



**THE SECOND QUARTERLY REPORT FOR THE YEAR
2008 COVERING THE PERIOD 1ST APRIL 2008 TO 30TH
JUNE 2008**

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.

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 second quarter of the year 2008 and is for the period commencing 1st April, 2008 to 30th June, 2008.

INVESTIGATIONS COVERING THE PERIOD 1ST APRIL 2008 TO 30TH JUNE 2008

1. KACC/AT/INQ/17/2006

Inquiry into an allegation that Mavji Construction Company Ltd which had been contracted by the National Social Security Fund to put up a thirty three storied building along Monrovia-Mokhtar Daddah Streets in Nairobi was overpaid. The project was to be a commercial project comprising of four basement parking floors, one ground shopping floor, two mezzanine floors, one podium floor and twenty five typical floors. The agreed cost was Kshs. 3,181,468,427.70. The project was however later scaled down by NSSF and the twenty five floors were done away with. The works were practically completed on 23rd June 2003 and the cost was kshs. 2,791,090,291.13. This amount was arguably close to the amount that was to complete the 33 storied building.

The investigation however established that the Kshs. 3,181,468,427.70 did not include the cost of demolition of the existing buildings; nor did it include the cost of geotechnical survey. The Contractor was also required to do shoring and propping of the sides of the excavated site because of the dangers of collapse brought about by *el nino* rains and the bomb blast. Further, the contractor moved to the site on time but NSSF delayed in signing the contract document. Also when NSSF decided to restructure and scale down the project, it took one year to reach a final decision on the alterations. Thus claims arising from the restructuring of the project together with contractual claims from delayed payments of certified claims escalated the costs despite the scaling down of the project. The investigation therefore established that the escalated costs of the project was largely occasioned by the actions of NSSF and were not occasioned by the fault of the contractor.

The file was forwarded to the Attorney General on 24th June 2008 with the recommendation that the file be closed. Advise of the Attorney General is awaited.

2. KACC /FI/INQ/34/2006

Inquiry into allegations of abuse of office against the former Managing Director of Kenya Pipeline Company Ltd (KPC) in irregularly committing the KPC to a joint venture agreement with The Gas Company Ltd resulting in a loss of Kshs. 300 Million to KPC in terms of equity contributions and other outgoings. Investigations established that although the joint venture

initiative was approved by the Government of Kenya, contributions made by KPC to the joint venture account were misappropriated by the former Managing Director and a Director of The Gas Company Ltd who were the signatories thereto. It was also established that some pieces of land that were purportedly contributed to the joint venture by The Gas Company Ltd were irregularly excised from public land that had already been alienated by the Kenya Airports Authority as part of the land on which Moi International Airport Mombasa is situated.

The file was forwarded to the Attorney General on 25th June 2008 with the following recommendations;

- (a) that the former Managing Director of Kenya Airports Authority and the former Commissioner of Lands be charged with abuse of office for directing the surveying and directing the issuance of letters of allotment respectively, of the land belonging to Kenya Airports Authority
- (b) that the former Managing Director of KPC be charged with breach of trust by a person employed in the Public Service.
- (c) that a Personal Assistant to the former President and two of his companies be charged with obtaining by false pretences
- (d) that The Gas Company Ltd and its director together with the former Commissioner for Lands and the Managing Director of Kenya Airports Authority be charged with conspiracy to defraud.

Advice of the Attorney General is awaited.

3. KACC/FI/INQ/29/07

Inquiry into allegations that Kenyatta National Hospital lost more than Kshs. 4 Million arising from disobedience of a Court order and the consequent liability to the decree holder and the attaching auctioneer. Kenyatta National Hospital had contracted Countryside Suppliers Ltd for the supply, delivery and installation of window curtains, patient's bedside screens and patient's bedside lockers. A dispute arose between KNH and Countryside Suppliers and an arbitrator was engaged who ultimately awarded the said Company Kshs. 129,936,778.84. KNH arranged to pay the amount in instalments. In the meantime, the freight company that airlifted the consignment of curtains and lockers on behalf of Countryside Suppliers Ltd from Dubai to Nairobi sued the said Company for failure to pay the freight charges totalling to Kshs. 5,095,000. A judgment was awarded and decree was finally issued to the freight Company. The freight company later obtained garnishee orders entitling it to attach debts owed to Countryside Suppliers by KNH. Investigations further established that KNH challenged the garnishee orders in Court but its application failed. KNH

therefore had to pay the sums owed by Countryside Suppliers to the freight company in accordance with the garnishee order and thereafter recovered the said sum together with auctioneer's charges from the sums due to Countryside Suppliers Ltd. The investigation did not establish any wrong doing on the part of KNH.

The file was forwarded to the Attorney General on 20th June 2008 with the recommendation that the file be closed. Advise of the Attorney General is awaited.

4. KACC/FI/INQ/35/2007

Inquiry into an allegation that the Provincial Applied Technology Officer (PATO) based in Embu had mismanaged public funds from an AIE allocation of Kshs. 6.5 Million for the Department of Micro and Small Enterprises Development (MSED) for the Financial Year 2005/2006. The investigation established that the Provincial Applied Technology Officer together with a Jua Kali Inspector attached to the PATO's office had embezzled the money meant for the MSED projects in Embu District by receiving money for goods that were not purchased and or supplied to the said projects.

The file was forwarded to the Attorney General on 25th April 2008 with a recommendation that the PATO and the Jua Kali Inspector be charged with eleven counts of fraudulent acquisition of public property and the PATO be charged with an additional count of careless failure to comply with law relating to procurement. The recommendation was accepted on 2nd July 2008.

5. KACC/AT/INQ/11/2006

Inquiry into allegations that a public road in Majengo Estate of Mombasa Municipality had been irregularly subdivided into plot numbers Mombasa/Block XVI/610 to 619 and allocated to private developers Awadh Saleh Said and Said Saleh Said. Investigations revealed that the said parcels of land were a subdivision of an older block title known as Section XVI/10/M.I (Mombasa Island) initially owned by one Farouk Saleh Nguru. The same was later registered in the names of M/s Awadh Saleh Said and Said Saleh Said as proprietors in common in equal shares. It was clear from the evidence that, over time, the said parcels of land were leased out to several tenants who proceeded to build and settle on the land with the consent of Mr. Nguru and his family and provisions of roads and other open spaces was made in a layout plan lodged with the Municipal Council of Mombasa sometimes in 1973. Following an

intervention by the Government, the tenants were settled on the land on a willing-buyer-willing seller basis. It was at this stage that Mr. Nguru and his family subdivided portions previously marked as roads and open spaces under a new subdivision scheme which largely adopted the 1973 scheme. It was noted that the subject road was never surrendered to the Government or the Municipal Council of Mombasa as a public road and the entire parcel of land remained under one title in the names Awadh Saleh Said and Said Saleh Said. The disputed "road" formed part of private land which cannot be investigated or recovered by the Commission as public property under section 7(h) of the Anti-Corruption and Economic Crimes Act, 2003. Nevertheless some anomalies which raised serious doubts as to the accuracy, fidelity and completeness of every survey done by a private surveyor, were noted. The issues arising were referred to the Land Surveyor's Board to establishing whether the said private surveyor or any other licenced surveyor was guilty of professional misconduct and take appropriate disciplinary action as empowered by section 17 of the Surveyors Act (Cap 299, Laws of Kenya).

The file was forwarded to the Attorney General on 5th June 2008 with the recommendation that the file be closed. Advise of the Attorney General is awaited.

6. KACC/FI/INQ/15B/2005

Inquiry into an allegation that Kisii Municipal Council paid over Kshs. 1.5 Million to M/S Zafora Insurance Brokers Limited for an insurance cover for its vehicles for the period 1996/7, but the company did not issue a policy with respect to the cover, occasioning loss of money to the Municipal Council. The investigation established that the Insurance Brokers were indeed paid the money by the Council, but did not forward the same to the Insurance Company which was to avail the insurance cover. Documents relating to payment however could not be traced and hence the evidence available was not adequate to support criminal charges in Court.

The file was forwarded to the Attorney General on 20th June 2008 with the recommendation that the file be closed. Advise of the Attorney General is awaited.

7. KACC/FI/INQ. 10/105

Inquiry into allegations that the former Minister for Finance had abused his office by irregularly exempting M/S Kinondo Holdings Ltd from payment of stamp duty amounting to Kshs. 814,000. Investigations established that

after the former Minister received the request for exemption, he assigned the matter to a Deputy Secretary who sought the Attorney General's legal advice as to whether the case qualified for stamp duty waiver. A State Counsel in the Attorney General's Chambers advised that the waiver could be granted under Section 106(1) of the Stamp Duty Act as the Section does not provide criteria for waiver. However, the Section of the law relied upon by the State Counsel was repealed way back in 1994 and the new provision required that the Minister should be satisfied that it was in the public interest to grant any waiver. The investigation also established that the Act does not outline any procedure as to how the Minister should determine public interest. In view of the wrong advice and the lack of guidelines on what amounts to public interest, the investigation did not disclose any wrong doing on the part of the former Minister.

The file was forwarded to the Attorney General on 29th April 2008 with the recommendation that the inquiry file be closed. Advice of the Attorney General is awaited.

8. KACC/ INQ.34(A)/03

Inquiry into an allegation that the Company Secretary of Nzoia Sugar Company Limited had manipulated the minutes of Tender Committee meeting to favour M/S Agriquip Agencies (EA) Ltd in the purchase of three turbine rotors. The investigation established that the Company Secretary was not in the two meetings of the Management Tender Committee which deliberated on the issue. There was also no evidence that the Company Secretary had any interest in the Company that was awarded the tender.

The file was forwarded to the Attorney General on 4th April 2008 with the recommendation that the file be closed. The recommendation was accepted on 23rd June 2008.

9. KACC/FI/INQ/27B/2007

Inquiry into allegations that a Construction Company colluded with Government engineers to get payment for shoddy work done on the Garissa-Dadaab Road Spot Improvement Graveling Project. Investigations established that the work undertaken on the road was shoddy due to poor supervision by the Resident Engineer, who has since died. The Resident Engineer did not provide transport to his staff and this compromised supervision. With regard to the allegation that there was excess payment to the contractor, the investigation revealed that the Contractor had not yet submitted the final certificate, yet issues of any

overpayment can only be conclusively addressed after a final certificate has been issued.

The file was forwarded to the Attorney General on 10th June 2008 with the recommendation that the same be closed. Advice of the Attorney General is awaited.

10. KACC CR 142/142/2007: NAIROBI ACC 54/2007

Inquiry into an allegation that the Chief Procurement Officer of Kenya Meteorological Department and the proprietor of Kenya Auto Electrical Company had offered a benefit of Kshs. 1,000,000 to KACC investigators as an inducement to prepare a favourable report in respect of an investigation on procurement of automatic weather station equipments by the Kenya Meteorological Department. Investigation established that the offer was made to the investigators and in a subsequent trap operation, the suspect gave Kshs. 1,000,000 to the investigators. The suspects were arrested and charged with offering and giving a benefit contrary to Section 39(3)(b) of the Anti-Corruption and Economic Crimes Act, 2003.

The file was forwarded to the Attorney General on 4th April 2008 with the recommendation that though the Chief Procurement Officer had already died, the case against the proprietor of Kenya Auto Electrical Company be prosecuted to its logical conclusion. The Attorney General on 19th June 2008 rejected the recommendation to prosecute and instructed that the case against the proprietor of Kenya Auto Electrical Company be withdrawn and the file be closed.

11. KACC OPS/INQ/1/08

Inquiry into an allegation that an officer with the National Security Intelligence Service had corruptly offered a benefit of Kshs. 100,000 to KACC investigators as an inducement to terminate an investigation on alleged embezzlement of public funds by the District Officer of Ndia Division in Kirinyaga District. The investigation established the offer had been made to the officers, but the suspect did not hand over the money as he became suspicious a trap had been laid to arrest him.

The file was forwarded to the Attorney General on 7th April 2008 with the recommendation that the suspect be prosecuted for offering a benefit to a KACC investigator. Advice of the Attorney General is awaited.

12. KACC CR 142/169/2007: MAKADARA ACC 66/2007

Inquiry into an allegation that a Police Constable attached to Kilimani Police Station had solicited for a benefit of Kshs. 200,000 as an inducement to forbear charging the complainants with an alleged offence of forgery. Investigations established the solicitation and receipt of Kshs. 50,000. The suspect was arrested and arraigned before the Makadara Anti-Corruption Court with five counts of soliciting and receiving a benefit.

The file was forwarded to the Attorney General on 8th April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 7th May 2008.

13. KACC CR 141/530/2007: MAKADARA ACC 48/2007

Inquiry into an allegation that two persons had impersonated KACC investigators and purported to arrest the complainant on the pretext that he had committed corruption offences at the Ministry of Livestock and Fisheries Development where he worked as a Transport Officer. The investigation established the impersonation. The suspect was arrested and charged with impersonating an investigator before the Makadara Anti-Corruption Court.

The file was forwarded to the Attorney General on 21st April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 7th May 2008.

14. KACC CR 151/472/2006: NAIROBI ACC 2440/2006

Inquiry was as a result of information received by the Commission to the effect that Police officers attached to Mtito- Andei Highway Traffic were collecting bribes from motorists and were using two parallel cash bail books. Investigations revealed that the officers were stopping motor vehicles. A search conducted on the officers and their residences revealed that one of them had Kshs. 94,000 hidden under his fridge and he could not explain the source of the money. He also had a parallel cash bail book which had seemingly been used concurrently with official cash bail book. He was charged with corruption but was subsequently

acquitted by the Court. Investigation on the issue of cash bail book revealed that the officer was not required to use a parallel cash bail book and the same was obtained under suspicious circumstances. The conduct of the officer violated the Force Standing Orders.

The file was forwarded to the Attorney General on 6th June 2008 with the recommendation that administrative action be taken against the Officer by the Commissioner of Police. Advise of the Attorney General is awaited.

15. KACC CR 141/944/05: KERICHO ACC 26/2005

Inquiry as a result of information received by the Commission to the effect that officers based at the Mai Mahiu weighbridge were not enforcing the Axle Load Limits Regulations under the Traffic Act, Cap 403 and were instead demanding and receiving bribes from lorry drivers who were suspected to have exceeded the axle load limits allowed. It was alleged that the officers were taking bribes of between Kshs. 1,000 and Kshs. 5,000 per lorry depending on the excess tonnage. The lorry drivers are then allowed to proceed with their journey without being arrested. The investigation, which included video taped evidence, revealed that the officers routinely received bribes from lorry drivers and some of them were found with cash whose source they could not explain. The amount ranged from Kshs. 41,170 to Kshs. 19,000. Another officer was found with foreign currency including dollars, sterling pounds and Tanzanian Shilling. The five officers were charged with the offence of corruption before the Kericho Anti-Corruption Court.

The file was forwarded to the Attorney General on 11th April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion.

16. KACC CR 021/32/2008: MOMBASA ACC 3/2008

Inquiry into an allegation that a Security officer with the Kenya Power & Lighting Co. Ltd (KPLC), Mombasa, had solicited for a benefit of Kshs. 30,000 as an inducement so as to reconnect electricity supply to the complainant's residence. The supply had been cut off when falling tree branches which the complainant's worker was trimming fell on the electricity wire. The investigation established the solicitation and receipt of Kshs. 14,000 on 8th May 2008 and Kshs. 10,000 on 15th May 2008. The suspect was arrested and charged before the Mombasa Anti-Corruption Court.

The file was forwarded to the Attorney General on 25th June 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion.

17. KACC CR 011/135/2007: MAKADARA ACC 65/2007

Inquiry into an allegation that the Assistant Chief of Savannah Sub-Location had solicited for a benefit of Kshs. 20,000 from an employee of a Children's Home as an inducement so as not to recommend the closure of the Home. The investigation established the solicitation and receipt of Kshs. 10,000. The suspect was arrested and charged before the Makadara Anti-Corruption Court.

The file was forwarded to the Attorney General on 2nd April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 30th April 2008.

18. KACC CR 141/503/2007: MAKADARA ACC 43/2007

Inquiry into an allegation that two persons had impersonated KACC investigators and were alleging that they had been seconded to the City Council of Nairobi. They were soliciting for a benefit of Kshs. 10,000 as an inducement so as not to demolish a kiosk situated in Nairobi West. Investigations established that one of the impersonators had a forged staff identity card. They were arrested and charged with impersonation, uttering a false document and offering a benefit to a City Council employee so that they are not arrested for the impersonation. The case is pending before Makadara Anti-Corruption Court.

The file was forwarded to the Attorney General on 8th April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 30th April 2008.

19. KACC CR 921/723/2007: KAKAMEGA ACC NO. 2839/2007

Inquiry into an allegation that the Officer Commanding Kapsokwony Police Station had solicited for a benefit of Kshs. 10,000 as an inducement to forbear charging the complainant with an alleged offence of resisting lawful arrest. The investigation established the solicitation and receipt of Kshs. 3,000. He was arrested and arraigned before Kakamega Anti-Corruption Court.

The file was forwarded to the Attorney General on 1st April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 25th April 2008.

20. KACC CR 255/117/2008: NYERI ACC 1/2008

Inquiry into an allegation that the Officer in Charge of Ndaragwa Police Station had solicited for a benefit of Kshs. 18,000 as an inducement to forbear charging the complainant with the offence of assault. Investigations established the solicitation and receipt of a benefit of Kshs. 10,000. The investigation further established that the suspect had earlier on obtained a sum of Kshs. 10,000 from the complainant on the pretext that the money was for cash bail to secure the release of the complainant from custody. The suspect was arrested and charged before the Nyeri Anti-Corruption Court with the offence of soliciting, receiving a benefit, abuse of office and in the alternative, obtaining by false pretences.

The file was forwarded to the Attorney General with the recommendation that the case pending before Court be prosecuted to its logical conclusion.

21. KACC CR 021/13/2008: MOMBASA 1/2008

Inquiry into an allegation that a Probation Officer II based at the Mombasa Probation Office had solicited for benefit of Kshs. 10,000 as an inducement to prepare a favourable probation report in Criminal Case No. 2420/2007. Investigations established the solicitation and receipt of Kshs. 9,000. The suspect was arrested and arraigned before the Mombasa Anti-Corruption Court with the offence of soliciting and receiving a benefit.

The file was forwarded to the Attorney General on 4th June 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 10th July 2008.

22. KACC CR 142/117/2007: NARIOBI ACC 39/2007

Inquiry into an allegation that a Forest Guard based in Arboretum had solicited for a benefit of Kshs. 4,000 as an inducement so as not to arrest the complainant and his girlfriend and have them charged for allegedly behaving indecently in a public park. The investigation established the

solicitation and receipt of Kshs. 3,000. She was arrested and charged before Nairobi Anti-Corruption Court.

The file was forwarded to the Attorney General on 1st April 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 23rd April 2008.

23. KACC CR 141/132/2007: NAIROBI ACC 12/2008

Inquiry into an allegation that a Police Officer attached to Criminal Investigation Department, Ruiru, had solicited for a benefit of Kshs. 2,000 as an inducement so as to return the complainant's driving licence which he had confiscated. The investigation established the solicitation and receipt of Kshs. 2,000. The suspect was arrested and charged with soliciting and receiving a benefit before the Nairobi Anti-Corruption Court.

The file was forwarded to the Attorney General on 18th June 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion.

STATISTICAL SUMMARY OF FILES FORWARDED TO THE ATTORNEY GENERAL

Total No. of files forwarded to the Attorney General	23
No. of files recommended for prosecution	15
No. of files recommended for administrative or other action	1
No. of files recommended for closure	7
No. of files where recommendation to prosecute accepted	12
No. of files recommended for prosecution and the cases are already lodged before Court	11
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	0
No. of files where recommendation to prosecute not accepted	1
No. of files where recommendation for administrative or other action not accepted	0
No. of files forwarded in previous quarters and received during this quarter	19
No. of files where closure not accepted	0
No. of files awaiting Attorney General's action	9

DATED AT NAIROBI THIS

DAY OF

2008

FATUMA SICHALE (MRS)
DEPUTY DIRECTOR