers captured in the surveillance clip be undertaken by the National Police Service Commission. In addition to the administrative disciplinary action, the Commission to institute asset recovery proceedings in relation to the suspicious transactions found in the Mpesa and bank accounts of the Embu Police Station officers.

On 10<sup>th</sup> July 2020, the DPP returned the inquiry file accepting recommendation for administrative action.

**28. EACC/OPS/INQ/141/2017**

**INQUIRY INTO ALLEGATIONS OF ABUSE OF OFFICE AGAINST TRAFFIC POLICE OFFICERS ATTACHED TO EMBU POLICE STATION TRAFFIC BASE.**

Investigations commenced following receipt of complaints from motorists plying Embu-Meru and Embu-Kiritini road routes on rampant bribery against Traffic Police Officers from Embu Traffic Police Base. It was alleged that the Police Officers were harassing and collecting bribes from motorists without conducting vehicle inspection.

The Commission conducted a surveillance operation along the Embu-Meru and Embu-Kiritini roads and established that police officers manning the said roads were engaging in corrupt conduct while performing their duties. The traffic officers were stopping motorists but not conducting any inspection on the vehicles but receiving money from the drivers and conductors. The money received by the officers was however not recovered.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP recommending that administrative action against 12 traffic police officers attached to Embu Traffic Police Base be undertaken.

On 1<sup>st</sup> July 2020 the DPP advised that the inquiry file be closed.

#### **29. EACC/ELD/OPS/INQ/21/2019**

#### **INQUIRY INTO ALLEGATIONS OF BRIBERY AGAINST A POLICE OFFICER BASED AT THE DCI'S OFFICE- TURKANA AND A CLERK ATTACHED TO THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS- LODWAR.**

The Commission commenced investigations following an allegation that a police officer based at the DCI's office- Turkana and a clerk attached to the Office of the Director of Public Prosecutions (ODPP) - Lodwar were demanding for a bribe of Kshs. 200,000 from an employee of the County Government of Turkana in order to exonerate him from being arrested and charged in a Criminal Case.

The investigations established that a Police Officer based at the DCI's office- Turkana called an employee of Turkana County Government and asked for a meeting in relation to a letter from the ODPP directing that the County employee be arrested. In the meeting the Police officer was accompanied by a clerk attached to the ODPP demanded a bribe of Kshs. 200,000/=. The Turkana County official employee reported the incident to the Commission.

Investigations further established, that the bribe demand was later reduced to Kshs. 50,000/= as per the recorded conversation between the Turkana County official and the Clerk attached to the ODPP. The Police officer was however not captured in the recorded conversation demanding a bribe.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the Clerk be charged with two counts of receiving a bribe

contrary to Section 6(1) as read with Section 18(1) & (2) of the Bribery Act No. 47 of 2016.

On 9<sup>th</sup> July 2020, the DPP recommended that further investigations be carried out.

**30. EACC/OPS/INQ/151/2019**

**INQUIRY INTO ALLEGATIONS OF BRIBERY AGAINST AN EMPLOYEE AT THE STATE LAW OFFICE.**

The Commission received a report alleging that an employee at the State Law Office was requesting for a bribe of Kshs. 2,500/= in order to release a birth certificate.

The Commission organized a trap operation that resulted in the arrest of the suspect. EACC officers conducted a search on the suspect and recovered Kshs. 2,500/= treated trap money.

A report was compiled and forwarded to the DPP on 7<sup>th</sup> May 2020, with recommendation that the State Law Office employee be charged with two counts of receiving a bribe contrary to Section 6(1) as read with Section 18(1) & (2) of the Bribery Act No. 47 of 2016.

On 18<sup>th</sup> June 2020, the DPP recommended that further investigations be carried out.

**31. EACC/ELD/OPS/INQ/22/2019**

**INQUIRY INTO ALLEGATIONS OF BRIBERY AGAINST A POLICE OFFICER ATTACHED TO DCI-KEIYO SOUTH POLICE DIVISION, ELGEYO MARAKWET COUNTY.**

The Commission received a complaint from a Manager of a private school who alleged that a Police Officer based at the DCI's office in Keiyo South was requesting for a bribe of Kshs. 30,000 so as to write a favourable school building inspection report.

On 9<sup>th</sup> October 2019 a trap operation was planned and executed. Investigations established that the Police Officer demanded for and received a financial advantage.

A report was prepared and forwarded to the DPP on 7<sup>th</sup> May 2020 with recommendation that the Police Officer be charged with two counts of receiving a bribe contrary to Section 6(1) as read with Section 18(1) & (2) of the Bribery Act No. 47 of 2016.

On 9<sup>th</sup> July 2020, the DPP returned the inquiry file accepting recommendation for prosecution.

### **32. EACC/MLD/OPS/26/2018**

#### **INVESTIGATIONS INTO AN ALLEGATION THAT THE OFFICER IN CHARGE KILIFI NORTH SUB COUNTY CHILDREN'S OFFICE AND A POLICE OFFICER DEMANDED AND RECEIVED A BRIBE FROM A PARENT IN ORDER TO HELP THE PARENT GAIN CUSTODY OF HER CHILD FROM HER ESTRANGED LOVER.**

Investigations commenced following a report received at the Commission's Huduma Centre Desk at Kilifi that a Children's Officer was demanding for a bribe of Kshs. 50,000 in order to help a parent gain custody of her child from her estranged partner.

Investigations established that a parent had gone to the Kilifi Children's office to seek assistance over her child's custody. The parent was introduced to a Children's Officer and a Police Officer attached to Kilifi Police Station who demanded for a bribe amounting to Kshs. 50,000/= in order to help her resolve the custody issue. On 19<sup>th</sup> December 2018, a trap operation was planned and executed. Investigations established that although both the Police Officer and Children's Officer demanded for a bribe, it is only the Children's Officer who received the Kshs. 20,000/= trap money since the Police Officer had travelled.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the Children's Officer- Kilifi North Sub-County, and the Police Officer attached to Kilifi Police Station be charged with 2 counts of requesting a bribe and 1 count of receiving a bribe contrary to Section 6(1) as read with Section 18(1) of the Bribery Act No. 47 of 2016; Conspiracy to commit corruption contrary to Section 47A (3) as read with Section 48(1) of the ACECA.

On 6<sup>th</sup> July 2020, the DPP recommended that further investigations be carried out.

### **33. EACC/ISL/OPS/INQ/36/2019**

#### **INVESTIGATIONS INTO ALLEGATIONS OF BRIBERY OF A POLICE OFFICER BY A CONDUCTOR WORKING WITH NORTHERN CITY COACHES.**

The Commission commenced investigation following a complaint on bribery allegations. It was reported that a conductor working with Northern City Coaches, while plying along Marsabit-Isiolo highways offered a bribe of Kshs. 2, 000/- to a Police Officer attached to the Multi-Agency Security Operations.

Investigations revealed that officers attached to Multi-Agency Special Operations were on duty along Marsabit-Isiolo highway when they stopped a bus to conduct routine security check up. A female Police Officer screening the female passengers noticed that two female passengers had documents that appeared suspicious and they could neither communicate in English nor Swahili. The Conductor of the bus offered the female Police Officer Kshs. 2, 000/- for her to release the said aliens.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations to charge the Conductor with 2 counts of giving a bribe contrary to Section 5(1) (a) as read with Section 18(1) of the Bribery Act, 2016.

On 4<sup>th</sup> July 2020 the DPP accepted the recommendation for prosecution.

### **34. EACC/OPS/INQ/159/2019**

#### **INQUIRY INTO ALLEGATIONS OF BRIBERY AGAINST A POLICE CONSTABLE ATTACHED TO MARURUI POLICE POST.**

Investigations commenced on 25<sup>th</sup> September 2019, following a complaint that a Police Officer attached to Marurui Police Post requested for a bribe of Kshs. 5,000/= from a private citizen so as to release his mobile phone, scrap metal and National Identity Card which had been confiscated at the said Police Post.

The Commission investigators conducted an operation leading to the arrest of the Police Constable. Investigations established that the suspect received Kshs. 4,000/=.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to DPP with recommendations to charge the Police Constable with 2 counts of receiving a



bribe contrary to Section 6(1) (a) as read with Section 18(1) of the Bribery Act No. 47 of 2016 and abuse of office contrary to Section 46 as read with Section 48 (1) of the ACECA.

On 9<sup>th</sup> July 2020, the DPP advised that further investigations be carried out.

### **35. EACC/KSM/OPS/INQ/2/2019**

#### **INVESTIGATIONS INTO ALLEGATIONS OF CORRUPTION AGAINST TWO POLICE OFFICERS ATTACHED TO THE KISUMU RAILWAYS POLICE STATION.**

The Commission commenced investigation following a complaint from two Burundi nationals who claimed that two police officers attached to Kisumu Railways Police Station were requesting for a financial advantage of Kshs. 3,000/- from them in order to release eleven pairs of shoes valued at Kshs. 11,000/- and to further allow one of them to continue hawking the shoes in Kenya.

Investigations established that the two police officers demanded for a bribe of Kshs. 2,000/= from the one of the Burundi nationals and they also received the bribe.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations to charge the two Police Officers with 3 counts of receiving a bribe contrary to Section 6(1) (a) as read with Section 18(1) of the Bribery Act No. 47 of 2016 and stealing from a person contrary to Section 279 (a) of the Penal Code.

On 30<sup>th</sup> June 2020, the DPP recommended that further investigations be carried out.

### **36. EACC/OPS/INQ/178/2019**

#### **INQUIRY INTO ALLEGATIONS OF CORRUPTION AGAINST A CITY COURT PROSECUTOR, EMPLOYED BY THE NAIROBI CITY COUNTY GOVERNMENT.**

The Commission commenced investigation following a complaint from a mason, alleging that a prosecutor from Nairobi City County at the Chief Magistrate Court, City Court was requesting for a financial benefit of Kshs. 50,000/= in order to withdraw a pending court case no. 718B of 2019 against his brother.

Investigations established that the City Court Prosecutor, requested for Kshs 50,000/= from the complainant to facilitate the withdrawal of Nairobi City County Case no. 718B of 2019 in which his brother and another private citizen were charged with erecting a building without approved plans pending in Chief Magistrates Court at City Court. Investigations established that on 6<sup>th</sup> November 2019, the City Court Prosecutor received Kshs 50,000/= trap money from the mason.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the City Court Prosecutor be charged with two counts of receiving a bribe contrary to Section 6 (1) (a) as read with section 18 of the Bribery Act.

On 18<sup>th</sup> September 2020, the DPP returned the inquiry file for further investigations.

### **37. EACC/OPS/INQ/16/2018**

#### **INVESTIGATIONS INTO BRIBERY ALLEGATIONS AGAINST TWO PRIVATE CITIZENS.**

A team of EACC officers were conducting a surveillance operation in Bukembe area, Bungoma County on 18<sup>th</sup> March 2018 in relation to suspects believed to be unlawfully diverting petroleum products meant for export into the local markets and tax evasion.

Following the operation, three suspects were arrested on 19<sup>th</sup> March 2018 at Bukembe area and booked at Bungoma Police Station. Investigations established that on 21<sup>st</sup> March 2018, the two private citizens met two Commission Officers and offered them a bribe of Kshs. 300,000/= so that they could drop the charges against the three suspects arrested on 19<sup>th</sup> March 2018. The two private citizens were immediately arrested after delivering the Kshs. 300,000/= to the Commission Officers.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with recommendations that the inquiry file be closed since the circumstances leading to the arrest of the private citizens amounted to an entrapment.

On 15<sup>th</sup> June 2020, the DPP accepted the Commission's recommendation for closure.

### **38. EACC/MLD/OPS/INQ/5/2018**

#### **INQUIRY INTO ALLEGATION THAT A TRAFFIC POLICE OFFICER BASED AT MTWAPA WEIGHBRIDGE CORRUPTLY REQUESTED FOR A BENEFIT FROM A TUKTUK RIDER IN ORDER FORM HIM TO RELEASE HIS DRIVING LICENCE AND CERTIFICATE OF INSURANCE THAT HE HAD CONFISCATED.**

Investigations commenced following a report made by a tuktuk rider that he had been arrested and released by a Traffic Police Officer around Mtwapa weighbridge while riding a tuktuk. The said Traffic Police Officer then confiscated his driving license and certificate of insurance. He demanded for Kshs. 5,000/- from the rider so as to release his driving license and certificate of insurance.

Investigations established that on 9<sup>th</sup> January, 2018 the traffic officer requested for a bribe of Kshs. 5,000/- from the Tuktuk rider and received Kshs. 2,000 upon which he released to the Tuktuk rider his driving license and certificate of insurance unconditionally without booking him or taking any action.

On 7<sup>th</sup> May 2020, a report was compiled and forwarded to the DPP with a recommendation to charge the Traffic Police Officer with 2 counts of receiving a bribe contrary to Section 6(1) (a) as read with Section 18(1) of the Bribery Act of 2016.

On 30<sup>th</sup> July 2020, the DPP returned the inquiry file for further investigations.

### **39. EACC/ELD/FI/INQ/10/2017**

#### **INVESTIGATION INTO ALLEGATIONS OF ABUSE OF OFFICE AND FRAUDULENT ACQUISITION OF PUBLIC PROPERTY BY THE OFFICER IN CHARGE OF KITALE MEDIUM PRISON.**

Investigations commenced following a complaint that the Officer in Charge, Kitale Medium Prison, had fraudulently acquired 400 bags of maize harvested from the prison and sold them.

Investigations established that the allegations were not true. Investigations revealed that only 903 bags of 90kgs of maize were harvested. 400 bags of the maize were consumed within the Kitale Medium Prison while 503 bags were distributed to other prisons. Each issuance or distribution of the maize was properly documented and accounted for.

On 7<sup>th</sup> May, 2020, a report was compiled and forwarded to the DPP with recommendations that the inquiry file be closed.

On 15<sup>th</sup> June 2020, the DPP accepted the Commission's recommendation for closure.

#### **40. EACC/KSM/OPS/INQ/11/2019**

##### **INVESTIGATIONS INTO BRIBERY ALLEGATIONS OF CORRUPTION AGAINST THE ASSISTANT CHIEF BAR A SUB LOCATION.**

The Commission commenced investigations following a complaint from a business man within Dago Trading Centre that the Assistant Chief Bar A Sub Location was requesting for a financial advantage from his sister, a student at Pwani University, in order to shortlist her as a Census Enumerator.

The Commission conducted an operation and investigations established that the Assistant Chief received a bribe of Kshs. 1,500 which was recovered from him. On 7<sup>th</sup> May, 2020, a report was compiled and forwarded to the DPP with recommendation to charge the Assistant Chief of Bar A Location with 3 counts of receiving a bribe contrary to Section 6 (1) (a) as read with Section of the Bribery Act.

On 15<sup>th</sup> June 2020, the DPP returned the inquiry file and advised that further investigations be carried out.

#### **41. EACC/KSM/OPS /INQ/04/2019**

##### **INVESTIGATION INTO ALLEGATIONS OF CORRUPTION AGAINST THE AREA CHIEF OF WEST KISUMU LOCATION.**

Investigations commenced following a report on 3<sup>rd</sup> May 2019, by a complainant alleging that the Area Chief for the West Kisumu Location, was requesting for a financial advantage of Kshs. 7,700/= in order to write a succession confirmation letter in favour of the complainant's grandmother and in order to sign a death certificate form for the deceased.

The Commission conducted an operation that resulted in the arrest of the area Chief West Kisumu Location who it was established received a bribe from the complainant. Kshs. 5,700/- of the received bribe was recovered from the Chief,

whereas the remaining Kshs. 2,000 was recovered from Gombe Kokulo Secondary School which the suspect had paid fees for his nephew.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to DPP with recommendations to charge the area Chief West Kisumu Location with the following offences; 3 counts of receiving a bribe contrary to Section 6 (1) (a) as read with Section 18 (1) (2) of the Bribery Act, 2016 and abuse of office contrary to Section 46 as read with Section 48(1) of the ACECA.

On 18<sup>th</sup> September 2020, the DPP accepted the recommendation for prosecution.

#### **42. EACC/NYR/OPS/INQ/44/2019**

#### **INVESTIGATION INTO ALLEGATIONS OF CORRUPTION AGAINST POLICE OFFICERS ATTACHED TO GACHATHA POLICE POST, NYERI COUNTY.**

On 10<sup>th</sup> September 2019, the Commission received a complaint alleging that two Police Officer attached to Gachatha Police Post were requesting for a financial benefit.

The Commission conducted a trap operation on the same day and established that the two Police Officers had demanded for Kshs. 3,000.00 from the Proprietor of 240 Hotel, Gachatha Trading Centre as inducement to release an employee of the hotel who had been arrested for allegedly operating the hotel beyond working hours.

On 4<sup>th</sup> June 2020, a report was compiled and forwarded to the DPP with recommendations to charge the two Police Officers with the offence of receiving a bribe contrary to Section 6 (1) (a) as read with Section 18 (1) (2) of the Bribery Act, 2016.

On 30<sup>th</sup> July 2020 the DPP returned the inquiry file for further investigations.

STATISTICAL SUMMARY OF FILES FORWARDED TO THE DIRECTOR OF PUBLIC PROSECUTIONS

1.	Total No. of files forwarded to the Director of Public Prosecutions	42
2.	No. of files recommended for prosecution	27
3.	No. of files recommended for administrative or other action	3
4.	No. of files recommended for closure	12
5.	No. of files recommended for prosecution and the cases are already lodged before Court	1
6.	No. of files where recommendation to prosecute accepted	7
7.	No. of files where recommendation for administrative or other action accepted	2
8.	No. of files where recommendation for closure accepted	9
9.	No. of files returned for further investigations	20
10.	No. of files where recommendation to prosecute not accepted	0
11.	No. of files where recommendation for administrative or other action not accepted	1
12.	No. of files where closure not accepted	0
13.	No. of files where prosecution declined but administrative action recommended	0
14.	No. of files awaiting the DPP's advice	3

DATED AT NAIROBI THIS

28<sup>th</sup>

DAY OF

September

2020

  
**ARCHBISHOP (RTD) ELIUD WABUKALA, EBS**  
**CHAIRPERSON**

/mao

  
**TWALIB MBARAK, CBS**  
**SECRETARY/CHIEF EXECUTIVE OFFICER**