

## PREAMBLE

The Kenya Anti- Corruption Commission is required under section 36 of the Anti-Corruption and Economic Crimes Act to prepare quarterly reports.

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. The report covers the first quarter of the year 2005 and is for the period between 1st January 2005 and 31st March 2005.

## **INVESTIGATIONS COVERING THE PERIOD 1ST JANUARY 2005 TO 31ST MARCH 2005**

### **1. KACC/INQ/1/3/04**

Inquiry into allegations that two employees of the City Council of Nairobi Water Department, Peter Ambugo Abuso and Alloys Owino Owegi solicited for a bribe of Kshs. 25,000 from the complainant in order to forbear arresting and charging him with an alleged offence of tampering with a water meter.

Investigations confirmed that the suspects demanded Kshs. 25,000/- and received Kshs. 20,000 from the complainant.

### **Recommendation**

It was recommended that both Peter Ambugo Abuso and Alloys Owino be charged with two counts of corruption contrary to section 39(3) a of the Anti-Corruption and Economic Crimes Act.

The file was forwarded to the Attorney General on 31st January 2005 and the Attorney General accepted the recommendations on 1st April 2005. Meanwhile, the case is pending before court.

### **2. KACC/INQ.21/16.6.04**

Inquiry into alleged irregular award of a contract of CID Forensic Science Laboratory to Forensic Science Laboratories Ltd and Anglo Leasing & Finance Limited

Investigations revealed that the government procurement procedures were not followed in awarding the contract to Forensic Laboratories Ltd and Anglo Leasing & Finance Limited. Further, the contract was signed before establishing the legal status of the two companies. The identity of the Directors of the two companies has not been established by the investigation. However, by 14th June 2004, all the money paid to Anglo Leasing & Finance Limited totalling to Kshs. 375,285,555.20 equivalent to US \$ 4,444,444.44 was paid back to the Government.

## **Recommendation**

- i. It was recommended that Mr. Zakayo Cheruyiot, former Permanent Secretary in the Office of the President, Mr. John F.A Agili, a Finance officer in the Office of the President and Mr. Francis Sang, former Director of Criminal Investigation Department be charged with the offence of abuse of office for proceeding with the procurement of a Forensic Science Laboratory without ensuring that there were technical specifications in place.
- ii. It was also recommended that Mr.Zakayo Cheruyiot and John F. A Agili be charged with another count of abuse of office contrary to section 101(1) of the Penal Code for failing to undertake a due diligence test on Anglo Leasing and Finance Company and Forensic Laboratories Ltd in order to ensure that they had the requisite capacity to enter into contract.

The file was forwarded to the Attorney General on 11th February 2005 and the Attorney General accepted the recommendation to prosecute Zakayo Cheruyiot and John F.A Agili on 2nd March 2005. With regard to Mr. Francis Sang, the Attorney General noted that the Forensic Science Laboratory project was controlled and co-ordinated by Mr. Cheruyiot and Mr. Agili. The Attorney General thus recommended that Mr. Francis Sang be treated as a witness as his evidence would be vital.

### **3. KACC/INQ. 14/ 29.4.04**

Inquiry into allegations of irregular award of contract for supply and installation of new passport issuing system for Department of Immigration to Anglo Leasing & Finance Limited.

Investigations revealed that Anglo Leasing & Finance Ltd is not registered either in UK or in Kenya. A contract was entered into without verifying the legal status of the company and in total breach of procurement procedures. The investigation has also established that the money paid to Anglo Leasing & Finance Limited amounting to Euros 956,700 was paid back to the Government by 13th May 2004.

## **Recommendation**

- i. That Sylvester Mwaliko, a former Permanent Secretary in the Office of the Vice President and Ministry of Home Affairs be charged with three counts of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act for facilitating the awarding

of the contract for financing, supply and installation of the new passport issuing system to Francois Charles Oberthur Fiduciare and later Anglo Leasing & Finance Limited without the knowledge of Immigration Department, hence conferring a benefit to the said companies. He also signed the contract without verifying the status of the companies, and conferred an improper benefit to Anglo Leasing & Finance Ltd

- ii. That Sylvester Mwaliko be charged with the offence of giving false information to Dorcas Achapa of the Attorney General's office to the effect that the concerns raised by the office of the Attorney General regarding the proposed contract had been submitted to the Treasury
- iii. That Sylvester Mwaliko be charged with an Economic Crime contrary to Section 45(2) b of the Anti-Corruption and Economic Crimes Act in that being an officer whose duties concerned administration of public revenue, he carelessly failed to comply with procurement procedures and guidelines provided in the Exchequer and Audit (Public Procurement) Regulations, 2001
- iv. That Joseph Mbui Magari, former Permanent Secretary in the Ministry of Finance be charged with two counts of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act in that he conferred a benefit to Anglo Leasing & Finance Ltd by signing a contract with them whereas the proposal on which the agreement was based was prepared by Francois Charles Oberthur Fiduciare. He also signed a contract on behalf of the Government without verifying the status of the companies he was contracting.
- v. That Joseph Mbui Magari be charged with Economic Crime contrary to Section 45(2) c in that he engaged in a project without prior planning
- vi. Wilson Kipsang Sitonik, Director of Government Information Technology Systems in Treasury be charged with two counts of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act in that he recommended the award of the Immigration Passport contract to Anglo Leasing without any technical evaluation from the user department. He also arbitrarily rejected the award of the contract of Global Enterprises Technologies contrary to the technical evaluation
- vii. David Lumumba Onyonka, head of Debt Management Division in Treasury be charged with abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act in that he arbitrarily wrote a memorandum confirming that the issues raised by the

Attorney General with regard to Anglo Leasing & Finance Ltd had been covered, whereas he knew they had not been covered.

The file was forwarded to the Attorney General on 11th February 2005 and the recommendation to prosecute was accepted on 16th February 2005.

#### **4. KACC/I/1/10/03, CR CASE NO. 67 OF 2003**

Inquiry into allegations that Mr. Peter Angwenyi Koinange, a clerk in Pensions Department, demanded a sum of Kshs. 3,000/- so that he could process a claim for gratuity. Investigations revealed that the suspect had made the demand and had received Kshs. 2,000/- from the complainant.

#### **Recommendation**

It was recommended that the suspect be charged with two counts of corruption contrary to section 39(3)a of the Anti-Corruption and Economic Crimes Act.

The file was forwarded to the Attorney General on 3rd March 2005 and the Attorney General accepted the recommendation to prosecute on 1st April 2005. Meanwhile, the matter is pending before court.

#### **5. KACC/AT/1/5/10.04**

The inquiry was into allegations that Mrs. Eunice Lamba Chacha, an employee of the Ministry of Home Affairs, had amassed wealth that was not commensurate with her income, and did not make full and frank disclosure as required by the Public Officer Ethics Act.

Investigations did not disclose evidence of illegally acquired wealth.

#### **Recommendation**

It was recommended that the file be closed for lack of evidence. The file was forwarded to the Attorney General on 5th March 2005. The Attorney General's action on the file is awaited

#### **6. KACC/INQ 38/23.9.04**

Inquiry into alleged misappropriation of National Aids Control Council's funds by an NGO called Lereshwa HIV/AIDS Awareness and Preventive Programme.

The investigation revealed that though there were wrangles among the members of the NGO in the implementation of the programme, the funds were fully accounted for.

### **Recommendation**

It was recommended that the file be closed for lack of evidence.

The file was forwarded to the Attorney General on 23rd March 2005 and the Attorney accepted the recommendation to close file on 1st April 2005

### **7. KACC/INQ 27/9.7.04**

The inquiry was into allegations that Mrs. Nancy Mutua, an employee of Retirement Benefits Authority was offered a free trip to Sarova Shaba Hotel by Kenya Wildlife Trails Ltd. after having facilitated the winding up of Kenya Wildlife Trails Staff Retirement Benefit Scheme.

Investigations revealed that the Kenya Wildlife Trails Staff Retirement Benefit Scheme was wound up under the supervision of Retirement Benefits Authority. The institution made the decision to approve the winding up, and not Mrs. Nancy Mutua. Further, Mrs. Nancy Mutua's husband paid for the trip to Sarova Shaba Hotel in full.

### **Recommendation**

It was recommended that the file be closed as no offence was disclosed against Mrs. Nancy Mutua.

The file was forwarded to the Attorney General on 23rd March 2005 and the Attorney General accepted the recommendation to close file on 1st April 2005.

## **STATISTICAL SUMMARY**

<b>No. of files forwarded to the Attorney General</b>	<b>7</b>
<b>No. of files recommended for prosecution</b>	<b>4</b>
<b>No. of files recommended for administrative or other action</b>	<b>0</b>
<b>No. of files recommended for closure</b>	<b>3</b>
<b>No. of files where recommendation for prosecution accepted</b>	<b>4</b>

