



**THE ETHICS AND ANTI-CORRUPTION COMMISSION**

**THE SECOND QUARTERLY REPORT FOR THE YEAR 2012  
COVERING THE PERIOD  
1<sup>ST</sup> APRIL, 2012 TO 30<sup>TH</sup> JUNE, 2012**

## **PREAMBLE**

The Ethics and 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 Director of Public Prosecutions under Section 35 of the Anti-Corruption and Economic Crimes Act, 2003 as read with Section 11(1) (d) of the Ethics and Anti-Corruption Commission Act, 2011.

Section 36 of the Anti-Corruption and Economic Crimes Act, 2003 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 second quarter of the year 2012 and is for the period commencing 1<sup>st</sup> April, 2012 to 30<sup>th</sup> June, 2012.

## **INVESTIGATIONS COVERING THE PERIOD 1<sup>ST</sup> APRIL TO 30<sup>TH</sup> JUNE, 2012**

### **1. KACC FI/INQ/96/2010**

**Inquiry into allegations of procurement irregularities, bid rigging and abuse of office against the Ministry of Information and Communication officials emanating from the procurement of 5,000 acres of land from Malili Ranch Limited at a cost of Kshs.1 billion by the said Ministry for purposes of an ICT park.**

The investigation established that as part of the national plan of achieving Vision 2030, the Ministry of Information and Communication planned to establish an Information Communications and Technology Park (ICT-Park) that would facilitate the development of Business Processing Outsourcing (BPO) sub sector. The establishment of the multi-media ICT-Park was expected to trigger the growth of knowledge based industries. Investigations further established that the Ministry of Information and Communication which was the executing Ministry of the Government for purposes of the establishment of the said ICT-Park project, was then allocated funds for purposes of the acquisition of land. The Ministry went ahead to procure the 5,000 acres of land from Malili Ranch Limited, located along the Athi-River Basin. The investigations revealed that the procurement for the purchase of the land for the ICT Park was not done in conformity with the provisions of the Public Procurement and Disposal Act and the Regulations. The land was obtained through direct procurement instead of open tendering.

The file was forwarded to the Director of Public Prosecutions on 2<sup>nd</sup> April, 2012 with the recommendation that the Permanent Secretary in the Ministry of Information and Communication; and the Chief Procurement Officer be charged with the offences of careless failure to comply with the law relating to procurement of goods contrary to section 45(2) (b) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and Abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2005.

On 5<sup>th</sup> July, 2012, the Director of Public Prosecutions returned the file for further investigations.

## 2. KACC/FI/INQ/67/2011

**Inquiry into allegations that the Director General of Kenya National Bureau of Statistics (KNBS) fraudulently awarded a storage contract and authorized payment of a sum of Kshs. 7,390,000 to a non-existing company without following the laid down procurement procedures.**

Investigations revealed that KNBS engaged various companies to transport census materials from different regions in the country. Upon realization that the available storage space for the census materials was not enough, KNBS retained one of the companies to provide warehousing space for the materials. Investigations further revealed that an agent of the said company purported to register another company and present it as the same company that had a contract with KNBS. The agent then presented his company as the provider of the warehousing services and used false documents to complete this scheme. Investigations further established that to further the fraud, the agent opened a bank account into which KNBS made a payment of Kshs. 7,390,000. Whereas this payment was made in favour of the agent's company, the company did not provide any warehousing services, since the warehouse that the company's sole director purported belonged to him, belonged to the bona fide company that KNBS had initially awarded the contract. The agent therefore received public funds for services not rendered. Investigation established that in procuring storage space for census materials, the Director General of KNBS and the Procurement Manager failed to comply with the public procurement laws and regulations.

The file was forwarded to the Director of Public Prosecutions on 31<sup>st</sup> May, 2012 with the recommendation that the Director General of the Kenya National Bureau of Statistics and Procurement Manager be charged with the offences of wilful failure to comply with the applicable law relating to the procurement of services contrary to section 45(2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes, No.3 of 2003; the Director General be charged with the offence of abuse of office contrary to section 46 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003; and the representative of non-existent company be charged with the offence of fraudulent acquisition of public property contrary to section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 2<sup>nd</sup> July, 2012, the Director of Public Prosecutions accepted the recommendation for prosecution.

**3. KACC/FI/INQ/44/2011**

**Inquiry into allegations of irregular procurement of a total of 132,000 metric tons Automotive Gas Oil by the National Oil Corporation of Kenya (NOCK).**

Investigations established that the need for NOCK to procure Automotive Gas Oil (AGO) arose after NOCK was awarded a tender for the supply of the same by the Ministry of Energy. Pursuant to the award made to NOCK by the Ministry, NOCK entered into an agreement with a private petroleum company to supply and deliver the AGO. Investigations further revealed that NOCK did not invite any tenders for the supply of AGO. Instead, they used direct procurement to identify a company to supply the AGO. Investigations also established that in spite of NOCK having contracted the petroleum company, the latter did not supply the oil within the contract period. Since the oil was not delivered within the stipulated period, the management of NOCK decided to engage an alternative company to supply the oil, to avert a crisis demand that would have arisen. However, the alternative supplier agreed to supply and deliver the AGO at a much higher cost than the initial supplier. The investigation also established that NOCK, while engaging the alternative supplier, once again used direct procurement. The investigation established that the method of procurement adopted by NOCK on both occasions was in contravention of the laid down public procurement laws and procedures. It was also established that NOCK made a payment of USD 127,580 to Russian Oil and Gas Manufacturers and Exporters Association (RUOGMEA) in order to be issued with a Purchase Approval Transaction Allocation Code to enable NOCK to import oil products from the Russian Federation. However, in spite of this payment being made from public funds, the intended 132,000 metric tonnes of AGO was not delivered to NOCK.

The file was forwarded to the Director of Public Prosecutions on 22<sup>nd</sup> June, 2012 with the recommendation that the Managing Director and Supply Manager, National Oil Corporation of Kenya be charged with the offence of wilful failure to comply with the law and applicable procedures relating to procurement contrary

to Section 45(2) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003; and that the Managing Director also be charged with the offence of abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that the sum of USD 127,580 public funds be recovered.

The advice of the DPP is awaited.

#### **4. EACC/INQ/09/2012**

##### **Inquiry into allegations of theft of public funds amounting to Kshs.4,389,960 at the Makueni District Treasury, by the District Accountant.**

Investigations established that in December, 2008, the Makueni District Internal Auditor conducted a routine check of the cash management system within the District Treasury; and he established that unauthorised cash imprests had been paid to the District Accountant and other officers. The auditor also established that the District Accountant had received cash advance in the form of IOUs. He carried out a comprehensive cash management audit which revealed, among other irregularities, that the cashbook was overdrawn to the tune of Kshs.2,208,203.70. The investigation further established that the total amount of money unaccounted for by the District Accountant was Kshs.4,389,960.00

The file was forwarded to the Director of Public Prosecutions on 21<sup>st</sup> June, 2012 with the recommendation that the District Accountant be charged with the following offences; unlawful acquisition of public property contrary to Section 45(1) (a), wilful failure to comply with the applicable procedures and guidelines relating to management of public funds contrary to Section 45(2) (b) and abuse of office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

On 4<sup>th</sup> July, 2012, the Director of Public Prosecutions accepted the recommendation for prosecution.

**5. EACC/ELD/INQ/FI/1/2011**

**Inquiry into allegations that officials of the Eldoret South Constituency Development Fund misappropriated a sum of Kshs.800,000/= meant for the heavy grading of the Nariri-Cheptabach Road, within the Eldoret South Constituency during the 2009-2010 Financial year.**

The investigation established that the sum of Kshs.800,000 was released to the Eldoret South Constituency Development Fund Committee (CDFC) and was intended for the grading of the Nariri-Cheptabach road. However, the funds were not released to the legitimate Project Management Committee that was entitled to receive and use it for the said purpose. Instead the money was paid to a parallel Project Management Committee and was withdrawn by three officials of the said committee. The investigations further established that whereas the three officials received the money, the road project was neither implemented nor grading done, although the said officials purported to have paid the money to a contractor. The suspects did not account for the CDF funds received and were therefore culpable for misappropriation of public funds.

The file was forwarded to the Director of Public Prosecutions on 25<sup>th</sup> May, 2012 with the recommendation that the suspects be charged with the offences of fraudulent acquisition of public property contrary to section 45(1) (a) read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, misappropriation of Constituency Development Funds contrary to section 51 of the Constituencies Development Fund Act and uttering a false document contrary to section 353 of the Penal Code.

On 7<sup>th</sup> June, 2012, the DPP accepted the recommendation for prosecution.

**6. KACC/INQ/AT/17/2009 (F)**

**Inquiry into allegations of irregular acquisition of land reference Number; Kisumu Municipality/Block7/240 popularly known as 'Taifa Park' valued at Kshs.16,400,000.00 by private individuals.**

The investigation established that the land parcel was originally allocated to the Municipal Council of Kisumu (the Council). The land was later on surveyed as

Land Reference number 114/1019 and named 'King George V Park'. The draft deed number IR 18388 was prepared on 12<sup>th</sup> July, 1961 with a lease term of ninety nine (99) years from 1<sup>st</sup> March, 1961. Later on 28<sup>th</sup> September, 1975 the registration of this land was moved from the Registration of Titles Act regime to that of Registered Land Act. The title of the land accordingly changed from L.R. Number 114/1019 to Kisumu Municipality/Block 7/240 and the requisite Certificate of Lease issued to the Council on 27<sup>th</sup> April, 1999. Investigations further revealed that the land was allegedly transferred to and registered in the joint names by the Council with the help of its then Town Clerk; this he did by notifying the relevant Land Registry vide a letter that the Council had approved the said transfer. Investigations further revealed that the Council neither gave the approval for the transfer nor were the necessary consents obtained from the Ministry of Local Government and/or the Commissioner of Lands prior to the disposal of public property. The relevant transfer document was duly registered by a Land Registrar then based at the District Lands office, Kisumu County. The land was later disposed to a private company effectively completing the irregular alienation of this public property.

The file was forwarded to the Director of Public Prosecutions on 29<sup>th</sup> May, 2012 with the recommendations that the then Town Clerk and the District Land Registrar be charged with the following offences; abuse of office contrary to section 46, wilful failure to comply with the law relating to disposal of public property contrary to section 45(2) (b), fraudulent disposal of public property contrary to section 45 (1) (b) and conspiracy to commit an offence of corruption contrary to section 47A as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that the beneficiary of the illegally acquired public land be charged with the offence of fraudulent acquisition of public land contrary to section 45(1(a) of the Anti- Corruption and Economic Crimes Act, 2003.

Civil recovery proceedings were instituted by the Commission, and the title has since been surrendered by the private owners to the Government for cancellation.

On 4<sup>th</sup> July, 2012, the Director of Public Prosecutions accepted the recommendation for prosecution.

## **7. KACC/FI/INQ/50/2011**

### **Inquiry into allegations that the City Council of Nairobi made irregular payments to a Law firm for legal services that were not rendered.**

Investigations established that in the years 2008 and 2010, the Council advertised a Tender Notice inviting interested law firms to bid for pre-qualification for provision of legal services during the period 2010-2012. Among the law firms that bid and was eventually pre-qualified was the law firm that is said to have received payments for services not rendered. Investigations established that, the Council through its Director of Legal Affairs instructed the said Law Firm to defend the Council in two matters filed against the Council in the High Court, Nairobi. The Law Firm sent its fee notes to the Council requesting for a payment of Kshs.1.74 million and Kshs. 1,489,000 as instruction fees for defending the council. Investigations further established that the Council issued two payment cheques in favour of the Law firm. Investigations also established that the two cases in respect of which the Council issued the payment cheques are still ongoing and the Court records indicate that the firm has been defending the Council's interests as instructed. The two cheques however have not been released to the firm. The evidence obtained did not reveal that the payments made in favour of the Law Firm were irregular as alleged, and no culpability was established on the part of the Council officials.

The file was forwarded to the Director of Public Prosecutions on 20<sup>th</sup> June, 2012 with the recommendation that the Inquiry file be closed.

On 2<sup>nd</sup> July, 2012, the Director of Public Prosecutions accepted the recommendation for closure.

## **8. EACC/MSA/INQ/FI/2012**

### **Inquiry into allegations of abuse of office against the Chief of Waride Location over allocation of plots at a proposed trading centre in Witu Division within Lamu County.**

Investigations established that in the year 2005, the District Development Committee, Lamu resolved that plot number 350/351 which was for public utility,

be utilized for the construction of a market centre. This decision was endorsed in a full Council meeting in February, 2011. Investigations further established that a committee was to be formed to come up with the modalities for developing the market centre. However, before the said committee was formed, the Chief formed his own committee; and at a meeting held to discuss the criteria for allocation, he insisted that for anyone to qualify for allocation, they would have to pay Kshs. 5,000 and Kshs. 20,000 for a residential and commercial plot respectively. Investigations revealed that the Chief collected money from members of the public but issued no receipts. In spite of the payments, no plots were allocated to the payees. Investigations also established that whereas there was a well grounded suspicion that the Chief had collected the money as alleged from the villagers, the villagers did not volunteer to record their complaints and statements.

The evidence obtained therefore did not meet the threshold to prove the allegations of corruption against the Chief beyond reasonable doubt. This notwithstanding, the investigation established that the Chief did not carry out his duties in a manner that would foster public confidence in the integrity of his office.

The file was forwarded to the Director of Public Prosecutions on 27<sup>th</sup> June, 2012 with the recommendation that administrative action be taken against the Chief of Dide Waride Location.

On 3<sup>rd</sup> July, 2012, the Director of Public Prosecutions accepted the recommendation for administrative action.

#### **9. KACC CR.141/39/2011 CF NO. NAIROBI ACC.5/2011**

**Inquiry into allegations that officials of the Makadara Constituency Development Fund Committee (CDFC) corruptly solicited for a benefit from the complainant as an inducement for him to approve some irregular payments amounting to Kshs.4.5 million that the suspects wanted to make from the Makadara CDF kitty for non-existent projects.**

The investigation established the solicitation and receipt of the benefit. The suspects were arrested and charged before the Nairobi Anti-Corruption Court

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.

The file was forwarded to the Director of Public Prosecutions on 11<sup>th</sup> May, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

On 31<sup>st</sup> May, 2012, the DPP accepted the recommendation for prosecution.

#### **10. EACC/MSA/RP/1/2012**

**Inquiry into allegations that a Public Health Officer II in Mombasa corruptly solicited for a benefit from the complainant as an inducement to forbear charging the complainant's employer with the offence of failing to comply with a Notice issued under the Public Health Act.**

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and he is awaiting arraignment before the Mombasa Anti-Corruption Court.

The file was forwarded to the Director of Public Prosecutions on 22<sup>nd</sup> May, 2012 with the recommendation that the suspect be charged with the offences corruptly 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.

On 22<sup>nd</sup> June, 2012, the DPP accepted the recommendation for prosecution. Arrangements are being made to arraign the suspect in court.

#### **11. KACC/CR.121/172/2010 CF. MAKADARA ACC. NO.2/2010**

**Inquiry into allegations that a Licensing Officer at the City Council based at the Kayole North Ward corruptly solicited for a benefit from the complainant as an inducement to issue her with a Business Permit Application Form.**

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Makadara Anti-Corruption Court with the offences of corruptly soliciting for 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.

The file was forwarded to the Director of Public Prosecutions on 31<sup>st</sup> May, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

On 14<sup>th</sup> June, 2012, the DPP accepted the recommendation for prosecution.

## **12. EACC/MSA/INQ/3/2012**

**Inquiry into allegations that a Drug Inspector with the Pharmacy and Poisons Board, Mombasa corruptly solicited for a benefit from the complainant as an inducement so as to release drugs that had been confiscated by drug inspectors following a raid conducted at her premises.**

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and he is awaiting arraignment before the Mombasa Anti-Corruption Court.

The file was forwarded to the Director of Public Prosecutions on 12<sup>th</sup> June, 2012 with the recommendation that the suspect be charged with the offences of corruptly soliciting for 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.

On 25<sup>th</sup> June, 2012, the DPP accepted the recommendation for prosecution. Arrangements are being made to arraign the suspect in court.

## **13. EACC/MSA/RP/INQ/4/2012**

**Inquiry into allegations that the Regional Manager, Kenya Industrial Estates (KIE), Mombasa corruptly solicited for a benefit from the complainant as an inducement to facilitate her employment with KIE on permanent terms.**

The investigation established the solicitation and receipt of the benefit. The suspect was arrested; and is awaiting arraignment before the Mombasa Anti-

Corruption Court.

The file was forwarded to the Director of Public Prosecutions on 28<sup>th</sup> June, 2012 with the recommendation that the suspect be charged with the offences of corruptly soliciting for 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.

On 3<sup>rd</sup> July, 2012, the DPP accepted the recommendation for prosecution. Arrangements are being made to arraign the suspect in court.

**STATISTICAL SUMMARY OF FILES FORWARDED TO  
THE DIRECTOR OF PUBLIC PROSECUTIONS**

Total No. of files forwarded to the Director of Public Prosecutions	<b>13</b>
No. of files recommended for prosecution	<b>11</b>
No. of files recommended for administrative or other action	<b>1</b>
No. of files recommended for closure	<b>1</b>
No. of files recommended for prosecution and the cases are already lodged before Court	<b>0</b>
No. of files where recommendation to prosecute accepted	<b>9</b>
No. of files where recommendation for administrative or other action accepted	<b>1</b>
No. of files where recommendation for closure accepted	<b>1</b>
No. of files returned for further investigations	<b>1</b>
No. of files where recommendation to prosecute not accepted	<b>0</b>
No. of files where recommendation for administrative or other action not accepted	<b>0</b>
No. of files where closure not accepted	<b>0</b>
No. of files awaiting Director of Public Prosecution's action	<b>1</b>

**DATED AT NAIROBI THIS**

**DAY OF**

**2012**

**JANE W. MUTHAURA (MRS)**  
**AG. SECRETARY/CHIEF EXECUTIVE OFFICER**