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**THE THIRD QUARTERLY REPORT FOR THE  
YEAR 2010 COVERING THE PERIOD 1<sup>ST</sup>  
JULY TO 30<sup>TH</sup> SEPTEMBER 2010**

**THE KENYA ANTI-CORRUPTION  
COMMISSION**

## **PREAMBLE**

The Kenya Anti-Corruption Commission is required under section 36 of the Anti-Corruption and Economic Crimes Act, 2003, to prepare quarterly reports setting out the number of reports made to the Attorney General under section 35.

Section 35 provides that:

1. Following an investigation, the Commission shall report to the Attorney General on the results of the investigation.
2. The Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime.

Section 36 provides that:

1. The Commission shall prepare quarterly reports setting out the number of reports made to the Attorney General 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 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 the Anti-Corruption and Economic Crimes Act, 2003. The report covers the third quarter of the year 2010 and is for the period commencing 1<sup>st</sup> July, 2010 to 30<sup>th</sup> September, 2010.

## **INVESTIGATIONS COVERING THE PERIOD 1<sup>ST</sup> JULY TO 30<sup>TH</sup> SEPTEMBER 2010**

### **1. KACC/FI/INQ/15/2010**

Inquiry into allegations that a Senior Education Officer in the Ministry of Education misappropriated Kshs. 3,936,200 entrusted to him for the purpose of carrying out capacity building workshops for stakeholders in the Most Vulnerable Children (MVC) Support Grant Programme at Machakos and Garissa Teachers Training Colleges. The Commission had received a report alleging that a sum of Kshs. 103 million allocated to the Kenya Education Sector Support Programme (KESSP) of the Ministry of Education had been misappropriated by the implementing officers. Specific to this inquiry was the allegation that the Senior Education Officer had misappropriated a sum of Kshs. 3,936,200 that was intended for conducting sensitization workshops for stakeholders from various schools that were involved in the implementation of the MVC Support Grant Programme under the KESSP HIV and AIDS component. It was a requirement that before the funds could be released, the school head teachers and other stakeholders would be sensitized on the use of the funds. The investigations established that the suspect applied for and was given an imprest of Kshs. 3,936,200 to cater for the two workshops, and that after completion of the workshops, he surrendered the imprest using false documents to justify a higher expenditure than was the case.

The file was forwarded to the Attorney General on 16<sup>th</sup> September, 2010 with the recommendation that the suspect be prosecuted for the offences of fraudulent acquisition of public property contrary to section 45(1)(a) of the Anti-Corruption and Economic Crimes Act, 2003, false accounting by a public officer and uttering a false document contrary to sections 331(1) and 353 of the Penal Code, Chapter 63 of the Laws of Kenya. The Attorney General returned the file on 4<sup>th</sup> October 2010, accepting KACC's recommendations that prosecution and recovery proceedings should ensue against the suspects.

### **2. KACC/FI/INQ/158/2009**

Inquiry into allegations of fraud and corruption against the Human Resources Officer of the Western Kenya Community Driven Development and Flood Mitigation Project (WKCCDD/FMP). It was alleged that the suspect, took an imprest of Kshs. 3,699,000 for use in conducting a sensitization workshop on HIV/AIDS but misappropriated the same. Investigations confirmed that the suspect had applied for and received an imprest of Kshs. 3,699,000 as alleged but surrendered the same using falsified documents. The suspect prepared false schedules bearing forged signatures of the participants indicating that they were paid more than what they actually received. Some of the alleged participants were categorical that they never attended the training.

The file was forwarded to the Attorney General on 16<sup>th</sup> September, 2010 with the recommendation that the suspect and her accomplice be prosecuted for the offences of conspiracy to defraud contrary to section 317 of the Penal Code, Chapter 63 of

the Laws of Kenya, Deceiving Principal and fraudulent acquisition of public property contrary to sections 41(2) and 45(1)(a) of the Anti-Corruption and Economic Crimes Act, 2003, and uttering a false document contrary to section 353 of the Penal Code. The Attorney General returned the file on 4<sup>th</sup> October 2010, accepting KACC's recommendations that prosecution should ensue against the suspects

### **3. KACC/FI/INQ/10/2010**

Inquiry into allegations that a Senior Education Officer in the Ministry of Education misappropriated Kshs. 2,012,000 entrusted to her for conducting a workshop for the school infrastructure committees in Western Kenya Region. The Commission had received a report alleging that a sum of Kshs. 103 million allocated to the Kenya Education Sector Support Programme (KESSP) of the Ministry of Education had been misappropriated by the implementing officers. Specific to this inquiry was the allegation that a Senior Education Officer had misappropriated a sum of Kshs. 2,012,000 that was intended for facilitating the training of members of school infrastructure committees in the Western Kenya Region. The investigation established that the suspect was indeed entrusted with an imprest in the sum of Kshs. 2,012,000 to facilitate the subject training and that the workshops were indeed held. However it was ascertained that the suspect did not truthfully account for the expenditure at the time of surrender. It was noted that the forms signed by the participants to acknowledge payment were altered to indicate that they received more money than what they had received, some participants listed as having been paid facilitation allowance disputed the same, and falsified receipts were used to account for some of the imprest.

The file was forwarded to the Attorney General on 26<sup>th</sup> July 2010 with the recommendation that the suspect be prosecuted for the offences of false accounting by a public officer and uttering a false document contrary to sections 331(1) and 353 of the Penal Code, Chapter 63 of the Laws of Kenya. The Attorney General returned the file on 4<sup>th</sup> October 2010, accepting KACC's recommendations that prosecution should ensue against the suspect.

### **4. KACC/AT/INQ/16/2009**

Inquiry into allegations that private developer had illegally acquired a piece of land, LR No. 209/16441 belonging to Racecourse Primary School, a public school run and maintained by the City Council of Nairobi. The investigations confirmed the allegation and established that by the time the land in issue was being transferred to the private developer in 2006, it had already been allocated to the City Council of Nairobi by the Commissioner of Lands and was not available for disposal. It was further established that the transfer in favour of the private developer had been effected using a false Part Development Plan (PDP) and a forged letter of allocation with the complicity of some officials of the City Council of Nairobi and the Ministry of Lands.

The file was forwarded to the Attorney General on 5<sup>th</sup> July 2010 with the recommendation that the private developer and the concerned officers of the City Council of Nairobi and the Ministry of Lands be prosecuted for the offences of

fraudulent acquisition/disposal of public property contrary to section 45(1)(a) and (b) of the Anti-Corruption and Economic Crimes Act, unlawful failure to pay fees payable to a public body contrary to section 45(1)(d) of the Anti-Corruption and Economic Crimes Act, conspiracy to defraud contrary to section 317 of the Penal Code, and making a document without authority contrary to section 357(a) of the Penal Code. The Attorney General returned the file to KACC on 6/10/2010 with a directive that the outstanding investigations be completed and the file re-submitted for AG's directions.

#### **5. KACC/FI/INQ/06/2010**

Inquiry into allegations of embezzlement of Kshs. 2,632,000 against an Assistant Director in the Ministry of Education. It was alleged that several officials of the Ministry of Education had defrauded the Ministry of millions of shillings through a series of capacity building workshops that were organized by the Ministry under the Kenya Education Sector Support Programme (KESSP) Project. One of the workshops targeted the School Infrastructure Committees for which the suspect in this inquiry was entrusted with Kshs. 2,632,000 imprest. The investigation revealed that the suspect colluded with the host institution to inflate the number of participants and that false receipts were used to account for and surrender the imprest.

The file was forwarded to the Attorney General on 13<sup>th</sup> July 2010 with the recommendation that the suspect be prosecuted for the offences of fraudulent acquisition of public property contrary to section 45(1)(a) and (b) of the Anti-Corruption and Economic Crimes Act, knowingly deceiving principal contrary to section 41 of the Anti-Corruption and Economic Crimes Act, conspiracy to commit an offence of corruption or economic crime contrary to section 47A(3) of the Anti-Corruption and Economic Crimes Act, 2003 and uttering a false document contrary to section 353 of the Penal Code, Chapter 63 of the Laws of Kenya. The Attorney General returned the file on 4/10/2010 with directions that further investigations be carried out.

#### **6. KACC/MSA/FI/INQ/9/2009**

Inquiry into an allegation of failure to adhere to public procurement laws and regulations in the procurement of three tractors and two ploughs by officials of Lamu West Constituency Development Committee. Allegations were made to the Commission of various malpractices and violation of the procurement law in the management of Constituency Development Funds in Lamu West Constituency. The allegations involved conflict of interest, bid rigging, failure to comply with procurement laws, and abuse of office. The investigations into the allegations were initiated, with this particular inquiry targeting the alleged failure to comply with procurement law in the acquisition of three tractors and their accessories. The investigation confirmed three officials of the Lamu West Constituency Development Committee violated the procurement law and regulations in the acquisition of three tractors and their accessories.

The file was forwarded to the Attorney General on 14<sup>th</sup> July 2010 with the recommendation that the three officials be charged with the offence of wilful failure to comply with the law relating to procurement of goods under section 45(2)(b) of the Anti-corruption and Economic Crimes Act, 2003. The Attorney General returned the file on 15<sup>th</sup> September 2010, accepting KACC's recommendations that prosecution should ensue against the suspects.

#### **7. KACC/FI/INQ/110/2009**

Inquiry into allegations of misappropriation of Kshs. 106,500 belonging to the Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FMP) by the Chief Fisheries Officer, Bondo District. It was alleged that part of the funds donated by the World Bank to finance the WKCDD/FMP had been misappropriated on the pretext that it was used for restocking the Ochot Fish Dam. Investigations confirmed that the suspect had applied for and received an imprest of Kshs. 106,500 for the purpose of carrying out an ecological survey and re-stocking of Ochot Dam with fingerlings and that he surrendered the imprest in the usual manner. Some of the documents attached to the surrender voucher were receipts allegedly issued for the hire of a boat and for the purchase of fingerlings. The owners of the boat and the fish farm from which the fingerlings were allegedly bought denied the transactions and the receipts found to be false documents.

The file was forwarded to the Attorney General on 13<sup>th</sup> July 2010 with the recommendation that the suspect be prosecuted for the offences of false accounting by a public officer contrary to section 331(1) of the Penal Code and uttering a false document contrary to section 353 of the Penal Code. The Attorney General returned the file on 4<sup>th</sup> October 2010, accepting KACC's recommendations that prosecution should ensue against the suspect.

#### **8. KACC/AT/INQ/08/2007**

Inquiry into allegations that a Police Officer based at Ruaraka Police Station, Nairobi and the officer in charge of Highway Traffic Patrol was corrupt and had unexplained assets, a list of which was provided to the Commission. The Commission carried out investigations into the allegations and established that a significant portion of the assets in question belonged to the suspect's wife and were owned by her before they got married. It was further established that the suspect's wife was an established businesswoman owning considerable assets. It was the wealth declarations made by the suspect following their marriage that appear to have triggered the suspicions about his possessing unexplained assets, which were sufficiently accounted for by both the suspect and his wife. The investigations unearthed no evidence that the suspect was involved in corrupt activities or economic crime.

The file was forwarded to the Attorney General on 7<sup>th</sup> July 2010 with the recommendation for closure of the file. The Attorney General returned the file on 9/8/2010 and accepted KACC's recommendations that the file be closed.

#### **9. KACC/FI/INQ/99/2009**

Inquiry into allegations of conflict of interest against officials at the Kuria West District Treasury in the award of a tender for the renovation of the District Treasury offices. The investigation confirmed that funds had been set aside for the renovation of the District Treasury premises to create more office space. Subsequent to the receipt of the money, Bills of Quantities were prepared by the Ministry of Works, on the basis of which Requests for Quotations were floated. The quotations were thereafter evaluated and an award made to the lowest evaluated bidder. The decision was communicated the bidders and a Local Service Order issued. The investigation further established that the works were undertaken and payment made upon verification thereof. It became evident therefore that the relevant procurement procedures were followed in the award of the tender. There was equally no evidence to show that any of the officers involved in the processing of the tender influenced the award or had any connection with the successful bidder or the proceeds of the tender.

The file was forwarded to the Attorney General on 19<sup>th</sup> July 2010 with the recommendation that the inquiry file be closed. The Attorney General returned the file to KACC on 2<sup>nd</sup> September 2010 and directed that the contractor be recalled back to the site to complete the renovations as per the Bill of Quantities, failure to which the District Accountant be surcharged for the cost of the incomplete work.

#### **10. KACC.CR.764/246/2010: COURT FILE NO. NAKURU ACC. 4/2010**

Inquiry into allegations that a police officer attached to Gilgil Police Station had corruptly solicited for a benefit from the complainant as an inducement to facilitate the withdrawal of charges of robbery with violence filed against the complainant's son at Naivasha Law Courts. The investigation established the solicitation and receipt of the benefit. The suspects were arrested and charged with the offences of soliciting and receiving a benefit contrary to section 39(3)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and the case is pending before the Nakuru Anti-Corruption Court.

The file was forwarded to the Attorney General on 13<sup>th</sup> July, 2010 with a recommendation that the case pending before court be prosecuted to its logical conclusion. The recommendation was accepted by the Attorney General on 15<sup>th</sup> September, 2010.

#### **11. KACC.CR.021/19/2010: COURT FILE NO. MOMBASA ACC. 2/2010**

Inquiry into allegations that a Security Officer at the Kenya Ports Authority had corruptly solicited for a benefit from the complainant as an inducement to frustrate investigations into allegations of corruption against the complainant in which the

suspect was the key witness. The suspect indicated that he could frustrate the investigation and eventual prosecution of the case against the complainant by failing to attend court when required to testify. The investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged with the offences of soliciting and receiving a benefit contrary to section 39(3)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and the case is pending before the Mombasa Anti-Corruption Court.

The file was forwarded to the Attorney General on 25<sup>th</sup> August, 2010 with a recommendation that the case pending before court be prosecuted to its logical conclusion. The Attorney General returned the file on 4/10/2010 and accepted KACC's recommendations to prosecute.

**12. KACC.CR.811/103/2010: COURT FILE NO. KITALE ACC. 234/2010**

Inquiry into allegations that a senior support staff at the Ministry of Roads Kitale Office had corruptly solicited for a benefit from the complainant as an inducement to facilitate the approval of site building plans. The investigation established the solicitation and receipt of the benefit. The suspects were arrested and charged with the offences of soliciting and receiving a benefit contrary to section 39(3)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and the case is pending before the Kitale Anti-Corruption Court.

The file was forwarded to the Attorney General on 11<sup>th</sup> August, 2010 with a recommendation that the case pending before court be prosecuted to its logical conclusion. The Attorney General returned the file on 4/10/2010 and accepted the recommendations by KACC that the matter be prosecuted.

**13. KACC.CR.141/381/2009: COURT FILE NO. NAIROBI ACC. 24/2010**

Inquiry into allegations that a clerical officer employed by the City Council of Nairobi had corruptly solicited for a benefit from the complainant as an inducement to facilitate the processing of a death certificate in respect of the complainant's deceased brother. The investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged with the offences of soliciting and receiving a benefit contrary to section 39(3)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and the case is pending before the Nairobi Anti-Corruption Court.

The file was forwarded to the Attorney General on 16<sup>th</sup> September, 2010 with a recommendation that the case pending before court be prosecuted to its logical conclusion. The Attorney General returned the file on 4/10/2010 and accepted recommendations by KACC that the matter be prosecuted.

**14. KACC/CR.141/356/2010: COURT FILE NO. NAIROBI ACC. 22/2010**

Inquiry into allegations that a Senior Administrative Assistant at Kenyatta University had corruptly solicited for a benefit from the complainant as an inducement to



facilitate the release of a diploma certificate to the complainant, who had previously been a student at the University. The investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged with the offences of soliciting and receiving a benefit contrary to section 39(3)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and the case is pending before the Nairobi Anti-Corruption Court.

The file was forwarded to the Attorney General on 20<sup>th</sup> September, 2010 with a recommendation that the case pending before court be prosecuted to its logical conclusion. The Attorney General returned the file on 6/10/2010 and accepted recommendations made by KACC.

### **STATISTICAL SUMMARY OF FILES FORWARDED TO THE ATTORNEY GENERAL**

Total No. of files forwarded to the Attorney General	14
No. of files recommended for prosecution	12
No. of files recommended for administrative or other action	0
No. of files recommended for closure	2
No. of files recommended for prosecution and the cases are already lodged before Court	5
No. of files where recommendation to prosecute accepted	10
No. of files where recommendation for administrative or other action accepted	0
No. of files where recommendation for closure accepted	1
No. of files returned for further investigations	2
No. of files where recommendation to prosecute not accepted	2
No. of files where recommendation for administrative or other action not accepted	0
No. of files where AG has recommended administrative or other action	1
No. of files forwarded in previous quarters and received during this quarter	0
No. of files where closure not accepted	1
No. of files awaiting Attorney General's action	0

DATED AT NAIROBI THIS 8<sup>th</sup> DAY OF October 2010

**PROF. R.L.O. LUMUMBA, PhD**  
**DIRECTOR/CHIEF EXECUTIVE**

