

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- THIRD SESSION

PUBLIC INVESTMENTS COMMITTEE

**SPECIAL REPORT OF THE PUBLIC INVESTMENTS
COMMITTEE ON KENYA AIRPORTS AUTHORITY DUTY FREE
SHOPS CONTRACTS AT JOMO KENYATTA INTERNATIONAL
AIRPORT AND MOI INTERNATIONAL AIRPORT:**

1989 TO 2015

NOVEMBER 2015

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LIST OF ABBREVIATIONS/ACRONYMS

Ag.	-	Acting
AG	-	Attorney General
BPRT	-	Business Premises Rent Tribunal
Cap	-	Chapter
CS	-	Cabinet Secretary
DDF	-	Diplomatic Duty Free
HCCC	-	High Court Civil Case
JKIA	-	Jomo Kenyatta International Airport
CAA	-	Kenya Airports Authority
KDF	-	Kenya Duty Free
KMDP	-	Kamlesh Manukhlal Damji Pattni
MIA	-	Moi International Airport
MoTI	-	Ministry of Transport & Infrastructure
NIA	-	Nassir Ibrahim Ali
PPARB	-	Public Procurement Administrative Review Board
PPDA	-	Public Procurement and Disposal Act
PPDR	-	Public Procurement and Disposal Regulations
PPOA	-	Public Procurement Oversight Authority
PS	-	Principal Secretary (formerly Permanent Secretary)
SDoT	-	State Department of Transport
SGT	-	Suzan General Trading JLT, Dubai
T/A	-	Trading as
T1A	-	Terminal 1A
T4	-	Terminal 4
The Award	-	The Arbitral Tribunal Award Delivered
UAE	-	United Arab Emirates
VAT	-	Value Added Tax
WDF	-	World Duty Free
WDF (IOM)	-	World Duty Free Company Limited (registered in Isle of Man)
WDF(BVI)	-	World Duty Free Limited (registered in British Virgin Islands)

1.0 PREFACE

Introduction

Mr. Speaker Sir,

The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments.

Mandate of the Committee

The Committee is mandated to:-

- (a) Examine the reports and accounts of the public investments;
- (b) Examine the reports, if any, of the Auditor-General on the public investment;
- (c) Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

The Committee shall however not examine: -

- (a) Matters of major government policy as distinct from business or commercial functions of the public investments;
- (b) Matters of day-to-day administration; and,
- (c) Matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173-203. The Committee has power, under Article 125 of the Constitution, National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act, 2003, to summon witnesses, examine them on oath and receive evidence.

Committee Membership

The Committee comprises of the following Members: -

- (1) Hon. Adan Wehliye Keynan, CBS, MP - Chairperson

- (2) Hon. Anthony Kimani Ichung'wah, MP - Vice Chairperson
- (3) Hon. Francis Mwanzia Nyenze, EGH, MP
- (4) Hon. (Dr.) Oburu Oginga, MGH, MP
- (5) Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
- (6) Hon. Adan Mohammed Nooru, MP
- (7) Hon. Franklin Mithika Linturi, MP
- (8) Hon. Wafula Wamunyinyi, MP
- (9) Hon. Elias Bare Shill, MP
- (10) Hon. Sammy Silas Komen Mwaita, MP
- (11) Hon. (Dr.) Paul Otuoma Nyongesa, EGH. MP
- (12) Hon. John Olago Aluoch, MP
- (13) Hon. (Eng.) John Kiragu, MP
- (14) Hon. (Major) (Rtd) John Waluke Koyi, MP
- (15) Hon. Abdullswamad Sheriff Nassir, MP
- (16) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (17) Hon. Bernard Munywoki Kitungi, MP
- (18) Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
- (19) Hon. Cornelly Serem, MP
- (20) Hon. Ejidius Njogu Barua, MP
- (21) Hon. Irungu Kang'ata, MP
- (22) Hon. Johana Kipyegon Ng'eno, MP
- (23) Hon. John Muchiri Nyaga, MP
- (24) Hon. John Ogutu Omondi, MP
- (25) Hon. Korei Ole Lemein, MP
- (26) Hon. Mary Sally Keraa, MP

(27) Hon. Onesmus Muthomi Njuki, MP

Committee Proceedings

The Committee held sixteen Sittings in which it closely examined and heard evidence from witnesses. The Minutes of the Committee are hereto annexed to the Report. In addition, the records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's Observations and Recommendations as outlined in the Report.

These Observations and Recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent investment and financial management in state corporations and the public investments sector as a whole and guide in future procurements.

COMMITTEE'S GENERAL OBSERVATIONS

The section below provides a summary of the Committee's General Observations on the Inquiry:

1. **THAT the International Centre for Settlement of Investment Disputes based in Washington D.C. found the lease agreement entered into between the GoK and WDF in the year 1989 to be shrouded in bribery allegation and therefore had no force of law hence was declared null and void.**
2. **THAT the KAA management purposefully designed and signed a flawed contract document with contentious clauses and it took the intervention of the CS, MoTI to force a revision of the clauses, which has led to signing of a new Agreement. The subsequent action taken by Management of amending the Agreement has addressed the contentious clauses.**
3. **THAT if the financial proposals for tender no. KAA/193/2013-2014 were evaluated independently from the technical proposals, then KAA would have earned minimum yearly guaranteed concession fees of USD 626,000 (approximately 63.85 million) more which is the price difference between the highest bid yearly guaranteed concession bid price of USD.**

4,126,000 (approximately Kshs. 420.85 million per year) by AtuTurizmIsletmeciligi A.S. and the yearly guaranteed concession bid price of USD. 3,500,000 (approximately Kshs. 357million per year) by Dufry International AG who was awarded the contract.

4. THAT the Tender Evaluation Committee erred by considering a mandatory requirement a minor deviation contrary to Section 64 (1) of the Public Procurement and Disposal Act, 2005 that a tender is responsive if it conforms to all the mandatory requirements in the tender documents.
5. THAT KAA has never bothered to make provisions for the contingent liabilities of Kshs. 10.15 billion arising from the arbitral and high court awards, and professional legal fees raising doubts as to the accuracy of its audited financial statements and putting KAA assets at risk of auction should the claims be effected.
6. THAT KAA and WDF/DDF have not filed consent in court to set aside the Arbitral Award made by Hon. Justice (Rtd.) E. Torgbor. This exposes KAA and tax payer's funds to a contingent liability of USD 49,096,557 (approximately Kshs. 5 billion inclusive of interest).
7. THAT the sole intention of WDF/DDF was to perpetually retain all the spaces at the duty free area at JKIA and MIA, either in the name of the WDF/DDF or through other associated companies with different names.
8. THAT Eng. Michael Kamau, suspended CS, MoTI on the 16th September 2013, held a highly publicized press conference jointly with WDF/DDF officials categorically stating that all court cases filed by World Duty Free and its associate/subsidiary companies against KAA by WDF/DDF have been withdrawn. However, Eng. Kamau did not table any evidence before the Committee to show that the cases had been withdrawn.
9. THAT Eng. Michael Kamau did not follow through to ensure that his public pronouncement on the 16th September 2013 is fully implemented and a deed of settlement entered into to protect public interest. This has

led to an exposure of public funds of not less than Kshs. 17.15 billion arising from the arbitral awards, high court rulings, interests, professional legal fees and damages from forceful eviction of WDF.

10. THAT the Deed Settlement Agreement between KAA and WDF/DDF was never concluded in full because neither of the parties fulfilled the pre-conditions to meet their part of the bargain. This has contributed to the current stalemate.
11. THAT currently Terminal 1A space is not occupied or in use by WDF/DDF, Suzan Duty Free, Dufry International AG or any other local duty free operator. However, despite the ongoing court case, the spaces at Terminal 1A have been allocated to another company, namely Maya Duty Free Ltd on the pretext of temporary licence which expired on September, 2014 and renewed under unclear circumstances.
12. THAT the allocation of space to Maya Duty Free Ltd at Terminal 1A which is the subject of the Committee inquiry seems to have been undertaken in total disregard of procurement laws and procedures.
13. THAT external legal team headed by Mr. Fred Ngatia hired by KAA to help resolve the duty free shops cases has not fully achieved the intended objective in terms of resolving the cases but instead slapped KAA with a hefty legal fee note standing at approximately Kshs. 350 million.
14. THAT Mr. Fred Ngatia did not act in the best interest of his client KAA in his representation of KAA on the duty free cases and dispute resolutions. He failed to advise KAA to take the matter of determination of validity of the 1989 lease agreement to court and instead advised that an international court had already determined the matter. He devised a strategy of forceful eviction of WDF/DDF from JKIA and did not follow through to ensure that a deed of settlement is registered at the courts and as a direct consequence, WDF/DDF has not withdrawn the cases in court. Through his advice, KAA and the Kenyan public stands to lose

not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during the forceful eviction.

15. THAT Ms. Lucy Mbugua, the then CEO KAA, failed in her fiduciary duty to effectively manage the external professional legal team that KAA hired and instead resorted to accusation of the legal counsel Mr. Fred Ngatia of not cooperating with his client KAA on the matter of settlement with WDF/DDF.
16. THAT Eng. Stephen Gichuki as the CEO presided over the hurried forceful eviction of WDF/DDF from JKIA at night using hired goons without taking due consideration of the legal and financial implications of the action on KAA and the businesses operating at the duty free shops in JKIA. Through his action, KAA and the Kenyan public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during forceful eviction.
17. THAT the Attorney General was not consulted by KAA in the drafting and reviewing of the contracts between KAA and Dufry International AG, in the Arbitral Award of Kshs. 4.3 billion to World Duty Free Ltd in regard to HCCC 413 of 2008 and in the HCCC 45 of 2015 seeking to restrain KAA from awarding Concession Agreement to Dufry International AG.
18. THAT Prof. Githu Muigai, the Attorney General was present at the Press Conference of 16th September 2013. The circumstances and the role of Prof. Muigai and that of the Office of the Attorney General at the press conference is not clear. The failure by the government officials present at the press conference to ensure that a deed of settlement is entered into between KAA and WDF/DDF has exposed KAA and the country to a contingent liability of not less Kshs. 17.15 billion.
19. THAT Dufry Kenya Ltd, in which Dufry International AG is a shareholder, is a duly registered company in Kenya.

COMMITTEE'S GENERAL RECOMMENDATIONS

From the evidence adduced (oral and written) and the observations, the Committee recommends that:-

1. THAT EACC investigates Ms. Lucy Mbugua, Mr. Victor Arika and all other present and past officials of KAA involved in the designing and subsequent signing of flawed contract agreements between KAA and duty free shops operators at JKIA and MIA.
2. THAT EACC investigates the allocation of duty free shops spaces at Terminal 1A to Maya Duty Free Ltd., and any duty free operators at T1A, which seems to have been undertaken in total disregard of procurement laws and procedures.
3. THAT Eng. Michael Kamau, the suspended CS, MOTI should be held individually responsible for his failure of not following through and ensuring that a deed of settlements is entered between KAA and WDF/DDF to protect public interests. This failure has exposed KAA and the Kenya tax payer to a contingent liability of not less than Kshs. 17.15 billion.
4. THAT the Attorney General takes over as a matter of national interest all the KAA duty free cases that were being handled by external legal team and ensure that a Deed Settlement Agreement between KAA and WDF/DDF is quickly concluded in an amicable manner to protect public interest.
5. THAT KAA in consultation with the Attorney General works towards amicably finalizing the matter of Arbitral Award of Kshs. 4.3 billion granted to World Duty Free Ltd in regard to HCCC 413 of 2008.
6. THAT Eng. Stephen Gichuki as the then CEO be held personally criminally/civilly liable for abuse of office by executing the forceful eviction of WDF/DDF from JKIA at night using hired goons without taking due consideration of the legal and financial implication of the action on KAA and the businesses operating at the duty free shops in

JKIA. Through his action, Kenya public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during forceful eviction.

7. THAT joint assessors be appointed by KAA to evaluate the actual losses incurred if any by WDF and DDF arising from the 2013 forceful eviction by KAA. This is to determine the credibility of the sums of Kshs. 7 billion being claimed by WDF/DDF on the matter.
8. THAT KAA should expeditiously conclude all the global settlement agreements between it and WDF/DDF and other duty free shops operators in order to save the Kenyan taxpayers costly litigation fees.
9. THAT the Attorney General immediately starts the process of domesticating the ruling by the International Centre for Settlement of Investment Disputes based in Washington D.C that found the lease agreement entered into between the GOK and WDF/DDF in the year 1989 to be shrouded in bribery allegations and therefore had no force of law.
10. THAT KAA reviews Mr. Fred Ngatia's contested fee note of Kshs. 290 million with a view to making payment only for true and actual services delivered having so far been paid approximately Kshs. 60 million. Mr. Fred Ngatia did not act in the best interest of his client KAA in his representation of KAA on the duty free cases and dispute resolutions. Through this advice, KAA and the Kenyan public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during the rushed forceful eviction.
11. The Attorney General, Ministry responsible for Air Transport, Inspector of State of Corporations, Efficiency Monitoring Unit (EMU) and KAA form a technical team to audit the institutional framework, mandate and performance of KAA since its inception. This is to address any legal and institutional shortcomings hindering KAA from delivering on its mandate.
12. THAT the Attorney General, Ethics and Anti-Corruption Commission and the Public Procurement Oversight Authority should form a technical team

within three (3) months of the adoption of this Report to review all existing contracts that have been signed between KAA and business operators at JKIA and MIA from the year 1989 to 2015.

13. THAT Director General, Public Procurement Oversight Authority should debar for at least three (3) years, any business operator found to have flouted procurement laws in acquiring its operating contract. The debarment notice should be published and publicized in at least two daily newspapers with nationwide reach and the Kenya Gazette.
14. THAT the Attorney General and KAA should review the KAA Act (Cap 395), to conform to the Constitution of Kenya and the emerging global security challenges experienced in the aviation industry.

ACKNOWLEDGEMENT

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the work of the Committee in fulfilment of its mandate. The Committee is also grateful to all the witnesses who appeared and adduced evidence before it. Further, the Committee is grateful to the staff of Parliament, Office of the Auditor General, the Inspectorate of State Corporations and the National Treasury for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

Mr. Speaker,

On behalf of the Members of the Public Investments Committee, I beg to table the Special Report of the Committee on Kenya Airports Authority World Duty Free Shops Tender pursuant to Standing Order 199(6).

SIGN:

HON. ADAN. W. KEYNAN, CBS, MP
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

DATE:

2.0 BACKGROUND

2.1 Mandate and Functions of Kenya Airports Authority

1. The Kenya Airports Authority (KAA) was established in 1991 under Kenya Airports Authority Act, Chapter 395 of the Laws of Kenya and is charged with an umbrella responsibility of providing and managing a coordinated system of airports in the country. The KAA main functions include the following:-

- (i) Administer, control and manage aerodromes;
- (ii) Provide and maintain facilities necessary for efficient operations of aircrafts;
- (iii) Provide rescue and firefighting equipment and services;
- (iv) Construct, operate and maintain aerodromes and other related activities;
- (v) Construct or maintain aerodromes on an agency basis on the request of any government department;
- (vi) Provide such other amenities or facilities for passengers and other persons making use of the services or facilities provided by the Authority as may appear to the Board necessary or desirable; and
- (vii) Approve the establishment of private airstrips and control of operations thereof.

2. The KAA manages four International Airports namely: Jomo Kenyatta International Airport (JKIA), Moi International Airport (MIA), Eldoret International Airport (EIA) and Kisumu International Airport (KIA). The Authority also manages four domestic airports (Wilson Airport, Malindi Airport, Lokichoggio Airport, Wajir Airport) and two airstrips (Ukunda Airstrip and Manda Airstrip).

2.2 Jomo Kenyatta International Airport

3. Jomo Kenyatta International Airport (JKIA) is the largest airport in East and Central Africa. The airport was opened in the year 1978 with a design capacity of 2.5 million passengers annually.

4. Due to growth in traffic KAA embarked on an ambitious facility expansion and improvement program geared at expanding and improving the airport infrastructure with the aim of positioning it as a major aviation hub in the continent. This included the development of JKIA terminal 1A.

2.3 Tender for the Development and Management of a Duty Free Master Concessionaire

5. The first tender for the development and management of a Duty Free Retail Master Concessionaire at JKIA was advertised in the local dailies on 4th October, 2013 and opened on 25th October 2013. KAA tendered to engage a reputable duty free operator to develop and manage a duty free business at the new terminal 1A as a single master concessionaire. The objectives of the tender were:

(a) **New Retail Experience:** -KAA aimed to create a new retail experience for passengers at JKIA by maximizing on commercial offering, by creating a retail platform to showcase new brands, new products and better services.

(b) **Competitive Advantage:** - KAA aimed at positioning JKIA as the airport of choice for shopping at competitive retail prices for various goods and services.

(c) **Revenue Generation:** -KAA aimed to boost its non-aeronautical portfolio by generating additional revenues from the new duty free operation.

(d) **Boost to the national economy:** - The new tender is a major investment into the economy and KAA projected that it will inject over US \$ 2 million into the national economy and create over 100 new direct jobs.

6. The tender was to occupy all the levels of the new Terminal 1A as summarized in the table 1.0:

Level	Key Code	Area M2	Proposed Activity
Level 0	B3	21.50	Last minute duty free
Level 1	D1	416.3	Duty free shops for: <ul style="list-style-type: none"> • Liquor and Tobacco • Jewelry & watches • Perfumes and Cosmetics • Leather and luggage • Electronics • Chocolate & confectionaries • Textile/Fashion & Accessories • Toys • Gifts and souvenir
Level 1	E	108.4	Café and Bar <ul style="list-style-type: none"> • Bar , café, Snacks, Coffee &Tea, juices
Level 1	F	104.30	Communications Services <ul style="list-style-type: none"> • Sale of communication lines, gadgets, roaming, mobile money services • Foreign Exchange Services
Level 1	G	100.00	Food and Beverages (Restaurant)

Source: KAA¹

2.28 Genesis of the Tender and the Basis for the Inquiry

7. The contract was first advertised on 4th October, 2013 and the contract awarded to Ms Nuance Group AG but the KAA Board of Directors nullified the decision following a decision made by the Public Procurement and Administrative Review Board. Following a fresh tender process, the contract was awarded to Dufry International AG.
8. Developing an understanding and contextualization of the contracts of duty free shops concessions requires a backward trace of historical duty free shops concessions signed by the KAA. The Committee traced the genesis of

¹ KAA Submission to PIC, 4th March 2015

this tender from the 1989 Duty Free Concession Contract signed between House of Perfume and Government of Kenya. This Contract was later transferred to World Duty Free Ltd in 1989 and eventually terminated in 2013 and a new contract awarded to Dufry International AG on 14th August 2014 by the tender Committee. The notification of the award to M/S Dufry International Ag was made on 15th August 2014.

9. Two of the unsuccessful bidders namely; Flamingo International BVI Limited filed a petition for review before the Public Procurement Administrative Review Board (PPARB) on 21st August 2014; and Atu Turizm Isletmeciligi filed for a review before PPARB on 22nd August 2014. The PPARB consolidated and heard the two matters together and a decision was rendered on 17th September 2014 where both matters were dismissed by PPARB.
10. Upon review and before conclusion of the matter by PPARB, Suzan General Trading JLT(a company which did not participate in the tender)filed for a judicial review before the High Court (JR Case NO 339 of 2014) on 9th September 2014.
11. The company specifically sought for orders to quash the tender award and order KAA to re-tender for the tender. The matter was heard before the High and on 14th October 2014, the Court dismissed the application stating that the case failed to meet the threshold for grant of leave to bring Judicial Review proceedings against KAA. The applicant (Suzan General Trading JLT) filed a Civil Appeal No. 356 of 2014 against the ruling. The case is still pending at the Court of Appeal.
12. There seemed to be vested interests in the tender as shown by legal pursuits by Suzan General Trading JLT, a sister company to World Duty Free (trading as Kenya Duty Free Limited) whose contract had been terminated by KAA in 2013 and the numerous Court cases on the operations of Duty Free shops at JKIA and Mombasa International Airport forms the basis of the Committee Inquiry into the tender. This is pursuant to its mandate as per Standing Order No. 206, specifically the one relating to examining whether

the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices

13. The Committee at its Sitting held on 26th February 2015 resolved to inquire into the KAA's Tender for the Development and Operation of Duty Free Shops under a Single Master License at the JKIA, Terminal Unit 4 (Tender No KAA/193/2013-2014).
14. Specifically, the Committee sought to inquire into the following matters as they relate to the duty free shops contracts at JKIA and MIA:-
 - (i) Termination of the 1989 Duty Free Shops contract between the Government of Kenya (GoK)/KAA and WDF;
 - (ii) Negotiations for settlement with KAA following the eviction of WDF from KAA premises in July 2013;
 - (iii) Current status of compensation to WDF following the August 2013 eviction and the subsequent 16th September 2013 Press Release at the Ministry of Transport and Infrastructure headquarters;
 - (iv) Current status of all pending court cases between KAA and WDF).
 - (v) Procurement Process for the tender for the development and management of a Duty Free Retail Master Concessionaire at JKIA (Tender No. KAA/193/2013-14)

3.0 SUBMISSION AND EVIDENCE BY WITNESSES

Introduction

1. In undertaking the inquiry, the Committee invited several witnesses to make submissions and adduce evidence on the matter. These included: Kenya Airports Authority's current Management led by Mr. Yatich Kangugo, acting Managing Director; Engineer. Michael Kamau, suspended Cabinet Secretary for MoTI; Mr. Nduva Muli suspended Principal Secretary for Transport; former Managing Directors of KAA Ms. Lucy Mbugua and Engineer. Stephen Gichuki; Mr. Kamlesh Pattri; KAA lead Counsel Mr. Fred Ngatia; and Mr. Maurice Juma, Director- General, Public Procurement Oversight Authority (PPOA) among others.
2. This section of the report contains a summary of their oral and written submissions and evidence, and Committee Observations.

3.1 SUBMISSION BY MR. YATICH KANGUGO, AG. MANAGING DIRECTOR, KAA

A. SUBMISSION AND EVIDENCE

Mr. Yatich Kangugo, acting Managing Director, KAA, accompanied by Ms. Margaret Muraya, acting General Manager, Procurement & Logistics; Mr. Patrick Chonde, acting General Manager, Finance; Eng. Philemon Chamwada, General Manager, Projects & Engineering Services and Mr. Bernard Mogambi, Acting General Manager Marketing, appeared before the Committee on 9th March 2015 and 7th April 2015 to make their submission and adduce evidence on the matter before the Committee. They informed the Committee as follows:-

3.1.1 Master Concessionaire of Duty Free Shops, Tender No. Tender No. KAA/193/2013-2014

1. World Duty Free/Diplomatic Duty Free operated Duty Free Shops at JKIA and MIA from 1989 until 2013 when a decision to terminate their contract and evict them from KAA premises was made Thereafter KAA tendered for Master Concessionaire of Duty Free Shops, Tender No. Tender No. KAA/193/2013-2014

2. The objectives of the Tender were:-
 - (i) To create a new retail experience for the passengers at JKIA to show case new brands, products and better services.
 - (ii) To have a competitive advantage with competitive retail prices;
 - (iii) Boost its non-aeronautical portfolio by generating additional revenue;
 - (iv) Boosting the economy as the development is likely to inject over USD 2 million into the national economy.

3. The first tender was advertised in the local dailies on 4th Oct. 2013 and opened on 25th Oct. 2013 (**Appendix 1**). Thirty-six bidders bought the tender, but only the following ten (10) bidders returned their bids:
 - (i) World Duty Free
 - (ii) Silver Duty Free
 - (iii) Maritime & Mercantile International LLC
 - (iv) Flemingo International (BVI) Ltd
 - (v) SIA Kenya Holdings Ltd
 - (vi) Belgian Sky Shops Ltd
 - (vii) Tiger Eye Retail
 - (viii) Dufry International AG
 - (ix) Nuance Group
 - (x) Unifree Duty Free

4. The tender was awarded to M/S Nuance Duty free. Four (4) firms, however lodged an appeal before the Public Procurement Administrative Review Board (PPARB) against the Authority. The PPARB ordered that the award to M/S Nuance be annulled and directed the Authority to tender afresh. The tender was an Open International Tender.

5. The second tender (a re-tender) for development and operation of Duty Free Shops under a Single Master License at the new JKIA, Terminal Unit 4 was advertised in the local dailies in 26th and 28th March 2014. (Appendix 2)
6. The tender was opened on the 8th July 2014. Out of the twenty (20) bidders who bought the tender document, the following five (5) returned their bids:-
 - (i) Dufry International AG.
 - (ii) Atuturizim Isletmeciligi
 - (iii) AerRianta International
 - (iv) Paragon Holdings
 - (v) Flemingo International (BVI) Limited
7. The tender was evaluated as per the criteria set out in the bidding documents after which Evaluation Committee recommended award to Dufry International AG. The tender committee subsequently met on 14th August 2014 and approved award to M/S Dufry International AG as recommended by the tender evaluation committee.
8. Notification of the award to M/S Dufry International AG was made on 15th August 2014, while all unsuccessful bidders were informed on the same date. (Appendix 3) Two unsuccessful bidders filed for review with PPARB against the Authority, but both cases were dismissed.
9. Suzan Trading JLT filed before the High Court for the tender award to be set aside and re-tendered, but the High Court ruled that the case failed to meet the threshold for grant of leave to bring judicial review proceedings against the Authority. Suzan Trading JLT filed a civil appeal on the ruling and it was ruled against them.

3.1.2 The Matter of the Contentious Clauses in the First Contract dated 15th October 2014 awarded to Dufry International AG

10. The first concession agreement signed by the parties dated 15th October 2014 was prepared by the law firm of M/s Ogetto, Otachi & Company Advocates, external Counsel for the Authority. Vide letter dated 19th December, 2014

Ref. MOT&I/AT/028/238 Vol. VII/14 from the Principal Secretary, MoTI, the Authority's attention was drawn to certain clauses referred to as "contentious clauses" in the Agreement that required to be expunged lest the concessionaire would enjoy contractual privileges not envisaged in the tender documents and were not the intent of the Authority. **(Appendix 4)**

11. The Authority was advised to do the following:
 - (i) To formally explain how it entered into an Agreement that was prejudicial to its interests;
 - (ii) To cancel and review the Agreement to ensure its in line with the tender documents and Government policy and regulations; and
 - (iii) To bring the matter to the Board's attention to enable them investigate and come up with recommendations.
12. The Authority did a comprehensive review in liaison with its external Counsel and Dufry International Ag. After which an amended copy of the Concession Agreement was sent to the Ministry of Transport & Infrastructure for perusal and approval prior to execution.
13. The MoTI sought clarity on why the agreement talked of maintenance of "tariff rates" while the tender documents talked of "competitive prices". In a letter dated 6th February, 2015, the Ministry noted that the amendment to the contentious clauses did not exhaustively address the exposure of the Authority. Clause 4(b) under Article of the 2nd Concession Agreement was not in the Authority's best interest and might have implications on the existing tenants for the reason that the clause stops the Authority from contracting with any other person or entities from operation of Duty Free Retails Shops at Terminal 1A. **(Appendix 5)**
14. The contentious clauses were in the first Agreement under Article V Clause 4, sub clauses (a), (b), (c), (d) and (e). The changes effected were as follows
 - (i) Clauses (a) and (b) were amended
 - (ii) Clauses (c), (d) and (e) were deleted

Article I

15. Clause 7: It was agreed that Dufry International AG would commence services four months after it obtains all necessary approvals from KAA.

Clause 12: Definition of "Duty Free Retail Shops" has been introduced to expressly exclude other current and future commercial undertakings in the Terminal.

Article II

16. Clause 4(a): Rent of Kshs. 2,000 per square foot shall be adjusted to reflect inflationary rates, though the tender documents did not provide for escalation of rent.

Article V

17. Clause 4(a): It provides that this 2nd Agreement constitutes the entire agreement between the parties and supersedes all others, so the 1st was nullified.
18. Clause 4(d): it was introduced that in good faith both parties can make necessary adjustments resulting from operational or commercial imperatives or necessary design changes.

3.1.3 Board Resolution approving signing of the 1st and the 2nd Agreements

19. The Acting MD informed the Committee that there was no written authority/board resolution authorizing signing of the first and second contracts respectively, the reason being that once the Board approves the annual corporate budget and procurement plan, it is the Management's responsibility by law to implement the two and give periodic updates to the Board.
20. During a meeting attended by PS and CS-MoTI held at the MoTI headquarters on 18th December 2014, after pointing out the contentious clause to the KAA management (MD, Corporation Secretary, Legal Officer and Ag. General Manager- Procurement & Logistics) the MD and

Corporation Secretary gave the Cabinet Secretary their undertaking that the Agreement would be entirely reviewed and a new one signed.

21. On 8th January 2015, KAA Corporation Secretary held a meeting with the PS-MoTI in the PS's office and took him through the amended contract. It is during the said meeting that, the Corporation Secretary was given the go ahead to sign the amended agreement and forward a signed copy to the MoTI.
22. The officers involved in drafting of the Agreements were Mr. George Kamau (KAA Legal Officer) who resigned 26th March 2015, Ms. Katherine Kisila, KAA Corporation Secretary, Mr. Kennedy Ogetto of M/s Ogetto, Otachi Company Advocates in consultation with Dufry International Ag. Principals and Lawyers.

3.1.4 Justification for the figure of Kshs. 2,000/= rent per square foot

23. The Committee was informed at the time of preparing the tender documents, JKIA Terminal 4(TIA) was still under construction and Duty Free operations were only at the JKIA Terminal 1 & 2. These Duty Free operations were ONLY charged at a single rate of USD 345 per meter per annum. No consideration was made for concession fee based on turnover.
24. The proposed commercial operations at JKIA T4 (later JKIA T1A) were to be based on both rentals for the space occupied and secondly on concession fee based on business turnover. To incorporate the two components, the rent was fixed at Kshs 2,000 per sq. ft. per annum and the concession fee at 20% on business turnover.

3.1.5 KAA Audited Financial Statements Vis-à-vis Litigation & Legal Fees

25. The Committee further heard that the Authority has always disclosed exposure on litigation and legal fees for instance disclosure note no. 22 in the financial year 2012/2013 financial statements and disclosure note 50 in the financial year 2013/2014 financial statements.

3.1.6 Past Duty Free Court Cases(Appendix 6)

(I) World Duty Free (trading as Kenya Duty Free Limited) Complex vs. KAA: HCCC No. 413 of 2008

26. This dispute was about the operation of Duty Free Shops at Moi International Airport and Jomo Kenyatta International Airport. World Duty Free alleged that as per its Agreement with the Authority of 27th April 1989 and amended on 11th May 1990, it was granted sole and exclusive rights to run Duty free shops and carry out advertising concessions in JKIA, MIA and all other Airports run by the Authority. The matter was referred to arbitration that lasted until its conclusion in October 2012.
27. On 5th December 2012, the award was delivered requiring KAA to pay WDF approximately \$49,000,000 (approximately Kshs. 5.1 billion).
28. In addition to this, KAA was ordered to cancel other contracts with third parties in relation to advertising concessions and comply with the provisions of the leases dated 29th January 2003 and 10th January 2002 which allegedly gave exclusivity to the Applicant.

(II) KAA Vs. World Duty Free Appeal no. 67 of 2013

29. The case challenged the award issued under case HCCC No. 413 of 2008. Orders were issued that ensured that the award could not be effected until the appeal is heard and finally determined.

(III) World Duty Free Vs. KAA HCCC No. 331 of 2012(formerly HCCC No. 413 of 2008)

30. World Duty free sought conservatory orders restraining the Authority from proceeding with advertised tenders for the development of an African Artifacts & Bookshop (Lot 1) and a Confectionary & Jewellery Shop (Lot 2) at Moi International Airport. The tender had been advertised as per the Public Procurement & Disposal Act of 2005.
31. The Court issued consent orders restraining the Authority from awarding concessions with regard to the suit for 14 days from date of issuance of order. The Managing Director and Corporation Secretary were found in

contempt for publishing the tender notices. The Authority was ordered to publish a notice of cancelling the said tenders within 14 days. The authority filed an appeal and obtained a stay pending hearing of the appeal.

(IV) KAA VS World Duty Free Civil application NAI 285 of 2012

32. This was an appeal against the orders of HCCC No. 331 of 2012, finding the MD and Corporation Secretary in contempt. The Court of appeal granted stay of execution of orders pending hearing and determination of appeal. The matter is awaiting substantive hearing.

(V) Africa Duty Free Limited & Diplomatic Duty Free Limited Vs Public Procurement Administration Review Board (PPARB) & KAA: Civil Suit No. 32 of 2012

33. The applicants had appealed against the declining of PPARB to issue orders against the Authority's decision to award management of duty free shops to Silver Duty Free Limited for management of Duty Free Shops at Kisumu Airport. The applicants were seeking annulment and repeat of the tendering process. On January 2012, the court made an ex-parte ruling and issued an order granting leave to the Applicants to institute proceedings to quash the decision of PPARB dismissing the applications filed by the Applicants and prohibiting the Authority from proceeding with the tender and granting stay of the aforesaid decisions.

(VI) World Duty Free Ltd T/A Kenya Duty Free Complex VS KAA: HCCC No. 196 of 2012

34. The Applicant sought injunction restraining the Authority from awarding tenders for operation of Duty Free shops at JKIA or any other Airport. This was after the Authority advertised for concessionaires to manage duty free shops in the upcoming Terminal 4 at JKIA. The matter is still in court. The media questioned the Judge's conduct and the judge asked both parties if they were comfortable with him continuing with the case. KAA want a different judge while the Applicant is comfortable with the same judge.

(VII) World Duty Free Ltd VS KAA: HCCC No. 253 of 2012

35. World Duty Free filed a suit requesting for a mandatory injunction to compel KAA to renew the leases of 29th January 2003. Upon inter-parties hearing, a ruling was delivered on 17th October 2012 and subsequent orders issued restraining the Authority from repossessing premises under the 2003 lease until the suit is finally heard and determined.

(VIII) Diplomatic Duty Free Limited VS KAA: BPRT No. 284 of 2010

36. The case was filed at the Business Premises Rent Tribunal on 12th June 2008 to have the Authority restrained from recovering some space at JKIA for passenger use. The parties entered a consent order issued on 26th April 2010 to the effect that the Authority being followed. Matter is pending a hearing date.

(IX) World Duty Free Limited VS KAA: BPRT No. 84 of 2008

37. World Duty Free went to the Business Premises Rent Tribunal to have the court compel the Authority not to deny them access to the leased premises at Moi International Airport Terminal II. The Tribunal granted the application but the Authority raised a preliminary objection that was allowed and the matter was struck out 30th July 2008. The suit was reinstated since the Applicant's counsel was not served with hearing notice and hearing on the matter is awaiting a hearing date.

(X) Diplomatic Duty Free Ltd VS The Hon AG and KAA: High Court Petition No. 101 of 2010

38. This matter arose after the Authority carried out an exercise for recovery of space occupied by various duty free shops for passenger use- among them was Diplomatic Duty Free Ltd. Conservatory orders were issued on 17th December 2010 and the matter is awaiting setting down for full hearing.

(XI) World Duty Free Ltd T/A Kenya Duty Free Complex VS KAA and Dufry International AG.

39. The matter was filed by Diplomatic Duty Free based upon claim for "sole and exclusive" rights to construct, furnish and commercially operate Duty

Free Shops at the Airport and disputing the contract between the Authority and Dufry International AG.

3.1.7 Contingent Liabilities arising out of Current Duty Free Concession

40. World Duty Free was given an arbitral award of Kshs. 4.3 Billion based on the Arbitral Award in HCCC 413 of 2008.
41. Court finding in favour of World Duty Free thereby granting sole and exclusive rights to operate duty free at JKIA and MIA amounts to Kshs 5.5 billion based on High Court Case No. 45 of 2015 by World Duty Free.
42. Cumulative contingent costs of Kshs. 350 million in respect of external professional legal fees in duty free related matters, out of which Mr. Fred Ngatia and Associates Advocates is owed Kshs. 290 million.
43. He further added that KAA has not paid any monies arising out of the contingent liabilities. Instead, KAA has appealed on all arbitral awards.

3.1.8 Procurement of KAA External Lawyers

The Acting MD informed the Committee that:

44. The law firms of M/S Ngatia & Associates and M/s Ogetto, Otachi & Company Advocates respectively are within the panel of lawyers procured procedurally under the Public Procurement and Disposal Act, 2005.
45. M/s Ogetto, Otachi & Company Advocates received written instructions from KAA in respect of PPARB appeals and High Court matters.
46. M/s Ngatia & Associates received written instructions in respect of Duty Free Shops matters- Arbitration appeal, legal opinion on amicable settlement and High Court claims. The fee notes submitted by M/s Ngatia and Associates were for the following services: -
 - (i) **Fee Note for Appeal on Arbitration Award of approximately USD 49 Million (Kshs 5 Billion) against KAA, High Court Case No. 67 of 2015 KAA vs WDF**
47. On 12th September 2008, World Duty Free filed suit seeking an injunction to restrain the Authority from awarding tenders it had earlier advertised in

respect of Duty Free Shops at the Moi International Airport. M/s Ngatia & Associates filed a suit against WDF being an appeal for the arbitral award by Justice E. Torgbor. They obtained orders to ensure that the award could not be put into effect until the Appeal was heard. The fee note raised was Kshs. 56, 262,069/= inclusive of VAT.

(ii) Fee Note Pre-eviction suit by DDF-HCCC No. 327 of 2013: DDF vs KAA

48. On 30th July 2013, DDF obtained ex-parte court orders to pre-empt repossession of the shops by KAA, but the court orders were served on the Authority on 1st August 2013 after the eviction action. The fee note is Kshs 17,400,000 inclusive of VAT.

(iii) Eviction & Repossession of Duty Free Shops & Lounges for JKIA and Moi International Airport

49. The Authority attempted to engage the DDF/WDF to consider vacating the areas which the Authority required for expansion purposes. This was not fruitful and since the leases with WDF/DDF were expiring on midnight 31st July 2013, repossession was done after midnight, which was successful. The fee note raised was Kshs. 290,850,000/= inclusive of VAT.
50. After the eviction, KAA with external Counsel initiated negotiations and discussion with WDF & DDF. Thereafter on 16th September 2013, the Eng. Michael Kamau, suspended CS, MoTI issued a press release where he stated that all cases against KAA by World Duty Free; Diplomatic Duty Free and Kenya Duty Free would be withdrawn.
51. KAA as part of the settlement, allocated space to WDF/DDF and 4 lease agreements signed with Suzan General Trading JTL trading as Suzan Duty Free, having taken over from WDF/DDF both in JKIA and Moi International Airport. This is because Suzan General Trading JTL has 15% shareholding in World Duty Free Limited. Suzan General Trading JTL's registered address is Austen Place, School Lane Westlands the same address as World Duty Free Limited of Mr. Kamlesh Pattni.

52. Mr. Arika, KAA Legal Counsel informed the Committee that Mr. Ngatia was procured through open tender process from a list of 68 law firms following approval by the Tender Committee and award by the KAA MD Ms. Lucy Mbugua. The external lawyers who worked closely with Mr. Fred Ngatia were Mr. Mohamed Muigai, Mr. Kennedy Ogetto, Mr. Ahmednassir and Mr. Eric Mutua.

3.1.9 18th September 2013 Press Conference

53. The Ag. MD, KAA informed the Committee that the press conference was held at the Boardroom of the MoTI headquarters on 18th September 2013. Some of the attendees included the following:

- (i) Hon. (Prof.) Githu Muigai - Attorney General;
- (ii) Eng. Michael Kamau, CBS - Cabinet Secretary, MoTI
- (iii) Mr. Joseph Kinyua - Chief of Staff & Head of Public Service;
- (iv) Prof. Mutuma Mugambi - The then Board Chairman, KAA
- (v) Ms. Lucy Mbugua - The then Managing Director, KAA
- (vi) Mr. Fred Ngatia - External Legal Counsel for KAA
- (vii) Mr. Kamlesh Pattri - Director, World Duty Free Limited
- (viii) Mr. Arif Hafiz - Director, Suzan General Trading JTL
- (ix) Mr. Ahmed Adan - External Legal Counsel for WDFL and Suzan General Trading JTL.

B. COMMITTEE OBSERVATIONS

54. The Committee made the following observations: -

- (i) **THAT** should the contingent liabilities be fully realized, KAA stands to lose public money to the tune of not less than Kshs. 10.15 billion arising from the arbitral awards, high court rulings, interests and professional legal fees.

- (ii) THAT KAA management purposefully designed and signed a flawed contract document with contentious clauses and it took the intervention of the Cabinet Secretary, MoTI to reluctantly correct some of the flaws in the contract documents.
- (iii) THAT the Cabinet Secretary's interventions though prudent, amounted to attempts to micro manage the procurement process of KAA.
- (iv) THAT Suzan Trading JLT, a sister company to World Duty Free (trading as Kenya Duty Free Limited) whose contract had been terminated by KAA in 2013 had vested interests in the tender as shown by legal pursuits and the numerous court cases on the operations of Duty Free shops at JKIA and Mombasa International Airport.
- (v) THAT Suzan Trading JLT filed a civil suit challenging the awarding of the tender even though it had participated in the first tendering process as part of a consortium with World Duty free but did not participate in the second round on which its case was based on.
- (vi) THAT KAA arbitrarily ignored the official government legal advisor and did not to seek any legal counsel from the Attorney-General in the drafting of the flawed contracts and subsequent court cases. KAA opted to use private professional legal counsels at exorbitant fees leading to a contingent liability of Kshs. 350 millionth therefore putting public funds at risk.
- (vii) THAT in Clause 4(a) in Article II of the contract documents concerning the rent per square feet, the tender document did not provide for escalation of rent and is likely to be abused and may lead to loss of revenues.
- (viii) THAT there were no consents filed in court concerning Mr. Kamlesh Pattni dropping all the cases by World Duty Free Complex; Africa Duty Free Limited and Diplomatic Duty Free,

therefore the KAA Contract with World Duty Free is still valid and that the contract signed between KAA and Dufry International Ag could be deemed invalid.

- (ix) THAT Eng. Michael Kamau, suspended CS, MoTI misled the Kenyan public when on the 16th September 2013 he held a press conference jointly with Mr. Kamlesh Pattni categorically stating that all court cases filed by World Duty Free and its associate/subsidiaries companies against KAA by Mr. Kamlesh Pattni have been withdrawn.
- (x) THAT although KAA is a semi- independent government agency, MoTI purportedly negotiated pertinent legal issues and even went ahead to release a press conference on its behalf.
- (xi) THAT Hon. (Prof.) Githu Muigai, Attorney General of the Republic of Kenya failed in his constitutional duties to advise the KAA to file consent in court concerning Mr. Kamlesh Pattni dropping all the cases against KAA even after attending the joint press conference held by CS Eng. Michael Kamau and Mr. Kamlesh Pattni ;
- (xii) THAT KAA signed the first flawed contract with Dufry International AG yet it appeared to have the same contentious clauses which World Duty Free Limited is using to claim sole and exclusive rights to manage all Duty Free Shops at JKIA and any other airport build and operated by KAA.
- (xiii) THAT KAA has never bothered to make provisions for the contingent liabilities of Kshs 10.15 billion arbitral and high court awards, and professional legal fees raising doubts as to the accuracy of its audited financial statements and putting KAA assets at risks of auction should the claims be effected .
- (xiv) THAT there appeared to be close business association between WDF Ltd, DDF Ltd and Suzan General Trading Ltd; and that

Suzan General Trading JTL and World Duty Free Limited share registered premises in Kenya.

(xv) THAT a letter allegedly showing the 15 % shareholding by Suzan in WDF Ltd was used to allocate the shop spaces in JKIA and MIA to Suzan General Trading JTL without due diligence to confirm its authenticity.

(xvi) THAT KAA management did not undertake proper due diligence on the companies it was dealing with on the matter of duty free contracts.

3.2 SUBMISSION BY MS. LUCY MBUGUA, FORMER MANAGING DIRECTOR, KAA

1. Ms. Lucy Mbugua, who served as the KAA Managing Director from August 2013 to February 2015 appeared before the Committee on 7th April 2015 to adduce evidence on the matter. She informed the Committee as follows:

A. SUBMISSION AND EVIDENCE

3.2.1 Background of WDF/DDF Contracts with KAA

2. THAT from April 1989 up to the year 2013, the major operators of the duty free shops at both Jomo Kenyatta International Airport (JKIA) and Moi International Airport (MIA) were Diplomatic Duty Free Limited (DDF) and its closely related entity World Duty Free Company Limited (WDF) which trades as Kenya Duty Free Complex Limited (KDF).
3. The basis of this operation was an agreement entered into on 27th April 1989 between the Government of Kenya and the House of Perfume (Appendix 7). The agreement was heavily in favor of the House of Perfume by giving it exclusive rights to operate duty shops at JKIA and MIA, and in which the Government agreed to enter into a lease agreement with the House of Perfume in respect of 3,000 square meters of duty free space at JKIA and 2,000 square meters of duty free premises at MIA for a term of 10 years which was renewable upon expiry.
4. The features of the Agreement included the following: -

- (i) The House of Perfume would have the exclusive rights to operate duty free facilities at the premises and at any other premises which in future could be designated as an airport;
 - (ii) No other person or firm would operate a duty free facility in an airport unless the House of Perfume gave its consent.
 - (iii) The House of Perfume was entitled to import without restriction or payment of duty or sales tax, all products, which it, or any of its sub-tenants, would sell at the duty free facilities.
5. Even though no lease agreement was ever entered into between the Government of Kenya and House of Perfume, WDF and DDF used provisions outlined in the subsequent leases signed when KAA was established as a statutory body for managing aerodromes. The consequences of these leases (which include the ones that expired on 31st March 2013 and 31st July 2013) was that the KAA was continually subjected to litigious claims by the said operators.
6. The effects of the claims were:
 - (i) The operators always obtained ex parte orders restraining KAA from proceeding with the tender process regarding the duty free shops.
 - (ii) Their claim to exclusive rights to run all Duty Free Shops contravenes the Public Procurement and Disposal Act and Regulations on accountable and transparent competition in public procurement.
 - (iii) DDF had a small bonded warehouse next to Terminal IA, which was to be relocated to the Cargo Village so that construction at Terminal IA could be completed. DDF declined to relocate and caused an extremely obstructed completion of the construction of Terminal 1A, which made KAA suffer massive losses.
 - (iv) Despite being requested by the Authority, DDF/WDF never relinquished space required by airlines to operate passenger lounges.
7. Attempts at negotiations for WDF/DDF to pave way for completion of T1A construction were not fruitful since DDF/WDF remained non-committal. By

relying on the exclusive right, DDF/WDF's sole intention was to forever retain all the space, obstruct the completion of the then Terminal 1A and retain ex-parte court injunctions against the tendering process.

3.2.2 Repossessing Duty Free shops from WDF/DDF

8. In repossessing duty free shops space from WDF/DDF, the KAA did the following:

(a) Pursuant to a Board Resolution passed on 28th January 2013, the Board directed management to identify a team of external legal counsels to defend the interests and file an appeal against the final award issued on 5th December 2012 requiring the KAA to pay the claimant USD 49,000,000. Thereafter, the management instructed the firm of M/s Ngatia and Associates to protect KAA's interests.

(b) Upon expiry of leases on 31st March 2013 and 31st July 2013 respectively, the KAA repossessed the spaces on 31st July 2013.

(i) JKIA area covered in a 5th March, 2007 Lease for DDF, total area repossessed was 988.3m²

(ii) JKIA area covered in a 14th September, 2007 Lease for DDF, total area repossessed was 997.66m²

(iii) MIA total area repossessed was 418.524m²

9. KAA Management duly instructed the law firm of Ngatia & Associates to defend the Authority in HCCC 327 of 2013 filed by DDF upon which ex-parte court orders were issued in favour of DDF on 30th July 2013, and served on the Authority towards midday on 1st August 2013 well after repossession had been completed.

3.2.3 Settlement

10. With the Cabinet Secretary, Ministry of Transport & Infrastructure's guidance, the Authority's external lawyer facilitated amicable settlement process which caused WDF/DDF's principal to publicly declare withdrawal of all claims against the Authority in all Airports. Eventually, the Authority

and WDF/DDF amicably agreed upon the withdrawal/setting aside of cases pending in court on duty free shops and related matters.

11. Ms. Mbugua however pointed out that she was not privy to the events leading to the joint press release of 18th September 2013 by Eng. Michael Kamau, CS MoTI and Mr. Pattni, having assumed office just three weeks earlier. She claimed to have been invited to the press conference together with Board Chairman and did not participate in the preparation of the press release.
12. The Board of Directors in its 180th Special Sitting held on 4th September 2013, approved negotiations with DDF/WDF. The Board empowered the KAA's external lawyer, Mr. Fred Ngatia vide letter dated 8th October 2013 signed by Ms. Lucy Mbugua, to defend the KAA's interests' and negotiate with DDF/WDF's lawyer Mr. Ahmed Adan in regard to claims pertaining to Duty Free shops at all airports in Kenya. (**Appendix 8**)
13. The letter confirming the appointment of Mr. Ngatia as KAA lawyer was done in good faith following instructions from CS MoTI;
14. The Board resolved that the following conditions precedent ought to be fulfilled by WDF and DDF and be expressly captured in the negotiation settlement: -
 - a) Withdrawal of all cases.
 - b) Setting aside of the award made by Hon. Justice Torgbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013.
 - c) They shall not have any further claims for damages for the recent and previous evictions.
 - d) Publicly and formally stating that they shall not have any further claims whatsoever against the Authority or the Kenyan Government in all airports.
15. The KAA on its part was to allocate Suzan General Trading JTL several spaces to carry out its operations. The Authority has already allocated the

following space to Suzan General Trading JTL (trading as Suzan Duty Free and which was brought on board by Mr. Kamlesh Pattni): -

- i. At JKIA, the Authority has duly signed lease Agreements with Suzan, space at Cargo Village Block B, Gates 6, Gates 7A & 7B and Gates 12.
 - ii. At MIA, the Authority has leased Terminal 1, Shops A, B & C bonded warehouse.
16. The action of the KAA in allocating the spaces was to ensure that KAA ultimately succeeds in closing the long chapter of historical challenges and running court cases between Mr. Kamlesh Pattni and KAA.

3.2.4 Management action on payment of Legal Fees to M/s Ngatia& Associates

17. M/s Ngatia& Associates presented three (3) fee notes to the Authority. The Authority wrote to the PS-MOTI requesting that the fee notes be submitted to the Attorney General to advise on the amounts paid in such cases.
18. In compliance with the Tender Committee's recommendations, the subject of the legal fees was presented to the Board which deliberated on the same in the 195th (Special) meeting held on 13th May 2014(Appendix 9). The Board discussed the following itemized fee notes: -
- (i) HCMA No.67 of 2013: KAA vs WDFL on setting aside Arbitral Award of USD 49, 096,557 issued on 5th December 2012 against the Authority, Kshs 76,262,029/- less rebate of Kshs. 10 million= Kshs. 66,262,069/-
 - (ii) HCCC No. 327 of 2013: DDF vs KAA on seeking injunction orders to stop eviction and force renewal of lease, Kshs. 17,400,000/- less rebate of Kshs. 10 million= Kshs.7,400,000.
 - (iii) Repossession of Duty Free Shops & Lounges from World Duty Free Ltd(WDF/Kenya Duty Free(KDF) and Diplomatic Duty Free(DDF), Kshs 290,850,000/- less rebate of Kshs. 40 Million= Kshs. 250, 850,000/-
19. Upon consideration of the matter, the Board recommended that the subject of payments be handled in the following way:

- (i) In the items above, payment to item (i) is Kshs. 58,000,000/- because a deposit of Kshs. 20,000,000 had been paid. On item (ii) the payment to be Kshs. 7,400,000/- since the total recommended amounts fall within the applicable scales of The Advocates (Remuneration) Order, 2013 & 2014.
 - (ii) The Board resolved that on item (iii), the Authority to negotiate with the law firm and apportion the fees in terms of services and each achievement. A Board paper on such observations on reasonableness of the fees was to be submitted to the Board for consideration and direction.
20. On informing the Parent Ministry of the Board's Resolutions, the Ministry vide letter Ref. MOT/C/ADM/5/I Vol. III (75), noted that the authority for payments for professional services can only be granted by the Authority's Tender Committee on the basis of its budget and not the Board or the Ministry. (**Appendix 10**)
21. The matter was subsequently submitted to the Tender Committee with the following requests.
- (i) To approve payment of professional legal fees to M/s Ngatia & Associates items (i) and (ii) as recommended by the Board.
 - (ii) To recommend appointment of three officers to negotiate with M/s Ngatia & Associates in respect of payment for item (iii) above.
22. The Tender Committee approved the above requests upon which payments were made.
23. The Management recommended to the Board at its 208th (Special) meeting held on 29th October 2014, that the KAA should make an offer to M/s Ngatia & Associates on payment of item (iii) in respect to repossession of the subject shops, lounges and bonded warehouses.
24. According to the Advocates Remuneration (Amendment) Orders, "for fees otherwise not prescribed, an advocate may charge his fees at such an hourly rate(s) as may be agreed with the client."

25. The Authority resolved to pay an all-inclusive balance of Kshs. 120,000,000 in full and final settlement of the fees charged under item(iii) on condition that M/s Ngatia & Associates avails duly filed Court Consents marking all the cases as settled and /or withdrawn.
26. The closure on the pending cases can only be achieved upon filing of duly filed Consents in Court, marking the said cases as settled and/or withdrawn.
27. This decision was communicated to Mr. Ngatia vide letter dated 10th November 2014. (Appendix 11).
28. For the negotiated settlement, Mr. Ngatia's law firm demanded Kshs. 290 million (for eviction of Mr Pattni from KAA premises and out of court settlement) which the KAA Board contested was too high and requested the figure to be revised downwards.

3.2.5 Current Status of Duty Free Contracts

29. Following the re-tender process in which Dufry International AG was awarded the tender for Master Concessionaire of Duty Free Shops, KAA was served court papers on 4th December 2014 by WDF Co. Ltd trading as Kenya Duty Free Ltd. In the papers, WDF is seeking: -
 - (i) A declaration that the October 2014 Agreement is null and void;
 - (ii) To prevent Dufry International Ag from dealing with duty free retail services under a single master license.
 - (iii) To restrain KAA and Dufry International Ag from interfering with WDF rights to all duty free shops in the Airports.
30. The Authority instructed Mr. Mohammed Nyaoga of Mohammed Muigai Advocates to represent it in the matter.
31. The CS-MoTI was requested to prevail upon WDF/DDF/KDF to honor the undertaking he made in public and to direct Mr. Ngatia to complete his assignment to obtain and submit signed and duly filed consents marking all cases between WDF/DDF and /or withdrawn.

32. Ms. Mbugua further informed the Committee that she wrote a letter dated 11th February 2015 to the CS MoTI in which she gave the CS an update on World Duty Free/Diplomatic Duty Free Limited. In the letter, she informed the CS as follows:
- (i) THAT the settlement between KAA and WDF/DDF pronounced in public on 16th September 2013 had not been formalized. As per the terms of the settlement, DDF/WDF was to withdraw all the 9 court cases and there would be no further claims on KAA. In return, KAA would give WDF/DDF space in JKIA and MIA on standard leases.
 - (ii) THAT Mr. Ngatia's fee of Kshs. 290,850,000 had not been paid since the Authority wanted to negotiate downwards and only pay once Mr. Ngatia had submitted duly filed Consents.
 - (iii) THAT Mr. Ngatia was yet to avail the filed consents. Meanwhile, WDF/DDF lawyers had written letters claiming space at T 1A as part of the settlement.
33. She reminded the CS that he had advised WDF/DDF that the space at Terminal 1A would be advertised and that they would be free to participate in the competitive tender process. Therefore, the space at Terminal 1A was not part of the settlement as approved by the CS-MoTI and the KAA Board.
34. Ms. Mbugua added that she never received the CS's response to the letter and that she was sent on compulsory leave, seven days after signing the said letter. She also denied having received any copies of letters and deed settlements from the Advocates (Ngatia and Wetangula, Aden & Makokha) and claimed that the letters allegedly copied to her, could have been backdated to sanitise the process. She accused the legal counsel Mr. Fred Ngatia of not cooperating with his client KAA on the matter of settlement with WDF/DDF.

3.2.6 The Matter of Duty Free Master Concessionaire and the Contentious Clauses

35. KAA advertised for the Tender for the Development and Management of a Duty Free Master Concessionaire Facility for the current Terminal I (then Terminal 4) at the JKIA in the print media from 4 October 2013 and closed on 25th October 2013. After evaluation of the bids, M/s Nuance Group Ag was declared the successful bidder and subsequently awarded the contract.
36. The award of the contract to M/s Nuance Group Ag was subsequently challenged at the Public Procurement Review Administrative Tribunal by four unsuccessful bidders namely: Unifree Duty Free, Suzan Trading JTL, Flemingo International Ltd. and Dufry International Ag.
37. In its decision dated 20th December 2013, the Board nullified the award of the contract to M/s Nuance Group Ltd and ordered the Authority to re-tender afresh and ensure that in doing so, it makes use of the standard tender document as prepared by the Public Procurement Oversight Authority (PPOA) and enlarge the specifications to make them more inclusive.
38. The Authority re-tendered afresh and advertised in print media as from 26th March 2014 and closed on 8 July 2014, the same tender for the Development and Operation of Duty Free Shops under a single Master Concessionaire at the Airport.
39. Before re-tendering, the Authority sought advice from the PPOA on various aspects of this particular tendering process including its compliance with the Public Procurement requirements. In its letter dated 18th June 2014, PPOA gave KAA the go-ahead to proceed with the process. In the fresh tendering process, 28 bid documents were purchased out of which five bids were submitted by the closing date, which included: Dufry International AG, ATU TurizimIsletmeciligi, AerRianta International, Paragon Holdings and Flemingo International (BVI) Limited.
40. Following the award of the fresh tender to Dufry International Ag., Flemingo International Ltd and Atuturizimisletmeciligi challenged the award of the

tender before the Public Procurement Review Board, who dismissed the petition on 17th December 2014. It directed that the procuring entity was at liberty to proceed with the procurement process in respect to the tender

41. After the award of the contract to Dufry International, Suzan General Trading JTL which had participated in the initial tender for the contract which was later nullified went to court seeking to quash the award of the tender to Dufry International AG. On 4th October 2014, the High Court dismissed the case and ruled that Suzan had not established any arguable case to warrant the quashing of the contract to Dufry International AG.

3.2.7 Kenya Airports Authority's Contract with Dufry International AG

42. On 15th October 2014, KAA signed a contract with Dufry International AG having been given the go ahead by all relevant entities including PPOA, PPARB and the High Court. A month or so after the contract was signed, it was noted that a number of the Clauses in the contract were not favorable and did not comply strictly with the tender document.
43. Upon realization of the mistakes, KAA immediately brought the same to the attention of Dufry International AG who agreed to discuss the relevant clauses with a bid to amending, modifying or altogether deleting them.
44. As a result of the discussions between KAA and its lawyers and Dufry International AG and its lawyers, a second and final document was signed by both parties on 22nd January 2015, which fully addressed all mistakes noted in the first contract signed 19th September 2014
45. Upon signing the 2nd Contract on 22nd January 2015, the 1st Contract was rendered redundant by virtue of Article XII Clause 4(a) of the new contract which states that the agreement constitutes the entire agreement between the parties and supersedes any previous agreements between the parties.
46. The concept of master concessionaire is well established in the business world. It refers to an agreement between the owner of a facility and the concession owner that grants the latter exclusive rights to operate a specified

business in the facility under specific conditions. Exclusivity is the hallmark of a master concessionaire arrangement.

47. From the onset, it was clear that KAA was granting a master concessionaire to run a duty free facility at Terminal 1A Unit at JKIA. It was also clear that the exclusivity would relate only to this particular Terminal and not the entire airport.
48. The contentious clauses for the contract, which were picked out and led to abandonment of the said contract document and the adoption of a new one, were found at Article V, titled "other covenants".
49. Clause 4(b) was considered for amendment because it required the Authority to provide adequate and appropriate offices and warehouses storage spaces for use by the Concessionaire as agreed by both parties.
50. Clause 4(c) was also considered for amendment because it stated that "in the event that temporary facilities are created for the handling of international departing or arriving passengers, the Concessionaire shall have the right to develop and operate retail areas as such temporary facilities on a priority basis."
51. Clause 4(d) was a contentious clause which provided that "in the event that the Authority further develops terminal facilities other than the terminal, the concessionaire shall be granted a priority over the concession within such facility, upon terms and conditions substantially to this Agreement with due adjustments of the rates."
52. This contract sought to address the concerns that were raised in respect to the 1st contract document. The amendments are to be found at Part V Clause 4(other covenants).
53. Clause 4(a) of the contract document provided that the Concessionaire would be the Single Master Licensee at the Terminal (this is what the tender documents provided for) and according to Ms. Lucy Mbugua, this is the practice all over the world.

54. Clause 4(b) provided that during the term of the contract, KAA would not contract any other entity to operate duty free shops at the Terminal. This was in compliance with the tender document. Another duty free provider would be a violation of the tender document.
55. Clause 4(c) states that the KAA would endeavor to provide office and warehouse storage space to the concessionaire upon payment of appropriate fees, rates and charges. It is significant to note that although Dufry International AG was entitled to exclusivity over the whole Terminal, KAA managed to negotiate this and to exclude other businesses not related to duty free from this exclusivity.
56. KAA could not legally allow another duty free facility at this Terminal. This was what the Tender Document provided and KAA could therefore not alter this position.
57. Under this tender, Dufry International AG is supposed to pay a yearly guaranteed minimum concession fee of USD 3.5 million to KAA.

B. COMMITTEE OBSERVATIONS

58. The Committee made the following observations from the submissions and evidence adduced by Ms. Lucy Mbugua:
 - (i) **THAT consents in relation to the cases by WDF/DDF/KDF had not been filed in court yet KAA went ahead to rent space out to Suzan General Trading JTL (a company brought in by Mr. Kamlesh Pattni).**
 - (ii) **The total minimum guaranteed concession fee for the tender that is to be paid by Dufry International AG to KAA for the tender period of 25 years is approximately Kshs. 9.187 billion (USD 87.5 million)**
 - (iii) **THAT KAA re-tendered afresh and advertised in print media as from 26th March 2014 and closed on 8 July 2014, the same tender for the Development and Operation of Duty Free Shops under a single Master Concessionaire at the Airport.**
 - (iv) **THAT the contract between KAA and Dufry International AG which was awarded the tender for Master Concessionaire of Duty Free Shops**

is now the subject of the Court process following the suit and service of Court papers to KAA on 4th December 2014 by WDF Co. Ltd trading as Kenya Duty Free Ltd.

- (v) THAT Mr. Fred Ngatia's legal fee note of Kshs. 290,850,000 had not been settled since the Authority wanted to negotiate them downwards and only pay once Mr. Ngatia had submitted duly filed court consents.
- (vi) THAT KAA and Dufry International AG signed a second and final document on 22nd January 2015, which fully addressed some of the mistakes noted in the first contract signed 19th September 2014.
- (vii) THAT KAA went ahead and signed a new contract with Dufry International AG on 22nd January 2015, even after the suit and service of Court papers to KAA on 4th December 2014 by WDF Co. Ltd trading as Kenya Duty Free Ltd.
- (viii) THAT Ms. Lucy Mbugua failed in her statutory duties as the CEO of KAA and instead opted to unconventionally delegate upwards to the CS, MoTI vide letter dated 11th February 2015 her responsibility of ensuring that a court consent was entered into for the settlement of the agreement between KAA and DDF pronounced in public.
- (ix) THAT Ms. Lucy Mbugua, then then CEO KAA, failed in her fiduciary duty to effectively manage the external professional legal team that KAA hired and instead resorted to accusation of the legal counsel Mr. Fred Ngatia of not cooperating with his client KAA on the matter of settlement with WDF/DDF.

3.3 JOINT SUBMISSION BY MS. LUCY MBUGUA, MR VICTOR ARIKA AND ENG. FRANCIS NGIGI

Ms. Lucy Mbugua, former Managing Director, KAA jointly with Mr. Victor Arika, Legal Counsel (suspended) and Eng. Francis Ngigi, KAA Project Manager appeared before the Committee on 16th June 2015 to adduce evidence on the matter. The following section provides summary of their submission: -

A. SUBMISSION AND EVIDENCE

1. The Committee heard that negotiation for settlement was initiated at the Ministry of Transport and Infrastructure and KAA does not have the Minutes, as KAA did not chair the meetings and no minutes were availed to them.
2. At the 178th (Special) Board of Directors meeting of 14th August 2013, The Management briefed the Board on the deliberations of the meeting of 4th and 9th July 2013. The Board commended the Management for the repossession exercise and indicated that KAA cannot compensate DDF/WDF for repossessing its premises, and that in the contrary, it was DDF/WDF who should compensate KAA for any losses occasioned by use of its premises.
3. At the 180th (Special) Board of Directors meeting of 4th September 2013: The Board deliberated on presentations on negotiation made by the external lawyer representing KAA, Mr. Fred Ngatia and external lawyer representing World Duty Free Limited (KDF) and Diplomatic Duty Free Limited (DDF), Mr. Ahmed Adan. It considered the matter at length and resolved as follows:-
 - (i) The external lawyer, Mr. Fred Ngatia was empowered by the Board to take in, and defend the interests of the Authority in negotiations with the external lawyer, Mr. Ahmed Adan, representing WDF and DDF with regard to claims on Duty free shops at all airports in Kenya.
 - (ii) The following conditions precedent had to be fulfilled by WDF and DDF are to be captured in the negotiation settlement:-
 - a) Withdrawal of all cases
 - b) Setting aside of the award made by the arbitrator, Hon. Justice (Rtd) E. Torgbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013
 - c) They shall not have any further claims for damages for the recent and previous evictions.
 - d) Publicly and formally state that they shall not have any further claims whatsoever against the Authority or the Kenyan government in all Airports.

- e) KAA in exchange was to identify available space to the new associated company of WDF and DDF, Suzan Duty Free.
- 4. The Acting Managing Director was authorized to work with the KAA's external Counsel Mr. Fred Ngatia, and update the Board accordingly on the proposed final negotiated settlement for the Board's approval. The final negotiated settlement was to be submitted by the Board to the Cabinet Secretary of the Ministry of Transport and Infrastructure for due approval. Consequently, all license agreements drafted were to be reviewed before execution with a view to protect the Authority's interest.
- 5. The following series of meetings were held: -

1st Meeting (Appendix 12): Held on 4th July 2013 at Fairview Hotel: This meeting was attended by Mr. Fred Ngatia (Chairman), external Counsel representing KAA; Mr. Victor Arika, Ag Corporation Secretary KAA; Ms. Lucy Mbugua, GM Marketing & Business Development KAA; Mr. Francis Ngigi, Project Manager KAA; Ms. Margaret Munene, Legal Counsel KAA; Mr. Bernard Kalove lawyer representing KDF; Mr. Sukhdev Kumar Puri, GM DDF; Mr. Rahul Sood, GCEO and Mr. Ajay Kothari, GM KDF.

The Agenda of the Meeting was:

- (i) **The Bonded Warehouse (store)**, which was preventing the contractor from completing the ongoing, works at JKIA Terminal 4. In their discussion, KAA and DDF/KDF agreed upon the terms and conditions for relocation of the said store. The members observed and agreed as follows:
 - a) It was DDF/KDF's statutory duty to address any customs issues with the Customs Department should it relocate the Bonded Warehouse (store);
 - b) There was to be a site visit at the proposed space at Cargo Village area for the bonded warehouse on Friday 5th July 2013 at 10:30am between the representatives of both KAA and by DDF/KDF.
 - c) DDF/KDF would meet the cost of renovating the proposed Bonded Warehouse at the cargo village area. As KAA was looking at the

minimum time for construction, DDF/KDF agreed to take into account the issue of timeframe.

(ii) **Terminal 4 with regard to the disputed advertisement:** -DDF/KDF requested KAA to allocate them a space measuring 250 sq.metres at Terminal 4 without KDF going through the tender. The Chairman (Mr. Ngatia) however advised that doing so would be in breach of the Public Procurement and Disposal Act 2005 and Public Procurement & Disposal Regulations 2006 as both parties were duty bound to comply with the law. The Chairman informed the Committee that the issue of exclusivity which was being relied on by DDF/KDF was to be addressed at the next meeting.

6. **2nd Meeting (Appendix 13):** Held on 9th July 2013 at Andrews Apartments. The meeting was attended by Mr. Fred Ngatia, Meeting Chairman, external lawyer representing KAA; Mr. Victor Arika, Ag. Corporation Secretary KAA; Ms. Lucy Mbugua, GM Marketing & Business Development KAA; Mr. Francis Ngigi, Project Manager, KAA; Ms. Margaret Munene, Legal Counsel, KAA; Mr. Benard Kalove lawyer representing KDF; Mr. Kamlesh Pattni owner of DDF/KDF; Mr. Rahul Sood, GCEO and Mr. Ajay Kothari, GM, KDF.

The agenda of the meeting:

(i) **Bonded Warehouse:** On the Matter of the: As a goodwill gesture, KAA agreed for a period of two years(renewable) subject to availability of space, and subject nonetheless to earlier determination to be provided in a formal license agreement.

(ii) **Terminal 4:** On Matter of Terminal 4, DDF/KDF informed the meeting that given that they had the exclusivity clause in their lease, they requested that they be allocated 250sqm in the new terminal (T4). DDF/KDF informed the meeting that they had assured their partner based in Dubai (Suzanne International) that they were likely to get a space at Terminal 4. KAA representatives informed the meeting that the Authority was looking for one operator in Terminal 4 since there was only one duty free shop, which cannot be split. Therefore, KAA was willing to reach out to DDF/KDF in accordance with the law in

obtaining duty free shop at Terminal 4 openly and transparently by an open tender. For clarity, the representatives from DDF/KDF were taken through the Terminal 4 architectural plan by KAA. DDF/KDF informed the meeting that as they discussed out of court settlement, the same should be fair and reasonable. They were informed that the Authority was willing to give as much as it can however within the law. KAA however informed the meeting that they would consult further and see whether there was a way out in terms of space at Terminal 4.

7. No other negotiation meeting for this team was held after this one. The decision to hold the meetings outside KAA premises was made by Eng. Stephen Gichuki, former Managing Director to ensure that the negotiations were held at a neutral location. KAA met the expenses for the two meetings.
8. The Committee heard that on 30th May 2014, KAA received a letter dated 29th May 2014 (**Appendix 14**) from DDF lawyers claiming that DDF could not conclude the settlement as KAA had failed to award it shop space at MIA. Terminal 4 (T4) space was never mentioned in the letter. Subsequent to this letter of offer for the MIA space, DDF changed narrative and included T4 issues.
9. The settlement has not been completed due to the following challenges:
 - (i) While KAA had done its part of providing spaces to Suzan DF - 4 shops at JKIA, a bonded warehouse at JKIA, a shop at MIA, and a bonded warehouse at MIA, DDF have never reciprocated by way of signing consent letters for court cases withdrawal as an aspect of deed of settlement.
 - (ii) DDF has insisted on obtaining space at T4 area that was not agreed as part of the deal.
 - (iii) KAA did not immediately give space at Moi International Airport (MIA) due to the re-organization and renovations that were taking place. But after the renovations were completed they offered space to

DDF at MIA, who did not take up the offer. DDF/KDF continued demanding for space at JKIA Terminal 4.

10. Due to the said insistence by DDF, KAA's external lawyer has not been able to finalize preparation of deed of settlement.
11. In view of the non-completion of the settlement arrangement, KAA wrote a letter dated 11th February 2015 to the CS- MOTI seeking his intervention. WDF/DDF is still at KAA with a new lease and paying rent at the terms of the new lease.

B. COMMITTEE OBSERVATIONS

12. The Committee made the following observations from the joint submissions and evidence adduced by Ms. Lucy Mbugua, Mr. Victor Arika and Eng. Francis Ngigi: -
 - (i) **THAT it was DDF/WDF who initiated the negotiations for new leases. However, vide a letter from DDF/WDF dated 19th December 2012; DDF/WDF acknowledges a letter from KAA who appear to have initiated the negotiations for renewal of new leases.**
 - (ii) **THAT WDF/DDF is still at KAA with a new lease and paying rent at the terms of the new lease.**
 - (iii) **THAT Minutes of the meeting held with the MOTI were not availed to KAA.**
 - (iv) **THAT it appeared that KAA was being directed by MOTI on what to do judging from the contents of the letter dated 29th May 2014.**
 - (v) **THAT KAA fulfilled its part of the terms of the negotiations since it is evident that Terminal 4 was never part of the bargain with DDF/KDF. DDF/KDF continued has continued to demand for space at JKIA Terminal 4.**
 - (vi) **THAT external legal team head by Mr. Fred Ngatia hired by KAA to help resolve the duty free shops cases has not achieved much in terms**

of resolving the cases but instead slapped KAA with a hefty legal fee note standing at approximately Kshs. 350 million.

(vii) THAT KAA's external lawyers have not been able to finalize preparation of deed of settlement.

3.3 SUBMISSION AND EVIDENCE BY MR. FRED NGATIA, KAA EXTERNAL LEGAL COUNSEL

Mr. Fred Ngatia, Senior Counsel at Ngatia & Associates appeared before the Committee on 7th April, 2015 and 29th April 2015 to adduce evidence on the matter of Duty Free Shops. The following section provides summary of the submissions and evidence by Mr. Fred Ngatia:-

A. SUBMISSION AND EVIDENCE

a. Introductions

1. In June, 2013 the Cabinet Secretary, MoTI, together with the Management of Kenya Airports Authority made a request to him to carry out an in depth analysis of the World Duty Free saga from its inception in 1989 and find out ways by which the company could be evicted from Jomo Kenyatta International Airport (JKIA), Moi International Airport (MIA) and Wilson Airport.
2. The Company was occupying almost 80% of all the duty free premises and successive administrations had tried and failed to evict the company.
3. Considering this was a massive undertaking, he requested and was granted authority to work together with the firm of Ahmednassir & Co Advocates and other seasoned advocates. In the subsequent consultations with the client, Mr. Ngatia was accompanied by Mr. Ahmednassir, Mr. Mansour Issa, Oriara and Mr. Eric Mutua.

3.3.1 The Duty Free Shops Master Concessionaire: 1989 Agreement

4. In a lease which was made on 27th April 1989, WDF was granted sole rights to operate all duty free shops in all airports in Kenya. World Duty Free was then operating as House of Perfume. GoK agreed to lease out 3,000 square

- meters of duty free space at JKIA and 2,000 square meters of duty free premises at Moi International Airport for a term of 10 years which was renewable upon expiry.
5. The notable features of the 1989 Lease Agreement were as follows;
 - (i) The House of Perfume would have the exclusive right to operate duty free facilities at the demised premises and at any other premises that in future could be designated as an airport.
 - (ii) No other person or firm would perform operate a duty free facility in any airport unless the House of Perfume gave its consent.
 - (iii) House of perfume was entitled to import, without any restrictions or payment of duty or sales tax, all products which it intended to sell at its duty free facilities.
 6. A Mr. B. Omuse, the then Director of Aerodromes, wrote to the PS, Provincial Administration and Internal Security on 29th January 1990 seeking the Ministry's intervention on encroachment by House of Perfume on areas considered security zones. (**Appendix 15**)
 7. The Board of Airline representatives also wrote to the Minister of State in Office of the President, Hon. Burudi Nabwera on 19th February 1990 complaining about notice of eviction addressed to 5 airlines instructing them to vacate first class lounges to create room for duty free shops (**Appendix 16**).
 8. The Solicitor General gave a legal opinion dated 24th June 1993 to the effect that the Agreement of 27th April 1989 was null and void (**Appendix 17**).
 9. World Duty Free Company was registered on 15th December 1989 in the Isle of Man. A Mr. Nassir Ibrahim of the United Arabs Emirates (UAE) is listed as one of the Directors (**Appendix 18**)
 10. Mr. Kamlesh Pattni registered a company known as Word Duty Free Company Ltd in the British Virgin Islands on 21st November 2001 (**Appendix 19**)

11. Mr. Fred Ngatia brought to the attention of the Committee that Mr. Kamlesh Pattni's ownership of World Duty Free had been contested by Mr. Nassir Ibrahim Ali in the International Centre for Settlement of Investments Disputes, based in Washington, DC, USA, Case No ARB/00/7 in 2006.
12. Mr. Nassir Ibrahim Ali's case was dismissed by the Arbitration centre as shown in Paragraph 188 of the ruling. According to Mr. Ngatia, the Arbitration centre invalidated the 1989 Agreement between the GoK and the House of Perfume because Mr. Ibrahim was found to have bribed government officials in order to be awarded the tender (in paragraph 167 of the Award, the Arbitrator observed that Mr. Ali paid a substantial bribe in cash to the Kenyan Head of State in March 1989.)
13. In his opinion therefore, the GoK/KAA should have been guided fully by this International Arbitral ruling in dealing with the claims by WDF/DDF. Upon enquiry of whether KAA was aware of the decision of the international court on the matter, KAA informed Mr. Ngatia that they were not aware of it.

3.2.9 Eviction of WDF

15. After 2 months of intensive research and perusal of numerous cases which had been filed by World Duty Free against KAA, the legal team strategized a way of evicting the Company from the Airport lounges. Detailed presentations were made to KAA and after thorough evaluation, KAA granted for the eviction to take place.
16. As the team leader, Mr. Fred Ngatia prepared an eviction strategy which took place between the times of 1a.m to 9a.m on the night of 1st August and 2nd August, 2013. KAA was able to recover its premises for the first time after 25years. The exercise of evicting WDF/DDF from the Airport lounges was to the advantage of the Government and KAA. According to him, this was a substantial gain by GoK which required to be protected.

3.2.10 Offer to World Duty Free Ltd

17. After the eviction, WDF made a request to KAA to be allowed to operate a few duty free shops but without any of the contentious terms contained in the original lease signed in 1989. Mr. Fred Ngatia prepared an offer to WDF which had the following conditions;
- (i) That WDF would abandon and renounce their claim to exclusive use of duty free premises.
 - (ii) That WDF would abandon and relinquish an award of approximately Kshs. 5 billion that had been made in its favour.
 - (iii) That WDF would not file any suit against the Government or KAA seeking compensation for alleged losses of 7 billion incurred during the eviction.
 - (iv) That First Class Airport Lounges hitherto occupied by WDF be relinquished and taken over by Kenya Airways.
 - (v) That WDF withdraws the numerous court cases it had filed against KAA.
18. In consideration, WDF accepted the terms and KAA agreed to meet the following conditions;
- (i) Allocate 4 shops to WDF at JKIA and 1 shop at MIA.
 - (ii) KAA offered to allocate a small space to WDF at Terminal 4. This space was marked out by KAA's Project Manager Engineer (Eng. Ngige) who was in-charge of that project.
 - (iii) WDF was to attend a public media briefing, in the presence of senior government officials where the company was to publicly declare acceptance of the terms that had been outlined.
19. WDF/DDF was eventually allocated space at MIA;
20. As a direct consequence of the omissions by KAA, WDF has not withdrawn the cases in court though not much action has taken place. Since an offer was made and which was accepted, a valid agreement exists in law.

21. In consultation with KAA, a media briefing was arranged at the Office of the CS, MoTI. This was held on 16th September, 2013. At the briefing, the Directors of World Duty Free publicly accepted all the terms as earlier agreed.
22. Among others, the following persons attended the media briefing and press release: the Attorney General Prof. Githu Muigai; CS, MoTI, Eng. Michael Kamau; Chief of Staff and Head of Public Service Mr. Joseph Kinyua, KAA Board Chairman; Prof. Mutuma Mugambi, KAA Acting Managing Director; Ms Lucy Mbugua, External KAA Legal Counsel, Mr. Fred Ngatia, Mr. Kamlesh Pattni (WDF Limited), External Legal Counsel for WDF Limited, External Legal Counsel for WDF Limited and Suzan General Trading represented by a Mr. Ahmed Adan.
23. Asked whether he succeeded in the objective to revert duty free space to KAA, Mr. Fred Ngatia responded that yes, he succeeded in stopping the arbitral award payment to WDF but that the agreement has not been fully implemented in terms of compensation to WDF. Without implementing the Agreement, WDF is not bound to withdraw cases against KAA.
24. Mr. Fred Ngatia also reported that so far, his law firm in liaison with WDF lawyers had successfully prepared four (4) leases towards compensation of WDF/DDF.
25. On whether Mr. Kamlesh Pattni could still claim Kshs. 7 billion for loss and damage incurred during eviction in 2013, Mr. Fred Ngatia stated that according to the law of tort, he should have filed the case within one year of the eviction, failure to which he lost legitimacy to do so.
26. Mr. Fred Ngatia disclosed that he had earlier represented Mr. Kamlesh Pattni, the Director of World Duty Free Company in a murder case in which he (Mr. Kamlesh Pattni) was acquitted at the High Court and this may be construed as conflict of interest.

3.2.11 Mr. Fred Ngatia's Professional Legal Fees

27. Regarding his legal fees, Mr. Fred Ngatia informed the Committee that he presented fee notes worth Kshs. 290 million (out of which 40 million is for VAT) to KAA for settlement. The balance of Kshs. 250 million is to be divided amongst him and the team of lawyers handling the cases. Payment of the bill is still pending because KAA felt that the fee was too high which Mr. Fred Ngatia maintains that it is commensurate with the Advocates Remuneration Order.
28. Mr. Fred Ngatia also submitted the following documents:
- (i) unsigned copy of Minutes of meeting held between KAA and World Duty Free Ltd on 9th July 2013;
 - (ii) Letter dated 5th September 2013 from KAA attaching the Resolutions made by the KAA Board of Directors at a board meeting held on 4th September 2013; (**Appendix 20**)
 - (iii) Copy of Draft Deed Settlement that is yet to be assented to by different parties (KAA, CS Transport & Infrastructure and WDF/KDF); (**Appendix 21**)
 - (iv) Letter dated 16th September 2013 attaching five (5) offer of premises to Suzan General Trading, all dated 16th September, 2013 and signed by Ms. Lucy Mbugua, Ag. Managing Director; (**Appendix 22**)
 - (v) Press Release by CS, MoTI dated 16th September, 2013; (**Appendix 23**)
 - (vi) Unsigned Press release by Mr. Kamlesh Pattni); (**Appendix 24**)
 - (vii) Video recording of the press release;
 - (viii) Letter dated 25th September, 2013 from KAA to Ngatia & Associates commenting on the leases to Suzan General Trading; (**Appendix 25**)
 - (ix) Letter dated 30th September 2013 from Ngatia & Associates instructing that premises were available for lease to Suzan General Trading at Moi International Airport, Mombasa; (**Appendix 26**)

- (x) Letter dated 8th December 2014 from KAA to Ngatia & Associates expressing appreciation for professional services rendered and need to conclude pending cases in court; (**Appendix 27**)
 - (xi) Proposal on the way forward by the legal team dated 28th April 2015. (**Appendix 28**)
29. Mr. Fred Ngatia also submitted that the team/subcommittee that discussed allocation of space to WDF as compensation for eviction comprised the following:
- a) Mr. Fred Ngatia - Lawyer representing KAA (Chair)
 - b) Mr. Victor Arika - Ag. Corporation Secretary (Secretary)
 - c) Ms. Lucy Mbugua - GM Marketing & Business Development at KAA
 - d) Eng. Francis Ngigi - Project Manager, KAA
 - e) Ms. Margaret Munene - Legal Counsel KAA
 - f) Mr. Benard Kalove - Lawyer representing DDF/KDF
 - g) Mr. Kamlesh Pattni - Owner, DDF/KDF
 - h) Mr. Rahul Sood - GCEO
 - i) Mr. Ajay Kothari - GM KDF

3.2.12 Matters Arising out of the Presentation

30. The Committee sought the following clarifications and Mr. Fred Ngatia responded as follows:
- (a) **Reasons why the Deed Settlement is still in draft form:** Mr. Ngatia responded that the delay by KAA to allocate Suzan General Trading space at MIA is one of the main reasons for the non-willingness by the Suzan General Trading lawyers to sign the Deed Settlement. He also added that had there been no delay in meeting the conditions agreed on by the two parties, Suzan General Trading would not have demanded space in Terminal 4;

- (b) Is the public declaration by Mr. Kamlesh Pattni at the press conference admissible in a court of law? Yes.
- (c) How many cases have been filed by Mr. Kamlesh Pattni against KAA? According to Mr. Fred Ngatia, at least 21 cases have been filed by Mr. Kamlesh Pattni against KAA. However, KAA is better placed to confirm the true position.
- (d) Were his(Ngatia) services legally procured? Yes. According to him, he is prequalified as one KAA's panel of lawyers and was given an appointment letter by the KAA management. Mr. Fred Ngatia added that KAA Eng. Stephen Gichuki, the then MD, asked him to lead a team of lawyers but he chose to work with his chosen team of competent lawyers.
- (e) Has 1989 Agreement been validated by the 2013-2015 negotiations? No. According to Mr. Fred Ngatia, the 1989 agreement remains null and void as determined by the International Court.
- (f) Why Mr. Fred Ngatia & legal team did not advise KAA to take the matter to local court for determination of validity of the 1989 agreement: According to Mr. Ngatia, this was because there was no need to go to court yet an international court had already determined the matter and KAA should have implemented that ruling to its advantage.

B. COMMITTEE OBSERVATIONS

31. The Committee made the following observations from the submissions and evidence adduced by Mr. Fred Ngatia:
- (i) THAT Eng. Michael Kamau, suspended CS, MoTI, interfered with operations and management of KAA by involving himself in the procurement of Mr. Fred Ngatia as KAA lawyer.
- (ii) THAT Mr. Fred Ngatia, a respected legal professional devised and executed forceful eviction of WDF from JKIA at night using hired goons without taking due consideration of the legal and financial consequences of his action on his client KAA and the businesses operating at the duty free shops. Through this action, WDF/DDF is

claiming approximately Kshs. 7 billion for loss incurred during forceful eviction.

- (iii) THAT on 30th January 2013, Eng. Gichuki wrote to Mr. Ngatia instructing him to lead the team of lawyers for the purpose of appealing against the final award by Justice Torgbor.
- (iv) THAT KAA wrote to Mr. Fred Ngatia on 16th March 2013 seeking to deposit Kshs 20 million to Mr. Ngatia to cater for expenses of the entire legal team comprising of Ngatia & Associates, Ahmednasir Abdikadir & Company Advocates, Tom Macharia Advocates and Eric Mutua Advocates.
- (v) THAT Mr. Fred Ngatia was paid an additional Kshs. 58 million for his services in the High Court case challenging Arbitral Award by Justice Torgbor. He has however never been paid Kshs. 250 million for his services in the eviction of World Duty Free from KAA premises.
- (vi) THAT Mr. Fred Ngatia did not act in the best interest of his client KAA in his representation of KAA on the duty free cases and dispute resolutions. He failed to advise KAA to take the matter of determination of validity of the 1989 lease agreement to court and instead advised that an international court had already determined the matter; he devised and executed forceful eviction of WDF from JKIA; he did not follow through to ensure that deed of settlement is registered in court and as a direct consequence, WDF has not withdrawn the cases in court.

3.4 SUBMISSION BY ENG. STEPHEN GICHUKI, FORMER MANAGING DIRECTOR, KAA

Eng. Stephen Gichuki, former Managing Director, KAA, (April 2010 - August 2013) appeared before the Committee on 29th April 2015 to adduce evidence on the matter of duty free concessionaire. The following section provides a summary of his submission: -

A. SUBMISSION AND EVIDENCE

3.4.1 The 1989 Duty Free Shops Lease Agreement

1. It is evident that the agreement entered into was in favour of the House of Perfume by giving it exclusive rights to operate duty free shops at JKIA and MIA.
2. Since KAA had not been established as a statutory body, the Agreement was executed by the Permanent Secretary, Office of the President and countersigned by the Permanent Secretary, Treasury. Every effort was expended to try and show that the Agreement was legitimate.
3. Numerous public officers raised concerns regarding the Agreement:
 - (i) By a letter dated 28th April 1989, the Director of Aerodromes wrote the Permanent Secretary, Internal Security questioning the wisdom in granting exclusive rights to the House of Perfume.
 - (ii) By a letter date 29th January 1990, the Director of Aerodromes once again wrote to the Permanent Secretary, Internal Security raising concern that the House of Perfume was operating in restricted areas.
 - (iii) By a letter dated 19th February 1990, the Board of Airlines Representatives wrote to the Minister of State, Office of the President to express grave concerns regarding activities of the House of Perfume.
 - (iv) By a letter dated 24th June 1993, the Attorney General wrote to the Head of Public Service as follows:

("Having carefully studied the matter, I have no evidence on record that the Attorney-General did certify in writing the execution of the Agreement on behalf of the Government was done in good accordance with the laws of Kenya. The Agreement was not vetted by this office at least from the records I have, prior to execution. From a legal point of view, therefore, all the conditions precedent to the effectiveness of the Agreement were not met. The legal effect is that the Agreement never came into force at all. Neither party can therefore, rely on it to justify any action and/or omission." (See Appendix 17)

(v) By a letter dated 15th August 1996, the Monopolies and Prices Commission emphatically stated that the Agreement was not only unwise, but also illegal for contravening the Restrictive Trade Practices, Monopolies and Prices Control Act. (Appendix 29)

4. From the foregoing, it is evident that numerous persons were concerned about the 1989 Agreement.

3.4.2 World Duty Free Ltd.

5. The House of Perfume was a trading name used by WDF which was the contracted Company.
6. WDF is a company registered in Isle of Man with the following as the shareholders/Directors: Nassir Ibrahim Ali; and Dinky International (South Africa) Dinky International S.A. was owned by Nassir Ibrahim Ali and his wife.
7. Mr. Kamlesh Pattni claimed that he had purchased all the shares in WDF, registered in the Isle of Man and that he was consequently the owner of the company. Mr. Nassir Ibrahim Ali denied having sold any shares to Mr. Kamlesh Pattni.
8. The two protagonists engaged in perhaps the most acrimonious dispute at that time culminating in the expulsion of Mr. Nassir Ibrahim Ali from Kenya. Having had his rival expelled from Kenya, Mr. Kamlesh Pattni became the only complainant in the litigation. Mr. Kamlesh Pattni obtained a 'judgement' to the effect that he was the owner of the shares in the WDF Company.
9. Despite the foregoing legal victory, Mr. Kamlesh Pattni had to have ownership of the shares changed at the Company Registry in the Isle of Man. The Courts in the Isle of Man refused to give evidence to the Kenya High Court 'judgement'.
10. Mr. Kamlesh Pattni then proceeded to the British Virgin Islands and registered a new company under the name of 'World Duty Free.' Hence two (2) different companies now exist, namely: World Duty Free registered in the

Isle of Man; and World Duty Free registered in British Virgin Island. The Company which GoK entered into an Agreement with in 1989 was WDF registered in Isle of Man.

11. Mr. Ali later took Mr. Kamlesh Pattni to the International Convention for the Settlement of Investment Disputes (ICSID). Mr. Ali in his submissions confessed that he was granted the contract through bribery to the Head Of State. This led to Mr. Ali losing the arbitration since the contract was executed fraudulently.

3.4.3 Diplomatic Duty Free Ltd

12. Having declared that he was the owner of the WDF registered in the Isle of Man, Mr. Pattni after having traded as the owner of the World Duty Free Ltd for a period of time requested that the leases be transferred to the Diplomatic Duty Free - a locally incorporated company.
13. Approximately 92% of space which was occupied by WDF was transferred to DDF.

3.4.4 Expiry of Leases

14. A number of leases expired on 31st March 2013 while the remainders were to expire on 31st July 2013. It had been a tradition that towards expiry of leases, Mr. Kamlesh Pattni would rush to court at the last moment and obtain ex-parte orders and which would subsequently be extended almost up to the end of the lease period.
15. KAA appointed a team to discuss with DDF/WDF the issue of expired leases, renewal thereof if any, and the related matters. This method of engagement is recommended in procurement laws and practice.
16. KAA offered to relocate the bonded warehouse to the Cargo Village at JKIA and DDF/WDF was also requested to relinquish some/premises. DDF/WDF had in excess of 70% of the duty free space at JKIA and MIA. In addition, it should be noted that:-
 - a) DDF has been operating 1st Class Lounges at the departure area at JKIA. KAA requested DDF to release the lounges so that Kenya Airways

could operate at least one of the lounges. Nairobi is possibly the only hub where for a long time; the local national airline had no lounge at the departure area.

b) It is the airlines who ought to be operating lounges. It is the airlines business to take care of their passengers.

17. Despite the need to resolve the matters, DDF/WDF was not willing to release any shopping space. Indeed, KAA's request to DDF/WDF to operate transparently as expected in the new dispensation was ignored. The issue of renewal of leases was therefore not concluded. It became quite clear that the sole intention of DDF/WDF was to forever retain all the space and obstruct completion of Terminal 4.

3.4.5 Repossession of Duty Free Shops at JKIA

18. KAA had despite all the provocations, refrained from repossessing the shops whose leases expired on 31st March 2013. It was KAA's hope that DDF would appreciate the need for honest and transparent conduct so that a holistic agreement could be reached.

19. When the second leases expired on 31st July 2013, it became quite clear that DDF/WDF were not keen to have a transparent renewal process. This made it necessary for the Authority to repossess the premises.

20. In a bid to minimise the losses, KAA's team carefully removed all the items and packed them at various venues. DDF/WDF trucks removed them to their storage facilities.

21. The eviction process involved KAA personnel, police, Customs, Immigration and labourers employed for that purpose. The immediate achievement of the exercise were as follows:

(i) Creating new passenger areas and comfort

(ii) Creating departure gate space for the national carrier, Kenya Airways;

(iii) Removing the bonded warehouse next to the old crew gate at Unit 1 which has created space for connection between Terminal 4 and Unit1; and construction of the Arrival Hall for Terminal 4.

(iv) The two airline lounges at Gate 6 and Gate 11 repossessed by KAA.

(v) Operation of airport lounges is part of KAA's core business.

3.4.6 Repossession of Duty Free Shops Spaces JKIA

22. The following plan areas were covered in the 5th March 2007 lease agreement and 14th September 2007 lease agreement.

Plan areas for 5 th March 2007 lease agreement		Plan areas for 14 th September 2007 Lease	
Plan Area	Area (M ²)	Plan Area	Area (M ²)
Unit 1 Safari Shop	33.70	1 st Class Lounge Unit 1	166.00
Konica Shop	45.60	Local Bookshop	18.00
Unit 2 Main Shop	607.00	Lounge 2	147.00
Unit 1 Main Shop	80.00	N-Club Class Lounge	157.00
Corner Shop	68.00	Feeder Warehouse	183.00
Unit 2B Shop	101.00	Audit Shop	49.59
Crew Shop	53.00	Antique Shop	34.7
TOTAL AREA	988.3	E-touch Cyber World	26.0
		Electronic Shop	103.0
		Arrival Shop	86.0
		Gold Shop	33.4
		EDP Shop	11.97
		TOTAL	997.66

23. The following were the distribution of plan areas under WDF and the distribution of Duty Free shop spaces at MIA:

Distribution of plan areas under WDF		Distribution of Space at MIA	
Plan Area	Area (M ²)	Plan Area	Area (M ²)
Cafeteria	30.00	Terminal 1 Shop	183.284
Local Bookshop	18.00	Terminal 2	
		Office	8.3
		Shop	39.24
Coffee Village Shop	14.00	Store	113
		TOTAL	343.824
TOTAL	62.00		

3.4.7 Court Action

24. Around the year 2008, Messrs World Duty Free had sued KAA for the loss of business after advertising for tenders for duty free shops in Mombasa and reducing their shops among others in JKIA. The matter had been referred by the then Chief Justice Evans Gicheru to retired Justice Torgbor for arbitration. The Arbitrator gave a final award of approximately USD 49,000,000 to the claimant.
25. The Board of Directors during a Special Board Meeting of 28th January 2013, instructed management to identify a team of legal counsel to file an appeal on the award.
26. Messrs Ngatia & Associates was among the service providers' approved for legal services through KAA Tender Committee meeting under paper 2420 (KAA/M1A/14/02 Vol. VIII) (Appendix32).
27. The law firm together with their legal team was instructed to file an appeal. They got a court injunction against attachment of the Authority's assets.

28. Later the firm together with its legal team comprising of Messrs: Mr. Ahmednassir Abdullahi, Mr. Eric Mutua, Mr. Mansur Issa and Mr. Tom Macharia were asked to handle all the numerous matters of World Duty Free which were pending in court. KAA had appointed a technical team to work with the external lawyers on the matter.
29. There was no figure agreed on between KAA and Mr. Fred Ngatia and his legal team. Mr. Fred Ngatia was the lead lawyer and his fee note was approximately Kshs. 250 - Kshs 300 Million. When KAA appointed Mr. Fred Ngatia as their legal representative, he consolidated all cases between KAA and Mr. Kamlesh Pattni.
30. In conclusion, Eng. Gichuki stated that he left KAA on 15th August 2013 and has not been involved in any matters on the subject after he left the service at KAA including the compensation agreement. The 1989 contract was not terminated during his tenure and was therefore not party to settlement negotiations.

B. COMMITTEE OBSERVATIONS

32. The Committee made the following observations from the submissions and evidence adduced by Eng. Stephen Gichuki:
 - (i) **THAT Eng. Stephen Gichuki as the CEO presided over the forceful eviction of WDF from JKIA at night using hired goons without taking due consideration of the legal and financial implication of the action on KAA and the businesses operating at the duty free shops in JKIA**
 - (ii) **THAT a fire broke out at the JKIA on 7th August 2013 after Eng. Stephen Gichuki had left KAA as the MD. The Committee sought and did not to establish the relationship between the fire and the eviction of WDF from KAA premises as per the Fire Investigation Report, it was evident that the fire was an accidental incident that resulted from arching that started from the Electrical Distribution Board. (Appendix 30)**
 - (iii) **THAT there was little information produced to ascertain that the Eng. Stephen Gichuki as the MD satisfied himself that the huge legal fee note**

of approximately Kshs. 390 Million from Mr. Fred Ngatia was in line with the Advocates Remuneration Order.

(iv) THAT the 1989 lease agreement was not terminated during his tenure and therefore he was not party to the settlement negotiations.

3.5 JOINT SUBMISSION BY ENG. MICHAEL KAMAU AND MR. NDUVA MULI

3.5.1 Termination of 1989 Duty Free Contracts

1. Eng. Michael Kamau, suspended CS, MoTI and Mr. Nduva Muli, suspended PS, State Department of Transport (SDoT) appeared jointly before the Committee on 29th April 2015 to adduce evidence on the matter of Kenya Airports Authority (KAA) Duty Free Contracts. The following section provides summary of the joint submission by the two witnesses: -

C. SUBMISSION AND EVIDENCE

2. On account of subsistence of exclusive and perpetual Agreements made with the Government of Kenya and KAA between World Duty Free (WDF) Company Limited and Diplomatic Duty Free (DDF) Limited, some of which commenced in 1989, KAA was unable to manage its premises in its best interest within the airports.
3. WDF and DDF over the years obtained numerous court orders, which made it impossible for KAA to terminate some of the agreements and repossess some of its property. KAA was even unable to repossess facilities from WDF that were hampering the work of the contractor of the now completed Terminal 1A at Jomo Kenyatta International Airport (JKIA).
4. External legal counsel, Mr. Fred Ngatia recommended that the only way to end the unlawful monopoly that had been granted to WDF/DDF was to carry out a repossession of all premises occupied by WDF/DDF on 31st March 2013 when the leases expired. Subsequently, repossession action was undertaken by KAA and vacant possession was achieved on 1st August, 2013.

3.5.2 Procurement of Ngatia & Associates Law Firm

5. In December 2012, Arbitrator, Hon. Justice (Rtd) E. Torgbor delivered an arbitration ruling in favour of WDF and DDF of \$49 million against KAA. WDF and DDF then commenced proceedings against KAA.
6. In January 2013 KAA appointed Mr. Fred Ngatia, Mr. Eric Mutua, Mr. Waweru Gatonye, Mr. Mansur Issa, Mr. Tom Macharia and Mr. Ahmednasir to represent KAA in the High Court in a bid to obtain orders to stop the attachment of KAA property to recover the USD 49 million judgment debt. The action by the said lawyers was successful and the attachment of KAA property was forestalled.
7. Mr. Fred Ngatia was then instructed by KAA to take over the conduct of all matters related to Duty Free Shops and employ mechanisms to ensure that the matters are concluded expediently and effectively put the entire issue to perpetual rest.
8. The procurement of Mr. Fred Ngatia and the other advocates involved was entirely the prerogative of KAA and not the MoTI as a separate and distinct procuring entity. At the time Mr. Fred Ngatia and the other advocates were instructed, the MoTI did not exist in its current form.
9. Pursuant to resolutions of Board of Directors passed on 4th September 2014 during its sitting of 180th meeting, the Board approved a negotiation process on amicable settlement between KAA and WDF/DDF. The Board empowered KAA's external counsel, Mr. Fred Ngatia to take part in, and defend the interests of KAA in negotiations with the external lawyer, Mr. Ahmed Adan, representing WDF and DDF with regards to claims on Duty Free Shops at all airports in Kenya.
10. The Board resolved that the following conditions precedent ought to be fulfilled by WDF and DDF and should therefore be captured in the settlement:
 - (i) Withdrawal of all cases;

- (ii) Setting aside of the award made by the Arbitrator, Hon. Justice (Rtd) E. Torgbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013;
 - (iii) They shall not have any other further claims for damages for the recent and previous repossession exercises; and
 - (iv) Publicly and formally stating that they shall not have any further claims whatsoever against KAA or the Kenya Government in all airports.
13. The Board then resolved to present the outcome of the negotiations to the Cabinet Secretary for Transport and Infrastructure for concurrence once complete.

3.5.3 The 16th September 2013 Press Release

14. Having completed the negotiation process, the Board then presented the final outcome to the CS, MoTI. As required by the KAA Board, WDF/DDF were to publicly state their withdrawal of their claims against the Authority in all airports. In this regard, the CS, MoTI Eng. Michael Kamau and Mr. Kamlesh Pattni representing WDF/DDF held a press conference and issued a press release dated 16th September 2013 to that effect.

3.6 The Press Conference was attended by:

- (i) Hon. Prof. Githu Muigai - Attorney General
- (ii) Eng. Michael Kamau - CS, MoTI
- (iii) Mr. Nduva Muli - PS, SDoT
- (iv) Prof. Mutuma Mugambi, MBS - Board Chairman, KAA
- (v) Ms. Lucy Mbugua - Ag Managing Director, KAA
- (vi) Mr. Fred Ngatia - External Legal Counsel for KAA
- (vii) Mr. Kamlesh Pattni - World Duty Free Limited
- (viii) Mr. Arif Hafiz - Suzan General Trading JTL

(ix) Mr. Ahmed Adan - Legal Counsel for WDF & Suzan
General Trading

15. The lawyers of both parties and the management teams were from that point to implement the settlement agreement and file the same in court in order to bring the matter to a legal end.

3.7 **3.7.4 The Role of the MoTI in resolving the Matter of the Contentious Clauses**

16. At the meeting held at the Ministry on 18th December 2014 chaired by the CS- MOTI, the Cabinet Secretary brought to the attention of KAA Managing Director clauses in the Concession Agreement dated 15th October, 2014 between KAA and Dufry International AG that were prejudicial to the interest of KAA.

17. The Managing Director was directed to ensure that the Board was informed of this matter and that the negotiations took place between KAA and Dufry International AG to rectify the position. Further, the Managing Director was to revert to the MoTI with explanation as to how the clauses were included in the Agreement. Article V in particular Clause 4 sub-clauses (a), (b), (c), (d) and (e);

a) The Concessionaire shall be the exclusive Concessionaire in the Terminal and shall have the right to sublet any and all areas within the areas of operation with the consent of the Authority. The Authority agrees not to move flights from the Terminal but incase the Authority has to move due to commercial reasons, the concessionaire will be allocated a substantially similar alternative operating area.

b) The Authority shall provide adequate and appropriate offices and warehouse storage spaces for use by the concessionaire as agreed by both parties.

c) In the event that temporary facilities are created for handling of international departing or arriving passengers, the concessionaire shall

have the right to develop and operate retail areas such as temporary facilities on a priority basis.

- d) In the event that the Authority further develops terminal facilities other than the Terminal, the Concessionaire shall be granted priority over the concession within such facilities, upon terms and conditions substantially similar to this Agreement with due adjustments of the rates.
 - e) The Authority shall regularly consult with the Concessionaire to discuss the arrangement of new space for the maximization of commercial benefits of both parties given due regard to the availability of new space and the flow of passengers.
18. The Principal Secretary, State Department of Transport, Mr. Nduva Muli vide a letter dated 19th December, 2014 wrote to the Managing Director KAA as a follow up of the meeting and directed as follows:
- a) To formally explain how the Authority entered into an agreement that was prejudicial to its interest;
 - b) To review the Agreement so as to ensure that the Agreement is in line with the tender documents and Government policy and regulations; and
 - c) To bring the matter to the attention of the Board in the earliest opportunity to enable the Board investigate the matter and revert with recommendations to be taken.
19. Vide a letter dated 30th January, 2015 the KAA sent to the MoTI a signed copy of the amended Concession Agreement already executed. (**Appendix 31**)
20. The MoTI vide a letter dated 6th February 2015, noted that the subsequent action taken by Management of amending the Agreement did not exhaustively address the prejudicial exposure to the Authority. The letter stated that clause 4 (b) of the amended Concession Agreement was not in the Authority's interest and might have implications on the existing tenants for the reason that the clauses stops the Authority from contracting any other persons or entities from operation of Duty Free Retail Shops at Terminal 1A.

B. COMMITTEE OBSERVATIONS

21. The Committee made the following observations from the joint submissions and evidence adduced by Eng. Michael Kamau and Mr. Nduva Muli:

- (i) THAT the contract agreement signed between KAA and World Duty Free Ltd was not in the best interest of the Authority. Instead, the Agreement gave WDF Ltd exclusive right to manage, occupy and sublet the Authority's terminal facilities at JKIA.
- (ii) THAT the procurement of the Ngatia & Associates and the other advocates was entirely done by KAA and not the Ministry of Transport and Infrastructure and in disregard of procurement laws and procedures.
- (iii) THAT KAA did not seek the advice of the Attorney General before entering into the Concession Agreement dated 15th October, 2014 between KAA and Dufry International Ag which contained contentious clauses that were prejudicial to the interests of KAA.
- (iv) THAT the goods that were removed during the eviction exercise of 1st August 2013 belonged to Suzan Trading Ltd and not World Duty Free or Diplomatic Duty Free Limited. The alleged losses suffered were therefore of Suzan Trading Ltd.
- (v) THAT Eng. Michael Kamau, suspended CS, MoTI on the 16th September 2013, held a highly publicized press conference jointly with WDF/DDF officials categorically stating that all court cases filed by World Duty Free and its associate/subsidiary companies against KAA by WDF/DDF have been withdrawn.
- (vi) THAT Eng. Michael Kamau did not follow through to ensure that his public pronouncement on the 16th September 2013 is fully implemented and a deed of settlement entered into to protect public interest. This has led to an exposure of public funds of not less than Kshs. 17.15 billion arising from the arbitral awards, high court rulings,

interests, professional legal fees and damages from forceful eviction of WDF.

- (vii) THAT Terminal 1 facility was not part of the agreement as claimed by WDF. The agreement was to cover existing terminals and not the newly constructed Terminal 1A.
- (viii) THAT the KAA management purposefully designed and signed a flawed contract documents with contentious Clauses and it took the intervention of the Cabinet Secretary, MoTI to reluctantly correct some of the flaws in the contract documents. The subsequent action taken by Management of amending the Agreement did not exhaustively address the prejudicial exposure to the Authority.

3.6 SUBMISSION BY MR MAURICE JUMA, DIRECTOR GENERAL, PPOA

Mr. Maurice Juma, Director-General, Public Procurement Oversight Authority (PPOA) appeared before the Committee 14th July 2015 to adduce evidence on Development and Management of the Master Concessionaire at the JKIA Terminal Unit 4 Re-Tender. The following section provides summary of his submission: -

3.6.1 Introduction

1. The KAA tender was to engage a reputable duty free shops developer and operator to manage its duty free offering at the new JKIA Terminal Unit 4. The successful bidder was expected to develop the facility at JKIA at their own costs, as per the plans to be submitted and approved by KAA. The initial contract was for 10 years with an option for renewal for a further term not exceeding 5 years.
2. The objectives of the tender were:
 - (i) Creation of a new retail experience for passengers at JKIA by maximizing on commercial offering by creating a retail platform to showcase any brands, new products and better services at competitive prices.

- (ii) Boost its non-aeronautical portfolio by generating additional revenues from the new duty free operations.
 - (iii) Boost the economy as the development was expected to inject over USD. 2 billion into the national economy. The development was also expected to generate over 100 jobs.
3. The procurement was initiated through advertisement notices dated 4th and 7th October, 2013. Tenders were opened on 25th October, 2013 where ten (10) bidders submitted their bids. The evaluation was carried out and an evaluation report prepared with recommendation to award the tender to M/S Nuance Group Ag at USD. 120,000 and a concession rate of 12.5 on net sales. The Tender Committee awarded the tender as recommended by the Evaluation Committee.
 4. The award of the tender was challenged at the PPARB by Unifree Duty Free, SUZAN General Trading JTL, Flemingo International (BVI) Ltd and Dufry International AG. Upon hearing the parties and reviewing the procurement records availed by KAA, the Review Board annulled the award and directed the Procuring Entity to re-tender afresh. The successful bidder M/S NUANCE GROUP AG moved to the High Court for judicial review (Misc. Application No. 463 of 2013). The application was withdrawn by the applicant before hearing and KAA re-started the procurement afresh.

3.6.2 Procurement Process

5. The tender was re-advertised on 26th and 28th March, 2014 in the Daily Nation Newspaper and the Standard Newspaper respectively. According to the tender notice, the initial deadline for submission of tenders was 18th April at 10:00am. However, the deadline for submission /opening date of the tender was extended through addenda Nos. 1 to 9 from 18th April, 2014 to 8th July, 2014.
6. The technical proposals were opened in the presence of the bidders' representatives on 18th July, 2014. The tender opening committee members comprised Ms. Maltida Jepkosgei, Mr. Nelson Obwoye, Mr. Sammy Kemboi,

Mr. Lawrence Amima and Ms. Jane Kamau. Out of 28 firms that bought the tender documents, the following five (5) firms responded:

- (i) Dufry International AG
- (ii) AtuturizmIsletmeciligi A. S
- (iii) AER Rianta International (ARI)
- (iv) Paragon Holdings
- (v) Flemingo International (BVI) Ltd

3.6.3 Tender Evaluation

7. The tender evaluation was conducted by a committee of four members namely Mr. Anthony Kulej, Mr. Wilfred Ndegwa, Ms. Margaret Muraya and Mr. Martin Kamau. The process was conducted in three stages; preliminary, technical and financial evaluation stages.

3.6.3.1 Preliminary Tender Evaluation

8. The preliminary tender evaluation was based on the criteria set out under 2.20 of the Appendix to Instructions to bidders to determine the responsiveness of the tenders to the mandatory requirements which included: Tender Security, dully filled declaration form, Certificate of Incorporation, Original and Copy of Tender Documents, Confidential Business Questionnaire, Litigation History, Audited accounts for financial years 2010, 2011 and 2012, Power of Attorney and Joint Venture Agreement.
9. Two bidders namely Paragon Holdings and Flemingo International (BVI) Ltd were disqualified for failing to meet some of the tender requirements. According to the Evaluation Report, Paragon Holdings did not use the correct tender document while Flemingo International (BVI) Ltd provided audited accounts for 2012 and 2013 instead of audited accounts for 2010, 2011 and 2012.
22. Flemingo Duty Free Shop Mumbai Private Ltd, one of the subsidiaries, did not provide audited accounts; and the other subsidiary Flemingo International Ltd did not provide other documents as required by

3.6.3.5 Financial Evaluation

33. The financial evaluation comprised of two parts, minimum annual guarantee subject minimum of USD 120, 000 exclusive of taxes and a license fee of at least 20% based on gross annual sales. The financial proposals accounted for 10 marks.

34. The financial proposals were opened on 12th August, 2014 in the presence of bidders' representatives. The financial proposals were as follows:

No.	Bidder's Name	Amount quoted (USD)	Technical Scores
1	Dufry International AG	3,500,000	83.61
2	AtuTurizmIsletmeciligi A. S	4,126, 000	78.2
3	AER Rianta International (ARI	2,000, 000	87.2
4	Flemingo International (BVI) Ltd	3, 765, 420	79.3

35. The technical scores and financial proposals were combined using the formula provided in the tender documents. The formula for calculating the final score was as follows: Final Score (100) = Technical Score + Financial score (where the maximum score of 10 marks on the financial scores were on pro-rata basis)

36. The scores were as follows:

No	Bidder's Name	Technical Scores	Amount quoted (USD)	Maximum financial proposal	Financial score pro-rata	Final score	Ranking
1.	Dufry International AG	83.61	3,500,000	4,126,000	8.482	92.09	1
2.	AtuTurizmIsletmeciligi A. S	78.2	4,126, 000	4,126,000	10	88.2	2
3.	AER Rianta International (ARI	87.2	2,000, 000	4,126,000	4.847	92.05	3

No	Bidder's Name	Technical Scores	Amount quoted (USD)	Maximum financial proposal	Financial score pro-rata	Final score	Ranking
4	Flemingo International (BVI) Ltd	79.03	3, 765, 420	4,126,000	9.126	88.16	4

3.6.4 Tender Evaluation and Notification

37. The evaluation committee recommended the award of the tender to Dufry International at an annual guarantee of USD 3.5 million per annum exclusive of taxes subject to an annual license fee at the rate of 20% on annual gross sales on account of having the highest combined technical and financial score
38. In its meeting held on 14th August, 2014 the tender committee concurred with the recommendation of the Evaluation Committee and awarded the tender to Dufry International AG.

3.6.5 Notification of Award

39. The successful and unsuccessful bidders were notified vide letters dated 15th August, 2014. The unsuccessful bidders except Paragon Holdings were informed the reasons why their tenders were not successful.
40. Prior to signing the contract, the Flemingo International BVI and Atuturizmlsletmeciligi A. S lodged requests for review Nos. 34/2014 and 35/2014 respectively at the Review Board. The requests were dismissed by the PPARB.
41. At the same time Suzan General Trading JTL moved to the High Court and lodged Judicial Review No. 339/2014 on the ground that the Procuring Entity did not comply with the decision of the Review Board to retender the and enlarge the specifications to make them more inclusive. The Court dismissed the matter.

3.6.6 The Contract with Dufry International AG

42. KAA and the successful bidder entered into a written contract agreement. The contract is dated 15th October, 2014 and was for an initial 10-year renewable for a further 5 years' subject to satisfactory performance.

3.6.7 PPOA Observations on the Tender

43. Evaluation was not concluded within 15 days as prescribed by Regulation 5 (4)(b) of the Public Procurement and Disposal (Amendment) Regulations, 2013. There is no evidence presented to PPOA showing that the Accounting Officer extended the tender evaluation period pursuant to Regulation 14(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
44. The Tender Committee did not award the tender within the 30 days after the tender opening as envisaged by Regulation 18(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
45. Paragon Holdings did not use the revised tender documents and therefore, the Evaluation Committee disqualified their tender at the preliminary evaluation stage. The decision of the Evaluation Committee was punitive to the bidder since they ought to have evaluated their tender using the criteria that was in the tender document and make a decision on whether to accept or reject it based on the outcome of the evaluation.
46. According to the first Evaluation Report, Flemingo International (BVI) Ltd submitted audited accounts for financial years 2012 and 2013 instead of 2010, 2011 and 2012. Further, Flemingo Duty Free Shop Mumbai Private Ltd did not submit audited accounts for the required period 2010, 2011 and 2012. Their tender was therefore disqualified. However, upon review of the tender document, PPOA noted that Flemingo Duty Free Shop Mumbai Private Ltd had submitted audited accounts for 2011 and 2012 though this could not make their tender responsive since the requirement was audited accounts for 2010, 2011 and 2012.
47. In the second evaluation, the failure to meet the requirement on submission of audited accounts by Flemingo International BVI and Flemingo Duty Free

Shop Mumbai Private Ltd as indicated in paragraph 4 above was considered minor deviation. The Evaluation Committee erred by considering a mandatory requirement a minor deviation contrary to Section 64 (1) of the PPDA, 2005 that a tender is responsive if it conforms to all the mandatory requirements in the tender documents.

48. Based on the analyzed documents submitted by KAA to PPOA, PPOA concluded that:

- (i) The non-compliance issues highlighted above may not have materially affected the outcome of the tendering process. For instance, the requirement on submission of audited accounts was considered a minor deviation during the second evaluation, Flemingo International BVI who benefited from the waiver did not emerge as the lowest evaluated bidder.
- (ii) It is not clear why KAA opted for a combined score criteria of evaluation, hence combining technical with financial score, where a maximum score of 10 marks on financial scores were on pro-rata basis. This is a method commonly used in Request for Proposals.
- (iii) All the 4 bidders qualified on technical evaluation having attained a cut-off 70 out of 90 marks.
- (iv) If the financial proposals were evaluated independently from the technical proposals, then the Procuring Entity would have earned USD 626, 000 more (4,126, 000 - 3, 500,000), which is the price difference between the highest price bid AtuturizmIsletmeciligi A.S. and Dufry International AG who was awarded the contract.

B. COMMITTEE OBSERVATIONS

49. The Committee made the following observations from the submissions and evidence adduced by Mr. Maurice Juma, DG, PPOA: -

- (i) **THAT if the financial proposals were evaluated independently from the technical proposals, then KAA would have earned minimum yearly guaranteed concession fees of USD 626,000 (approximately 63.85 million) more which is the price difference between the highest bid**

price of USD. 4,126,000 (approximately Kshs 420.85 million per year) by AtuTurizmIsletmeciligi A.S. and the bid of USD. 3,500,000 (approximately Kshs. 357 million per year) by Dufry International AG who was awarded the contract.

- (ii) THAT the contract was for a specified surface area of the duty free shops and would not have been in order to vary the area tendered for and seek to allocate part of the space to somebody else. This is inconsistent with the tendering conditions particularly if the area was specified in the bid documents.
- (iii) THAT KAA used quality cost-based selection method by combining technical and financial evaluation as opposed to least cost-selection method which led to loss of USD 626, 000. This method is normally used for consultancy services and request for proposals.
- (iv) THAT the tender committee did not award the tender within the 30 days after the tender opening as envisaged by Regulation 18(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
- (v) THAT failure to meet the requirement on submission of audited accounts by Flemingo International BVI and Flemingo Duty Free Shop Mumbai Private Ltd was considered minor deviation.
- (vi) THAT the Evaluation Committee erred by considering a mandatory requirement a minor deviation contrary to Section 64 (1) of the PPDA, 2005 that a tender is responsive if it conforms to all the mandatory requirements in the tender documents.

3.7 SUBMISSION BY MR. KAMLESH PATTNI

Mr. Kamlesh Pattni who is one of the four (4) directors and shareholder in World Duty Free Company Ltd trading as Kenya Duty Free Complex at JKIA appeared before the Committee on 22nd July 2015 and made oral submission. The following section provides a summary of the oral and written submission by Mr. Kamlesh Pattni:-

3.7.1 The 1989 Lease Agreement

1. By an Agreement made on 27th April 1989 as amended on 11th May 1990 between the GoK and WDF, it was inter alia agreed that KAA would grant leases to WDF of certain premises at both JKIA and MIA for a term of ten (10) years renewable for a further term of ten (10) years at the option of WDF, for the exclusive construction, management, control and commercial operation of duty free shops at the said airports as per the following specific Clauses of the Agreement: -
 - (i) *Clause (3(A) of the Agreement states " the Company shall have the sole and exclusive right within the area presently designated or which may in future be designated as the Airports (including any airport terminal which may in the future be constructed at the Airports by the Government)-to construct, develop and furnish the Complexes; and to operate the Complexes commercially for its own benefit freely and without restraint; and that no other persons or individual whatsoever shall be entitled to the same without prior written consent of the Company.*
 - (ii) *Clause 3(B) of the Agreement gave WDF the option to construct and operate at either both or both of the complexes an 8-bed transit hotel together with a restaurant and bar facilities for transit passengers.*
 - (iii) *Clause 3 (H) of the agreement also granted the company the sole and exclusive rights to advertise, or to arrange for other persons to advertise sales products within the airport terminals.*
 - (iv) *Clause (6(A) provides that the agreement would continue and remain in force until the expiry of the term of the leases granted to WDF or if such leases were to be renewed, until the expiration of such renewed lease.*
2. By dint of the Agreement, leases WDF were renewed in 1995 in respect of JKIA and MIA for terms of 10 years respectively expiring in 2005, which granted the company exclusivity to operate duty free shops.
3. By dint also of the agreement and to the Decrees given on 10th July 2002 by the High Court of Kenya (Hon. Justice Mbaluto) in HCCC Nos. 192 of 1999

and 464 of 2000, arising from the delay in renewing the said leases, KAA granted leases dated 29th January 2003 which replaced the expired 10-year term leases dated 25th August 1995, for terms of 10 years' renewable to WDF in respect of both JKIA and MIA.

4. Clauses 3(b) of the Leases dated 29th January 2003 (**Appendix 32**) granted to WDF in respect of JKIA and MIA, sole and exclusive rights to construct, manage and operate duty free shops and other related facilities and to advertise in both airports
5. As a consequence of the Agreement and the above mentioned leases, WDF had the sole and exclusive rights to construct, manage and commercially operate duty free shops at JKIA, MIA and any other airport and airport terminus owned and operated by KAA in Kenya and also the sole and exclusive right to advertise at the said airports.
6. It is therefore incorrect to state, assume or allege that: -
 - (i) The 1989 duty free contract as amended between GoK and WDF was terminated and in fact the said contract is the subject of one of the pending cases set out below which was one of the cases in the failed global settlement between WDF and others and KAA.
 - (ii) KAA was not party to 1989 contract. Its indirect involvement in the said contract was only in granting leases to WDF pursuant to the said contract and court orders.
 - (iii) WDF was never notified by GOK or KAA of any purported termination as alleged and continued in occupation of the premises which had been demised to it by KAA with the blessings of the Government and KAA until the 31st July/1st August 2013, when KAA with a horde of workers in a night of orgy, totally destroyed WDF duty free shops and those of DDF, broke and stole large quantities of their respective stock and dumped large quantities of the same outside the airport terminal having removed the same through customs control with the collaborate of the customs officers and with total impunity.

- (iv) Throughout the term of the leases granted by KAA pursuant to the GoK contract and court orders, WDF enjoyed peaceful possession of the premises demised to it with the exception of two raids which occurred on 4th and 5th December 2010 when two of its shops were demolished by KAA and the raid which occurred on night of 31st July and 1st August 2013.
- (v) As far as he's concerned, Mr. Pattni is not aware of any official or gazetted termination of the 1989 contract.
7. Although the 1989 Agreement gave exclusive rights to WDF, KAA breached the terms of the Agreement and the leases dated 29th January 2003 by granting leases (without WDF consent) to several third party operators including: KWAL, Goldrock, Glamour House, Hand Carvers, Maya Duty Free Ltd, Beth International Ltd, Rono Perfumes, Safari Liquor and Siamanda Duty Free.
 8. KAA also granted advertising rights to third parties to the exclusion of WDF.
 9. KAA went further to issue Tender Notice No. KAA/09/2007-2007 for the construction, management and operations of duty free shops (A,B,C) at Moi International Airport in contravention of WDF's sole and exclusive rights as a consequence of which WDF had to file a suit against KAA.
 10. In total disregard of the sole and exclusive rights of WDF, KAA issued Tender Notice No KAA/193/2013-2014 for the Development and Management of duty free retail services under a Single Master Concessionaire at JKIA and awarded the tender to a Swiss company named Dufry International AG and executed the Concession Agreement dated 22nd January 2015 with the said company. The said award is the subject of the proceedings in HCCC (Commercial Division) No. 45 of 2015 which is pending hearing and determination.
 11. Even after negotiating the surrender and monopoly exclusivity of WDF and the forceful eviction of WDF from KAA premises in 2013, KAA went ahead to grant the same exclusivity to Dufry International yet the tender documents did not specify exclusivity.

clarification No. 2 namely Registration /Incorporation Certificate, dully filled Confidential Business Questionnaire form, dully filled declaration form, dully filled litigation history form and detailed company profile. They only provided audited accounts.

23. Three bidders Dufry International AG, AtuturizmIsletmeciligi A. S and AER Rianta International (ARI) met the mandatory requirements and therefore qualified for the technical evaluation.

3.6.3.2 Technical Tender Evaluation

24. The technical tender evaluation was conducted in two parts as follows

Part A: Technical Mandatory Requirements

25. The evaluation criteria and the results were as follows:

- (i) Ability to access funds necessary for investment of at least USD 5.0 million;
- (ii) Minimum annual turnover of not less than USD 50 million for 2010, 2011 and 2012;
- (iii) Experience and capacity to develop and operate duty free shop (Minimum experience of 3 years):
 - a) Reference letters for each airport
 - b) Copies of leases/ agreements/contracts

26. AER Rianta International (ARI) was disqualified at this stage for failing to provide evidence and capacity to develop and manage duty free shops under a single master license. They also did not provide evidence of having operated three airports with annual passenger traffic of at least 7 million.

27. The other two bidders Dufry International AG and AtuturizmIsletmeciligi AS were qualified to move to the next stage of technical evaluation.

Part B: Technical Mandatory Requirements

28. In this stage evaluation was based on the following seven criteria;

No.	Criteria	Marks
1.	Experience	10 Marks
2.	Concept and fit out	15 marks
3.	Brand and product line	25 marks
4.	Marketing Plan	4 Marks
5.	Customer standards and quality control	6 Marks
6.	Management and operation	15 marks
7.	Financial performance, EPOS and recording system	10 marks
	Total	75 Marks

29. According to the evaluation report, Dufry International AG and AtuTurizmIsletmeciligi A.S. scored 85.45% and 84% respectively and therefore qualified for financial evaluation having attained the cut-off score of 70 out of 90. The evaluation report is dated 18th July, 2014.

Tender Adjudication

30. The Evaluation Report was presented to the Tender Committee in its meeting held on 31st July, 2014. The Committee rejected the recommendation of the Evaluation Committee and directed the committee to re-evaluate all the technical proposals. This was based on the concerns raised by Flemingo International BVI Ltd and AerRianta International who objected the results of the evaluation.

3.6.3.3 Tender Re-evaluation

31. Paragon Holdings was disqualified at the preliminary failing to use the revised tender documents. The revised tender documents were issued through the addendum No. 9 of 18th June, 2014. The other 4 bidders qualified for technical evaluation.

3.6.3.4 Tender Technical Re-Evaluation

32. The technical evaluation was repeated using the same evaluation criteria as in the first evaluation. All the 4 bidders were found responsive in the technical evaluation having attained the cut-off score of 70 marks out 90 and therefore preceded to the financial evaluation.

12. Following an uproar on the exclusivity granted to Dufry International, KAA issued a second Agreement to Dufry without the word "exclusivity" but hoodwinked the same exclusivity with the words "the Authority shall not contract any other person or entity for the operation of duty free retail shops at the Terminal" which in fact means an exclusivity.
13. WDF has since challenged the said exclusive award to Dufry under the above mentioned HCCC (Commercial Division) No. 45 of 2015 and the court issued an order maintaining the Status Quo which means that neither Dufry nor WDF can operate the single master concessionaire at JKIA the signing of the Agreement with monopoly clause with Dufry and later changing it as aforesaid casts a lot of aspersion and bad faith on the part of KAA with the sole purpose of getting rid of WDF.

3.7.2 Arbitral Award - 5th December 2012

14. Following the 4th and 5th December 2010 demolition of WDF's two shops namely Savannah Restaurant and Jumbo Africa Shop both at Gate 14, WDF commenced legal action against KAA. The Arbitral Tribunal (Hon. Justice Torgbor) rendered its award on 5th December 2012 in which WDF was awarded the following:
 - (i) Loss of unearned revenue of US\$ 27,959,264 incurred by WDF from KAA unlawful grant to third parties to operate duty free shops at JKIA;
 - (ii) US\$ 3,199,192 the revenue collected by KAA from advertising concessions it unlawfully granted third parties;
 - (iii) US\$ 10,000,000 as compensation for KAA breaches of contract;
 - (iv) US\$ 2,879,993 as revenue collected by KAA in the period 2005 to 2011;
 - (v) US\$ 58,108 lost revenue from lost income for the year 2011 consequent upon the demolition and evictions of WDF for its rented premises;
 - (vi) US\$ 5,000,000 as aggravated damages
15. In the interim the following cases were commenced relating to duty free shops at JKIA:

- (i) HCCC (Constitutional and Judicial Review Division) Petition No 101 of 2010 WDF vs KAA arising from destruction of WDF premises in 2010.
 - (ii) HCCC (Commercial Division) No 331 of 2012 WDF vs KAA. In this suit, contempt proceedings are pending before the former officers of KAA for their contempt of court in breaching diverse injunctive orders granted by Justice Nambuye.
 - (iii) HCCC (Commercial Division) No. 253 of 2012 WDF vs KAA relating to Tender Notice KAA/193/2013/-2014 issued by KAA for Development and Management of duty free retail shops under a Single Master Concessionaire License at JKIA.
 - (iv) HCCC (Commercial Division) No 327 of 2013 Diplomatic Duty Free Ltd vs KAA which sought the extension of extension of its leases dated 5th March and 14th September 2010 respectively. Injunctive Orders were granted by Justice Havelock on 29th July 2013 and subsequently by Justice Mabeya.
16. Instead of renewing the leases of WDF and DDF as requested in writing by both companies, on the night of 31st July and 1st August 2013, KAA breached the Order of 29th July 2013 in contempt of court and in breach of the Plaintiff's rights. Similar destruction and theft of duty free goods and eviction under KAA supervision occurred at Wilson Airport and Lokichoggio Airport and damaged caused to WDF shops and operations.
 17. In the process, WDF lost stocks which had been supplied on credit terms by Suzan General Trading JLT (a foreign company incorporated in UAE and registered in Kenya) which had not been paid for.
 18. With eviction of WDF from the airport premises and the refusal by KAA to renew its licenses and its staff security passes, WDF had no alternative but to cease its duty free operations at JKIA and hand over all the stock it had managed to salvage to Suzan.
 19. World Duty Free Ltd initially started in 1989 as House of Perfume, which was the investment division of Dubai-based group, Al Ghurair Enterprises with interest in banking, shopping malls and hotels. Al Ghurair invested USD 12 Million in improving Jomo Kenyatta International Airport (JKIA),

and consequently it was granted the concession to operate duty free shops in the then current airports and future airports in Kenya.

20. House of Perfume later changed its name to World Duty Free Company Limited operating in Kenya as Kenya Duty Free Ltd.
21. An Agreement was entered into on 27th April 1989 between the House of Perfume (the Company) and the Government of Kenya acting on behalf of the then Aerodromes Department in respect of duty free spaces at JKIA and Moi International Airport (MIA) in Mombasa for a term of 10 years, renewable upon expiry.
22. Clause 3(A) and 3(H) of the Agreement stated as follows:

3(A) the House of Perfume would have the exclusive rights to operate duty free facilities at the demised premises and at any other premises which in future could be designated as an airport.

3(H) no other person or would firm would operate a duty free facility in an Airport unless the House of Perfume gave its consent.
23. The Agreement was amended on 11th May 1990 to substitute the House of Perfume with World for Duty Free (WDF) - registered in the Isle of Man.
24. KAA was established as a statutory body in 1994 and took over the operations and responsibilities of Aerodromes Department after it ceased to exist. The contract was then deemed to have been made with KAA and new lease agreement was subsequently signed on 15th August 1995 substituting KAA as lessor while WDF remained as the lessee. The effective date of the lease was 1st July 1990 for a term of 10 years with the option of further renewal for a further term of 10 years subject to renegotiation of the rent payable to the KAA. Other terms of the agreement remained unchanged.
25. In 2002, the monopoly of operation of duty free shops at the airports by WDF was challenged in court and consequently KAA gave out the duty free shops located at JKIA to other operators despite the Agreement of exclusive rights being in force. A settlement was afterwards made in court with consent of KAA via a decree dated 1st July 2002.

26. Upon expiry of the 'first lease' a further 'second lease' (consisting of three lease agreements for three different duty free spaces) of 10-year period was entered into between KAA and WDF/DDF Company Limited on 29th January 2003. The Agreement contained the same clauses for sole and exclusive rights and automatic option of renewal for a further term of 10 years as the first lease.
27. In 2007, having traded as the owner of WDF for a long period of time, Mr. Pattni requested KAA that the leases be transferred to Diplomatic Duty Free (DDF) a locally incorporated company. As a result, most of the spaces previously occupied by WDF were transferred to DDF and two leases with respect to the transfer, were signed on 5th March 2007 and 14th September 2007. The two leases were for a term of 6 years each effective from 1st March 2007 and 1st August 2007 and thus were due to lapse on 31st March 2013 and 1st July 2013 respectively.
28. In March 2012, WDF pursuant to the renewal clause 4 (e) (iv) WWF notified KAA of its intention to renew the lease dated 29th January 2003 at JKIA and MIA for a further 10 years to permit it to continue operating the duty free shops at the airports. In February 2013, negotiations for renewal of the leases were initiated by WDF/DDF and after several meetings between the two parties; an agreement was reached to renew the leases.
29. As the date of expiry of the leases approached, KAA began giving unreasonable demands and conditions and it became evident that KAA was not willing to renew the lease agreements. WDF went to court seeking conservatory orders for temporary extension of the leases as negotiations for renewal of the leases continued between WDF/DDF and KAA.
30. WDF obtained court orders prohibiting KAA from repossessing the premises demised to WDF or granting leases to any third party, and compelling KAA to renew leases dated 5th March 2007 and 14th September 2007 for a term of 6 years each, pending inter-parties hearing which was for scheduled for 9th August, 2013. The orders were issued by the High Court on 30th July 2013

and copies were allegedly served to the KAA Managing Director on 31st July 2013.

31. Occupation of the duty free shops at JKIA by WDF/DDF continued until 31st July 2013 midnight when about 200 people allegedly led by Eng. Warutere carried out a raid on WWF/DDF shops with the aim of evicting WDF/DDF from the Airport's duty free premises. 22 shops together with first class lounges were destroyed and goods looted in spite of the conservatory court orders and an agreement of continued occupation of the premises arrived at between KAA and WDF 2 days before the eviction.
32. Prior to the eviction exercise WDF had other pending court cases against KAA of claim for damages of shops destroyed at the Airport in earlier raids on WDF duty free shops.
33. The goods that were destroyed/looted in the raid belonged to Suzan Duty Free, a company that was supplying goods to WDF/DDF outlets. The two companies entered into business partnership after WDF sold part of its shareholding to Suzan Duty Free for supplying goods. After the raid Suzan Duty Free notified KAA that goods belonged to them and not WDF/DDF.
34. The directors of Suzan DF sought for a meeting with the then KAA Managing Director Ms. Lucy Mbugua seeking to negotiate and arrive at an amicable settlement without resorting to litigation. This was in consideration that Suzan Duty Free will be allowed to reestablish themselves at the Airport duty free shops. In the negotiations, Suzan Duty Free was represented by Mr. Ahmed Adan whilst KAA was represented by a team of lawyers led by Mr. Fred Ngatia, others being Mr. Ahmednasir, Mr. Tom Macharia and Mr. Eric Mutua. WDF/DDF also participated in the negotiations where it was represented Wetangula and Makokha Co. Advocates.
35. An acceptable Agreement was reached subject to fulfillment of some pre-conditions by both parties. WDF/DDF was to fulfill the following: -
 - (i) *Withdrawal of all cases against KAA by WDF/DDF,*
 - (ii) *Setting aside of the Arbitral Award made by Hon. Justice (Rtd). E. Torgbor,*

(iii) *Withdrawal of further claims for damages for the recent and previous evictions,*

(iv) *Publicly and formally stating that that they shall have no further claims whatsoever against KAA.*

36. KAA in exchange, would identify available spaces at the airports and allocate them to Suzan Duty Free. Lawyers Mr. Ahmed Adan acting for Suzan Duty Free and Mr. Fred Ngatia KAA were to finalize the details of the settlement agreement. WDF/DDF was excluded from the negotiations.
37. Mr. Kamlesh Pattni consented to the Deed Settlement on the presumption that the lawyers for both parties had already reached a consensus on final details of the settlement agreement and that KAA would meet its part of the Agreement in full. In the Settlement Agreement, KAA was to allocate Suzan Duty Free - the new Company taking over from WWD/DDF 250 square metres of space in Terminal 1A, four shops and a bonded warehouse at JKIA and first Class lounge with a total area of 126.882 square metres at Terminal 1 and a bonded warehouse.
38. After a few days he (Mr. Kamlesh Pattni) was informed that a press conference had been arranged by KAA public relations firm Ogilvy and the then KAA Ag. Managing Director; Ms. Lucy Mbugua. In the Press Conference he accepted to surrender all premises allocated to WDF/DDF, exclusivity and monopoly of operating the duty free shops, renounced the arbitral award and undertook to withdraw the numerous cases pending in various courts filed against KAA and to never claim or demand any compensation then or in future regarding repossession of the shops and lounges by KAA.
39. After agreeing to enter into a Deed of Settlement and releasing a joint press brief at Transcom House (headquarters of MoTI), KAA reneged on the Agreement and refused to execute its part of the Agreement. The spaces identified for allocation to Suzan Duty Free of 250 square metres in JKIA Terminal 1A and first class lounge in MIA were never allocated. Instead KAA allocated other spaces in JKIA and MIA to Duty Free that were not part

of the settlement Agreement. KAA informed Suzan Duty Free that the space at Terminal 1A would be for public use and for passenger movement and resting, awaiting transit.

40. The space of 250 square metres at JKIA Terminal 1A identified for allocation to Suzan Duty Free was offered to private individuals and first class lounge allotted to a private company Swiss Port while various other shops were given to other people without a tendering process.
41. Again, the monopoly and exclusivity of operation of Airport duty free shops which WWD/DDF had surrendered was given to another duty free operator named Dufry, through an Agreement with similar features and form as the 1989 House of Perfume/GoK Agreement except that it was worded using the phrase 'no other person will be allowed to operate duty free shop at the airport'. The controversial award of exclusivity and monopoly of operation of the duty free shops raised questions which allegedly led to dismissal of some officers of KAA.
42. Due to KAA's failure to fulfill its part of the Deed Settlement and the subsequent allocation of duty free shops to Dufry, further negotiations collapsed and WDF/DDF filed a suit in court contesting the validity of the Agreement made between KAA and Dufry.
43. Mr. Kamlesh Pattni maintained that the Agreement entered into by KAA and Dufry International AG which gave Dufry International AG exclusivity and monopoly to operate duty free shops was not binding since the earlier Agreement made between WWD/DDF for operation of the same duty free shops with exclusivity was still in force because it was not legally terminated.
44. Currently Terminal 1A space is not occupied or in use by WDF/DDF, Suzan Duty Free, Dufry or any other local duty free operator. The space has been allocated to another Company called Maya Duty Free Ltd Duty Free Ltd on the pretext of temporary licence which expired on September, 2014 and renewed under unclear circumstances. Allocation of the space was done in disregard of tendering procedures.

45. Maya Duty Free Ltd Duty Free Ltd had operated at the duty free area at JKIA since 1986 but was expelled from the Airport to give room to the exclusive occupation of the WDF when it started occupation of shops at the Airport as House of Perfume.
46. He affirmed that all along he had been acting in utmost good faith and was willing to implement his part of the Settlement Agreement and the current stalemate is as a result of KAA failing to meet the terms set out in the Settlement Deed.

3.7.3 Responses to Committee Members' Queries

47. On whether there was an existing court injunction before the eviction at JKIA on the night of 31st July 2013, Mr. Pattni informed the Committee that WDF had obtained temporary court orders restraining KAA or its agents from repossessing from duty free shops occupied by WDF/DDF at the Airport or allocating the same shops/spaces to other operators until a settlement agreement on renewal of the leases is reached.
48. The orders had been in force since November 2012 and were extended through another injunction 2 days prior to eviction until hence there was no window period that KAA would exploit to evict WDF/DDF from the Airport.
49. On the value of duty free goods and alleged trading of duty free goods outside the designated duty free areas, he informed the Committee that due to the high number of passengers in JKIA and MIA there is a high business turnover and in addition it's a fast business with high profit margins. Apart from the Airport shops WDF/DDF also operated other outlets at the former Grand Regency Hotel and at the Village Market for diplomats.
50. On the relationship between Mr. Kamlesh Pattni and Suzan Duty Free considering that they were both represented by the same lawyers; Wetangula, Adan and Makokha Co. Advocates during negotiations, Mr. Pattni maintained that there was no business relationship between him as an individual and Suzan Duty Free Company and that Wetangula and

Makokha Co. Advocates were only acting as advocates for both WDF and Suzan Duty Free.

51. Mr. Kamlesh Pattni provided the names of directors/shareholders of WDF Company as at 14th November 2013 as follows:-

Names	Address	Nationality	Shares
Mr. Mukesh Vaya	P. O. Box 12505 Nairobi	Kenyan	166,668
Mr. Harjit Singh Gurdev	P. O. Box 12505 Nairobi	Indian	166,666
Mr. Kamlesh Pattni	P. O. Box 12505 Nairobi	Kenyan	166,666
Mr. Kevin Dias	P. O. Box 12505 Nairobi	Kenyan	Nil

52. Mr. Pattni submitted to the Committee a list of all pending court cases against KAA. The Company is still pursuing the cases in court and has not withdrawn any.
53. He stated that the arbitration case filed in the International Centre for Settlement of Investments Disputes Tribunal, Washington D.C was not between him and Mr. Nassir Ibrahim. Mr. Ibrahim had sued the GOK seeking colossal amount for compensation for breaching the contract to operate duty free shops at JKIA. WDF was also not party to the case. However, Mr. Nassir Ibrahim lost the case and he denied any role in deportation of Mr. Ibrahim Ali from Kenya.

B. COMMITTEE OBSERVATIONS

54. The Committee made the following observations from the submissions and evidence adduced by Mr. Kamlesh Pattni:-

- (i) **THAT the sole intention of Mr. Kamlesh Pattni and his associated companies was to perpetually retain all the spaces at the duty free**

area at JKIA and MIA, either in the name of the WDF/DDF or through other associated companies with different names.

- (ii) THAT the Deed Settlement Agreement between KAA and WDF/DDF was never concluded in full because neither of the parties fulfilled the pre-conditions to meet their part of the bargain. This has contributed to the current stalemate.
- (iii) THAT Mr. Kamlesh Pattni has not filed consent in court to set aside the Arbitral Award made by Hon. Justice (Rtd). E. Torgbor. This exposes KAA to a contingent liability of USD 49,096,557 (approximately Kshs. 5 billion).
- (iv) THAT during the negotiations on settlement Agreement Mr. Kamlesh Pattni participated as a director of WDF not for Suzan Duty Free. During the negotiations on the Settlement Agreement Mr. Kamlesh Pattni introduced Suzan Duty Free as a business partner
- (v) THAT Suzan Duty Free had no contractual relationship with KAA hence had no *locus standi* on any dealings in the matter.
- (vi) THAT WDF/DDF negotiated for duty free spaces at the airport only for it to relinquish the same space to Suzan Duty Free.
- (vii) THAT the leases and Deed Settlement negotiations all along were between Mr. Kamlesh Pattni, WDF/DDF and KAA. Suzan Duty Free was not party to the agreements at any point. It is therefore not clear how does Suzan Duty Free inherited the space awarded to WDF/DDF.
- (viii) THAT It is not clear whether Suzan Duty Free and WDF/DDF companies share directorship.
- (ix) THAT The International Centre for Settlement of Investment Disputes based in Washington D.C found the lease agreement entered into between the GOK and WDF in the year 1989 to be shrouded in bribery allegations and therefore had no force of law hence was declared null and void.

- (x) THAT KAA continued to perpetuate an illegality by signing new contracts of exclusivity and monopoly of operation at the airports with other subsequent companies.
- (xi) THAT Currently Terminal 1A space is not occupied or in use by WDF/DDF, Suzan Duty Free, Dufry International AG or any other local duty free operator.
- (xii) THAT despite the ongoing court case, the spaces at terminal 1A has been allocated to another Company called Maya Duty Free Ltd Duty Free Ltd on the pretext of temporary licence which expired on September, 2014 and renewed under unclear circumstances.
- (xiii) THAT allocation of the space to Maya Duty Free Ltd at terminal 1A which is the subject of the Committee inquiry seems to have been undertaken in total disregard of procurement laws and procedures.

3.8 SUBMISSION BY THE OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General wrote to the Committee adduced written evidence dated 13th April 2015 and attached to this Report as (**Appendix 33**). The following section provides a summary of the submission by the Office of the Attorney General.

3.8.1 Lack of Consultation by KAA on Duty Free Shops Matter

2. The Attorney General's Office submitted that it was not consulted on the following matters: -
 - (i) Drafting and reviewing of the Contracts between KAA and Dufry International AG.
 - (ii) Arbitral Award of Kshs. 4.3 billion to World Duty Free Ltd in regard to HCCC 413 of 2008.
 - (iii) High Court Case No. 45 of 2015 seeking to restrain KAA from signing Duty Free Concession Agreement with Dufry International AG.

The AG further submitted as follows: THAT

3.8.1 Nuance Group AG

3. Nuance Group AG does not appear in the database of registered companies or business names.

3.8.2 Dufry International Vs. Dufry Kenya Ltd.

4. Dufry International AG also does not appear in the database of registered companies of business names. However, there is a company registered under the name, Dufry Kenya Ltd in which Dufry International AG is a shareholder.
5. Dufry Kenya Ltd was registered on 7th November 2014 as a private company, registration number CPR/2014/166715. The directors/shareholders are as follows:-

Directors	Address	Nationality	Shares
Xavier Rossinyol Espel	214 Buckhausertrasse 11, 8048, Zurich, Switserland	Spanish	Nil
Miguel Angel Martinez Suarez	Calle Ribera Del Loira 38 4 Planta Zurich, Switzerland 28042 Madrid, Spain	Spanish	Nil
Non-Director Shareholders			
Dufry International AG. (a limited liability company incorporated in Switzerland as no CH-270.3.002.354-9)	Brunngaesslein 12, CH - 4052 Basel Switzerland	Swiss	60
Dufry Participations AG (a limited company incorporated in Switzerland as no CH-270.3.002.857-3)	Brunngaesselin 12, Ch 4052 Basel Switzerland	Swiss	40
	TOTAL SHARES		100

Source: Office of the Attorney General and Department of Justice²

3.3.4 Suzan General Trading JTL

6. Suzan General Trading JTL is registered in Dubai, UAE. It is registered in Kenya as a foreign company and issued with a certificate of compliance on 30th March 2010, registration number CF/2010/20695. The Directors/shareholders are registered as follows:

² Report of the Office of the Attorney General to PIC, 13th April 2015, Nairobi

Directors	Address	Nationality	Shares
Arif Yusuf Hafiz	P O Box 40182 NAIROBI	Indian	Nil
Sankar Anantha	P O Box 40182 NAIROBI	Indian	Nil

Source: Office of the Attorney General and Department of Justice³

7. The registered office of the Company is: LR No. 1870/111/461 Cargo Village, JKIA, and P.O. Box 40182, Nairobi- Kenya.
8. The authorized person for the company is Odhiambo M T Adala of P. O. Box 40182, Nairobi.

3.3.5 World Duty Free Company Ltd

9. The World Duty Free Company is incorporated in the British Virgin Islands and registered in Kenya as a foreign company and issued with a certificate of compliance in 2001 with registration number F55/2001. According to return of alteration, particulars of Directors dated 30th May 2003 and 17th February 2004 (in a temporary file), the directors are as follows:

Directors	Address	Nationality	Remarks
Arif Mapara	P O Box 39778 Dubai, UAE	British	Replaced Minal Morarji
Harjit Singh	P O Box 39778 Dubai, UAE	Malaysian	Replaced Mukesh Vaya
Arif Hafiz	P O Box 39778 Dubai, UAE	Indian	Replaced Kamlesh Pattri

Source: Office of the Attorney General and Department of Justice⁴

10. The registered office of the company is: LR No 21919 Jomo Kenyatta International Airport, P O Box 19122, NAIROBI.
11. The authorized person for the Company is Ajaykumar Kothari, P O Box 19122, Nairobi.

³Report of the Office of the Attorney General to PIC, 13th April 2015, Nairobi

⁴Report of the Office of the Attorney General to PIC, 13th April 2015, Nairobi

3.3.6 Africa Duty Free Ltd

12. Africa Duty Free Ltd was registered on 5th September 2003 as a private company, registration number C105501. According to the annual return for the year 2009, dated 13th February and form 203A dated 16th June 2011, the Directors/shareholders are as follows:

Directors	Address	Nationality	Shares
Arif Yusuf Hafiz	P O Box 1458-00100 Nairobi	Indian	1
Harjit Singh Gurdev Singh	P O Box 1458-00100 Nairobi	Kenyan	1
MukeshVaya	P O Box 12505 Nairobi	Kenyan	Nil
		TOTAL SHARES	2

Source: Office of the Attorney General and Department of Justice⁵

13. The registered office of the Company is: LR No. 1870/111/461 School Lane, Westlands, and P.O. Box 12505 NAIROBI.
14. The company is registered in Ras Al Khaimah, UAE. It is registered in Kenya as a foreign company and issued with a certificate of compliance on 8th October 2009, registration number CF/2009/10973. The Directors at registration were as follows:

Directors	Address	Nationality	Shares
Arif Yusuf Hafiz	P O Box 11401, Dubai, UAE	Indian	Nil
Sankar Ananthanarayan Singh	P O Box 11401, Nairobi	Indian	1

Source: Office of the Attorney General and Department of Justice⁶

15. The registered office of the company is Corner House, 8th Floor, Kimathi Street, P. O. Box 107-00100, Nairobi. The authorized person is Ahmad Adan of P O Box 10741-00100, Nairobi.

⁵Report of the Office of the Attorney General to PIC, 13th April 2015, Nairobi

⁶Report of the Office of the Attorney General to PIC, 13th April 2015, Nairobi

3.3.7 Diplomatic Duty Free Ltd

15. The company was registered on 21st January 1999 as private company registration number C841173. According to the annual return for the year 2013, dated 1st August 2013, the directors/shareholders are as follows:

Directors	Address	Nationality	Shares
Guarang Harishbhai	P O Box 11110-00100 Nairobi	Indian	2
Garwal Abhimanyu	P O Box 1458-00606 Nairobi	Kenyan	Nil
Non-Director Shareholders			
Gihon Holdings Ltd	P O Box 17870, Jebel Ali Free Zone		600
Solitaire Holdings Ltd	P O Box 14401, Hamran Centre, Diera Dubai, UAE		398
		TOTAL SHARES	1000

Source: Office of the Attorney General and Department of Justice⁷

16. The registered office of the company is: LR No. 21919, Jomo Kenyatta International Airport, and P.O. Box 1110- 00100 Nairobi.

3.3.8 Kenya Duty Free Complex

17. The company was registered on 14th August 1990, registration number BN153060, nature is business is retail and wholesale trade in duty free goods. The proprietor is World Duty Free Company Ltd.

18. The registered office of the Company is LR 209/477/52, Silopark House, City Hall Way, JKIA and MIA, Mombasa. P. O. Box 19122, Nairobi.

B. COMMITTEE OBSERVATIONS ON THE ATTORNEY-GENERAL'S SUBMISSION

19. The Committee made the following observations from the submissions and 19. evidence adduced by the Office of the Attorney General and Department of Justice:-

- (i) **THAT the Attorney General was not consulted by KAA in the drafting and reviewing of the Contracts between KAA and Dufry International AG.**

⁷Report of the Office of the Attorney General to PIC, 13th April 2015, Nairobi

- (ii) THAT the Attorney General was not consulted by KAA in the Arbitral Award of Kshs. 4.3 billion to World Duty Free Ltd in regard to HCCC 413 of 2008.
- (iii) THAT the Attorney General was not consulted by KAA High Court Case No. 45 off 2015 granting World Duty Free Ltd sole and exclusive rights to operate duty free at JKIA and MIA.
- (iv) THAT Prof. Githu Muigai, the Attorney General was indeed consulted in the matter of the settlement negotiations and he appeared and spoke at the press release of 16th September 2013.
- (v) THAT Prof. Githu Muigai, the Attorney General was present at the Press Conference of 16th September 2013. The circumstances and the role of Prof. Muigai and that of the Office of the Attorney General at the press conference is not clear. The failure by the government officials present at the press conference to ensure that a deed of settlement is entered into between KAA and WDF/DDF has exposed KAA and the country to a contingent liability of not less Kshs. 17.15 billion.
- (vi) THAT Dufry Kenya Ltd in which Dufry International AG is a shareholder is a duly registered company in Kenya.
- (vii) THAT Dufry International AG (a limited liability company incorporated in Switzerland) is the majority shareholder with 60 shares while Dufry Participation AG (a limited liability company incorporated in Switzerland) is the minority shareholder with 40 shares in Dufry Kenya Ltd.

4.0 COMMITTEE GENERAL OBSERVATIONS

From the oral and written evidence submitted, the Committee, made the following observations: -

1. THAT the International Centre for Settlement of Investment Disputes based in Washington D.C. found the lease agreement entered into between the GoK and WDF in the year 1989 to be shrouded in bribery allegation and therefore had no force of law hence was declared null and void.
2. THAT the KAA management purposefully designed and signed a flawed contract document with contentious clauses and it took the intervention of the CS, MoTI to force a revision of the clauses, which has led to signing of a new Agreement. The subsequent action taken by Management of amending the Agreement has addressed the contentious clauses.
3. THAT if the financial proposals for tender no. KAA/193/2013-2014 were evaluated independently from the technical proposals, then KAA would have earned minimum yearly guaranteed concession fees of USD 626,000 (approximately 63.85 million) more which is the price difference between the highest bid yearly guaranteed concession bid price of USD. 4,126,000 (approximately Kshs. 420.85 million per year) by AtuturizmIsletmeciligi A.S. and the yearly guaranteed concession bid price of USD. 3,500,000 (approximately Kshs. 357million per year) by Dufry International AG who was awarded the contract.
4. THAT the Tender Evaluation Committee erred by considering a mandatory requirement a minor deviation contrary to Section 64 (1) of the Public Procurement and Disposal Act, 2005 that a tender is responsive if it conforms to all the mandatory requirements in the tender documents.
5. THAT KAA has never bothered to make provisions for the contingent liabilities of Kshs. 10.15 billion arising from the arbitral and high court

awards, and professional legal fees raising doubts as to the accuracy of its audited financial statements and putting KAA assets at risk of auction should the claims be effected.

6. THAT KAA and WDF/DDF have not filed consent in court to set aside the Arbitral Award made by Hon. Justice (Rtd.) E. Torgbor. This exposes KAA and tax payer's funds to a contingent liability of USD 49,096,557 (approximately Kshs. 5 billion inclusive of interest).
7. THAT the sole intention of WDF/DDF was to perpetually retain all the spaces at the duty free area at JKIA and MIA, either in the name of the WDF/DDF or through other associated companies with different names.
8. THAT Eng. Michael Kamau, suspended CS, MoTI on the 16th September 2013, held a highly publicized press conference jointly with WDF/DDF officials categorically stating that all court cases filed by World Duty Free and its associate/subsidiary companies against KAA by WDF/DDF have been withdrawn. However, Eng. Kamau did not table any evidence before the Committee to show that the cases had been withdrawn.
9. THAT Eng. Michael Kamau did not follow through to ensure that his public pronouncement on the 16th September 2013 is fully implemented and a deed of settlement entered into to protect public interest. This has led to an exposure of public funds of not less than Kshs. 17.15 billion arising from the arbitral awards, high court rulings, interests, professional legal fees and damages from forceful eviction of WDF.
10. THAT the Deed Settlement Agreement between KAA and WDF/DDF was never concluded in full because neither of the parties fulfilled the pre-conditions to meet their part of the bargain. This has contributed to the current stalemate.
11. THAT currently Terminal 1A space is not occupied or in use by WDF/DDF, Suzan Duty Free, Dufry International AG or any other local duty free operator. However, despite the ongoing court case, the spaces

at Terminal 1A have been allocated to another company, namely Maya Duty Free Ltd on the pretext of temporary licence which expired on September, 2014 and renewed under unclear circumstances.

12. THAT allocation of the space to Maya Duty Free Ltd at Terminal 1A which is the subject of the Committee inquiry seems to have been undertaken in total disregard of procurement laws and procedures.
13. THAT the external legal team consisting of M/s E.K. Mutua and Co. Advocates, M/s Ahmednasir Abdikadir & Co. Advocates, Mr. Mansur Issa and Mr. Tom Macharia under the leadership of Mr. Fred Ngatia, hired by KAA to help resolve the duty free shops stalemate has not fully achieved the intended objective in terms of resolving the cases but instead slapped KAA with a hefty legal fee note standing at approximately Kshs. 350 million.
14. THAT Mr. Fred Ngatia did not act in the best interest of his client KAA in his representation of KAA on the duty free cases and dispute resolutions. He failed to advise KAA to take the matter of determination of validity of the 1989 lease agreement to court and instead advised that an international court had already determined the matter. He devised a strategy of forceful eviction of WDF/DDF from JKIA and did not follow through to ensure that a deed of settlement is registered at the courts and as a direct consequence, WDF/DDF has not withdrawn the cases in court. Through his advice, KAA and the Kenyan public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during the forceful eviction.
15. THAT Ms. Lucy Mbugua, the then CEO KAA, failed in her fiduciary duty to effectively manage the external professional legal team that KAA hired and instead resorted to accusation of the legal counsel Mr. Fred Ngatia of not cooperating with his client KAA on the matter of settlement with WDF/DDF.
16. THAT Eng. Stephen Gichuki as the CEO presided over the hurried forceful eviction of WDF/DDF from JKIA at night using hired goons

without taking due consideration of the legal and financial implications of the action on KAA and the businesses operating at the duty free shops in JKIA. Through his action, KAA and the Kenyan public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during forceful eviction.

17. THAT the Attorney General was not consulted by KAA in the drafting and reviewing of the contracts between KAA and Dufry International AG, in the Arbitral Award of Kshs. 4.3 billion to World Duty Free Ltd in regard to HCCC 413 of 2008 and in the HCCC 45 of 2015 seeking to restrain KAA from awarding Concession Agreement to Dufry International AG.
18. THAT Prof. Githu Muigai, the Attorney General was present at the Press Conference of 16th September 2013. The circumstances and the role of Prof. Muigai and that of the Office of the Attorney General at the press conference is not clear. The failure by the government officials present at the press conference to ensure that a deed of settlement is entered into between KAA and WDF/DDF has exposed KAA and the country to a contingent liability of not less Kshs. 17.15 billion.
19. THAT Dufry Kenya Ltd in which Dufry International AG is a shareholder, is a duly registered company in Kenya.

5.0 COMMITTEE'S GENERAL RECOMMENDATIONS

Arising from the evidence adduced by witnesses and observations thereof, the Committee recommends:-

15. THAT EACC investigates Ms. Lucy Mbugua, Mr. Victor Arika and all other present and past officials of KAA involved in the designing and subsequent signing of flawed contract agreements between KAA and duty free shops operators at JKIA and MIA.
16. THAT EACC investigates the allocation of duty free shops spaces at Terminal 1A to Maya Duty Free Ltd., and any duty free operators at T1A, which seems to have been undertaken in total disregard of procurement laws and procedures.
17. THAT Eng. Michael Kamau, the suspended CS, MOTI should be held individually responsible for his failure of not following through and ensuring that a deed of settlements is entered between KAA and WDF/DDF to protect public interests. This failure has exposed KAA and the Kenya tax payer to a contingent liability of not less than Kshs. 17.15 billion.
18. THAT the Attorney General takes over as a matter of national interest all the KAA duty free cases that were being handled by external legal team and ensure that a Deed Settlement Agreement between KAA and WDF/DDF is quickly concluded in an amicable manner to protect public interest.
19. THAT KAA in consultation with the Attorney General works towards amicably finalizing the matter of Arbitral Award of Kshs. 4.3 billion granted to World Duty Free Ltd in regard to HCCC 413 of 2008.
20. THAT Eng. Stephen Gichuki as the then CEO be held personally criminally/civilly liable for abuse of office by executing the forceful eviction of WDF/DDF from JKIA at night using hired goons without taking due consideration of the legal and financial implication of the action on KAA and the businesses operating at the duty free shops in

JKIA. Through his action, Kenya public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during forceful eviction.

21. THAT joint assessors be appointed by KAA to evaluate the actual losses incurred if any by WDF and DDF arising from the 2013 forceful eviction by KAA. This is to determine the credibility of the sums of Kshs. 7 billion being claimed by WDF/DDF on the matter.
22. THAT KAA should expeditiously conclude all the global settlement agreements between it and WDF/DDF and other duty free shops operators in order to save the Kenyan taxpayers costly litigation fees.
23. THAT the Attorney General immediately starts the process of domesticating the ruling by the International Centre for Settlement of Investment Disputes based in Washington D.C that found the lease agreement entered into between the GOK and WDF/DDF in the year 1989 to be shrouded in bribery allegations and therefore had no force of law.
24. THAT KAA reviews Mr. Fred Ngatia's contested fee note of Kshs. 290 million with a view to making payment only for true and actual services delivered having so far been paid approximately Kshs. 60 million. Mr. Fred Ngatia did not act in the best interest of his client KAA in his representation of KAA on the duty free cases and dispute resolutions. Through this advice, KAA and the Kenyan public stands to lose not less than Kshs. 7 billion which WDF/DDF is claiming for loss incurred during the rushed forceful eviction.
25. The Attorney General, Ministry responsible for Air Transport, Inspector of State of Corporations, Efficiency Monitoring Unit (EMU) and KAA form a technical team to audit the institutional framework, mandate and performance of KAA since its inception. This is to address any legal and institutional shortcomings hindering KAA from delivering on its mandate.
26. THAT the Attorney General, Ethics and Anti-Corruption Commission and the Public Procurement Oversight Authority should form a technical team

within three (3) months of the adoption of this Report to review all existing contracts that have been signed between KAA and business operators at JKIA and MIA from the year 1989 to 2015.

27. THAT Director General, Public Procurement Oversight Authority should debar for at least three (3) years, any business operator found to have flouted procurement laws in acquiring its operating contract. The debarment notice should be published and publicized in at least two daily newspapers with nationwide reach and the Kenya Gazette.
28. THAT the Attorney General and KAA should review the KAA Act (Cap 395), to conform to the Constitution of Kenya and the emerging global security challenges experienced in the aviation industry.

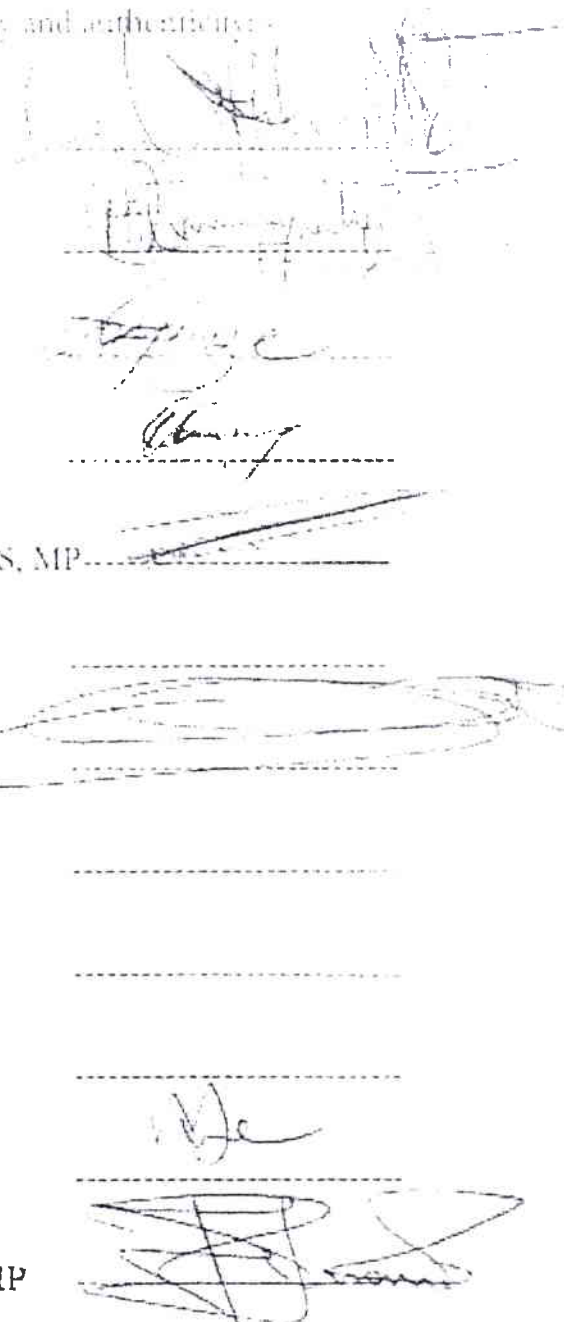
REPORT ADOPTION LIST

ADOPTION OF THE PUBLIC INVESTMENTS COMMITTEE
SPECIAL REPORT ON KENYA AIRPORTS AUTHORITY DUTY
FREE CONTRACTS AT JOMO KENYATTA INTERNATIONAL
AIRPORT AND MOI INTERNATIONAL AIRPORT: 1989 TO 2015.

DATE: _____ TIME: _____

We, the Members of the Public Investments Committee have, pursuant to Standing Order 199, adopted this Report and hereby affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

- (1) Hon. Adan Wabwire Kevnari, CBS, MP
- (2) Hon. Anthony Kamani Ichung'uah, MP
- (3) Hon. Francis Mwanzi Nyerere, EGH, MP
- (4) Hon. (Dr.) Obara Oginga, MGH, MP
- (5) Hon. (CPA) Thomas Ludindi Mwadegha, CBS, MP
- (6) Hon. Adan Mohammed Noory, MP
- (7) Hon. Franklin Mithika Litungi, MP
- (8) Hon. Athanas Wafula Wamunyonyi, MP
- (9) Hon. Elias Bare Shull, MP
- (10) Hon. Sammy Silas Komen Mwaita, MP
- (11) Hon. John Olago Aluoch, MP
- (12) Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP



Handwritten signatures of the committee members, corresponding to the list on the left. The signatures are written in black ink on a white background. Some signatures are more legible than others, while some are heavily scribbled or crossed out.

- (13) Hon. (Eng.) John Kiragu, MP
- (14) Hon. (Major) (Retd.) John Waiuke Koya, MP
- (15) Hon. Abdullswamad Sheriff Nassir, MP
- (16) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (17) Hon. Bernard Munywoki Kiungu, MP
- (18) Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
- (19) Hon. Cornelily Serey, MP
- (20) Hon. Ejidius Njogu Barua, MP
- (21) Hon. Irungu Kang'ara, MP
- (22) Hon. Johana Kipyegon Ng'eno, MP
- (23) Hon. John Muchiri Nyaga, HSC, MP
- (24) Hon. John Ogutu Omondi, MP
- (25) Hon. Korei Ole Lemein, MP
- (26) Hon. Mary Sally Kerua, MP
- (27) Hon. Onesmus Muthomi Njuki, MP

Handwritten signatures of the 27 members of parliament listed on the left, each written on a set of three horizontal lines.

APPENDICES

6.0 APPENDICES

- Appendix 1:** First Tender Advertisement dated 4th October 2013
- Appendix 2:** Second Tender Advertisement dated 26th and 28th March 2014
- Appendix 3:** Notification of Tender Award to M/S Dufry International AG dated 15th August 2014
- Appendix 4:** PS, MoTI letter to KAA dated 19th December, 2014 Ref. MOT&I/ AT/028/238 Vol. VII/14.
- Appendix 5:** PS, MoTI letter KAA dated 6th February, 2015
- Appendix 6:** Past Duty Free Court Cases
- Appendix 7:** 1989 Agreement
- Appendix 8:** Letter dated 8th October 2013 by Ms. Lucy Mbugua engaging the services of external lawyer, Mr. Fred Ngatia
- Appendix 9:** Board Minutes of 195th (Special) Meeting held on 13th May 2014
- Appendix 10:** MoTI letter Ref. MOT/C/ADM/5/I Vol. III (75)
- Appendix 11:** Letter to Mr. Fred Ngatia dated 10th November 2014
- Appendix 12:** Minutes of the First Meeting between KAA management, Mr. Ngatia and WDF/DDF/Suzan DF held on 4th July 2013 at Fairview Hotel
- Appendix 13:** Minutes of the Second Meeting between KAA management, Mr. Ngatia and WDF/DDF/Suzan DF held on 9th July 2013 at Andrews Apartments
- Appendix 14:** Letter from DDF lawyers to KAA dated 29th May 2014
- Appendix 15:** Letter by Mr. B. Omuse, the then Director of Aerodromes, to the PS, Provincial Administration and Internal Security dated 29th January 1990

- Appendix 16:** Letter from Board of Airline representatives to the Minister of State in Office of the President, Hon. Burudi Nabwera dated 19th February 1990
- Appendix 17:** Legal opinion by Solicitor General dated 24th June 1993 to the effect that the Agreement of 27th April 1989 was null and void
- Appendix 18:** World Duty Free Company Registration Certificate dated 15th December 1989 registered in the Isle of Man.
- Appendix 19:** Word Duty Free Company Ltd Registration Certificate dated 21st November 2001 registered in the British Virgin Islands
- Appendix 20:** Letter dated 5th September 2013 from KAA attaching the Resolutions made by the KAA Board of Directors at a board meeting held on 4th September 2013
- Appendix 21:** Copy of Draft Deed Settlement that is yet to be assented to by different parties
- Appendix 22:** Letter by Ag MD, Ms. Lucy Mbugua dated 16th September 2013 attaching five (5) letters of offer of premises to Suzan General Trading, all dated 16th September, 2013
- Appendix 23:** Press Release by CS, MoTI dated 16th September, 2013
- Appendix 24:** Unsigned Press release by Mr. Kamlesh Pattni
- Appendix 25:** Letter from KAA dated 25th September, 2013 to Ngatia & Associates commenting on the leases to Suzan General Trading
- Appendix 26:** Letter dated 30th September 2013 from Ngatia & Associates instructing that premises were available for lease to Suzan General Trading at Moi International Airport, Mombasa
- Appendix 27:** Letter dated 8th December 2014 from KAA to Ngatia & Associates expressing appreciation for professional services rendered and need to conclude pending cases in court

- Appendix 28:** Proposal on the way forward by the legal team dated 28th April 2015
- Appendix 29:** Letter dated 15th August 1996 by the Monopolies and Prices Commission
- Appendix 30:** KAA Fire Investigation Report (July 2013)
- Appendix 31:** Letter by KAA dated 30th January, 2015 to the MoTI
- Appendix 32:** Leases dated 29th January 2003 granted to WDF
- Appendix 33:** Submission by the Attorney General to the Committee



Kenya Airports Authority

INTERNATIONAL TENDER NOTICE

The Kenya Airports Authority invites sealed tenders from eligible firms for the following tenders:-

1. DEVELOPMENT AND MANAGEMENT OF A DUTY FREE RETAIL MASTER CONCESSIONAIRE AT JOMO KENYATTA INTERNATIONAL AIRPORT- KAA/193/2013-2014

Kenya Airports Authority wishes to engage a reputable Duty Free Retail Master Concessionaire to manage its duty free offering at the new Jomo Kenyatta Terminal Unit 4. Under the new facility the authority aim to create a new retail experience for our passengers at Jomo Kenyatta International Airport by maximizing on commercial offer by creating retail platform to showcase new brands, new products and better services.

- The operator shall be expected to demonstrate an understanding of the Travel Retail business.
- Tenderers shall provide details of past relevant business experience, including a list of sites where the tenderer is operating as a Duty Free Master Concessionaire. Only firms with relevant experience as a Duty Free Master Concessionaire in the travel retail business will be considered.

2. DEVELOPMENT AND MANAGEMENT OF AN INTERNATIONAL BRAND FASTFOOD OUTLET AT JOMO KENYATTA INTERNATIONAL AIRPORT - KAA/197/2013-2014

Kenya Airports Authority wishes to engage an internationally reputable firm with experience in operating an International Branded Fast Food Outlet, to manage a similar facility at the new terminal unit 4.

- The successful operator shall be expected to demonstrate an understanding of the Travel Retail business and have experience in operating in an up market environment which will include shopping malls, airports, train stations, up town streets e.t.c.
- Tenderers to provide a list of at least ten (10) outlets where the international brand is currently operating. These sites should be from at least three continents.

Interested eligible firms may obtain further information and inspect the tender documents at the Kenya Airports Authority Headquarters at JKIA, 2nd Floor, office of the GM (Procurement & Logistics) from 8.00 am to 5.00 pm local time, Monday to Friday except lunch time between 1.00 pm and 2.00 pm and on public holidays.

Tender documents may be purchased at Kenya Airports Authority Headquarters at JKIA Nairobi for non-refundable fee of Kshs. 1,000.00 for each document. Payment will be made to the cashier on 1st floor at KAA HQS by cash or Banker's Cheque payable to the Kenya Airports Authority. The applicant or his/her agent will pick tender document at the procurement office, 2nd floor of the same building upon production of a payment receipt.

Duly completed tender documents in plain sealed envelopes with **TENDER NUMBER AND TITLE OF THE TENDER** clearly indicated on the envelope shall be addressed to:-

**The Ag. Managing Director,
Kenya Airports Authority,
Kenya Airports Authority Headquarters Building,
Airport North Road,
P. O. Box 19001-00501,
NAIROBI.**

and be deposited in the Tender Box located on the 2nd Floor of Kenya Airports Authority Headquarters Building at JKIA, so as to be received on or before 25th October 2013 at 11.00am and shall be valid for a period of 90 days after bid submission. Late bids shall be rejected. Opening of bids will take place immediately thereafter at the Conference Room, 5th floor, KAA HQ's Building in the presence of tenderers/representatives who wish to attend.

The Authority reserves the right to accept or reject any tender and does not bind itself to accept the lowest or any tender.

Canvassing for the tender by the tenderer or by proxy shall lead to automatic disqualification of their tender.

AG. MANAGING DIRECTOR

↑ xibneqoñ



Kenya Airports Authority

INTERNATIONAL TENDER NOTICE

DEVELOPMENT AND MANAGEMENT OF A DUTY FREE RETAIL MASTER CONCESSION AT THE NEW JOMO KENYATTA INTERNATIONAL AIRPORT, TERMINAL UNIT 4 - RE-TENDER

TENDER: KAA/193/2013-2014

Kenya Airports Authority wishes to engage a reputable Duty Free Retail Master Concessionaire to manage its duty free offering at the new Jomo Kenyatta International Airport, Terminal Unit 4. Under the new facility the Authority aims to create a new retail experience for passengers at Jomo Kenyatta International Airport, by maximizing on commercial offering by creating a retail platform to showcase new brands, new products and better services at competitive prices.

The Authority now invites sealed tenders from eligible firms for the Development and Management of a Duty Free Retail Master Concession at the new Jomo Kenyatta International Airport, Terminal Unit 4.

Interested bidders must meet the following minimum requirements among others:-

- Having a minimum of three years continuous operating experience as a duty free retail master concessionaire in at least three airports each with an annual traffic of not less than seven (7) million passengers.
- Having a minimum of annual turnover of not less than US\$ 50 million from operation of such duty free retail master concession.
- Ability to access funds necessary for the investment in the duty free master retail concession of at least US\$ 5 million.

Interested eligible firms may obtain further information and inspect the tender documents at the Kenya Airports Authority Headquarters at JKIA, 2nd Floor, office of the General Manager (Procurement & Logistics) from 8.00 am to 5.00 pm local time, Monday to Friday except lunch time between 1.00 pm and 2.00 pm and on public holidays.

Tender documents may be purchased at Kenya Airports Authority Headquarters at JKIA Nairobi for non-refundable fee of Kshs. 1,000.00 for each document. Payment will be made to the cashier on 1st floor at KAA HQS by cash or Banker's Cheque payable to the Kenya Airports Authority. The applicant or his/her agent will pick tender document at the procurement office, 2nd floor of the same building upon production of a payment receipt.

There shall be a mandatory pre-bid conference at 10.00 am on 11th April 2014 at the Kenya Airports Head Office conference room 5th floor and thereafter a site inspection at the new terminal unit 4.

Duly completed tender documents in plain sealed envelopes with **TENDER NUMBER AND TITLE OF THE TENDER** clearly indicated on the envelope shall be addressed to:-

The Managing Director,
Kenya Airports Authority,
Kenya Airports Authority Headquarters Building,
Airport North Road,
P. O. Box 9001-00501
NAIROBI.

and be deposited in the Tender Box located on the 2nd Floor of Kenya Airports Authority Headquarters Building at JKIA, so as to be received on or before 18th April 2014 at 11.00am and shall be valid for a period of 90 days after bid submission. Late-bids shall be rejected. Opening of bids will take place immediately thereafter at the Conference Room, 5th floor, KAA HQ's Building in the presence of tenderers/representatives who wish to attend

The tender must be accompanied by a bid security of Kshs1,000,000/= Kenya Shillings One Million only or an equivalent amount in a freely convertible currency.

The Authority reserves the right to accept or reject any tender and does not bind itself to accept the lowest or any tender.

Canvassing for the tender by the tenderer or by proxy shall lead to automatic disqualification of their tender.

MANAGING DIRECTOR



**REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS**

TENDER NOTICE

The County Government of Machakos wishes to invite bids from eligible construction companies for road works as described below for the Routine Maintenance of Syokimau Roads in Mavoko Sub-County within Machakos County.

Interested bidders **MUST** be registered with the National Construction Authority (NCA) in the Road Construction categories indicated below. Bidders for Youth, Women and Persons With Disability must attach proof of Registration with the National Treasury or County Treasury in their respective preference group.

No bidder shall be awarded more than one contract

S/No.	Tender No.	Road Name	Length (KM)	Registration Category with NCA	Eligible Bidder	Budget Amount (incl. VAT) In Kshs
1	GMC/TRPH/RDS/15/2013-14	Community Road	4	3, 4 & 5 Only	All Bidders	19,000,000.00
2	GMC/TRPH/RDS/16/2013-14	Klungani Road	4	3, 4 & 5 Only	All Bidders	18,000,000.00
3	GMC/TRPH/RDS/17/2013-14	Mwananchi Road	4.5	4, 5, & 6 Only	Youth, Women and Persons With Disability	17,000,000.00
4	GMC/TRPH/RDS/18/2013-14	Sabaki Road (Main Ring Road)	7.5	3, 4 & 5 Only	All Bidders	28,000,000.00
5	GMC/TRPH/RDS/19/2013-14	Silanga-Kalombo Road	4.5	3, 4 & 5 Only	All Bidders	20,000,000.00
6	GMC/TRPH/RDS/20/2013-14	Syokimau-Katani Road	4	4, 5, & 6 Only	Youth, Women and Persons With Disability	17,000,000.00
7	GMC/TRPH/RDS/21/2013-14	Quarry-Mulinge Scheme Road	2.5	4, 5, & 6 Only	Youth, Women and Persons With Disability	17,000,000.00

Youth, Women, Persons With Disability and upcoming contractors are particularly encouraged to apply

Bidders may examine and obtain detailed tender documents during normal working hours, from the Supply Chain Management Services Office, Rm. 37, 1st floor, Machakos County Headquarters, Ngeli Road, during normal working hours, upon payment of a non-refundable fee of Kshs. 1,000 (Kenya Shillings One Thousand Only) per document. Payment shall be made to the Machakos County Tender Account, Account No. 1142993252, Kenya Commercial Bank, Machakos and the bank slip presented to the Cash Office, Ground Floor, Headquarters, Ngeli Road, Machakos upon which an official receipt will be issued for presentation to the Supplies Chain Management Services Office for issuance of document. A copy of the receipt should be attached to the tender document upon submission.

Qualification for Tendering (Mandatory)

The bidders are expected to include the following in their bids:-

- Certified Copy of Certificate of Registration/Incorporation.
- Certified Copy of valid Tax Compliance Certificate.
- Certified Copy of registration Certificate with the National Construction Authority in the stated categories.
- Certified Copy of registration with the National Treasury or County Treasury for bidders under Youth, Women and Persons With Disability.

The criteria of evaluation of bids

The criteria shall be as described in the tender documents.

Description of Works

The description and scope of works is as described in the tender documents.

Mandatory site visits and/or Bidders' Conference shall be held on the venue date and time as per the schedule below.

TENDER NO.	MEETING VENUE	DATE	START TIME
A1 Tender	Mavoko sub-County headquarters (former Municipality HQS)	8 th April 2014	10.00 AM

Prices quoted should include all taxes and must be expressed in Kenya Shillings and shall remain valid for a period of 90 days from the date of tender opening.

Completed tender documents enclosed in separate plain sealed envelopes and clearly marked with the respective Tender Number and Tender Name should be addressed and sent to:

County Secretary,
County Government of Machakos,
P.O. Box 1986-80100,
Tel: +254-44-20246,
MACHAKOS.

and be deposited in the tender box at the Machakos County Town Hall located off Ngeli Road on or before the date and time indicated in the table below:

TENDER NO.	TENDER OPENING VENUE	DATE	TIME
All Tenders	Machakos County Town Hall located off Ngeli Road	16 th April 2014	11.00 AM

Tender will be opened immediately thereafter in the presence of tenderers or their representatives who choose to attend. Late bids will not be accepted.

COUNTY SECRETARY

Appendix 2
(a)

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(a)

A Appendix 2 (b)



Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: +254 - 020 - 822111 / 6611000 / 6612000
Fax: +254 - 020 - 822078, 827304
Email: info@kenyaairports.co.ke
www.kenyaairports.co.ke

NOTIFICATION OF AWARD

KAA/193/2013-2014

15th August 2014

M/s DUFREY INTERNATIONAL AG
C/O DUFREY HOSPANOSUIZA
PARQUE EMPRESARIAL PUETA DE LAS NACIONES
C/ RIBERA DEL LOIRA, 38
EDIFICIO 4 -4A PLANTA – 2842 MADRID
ESPANA / SPAIN
Tel. no. 34 666 57 45 17
Miguel.martinez@dufrey.com

Dear Sir,

**RE: DEVELOPMENT AND OPERATION OF DUTY FREE SHOPS
UNDER A SINGLE MASTER LICENSE AT THE NEW JOMO
KENYATTA INTERNATIONAL AIRPORT, TERMINAL UNIT 4
TENDER NO. KAA/193/2013-2014**

This is to notify you that your tender for Development and Operation of Duty Free Shops under a Single Master License at the New Jomo Kenyatta International Airport, Terminal Unit 4 has been accepted.

You will be required to pay a minimum annual guarantee fee of **US\$ 3.5 million per annum exclusive of taxes** subject to an **annual license fee at the rate of 20%** on annual gross sales

The Marketing and Business Development Department will provide you with a Letter of Offer which shall be signed by the parties within twenty-eight (28) days from the date of this letter but not earlier than fourteen (14) days from the date of this letter.

Kindly fill the acceptance as a sign of accepting the award.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Lucy Mbugua', is written over the typed name.

LUCY MBUGUA
MANAGING DIRECTOR

CC - *Ag. General Manager (M&BD)*
General Manager (Finance)
Airport Manager (JKIA)
Corporation Secretary

Appendix 3

Appendix 4



**MINISTRY OF TRANSPORT AND INFRASTRUCTURE
OFFICE OF THE PRINCIPAL SECRETARY/TRANSPORT SERVICES**

Telephone: 2729200
E-mail: ps@transport.go.ke

Ngong Road
P O Box 52692 - 00200
NAIROBI, Kenya

MOT&I/AT/028/238 VOL.VII/14

19th December, 2014

Ms. Lucy Mbugua
Managing Director
Kenya Airports Authority
NAIROBI



Katherine

Dear *MD,*

Discuss a report and way forward

**RE: CONCESSION AGREEMENT FOR DEVELOPMENT AND
MANAGEMENT OF DUTY FREE MASTER LICENSE AT JOMO
KENYATA INTERNATIONAL AIRPORT BETWEEN KENYA
AIRPORTS AUTHORITY AND DUFREY INTERNATIONAL DATED
15TH OCTOBER, 2014**

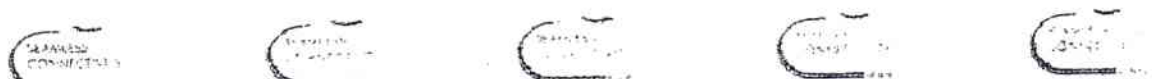
L. Mbugua MD

Reference is made to the above agreement and a meeting called by the Cabinet Secretary Ministry of Transport and Infrastructure on the above subject on 18th December, 2014. *18/12/14*

During the meeting it was brought to your attention that the above agreement contained several clauses and in particular clauses 4 a, b, c, d and e that are prejudicial to the interests of the Authority. It was further noted that none of these clauses were contained in the provisions set out in the tender process. No viable explanation for this state of affairs was given by the Authority during the meeting.

The purpose of this letter is to:-

- (1) Demand that an immediate formal explanation as to how the Authority entered into an agreement that is prejudicial to its interests.
- (2) Demand that the Agreement be immediately cancelled and reviewed to ensure the Agreement is in-line with the tender documents and Government policy and regulations.



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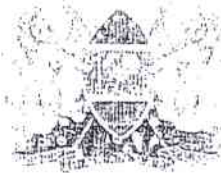
- (3) Require this matter to be brought to the attention of the Board of Directors at the earliest opportunity to enable it investigate the matter and revert with recommendations on actions that should be taken.

Yours *Sincerely*
[Signature]

Nduva Muli, EBS
PRINCIPAL SECRETARY

Copy to: **Eng. M.S.M. Kamau, CBS**
Cabinet Secretary
Ministry of Transport and Infrastructure
NAIROBI

Chairman
Board of Directors
Kenya Airports Authority
NAIROBI



**MINISTRY OF TRANSPORT AND INFRASTRUCTURE
OFFICE OF THE PRINCIPAL SECRETARY/TRANSPORT SERVICES**

Telephone: (+254 20) 2729200
Fax: (+254 20) 2726362
Email: ps@transport.go.ke
Website: www.transport.go.ke
When replying please quote

TRANSCOM HOUSE,
NGURU ROAD
P.O. Box 57692 - 00200
NAIROBI

MOT&I/C/AT/024/3 VOL VIII(33)

6th February, 2015

Ms. Lucy Mbugua
Managing Director
Kenya Airports Authority
NAIROBI

Dear *Ms.*,

**CONCESSION AGREEMENT FOR DEVELOPMENT AND MANAGEMENT
OF DUTY FREE RETAIL SERVICES UNDER A SINGLE MASTER
LICENSE AT JOMO KENYATTA INTERNATIONAL AIRPORT BETWEEN
KENYA AIRPORTS AUTHORITY AND DUFRY INTERNATIONAL AG**

Reference is made to your letter ref. KAA/8/193/2013-14 Vol.I(20) dated 30th January, 2015 on the above subject.

We have noted that the contentious Clauses in the previous Agreement have been deleted. However, Article V "The Authority's Covenant" Clause 4(b) stops the Authority from contracting any other person or entity from operation of Duty Free Retail Shops at the Terminal.

It is the considered view of this Ministry that the clause is not in the best interest of the Authority and may even have implications on the existing tenants.

Yours *Sincerely*
[Signature]

Nduva Muli, EBS
PRINCIPAL SECRETARY

Abbeville 2

DUTY FREE SHOPS COURT/ARBITRATION HIGHLIGHTS

1. H.C.C.C. NUMBER 413 OF 2008: WORLD DUTY FREE LIMITED -VS- KAA: The Duty Free Company sought an injunction to restrain the Authority from awarding tenders it had earlier advertised in respect of duty free shops at the Mol International Airport (MIA).
2. BPRT CASE NO. 84 OF 2008: WORLD DUTY FREE LIMITED -VS- KAA : This matter was filed on 12th June, 2008 by World Duty Free limited at the Business Premises Rent Tribunal seeking to have the Authority grant access to the Applicant to the leased premises at Moi International Airport Terminal II.

The Tribunal issued an order on the same day restraining the Authority from denying the Applicant access to the suit premises. The Authority raised a Preliminary objection which was allowed and the matter was struck out 30th July, 2008. However the suit was subsequently reinstated as the counsel for the Applicant had apparently not been served with the hearing notice.

The matter has not yet been set down for hearing up to date.

3. BPRT CASE NO. 284 OF 2010: DIPLOMATIC DUTY FREE LIMITED -VS.- This matter was filed on 12th June, 2008 by Diplomatic Duty Free limited at the Business Premises Rent Tribunal to have the Authority restrained from recovering some space at JKIA for passenger use.

The matter has been heard severally before the tribunal and in 2010 the parties entered into consent order issued on 26th April, 2010 to the effect that the Authority would not interfere with the Applicants premises and that the parties would undertake negotiations.

In 2011, the Authority instructed external counsel to file an application to set aside the consent order as it was procured without the requisite procedures of the Authority being followed. The Application is pending hearing once a date is available.

4. HIGH COURT PETITION NO. 101 OF 2010: DIPLOMATIC DUTY FREE LTD -VS- THE HON AG AND KAA: This matter was filed in December 2010 after

the Authority carried out an exercise for recovery of space occupied by various duty free shops for passenger use, among them was Diplomatic Duty Free Limited. Conservatory orders were issued on issued on 17th December 2010 and matter is awaiting setting down for full hearing.

5. HCCC NO. 331 OF 2012 (FORMERLY NRB HCCC NO. 413 OF 2008) after the matter was moved from the Civil Division to the Commercial Division: WORLD DUTY FREE LTD.T/A KENYA DUTY FREE COMPLEX -VS- KENYA AIRPORTS AUTHORITY: In this case, Kenya Duty Free Complex Limited filed the suit seeking conservatory orders to restrain the Authority from proceeding with tenders that had been advertised for the development and management of an African artifacts & bookshop(Lot 1) and a confectionary & jewelry shop(Lot 2) at Moi International Airport.

This was the genesis of the arbitration proceedings discussed in (1) hereinabove. The Authority had advertised the above shops in compliance with mandatory statutory provisions of the Public Procurement & Disposal Act of 2005. The Applicant contended that the shops could not be tendered as it held lease to the said premises from the Authority at the time of the tender. On 17th November 2008, the High Court issued a consent order to the effect that the Authority was restrained from awarding concessions with regard to the suit premises for 14 days from the date of issuance of the order. On 8th November 2012, the High Court (Justice Mutava) found the Managing Director and Corporation Secretary of the Authority personally in contempt of court for disobedience of the 2008 order.

In the course of the proceedings, on 12th July, 2012 the Applicant instituted contempt of court proceedings against the Managing Director and the Corporation Secretary of the Authority for publishing the notices afresh in 2012. The court delivered a ruling on 8th November, 2012 finding that the MD & the CS were in contempt of the court order dated 17th September 2008 for publishing the tender notices. The court ordered that the Authority proceeds to purge the contempt by publishing in the newspaper a notice cancelling the said tenders within 14days. The Authority filed an appeal against the said orders and successfully obtained stay pending hearing of the appeal.

6. CIVIL APPLICATION NAI 285 OF 2012: KENYA AIRPORTS AUTHORITY VS. WORLD DUTY FREE: This is an appeal against the orders of Mutava J in HCCC 331 of 2012 (original 413 of 2008) for stay of execution of the High Court Orders pending the conclusion of the appeal on the Ruling of 8th November, 2012

finding the Managing Director and Corporation Secretary to be in contempt of court.

Concurrently, the Authority applied for stay of execution of the court orders in that High Court ruling. The Court of Appeal delivered its ruling on 22nd February, 2013 where it granted the stay of execution pending the hearing and determination of the appeal. The matter is awaiting substantive hearing.

7. MISC CIVIL APPLICATION NO. 32 OF 2012 (JR): AFRICA DUTY FREE LIMITED AND DIPLOMATIC DUTY FREE LIMITED VS. PUBLIC PROCUREMENT ADMINISTRATION REVIEW BOARD (PPARB) AND KAA: The Applicants filed the Judicial Review proceedings on 25th January, 2012 challenging the ruling of the PPARB being PPARB Application No. 49 of 2011 and Application No. 50 of 2011 delivered on 11th January, 2012.

The PPARB ruling was on a Request for Review filed by the Applicants to appeal the Authority's decision to award management of duty free shops to Silver Duty Free Limited after evaluation of Tender Number KAA/73/2010-2011 (Management of Duty Free Shops at Kisumu Airport). The Applicants were seeking annulment and repeat of the tendering process. The PPARB declined the request for review whereby the Applicants filed these proceedings in the High Court.

On 27th January, 2012, the court made an ex-parte ruling and issued an order granting leave to the Applicants to institute proceedings to quash the decision of the PPARB dismissing the applications filed by the Applicants and prohibiting the Authority from proceeding with the tender and at the same time granting stay of the aforesaid decisions.

8. HCCC NO. 196 OF 2012: WORLD DUTY FREE LTD T/A KENYA DUTY FREE COMPLEX -VS- KENYA AIRPORTS AUTHORITY: In this matter, the Applicant sought injunction restraining the Authority from awarding Tenders for operation of Duty Free shops at JKIA or any other Airport.

This was after the Authority advertised for concessionaires to manage duty free shops in the upcoming Terminal 4 at JKIA.

The matter has been proceeding before the court and on 14th February 2013 when it came up for hearing, the judge asked both parties to indicate to him whether, in view of the media reports raising issues with regard to the judge's conduct, they still wished to have him continue hearing the matter.

The Applicant's advocate has confirmed that his client is comfortable with the judge handling the matter while the Authority has requested that the matter be allocated to a different judge.

9. HCCC NO. 253 OF 2012: WORLD DUTY FREE LTD -VS- KENYA AIRPORTS AUTHORITY: The Applicant, World Duty Free, filed this suit seeking mandatory injunction to compel the Authority to renew the leases dated 29th January 2003 with respect to premises occupied by the Applicant in both JKIA and MIA.

The Application sought to have the court compel the Authority to urgently renew the said leases to prevent loss and damage upon the Applicant by failure to effect such renewal by the Authority.

On 8th June, 2012, the High Court (Mabeya J) granted an ex-parte order maintaining the status quo i.e. the Applicant retains possession of the premises pending the hearing of the application inter-partes.

Upon inter-partes hearing, a ruling was delivered on 17th October, 2012 and subsequent orders issued restraining the Authority from repossessing premises under the 2003 lease until the suit is finally heard and determined.

10. ARBITRATION BETWEEN WORLD DUTY FREE LTD T/A KENYA DUTY FREE COMPLEX -VS- KENYA AIRPORTS AUTHORITY:

Details

This matter relates to a dispute between World Duty Free (trading as Kenya Duty Free Limited) and Kenya Airports Authority regarding operation of Duty Free shops at Moi International Airport and Jomo Kenyatta International Airport.

On 12th September 2008, World Duty Free filed in the High Court a suit being H.C.C Number 413 of 2008 (mentioned above as Item No. 1) seeking an injunction to restrain the Authority from awarding tenders it had earlier advertised in respect of duty free shops at the Moi International Airport.

In 2011, the complaint was amended to include a claim against the Authority for alleged loss and damage incurred by the Applicant as a result of the exercise for recovery of space at JKIA by the Authority in December 2010.

The initial claim was premised upon an Agreement dated 27th April 1989 and amended on 11th May 1990 between the Government of Kenya and World Duty Free Limited and Leases dated 29th January 2003 and 10th January 2002 between the Authority and World Duty Free Limited.

World Duty Free Limited alleged that the said Agreement and Leases granted it sole and exclusive rights to run Duty Free Shops and carry out advertising concessions in JKIA, MIA and all other airports run by the Authority.

The High Court referred the matter to arbitration by virtue of Section 33 of the Kenya Airports Authority Act, which requires that matters of this nature be resolved by way of arbitration.

By a letter dated 22nd September 2008 the then Chief Justice, Evan Gicheru appointed Retired Justice E. Torgbor as the arbitrator in this matter. The arbitral proceedings commenced on 15th December 2008 and lasted until the conclusion around October 2012.

On 5th December, 2012 the Arbitrator delivered the final award. Under the Final Award, the Authority was required to pay the Claimant approximately \$49,000,000. In addition to this, the Authority has been ordered to cancel other contracts with third parties in relation to advertising concessions and to comply with the provisions of the Leases dated 29th January 2003 and 10th January 2002 which allegedly gave exclusivity to the Applicant.

Pursuant to the Board resolution of on appointment of a team of external lawyers to protect the Authority's interests, the Management instructed the firm of Messrs Ngatia and Associates to immediately appeal the Award. Therefore, the Authority in return filed High Court Miscellaneous Application No. 67 OF 2013 (see Attachment 4B) against World Duty Free Company Limited, being an appeal to the Award of Justice E. Togbor on 5th December, 2012 to the Arbitration proceedings.

The matter was heard ex-parte in the first instance seeking interim orders to stay execution of the award- which orders were duly issued. These orders were meant to ensure that the award cannot be effected until the appeal is heard and finally determined.

Thereafter in July 2013, the Authority attempted to engage Diplomatic Duty Free to consider vacating the areas which were required by the Authority for expansion purposes.

The discussions failed to materialize and upon the expiry of the leases on 31st July, 2013, the Authority took measures to remove Diplomatic from the Terminal Buildings.

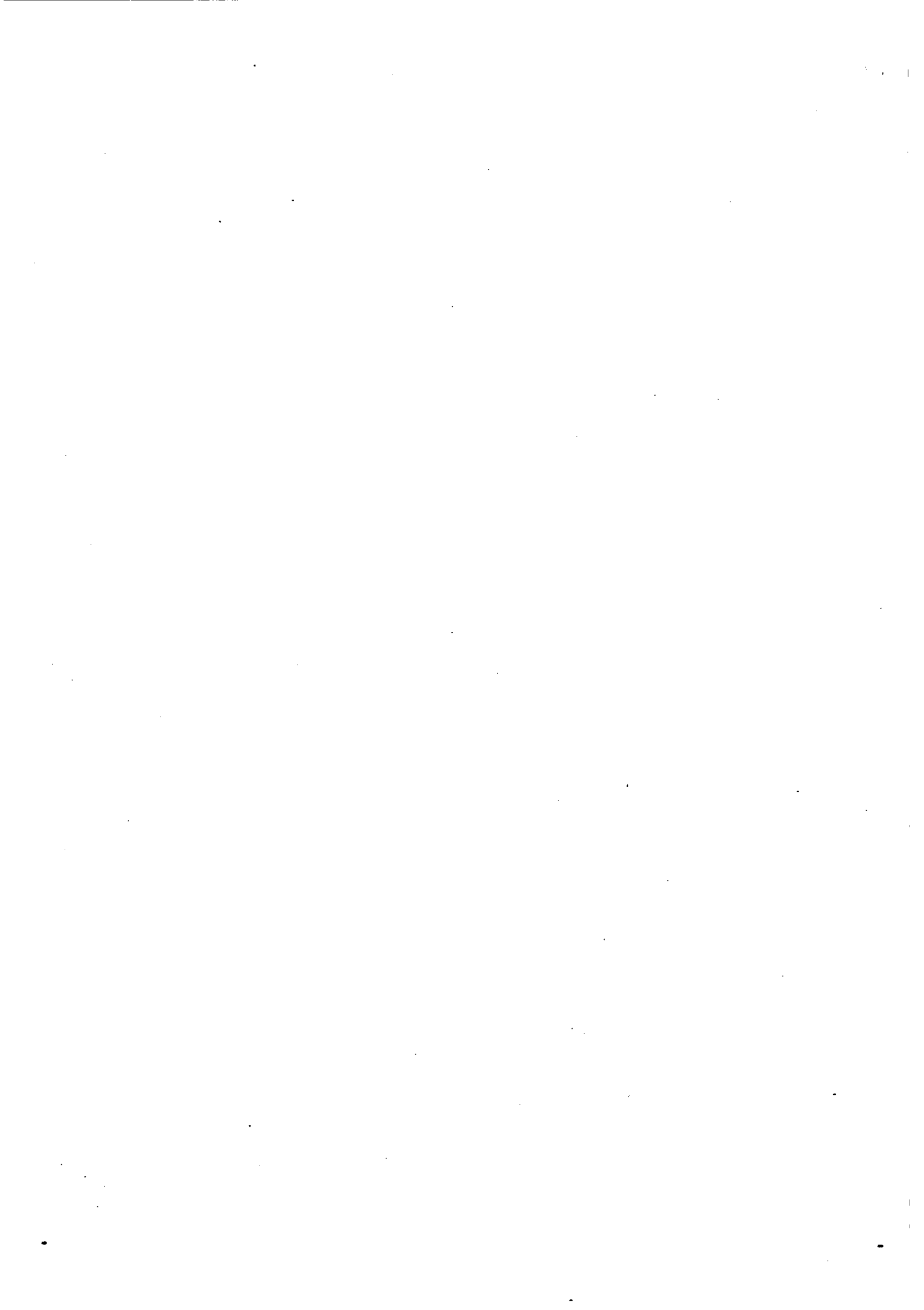
Immediately after removal, Diplomatic Duty Free filed suit HCCC No 327 of 2013, World Duty Free Company Limited -vs- KAA. (below).

Find attached hereto a copy of the Ruling of Retired Justice E. Torgbor made on 5th December 2012 and marked Attachment 6.

Pursuant to the Board resolution of on appointment of a team of external lawyers to protect the Authority's interests, the Management instructed the firm of Messrs Ngatia and Associates to immediately appeal the Award.

11. HIGH COURT MISCELLANEOUS APPLICATION NO. 67 OF 2013: KAA VS. DIPLOMATIC DUTY FREE LTD: (High Court Miscellaneous Application No. 67 of 2013, the Authority's appeal on the Final Award of approximately \$49,000,000). An appeal to the Award of Justice E. Togbor on 5th December, 2012 issued in the aforementioned arbitration. The matter was filed on 20th February, 2013 by a team of advocates instructed by the Authority and constituted as follows: (i) Mr. Fred Ngatia- Lead Counsel in liaison between the following team: (ii) Mr. Ahmednasir Abdikadir- secretariat for the legal team and also advocate on record. (ii) Mr. Tom Macharia, Mr. Eric Mutua and Mr. Mansur - Research and identification of all judgments to be cited at the hearing.
12. HCCC NO. 327 OF 2013: DIPLOMATIC DUTY FREE LTD -VS- KAA: Filed by Diplomatic Duty Free Limited slightly before the time of vacation, in respect of which ex-parte court orders were issued in favour of DDF on 30th July 2013, to preempt repossession by the Authority. The Court orders were served on the Authority on 1st August, 2013 after the vacation.
13. HCCC NO 45 OF 2015 AT NAIROBI COMMERCIAL & ADMIRALTY DIVISION: WORLD DUTY FREE COMPANY LTD T/A KENYA DUTY FREE COMPLEX -VS- KAA, AND DUFY INTERNATIONAL AG: On 4th February, 2015 the Authority was served with a fresh suit which still claim for "*sole and exclusive rights*" to construct, furnish and commercially operate Duty Free Shops at the Airport by virtue of the Agreement made on 27th April 1989 (as amended on 11th May, 1990 between the Government of Kenya and World Duty Free). The claimant is seeking enforcement of the Arbitral Award by Mr. Justice (Rtd)

E. Torgbor, and also seeks cancellation of the Agreement between the Authority and M/s Dufry International AG in respect of JKIA's Terminal 1A Master Concessionaire Tender.



Appendix 7

THIS AGREEMENT is made on the
BETWEEN

27th

day of April, 1989

- (1) THE GOVERNMENT OF THE REPUBLIC OF KENYA acting through and represented by the Office of the President, being the Ministry of the Government concerned within the meaning of the Government Contracts Act (Cap. 25, Laws of Kenya) ("the Government"); and
- (2) HOUSE OF PERFUME, a division of Al Ghurair Enterprises of P.O. Box 297, Dubai, United Arab Emirates ("the Company").

WHEREAS:

- (A) In order to enhance further the international reputation of the Republic of Kenya and to promote tourism generally, it is the Government's desire to construct, maintain and operate to the highest international standards duty-free complexes ("the Complexes") at Jomo Kenyatta International Airport, Nairobi and Moi International Airport, Mombasa ("the Airports").
- (B) In recognition of and in order to further the friendly links that exist between the Republic of Kenya and Dubai, United Arab Emirates, the Government has invited the Company to assist it in the construction, development and operation of the Complexes and in connection therewith they have agreed to enter into this Agreement upon and subject to the following terms and conditions:

NOW IT IS HEREBY AGREED as follows:-

1. The Lease *

The parties shall as soon as possible after the date hereof enter into a lease agreement ("the Lease Agreement") which shall include, inter alia, the following terms and conditions:-

(i) The Government shall grant to the Company a lease ("the Lease") of:-

- (a) 3,000 square metres of space of Jomo Kenyatta International Airport, Nairobi; and

7 siting A

(b) 2,000 square metres of space of Moi International Airport, Mombasa

in each case at the locations respectively outlined in red on the plans of Jomo Kenyatta International Airport, Nairobi and Moi International Airport, Mombasa annexed hereto as Exhibits D and E (together referred to as "the Leased Premises") subject to Clause 3(D) hereinafter.

(ii) The Lease shall be for a period of 10 years from [] [], 1990 ("the Lease Period") and the Company shall have the option to renew the Lease for a further 10 years upon the same terms and conditions subject only to renegotiation of the rent payable such option to renew to be exercised by the Company by notice in writing thereof within six months of the date of expiry of the Lease Period.

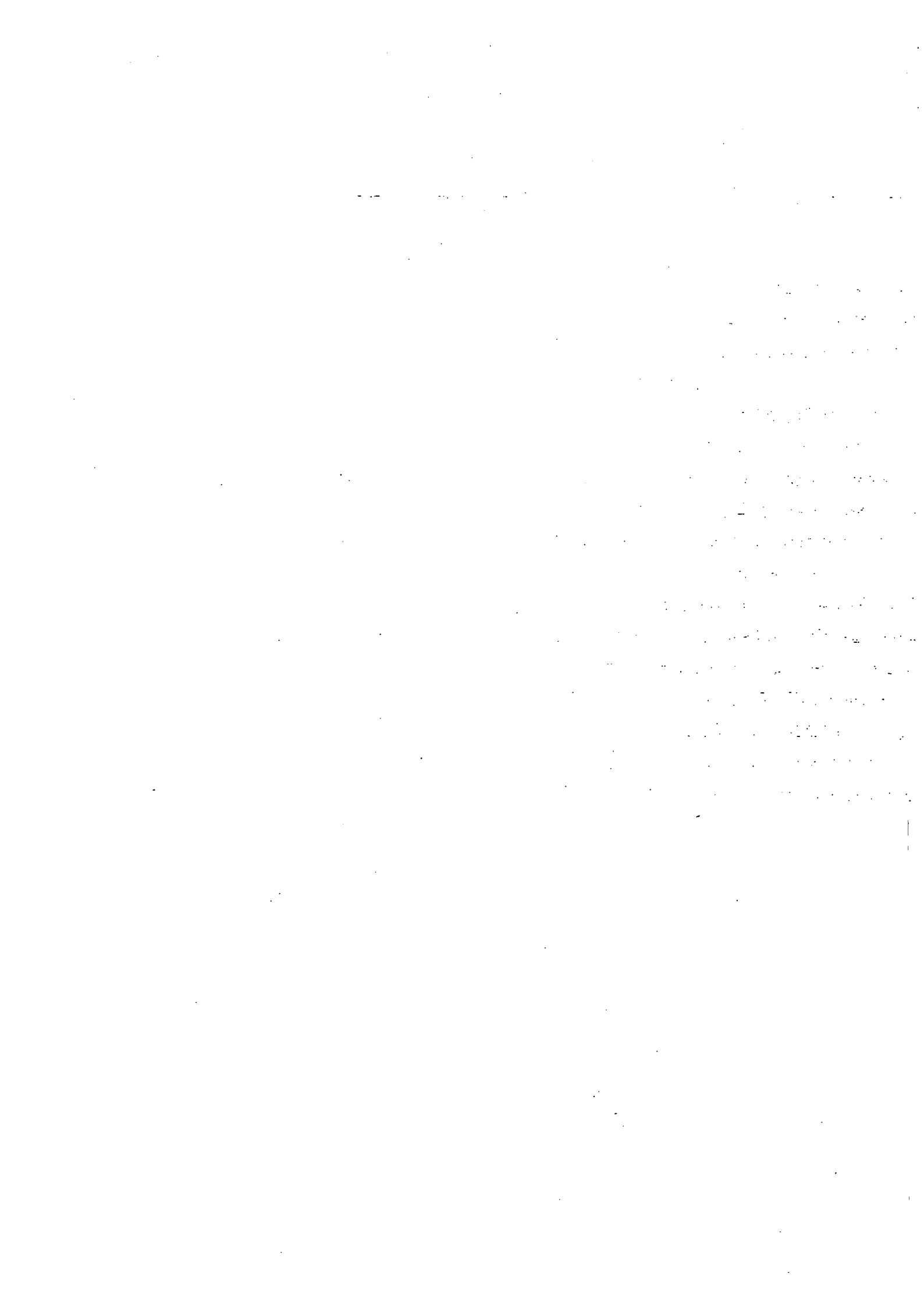
(iii) In consideration of the grant of the Lease, the Company shall pay to the Government the sum of US\$ 1,000,000 per annum for both Complexes, payable in two instalments half-yearly in advance and the first such instalment of which shall be payable on [] the commencement of the Lease Period []. Such annual payments shall be paid by the Company into such account with such bank as the Government shall notify to the Company in writing.

(iv) The Company shall be entitled with the consent of the Government which shall not be unreasonable withheld, to sub-let the Leased Premises to any person or individual, including persons or individuals who are not citizens of Kenya or entities owned by citizens of Kenya. The Government shall reply to the Company's application within 45 days' of the application.

2. Conditions Precedent

(A) This Agreement is conditional upon the following:-

(i) that (subject to Clause 4(iv), on or before 31st July, 1989 ("the Effective Date") the Company is satisfied that all licences, consents, approvals, exemptions, waivers, permissions and authorities ("the Consents") from the relevant concerned departments and authorities of the Government of the Republic of Kenya and the Central Bank of Kenya have been or will be granted to the Company and are or will be in full force and effect so as to enable the Company to exercise fully its rights under Clause 3; and the other provisions of this Agreement;



- (ii) that on or before the Effective Date the Government and the Company have entered into the Lease Agreement;
 - (iii) that the Attorney-General of the Government has certified in writing that the persons executing this Agreement on behalf of the Government are duly empowered to sign on behalf of the Government and that the Office of the President is the Ministry concerned, within the meaning of the Government Contracts Act.
- (B) If the above conditions have not been fulfilled by the Effective Date, either party may by written notice to the other terminate this Agreement which shall thereupon be of no further force or effect.

3. The Contract for the Complexes

(A) In consideration of the annual payment of U.S.\$ 1,000,000 referred to in Clause 1 (iii), the Government further agrees that the Company shall have the sole and exclusive right ("the Agency") within the area presently designated or which may in the future be designated as the Airports (including any airport terminals which may in the future be constructed at the Airports by the Government):

- (i) to construct, develop and furnish the Complexes; and
- (ii) to operate the Complexes commercially for its own benefit freely and without restraint.

No other person or individual whatsoever shall be entitled to the same without the prior written consent of the Company,

(B) In addition to the Agency granted to the Company in sub-clause (A) The Government shall grant to the Company the option to construct and operate within either or both of the Complexes a transit hotel with a minimum of Eight 8 beds together with restaurant and bar facilities, for transit passengers.

No other person or individual whatsoever shall be granted the same such option without the prior written consent of the Company, which consent shall not be unreasonably withheld.

(C) The Government shall ensure that all passenger traffic at each Airport (international, whether arriving, departing, transiting or transferring) is at all times routed through the Area of the Leased Premises, except in cases of rear emergencies.

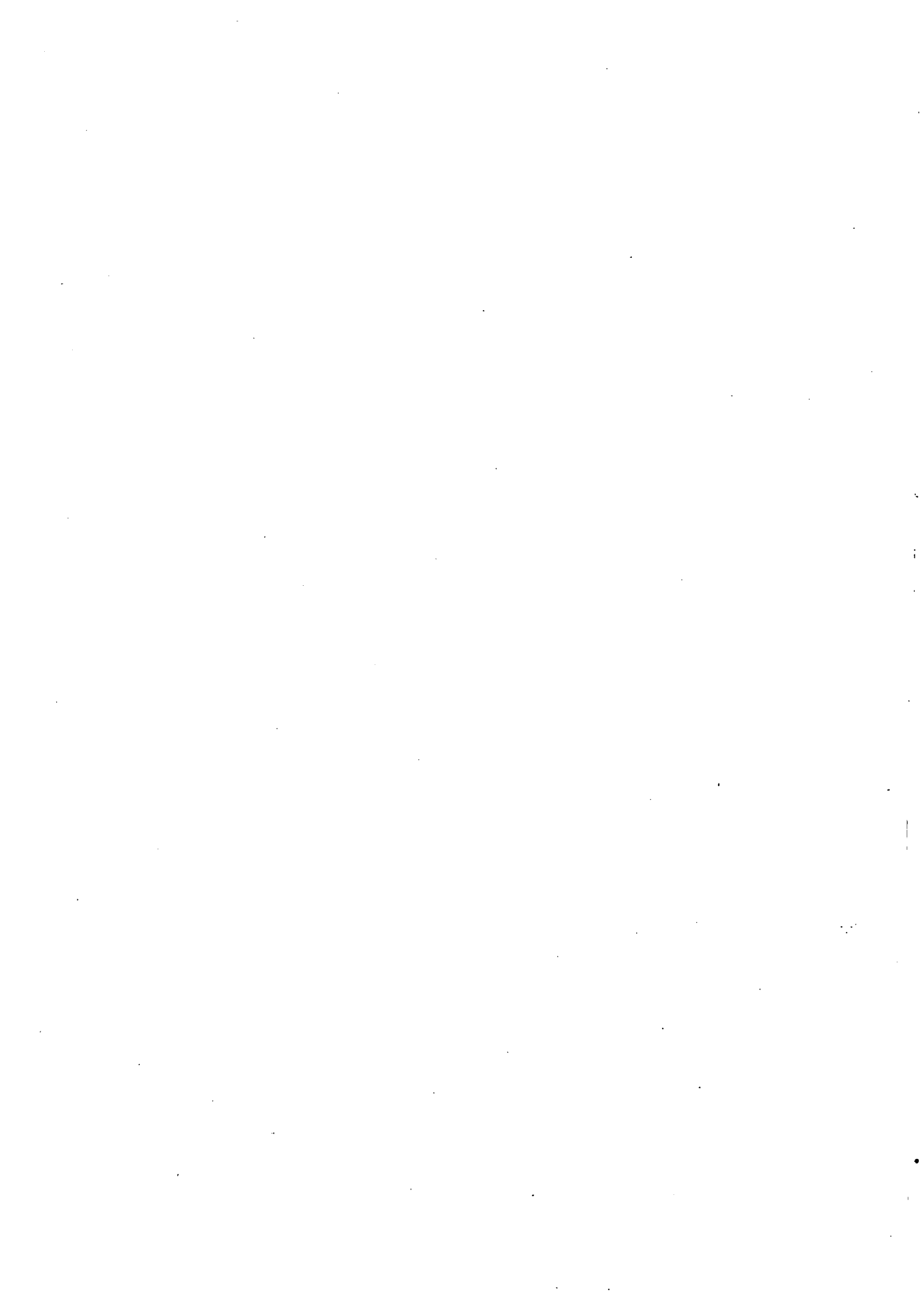
(D) The Company shall use its best endeavours to ensure that the construction and operation of the Complexes conforms to the highest international standards, and in that regard the Government shall permit the Company to choose at its sole discretion that area within the Terminals which is in the opinion of the Company the most suitable area or the Complexes.

(E) The Company shall be entitled to import into the Republic of Kenya without any restriction or payment of duty or sales tax any and things necessary for the construction and operation of the Complexes including without limitation, building materials, furniture, computers and stationery ("Materials") which it or any of its sub-contractors shall consider necessary for the construction, development and commercial operation of the Complexes.

(F) The Company shall be entitled to import into the Republic of Kenya without any restriction or payment of duty or sales tax any and all products which it or any of its sub-lessees intend to sell at the Complexes (the "Sale Products").

(G) Subject to such clearances as are required by the Government, the Company may sub-contract or employ any person or entity to assist it in the construction, development and commercial operation of the Complexes. If the Company decides to employ persons who are not citizens of Kenya, it shall be entitled subject to clearance by the Government to bring them into Kenya without restrictions. The Government undertakes that it shall upon the application of the Company promptly ensure the issue of the necessary entry visas and employment permits for such persons to enable them to work for the Company in the Complexes.

(H) The Government hereby grants to the Company the sole and exclusive rights to advertise, or to arrange for other persons to advertise Sales Products within the International Airport Terminals.



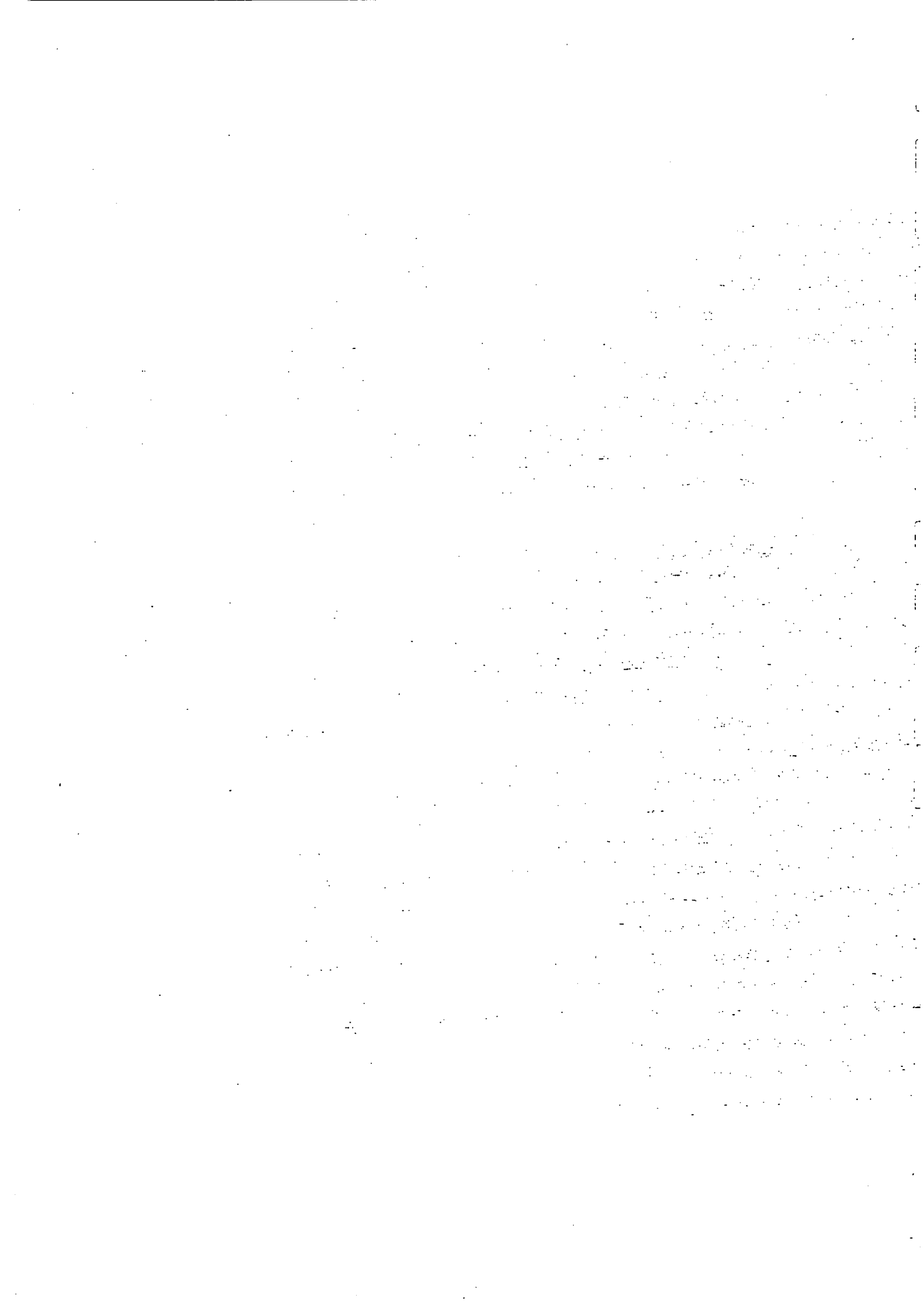
4. Representations and Covenants of the Government

The Government represents and covenants that:-

- (i) in the spirit of cooperation it will at all times use its best endeavours whenever required by the Company to facilitate in every way in the development, construction and commercial operation of the Complexes;
- (ii) none of the leases which have been granted by the Government and which are presently in force in the Complexes are capable or will be capable of being renewed by the existing lessees and that upon the expiry of such leases, the Government shall neither renew such leases nor grant new leases to any person other than to the Company in accordance with Clause 1;
- (iii) it shall make available to the Complexes all such water and electricity supplies, potable drinking water supplies, chilled water for air conditioning, cleaning, sanitary and security services as the Company shall at its sole discretion consider necessary for the efficient construction, development and operation of the Complexes;
- (iv) the only Consents that are required for this Agreement and the Lease Agreement to be effective and for the Company to exercise to the fullest extent possible its rights under this Agreement are:-
 - (a) the letter to the Company from the Ministry of Finance dated 18th January, 1989, a copy of which is exhibited in this Agreement as Exhibit A;
 - (b) the letter to the Company from the Central Bank of Kenya dated [] a copy of which is exhibited to this Agreement as Exhibit B;
 - (c) the letter to the Company from the Minister for Transport and Telecommunications dated 2nd February, 1989, a copy of which is exhibited to this Agreement as Exhibit C;

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- (d) Certificates of Approved Enterprise from the Ministry of Finance, to allow repatriation of funds from the Complexes;
- (e) with respect to foreign personnel, entry permits, work permits, alien's registration and external account;
- (f) with respect to local personnel, registration of the Complexes as employer for local service charges, national social security fund, national hospital insurance fund and tax purposes;
- ✓ (g) exemption from Kenyan tax authorities in respect operations of the Complexes;
- (h) registration of the Lease Agreement with all appropriate official authorities;
- (i) planning permission for the reconstruction and development of the Complexes;
- (j) import licenses for the importation of (i) construction material, (ii) machinery, (iii) electrical apparatus and (iv) Sale Products;
- ✓ (k) exemptions from Kenyan Sales Tax;
- (l) Trade Licencing Act (497) licences or exemptions therefrom;
- (m) appropriate Food, Drugs and Chemicals licences;
- (n) appropriate liquor, restaurant and hotel licences;
- (o) appropriate transport licences for vehicles for the transportation of Materials, Sales Products and other goods to and from the Complexes;
- (p) exemptions from regulations requiring standard shop hours; and
- (q) with respect to the setting up of hotel and restaurant facilities, a licence under the Tourist Industry Licencing Act and an exemption from hotel accommodation tax;

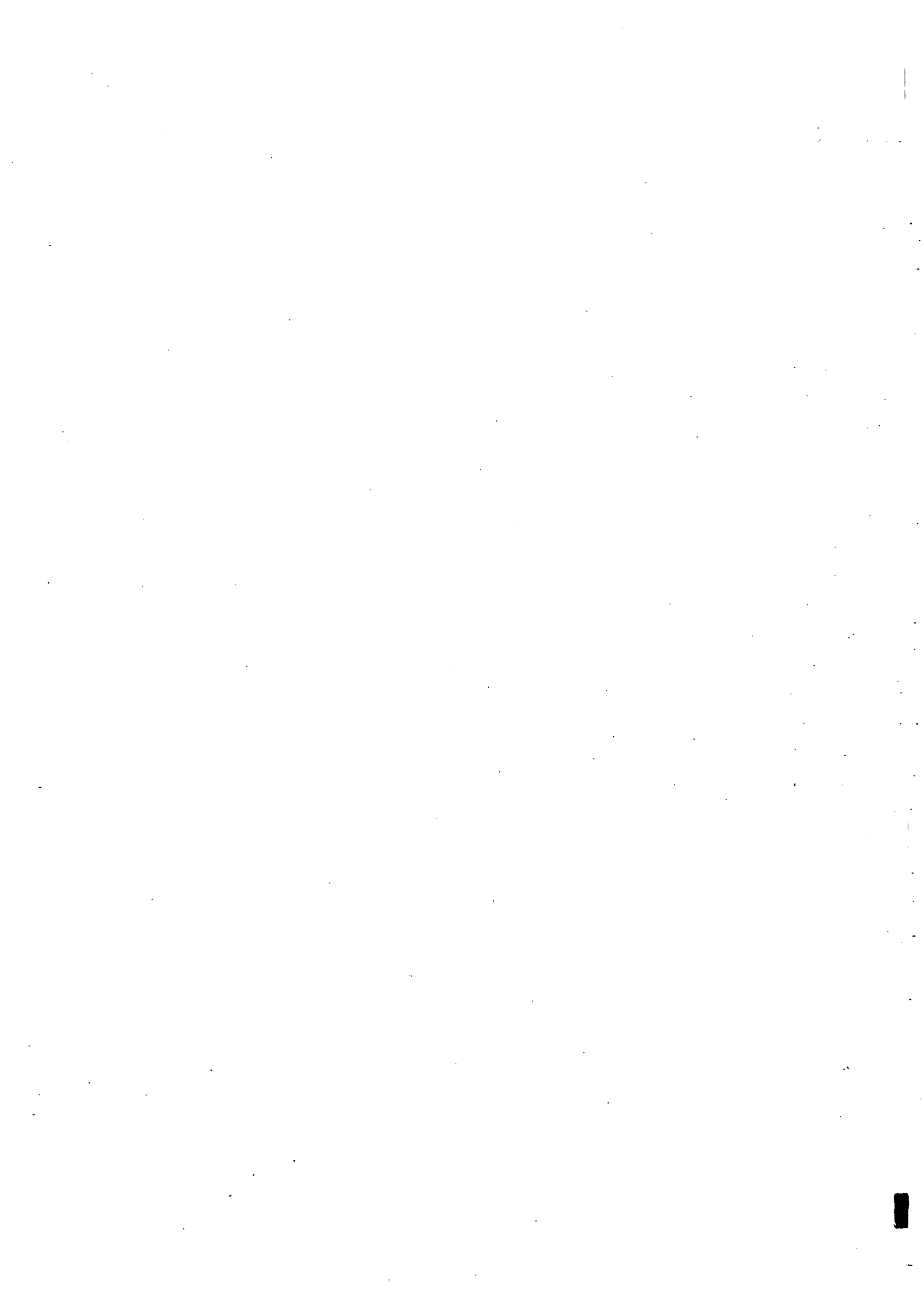


and that no other Consents are or will be required, whether from the Government or from any quasi-government, local or other authority. To the extent that any Consents (other than those referred to above) are required to be obtained by the Company or any employee or sub-contractor of the Company, the Government undertakes and covenants that upon the Company's application to the Government it shall promptly issue or procure the issue of such additional Consents;

- (v) if any of the Consents from time to time require renewal either with respect to the Company or any employee or sub-contractor of the Company, the Government irrevocably undertakes and covenants that upon the Company's application, the Government shall promptly renew or procure the renewal of any such consent; Provided that the conditions of such consent have been complied with.
- (vi) neither the Company, nor any sub-contractor of the Company, nor any sub-lessee of the Company none of which are Kenya companies shall be subject to any taxation or duty whatsoever, including without limitation, taxation on income or profits or duty on the import or export of Materials or on the import or export of Sale Products into or out of the Complexes and, for the avoidance of doubt, the Company shall have the absolute right without any hindrance whatsoever by the Government to remove free of tax, duty or any other charge from the Complexes any and all Materials and Sale Products which it may have brought into the Complexes but which for any reason remain unused or unsold and the Government covenants to make, issue and publish and renew whatever licences, permissions and notices are required to put this paragraph into effect;



- (vii) it will not, and it will procure that no quasi-government or local or other authority does, in any way whatsoever hinder, interfere with or restrain the Company or any of its employees or sub-contractors from carrying out the construction, development or commercial operation of the Complexes and shall provide for employees and sub-contractors of the Company free and unrestricted access to the Complexes .
- (viii) upon the importation into the Republic of Kenya of the Materials and the Sale Products, it will ensure that no undue delay shall elapse for the Materials and the Sale Products to be cleared through Customs;
- (ix) it will enable the Company freely and without restriction, hindrance or taxation to transfer wherever and in whatever manner it desires out of the Republic of Kenya the proceeds arising from the sale of the Sale Products, such proceeds to include without limitation foreign currencies, cheques, travellers cheques, credit cards and any other form of foreign exchange received against the sale of the Sale Products at the Complexes.
- (x) it shall permit the warehousing in bond of products imported by the Company for the Complexes;
- (xi) it shall provide all necessary facilities for persons purchasing Sale Products at the Complexes to transport such Sale Products out of the Complexes, including, without limitation, facilities to transport Sale Products to aircraft on which such persons are passengers.



5. Representations and Covenants of the Company

(A) The Company undertakes and agrees that:

- (i) all sales of Sale Products at the Complexes shall be in currencies other than Kenyan Shillings and the Company shall not at any time accept payment for the Sale Products in Kenyan Shillings or accept Kenyan Shillings in payment for goods and services or as a gift or for compensation in or outside Kenya or operate a Kenyan Shillings resident account;
- (ii) all services procured by the Company in the Republic of Kenya shall be paid for in Kenyan Shillings, from an external account.

(B) The Company shall advertise the Complexes in the international media.

(C) As soon as practicable after the construction of the Complexes, the Company shall publish a high quality in-flight magazine for use at the Complexes and by Kenya Airways in its aircraft, it being clearly understood that the Company shall have complete control over how and where the printing, publishing and advertising of such in-flight magazine shall be carried out.

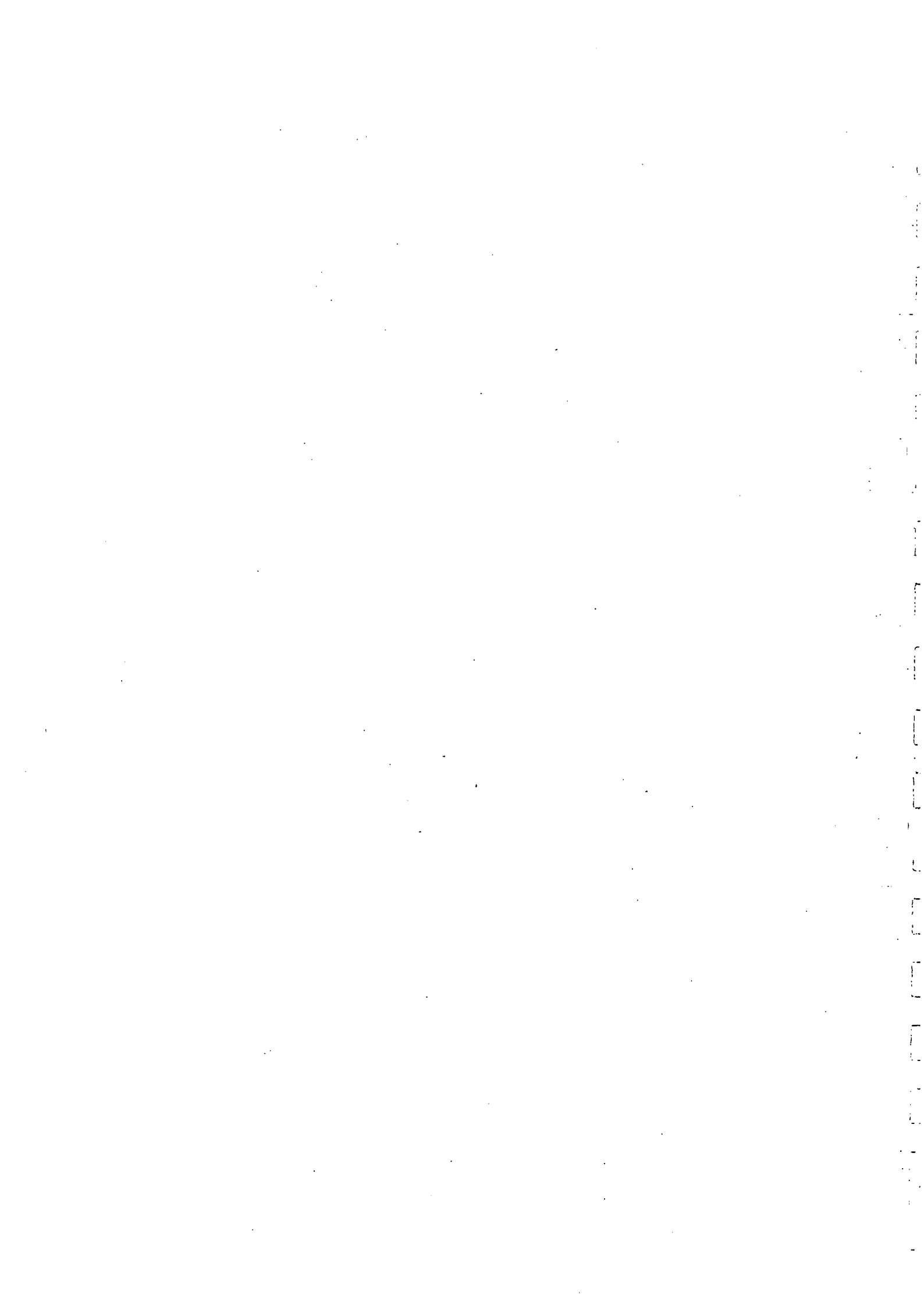
6. Termination

(A) Subject to Clause 2 and to the following provisions of this Clause, this Agreement shall continue until the expiry of the Lease Period or, if the Company exercises its option to renew the Lease under Clause 1(ii), until the expiry of the renewed Lease Period.

(B) Either party may terminate this Agreement forthwith by written notice to the other party:

- (a) if the other party shall commit a breach which is either anticipatory or incapable of remedy of any of the provisions of this Agreement;

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(b) if the other party shall have committed any other breach (being capable of remedy) of any provisions of this Agreement and shall have failed to comply within the time therein specified (being a reasonable time having regard to all the circumstances) with the notice of breach served pursuant to sub-clause (E).

(c) The Company may terminate this Agreement by not less than one month's written notice to the Government if:

- (i) any of the Consents are not renewed or are revoked;
- (ii) international flights into and out of the Airport cease for more than two months so as to render the operation of the Complexes commercially unviable;

and in the event of such termination the Company shall be entitled to be refunded such part of the annual payment made under the Lease as represents the unexpired period of the Lease for which such payment has been made.

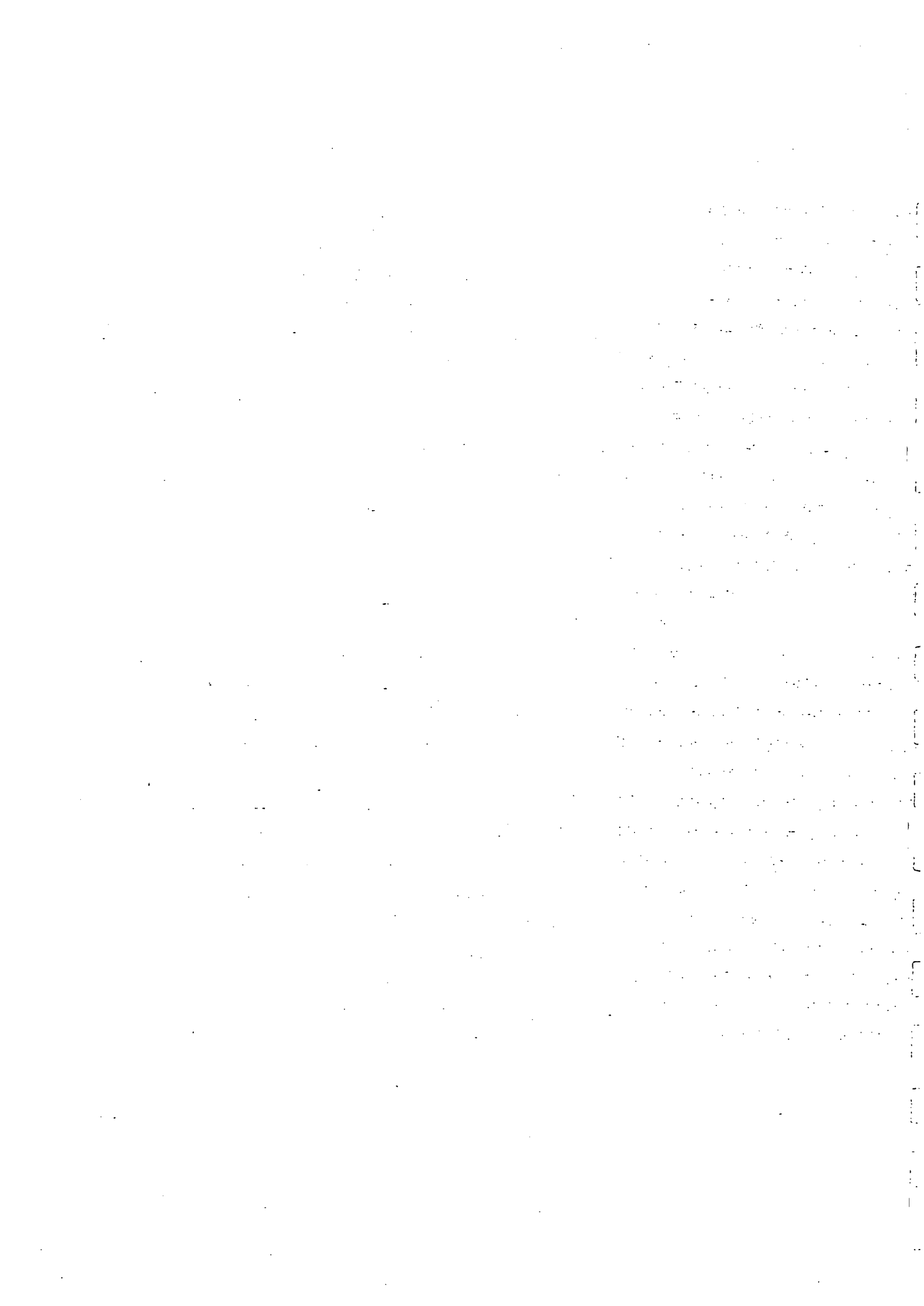
(D) If either party hereto is for the opinion that the other of them has committed or is committing a breach which is capable of rectification of any of the terms hereof then that party shall give to the other party notice in writing specifying the breach alleged and requiring the breach to be remedied within such time as herein specified (such time to be a reasonable time having regard to all the circumstances and in any event to be not less than thirty (30) days from the date of receipt of the notice by the other party).

7. Miscellaneous

(A) This Agreement represents the entire agreement between the parties and supersedes all previous representations or agreements, oral or written, concerning the subject matter thereof. No amendments or supplements to this Agreement shall be valid unless in writing executed by the parties.

(B) No failure to exercise, nor any delay, in the exercise of, any right or remedy either party may have under this Agreement or in connection herewith shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or of any other such right or remedy.

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8. Notices

(A) Each communication to be made between the parties under this Agreement shall be made in writing but, unless otherwise stated, may be made by telex.

(B) Any communication or document to be made or delivered by one party to the other shall (unless that other party has by 15 days' written notice specified another address) be made or delivered to that other party at the address which

In the case of the Government shall be at the following:

Address:

Telex:

and which in the case of the Company shall be at the following:

Address: P.O. Box 297,
Dubai,
United Arab Emirates

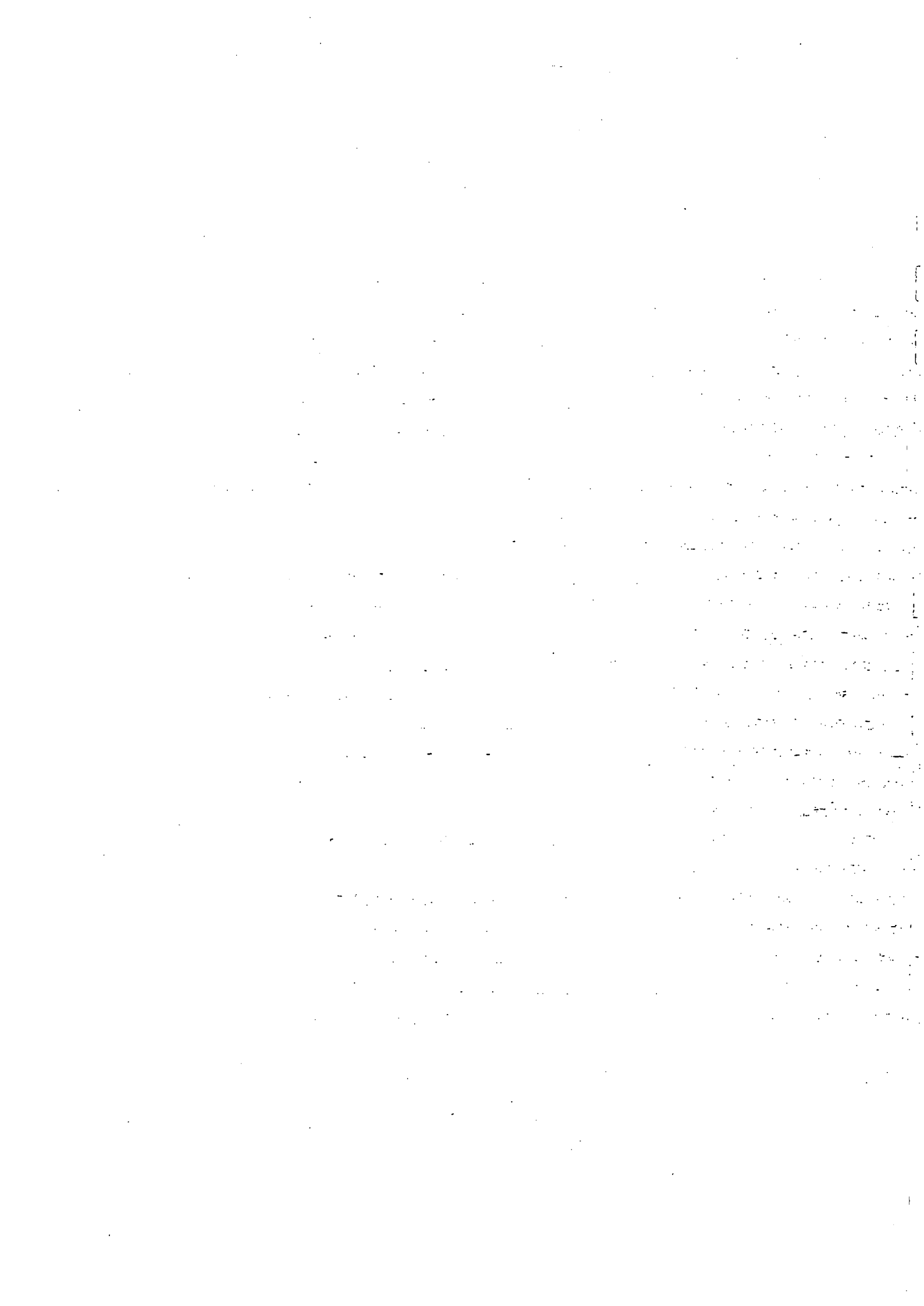
Telex: 49041 PRFUM

and shall be deemed to have been made or delivered when despatched (in the case of any communication made by telex) or (in the case of any communication made by letter) when left at that address or (as the case may be) 14 days after being deposited in the post first class postage prepaid in an envelope addressed to it at that address.

(C) Each communication and document made or delivered by one party to the other party shall be in the English language or accompanied by a translation thereof into English certified as being a true and accurate translation.

9. Arbitration

(1) The parties hereby consent to submit to the jurisdiction of the International Centre for Settlement of Investment Disputes ("the Centre") all disputes arising out of this Agreement or relating to any investment made under it for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the Convention").



- (2) It is hereby stipulated
- (a) that the Company is a national of the United Arab Emirates;
 - (b) that the transaction to which this Agreement relates is an "investment" within the meaning of the Convention;
 - (c) that any arbitral tribunal constituted pursuant to this Agreement shall apply English law;
 - (d) that any arbitration proceeding pursuant to this Agreement shall be conducted in accordance with the Rules of Procedure for Arbitration Proceedings of the Centre in effect on the date on which the proceeding is instituted.

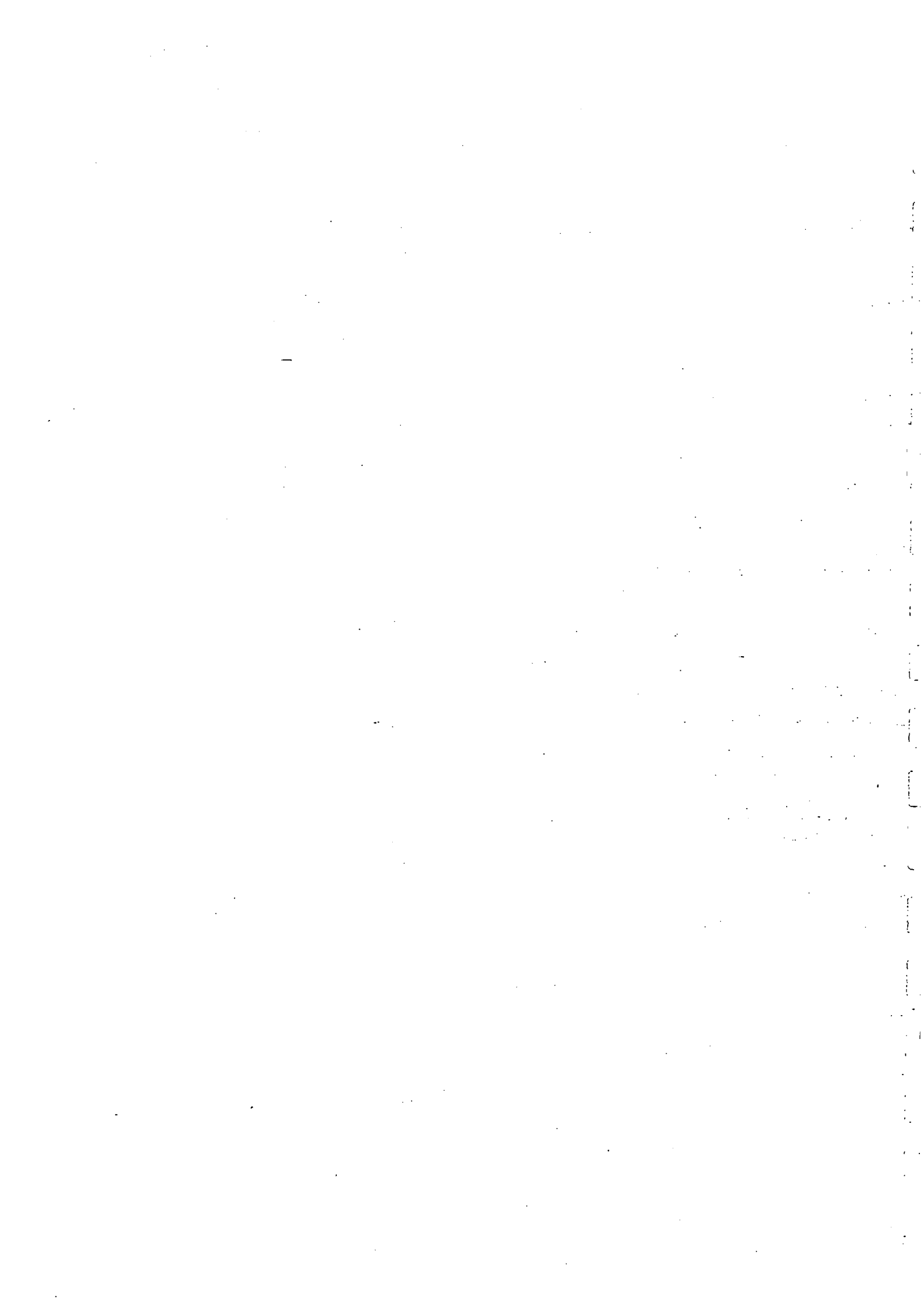
10. Governing Law and Jurisdiction

(A) This Agreement shall be governed by and construed in accordance with the laws of Kenya.

(B) Each of the parties hereto irrevocably agrees that, subject to any final and binding decisions issued pursuant to arbitration under Clause 9, the courts of Kenya shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and for such purposes irrevocably submits to the jurisdiction of such courts.

(C) The submission to the jurisdiction of the courts referred to in sub-clause (B) shall not (and shall not be construed so as to) limit the right of the parties to take proceedings against one another in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

(D) The parties hereby consent generally in respect of any legal action or proceeding arising out of or in connection with this Agreement to the giving of any relief or the issue of any process in connection with such action or proceeding including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any other order or judgment which may be made or given in such action or proceeding.



(E) To the extent that the Government may in any jurisdiction claim for itself or its assets immunity from suit execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed) the Government hereby irrevocably agrees not to claim and hereby irrevocably waives any immunity to the full extent permitted by the laws of such jurisdiction.

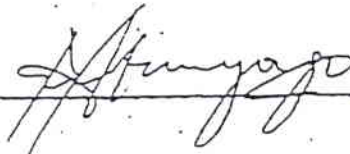
AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first before written.

Signed for and on behalf of
THE GOVERNMENT OF THE REPUBLIC OF KENYA

by H. A. DYUGI
(Office of the President) Acc. Officer
Permanent Secretary/Administration
in charge of the Aerodromes Department
in the presence of M. H. WA MBURA

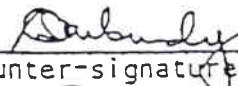


Signature



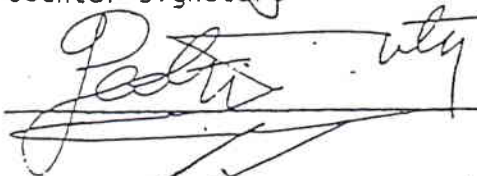
and countersigned by

C. S. MBINDYO
(Permanent Secretary/~~Deputy~~ Permanent
Secretary to the Treasury)

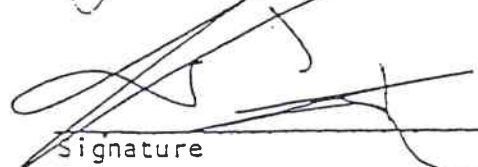


Counter-signature

in the presence of G. M. MITINE

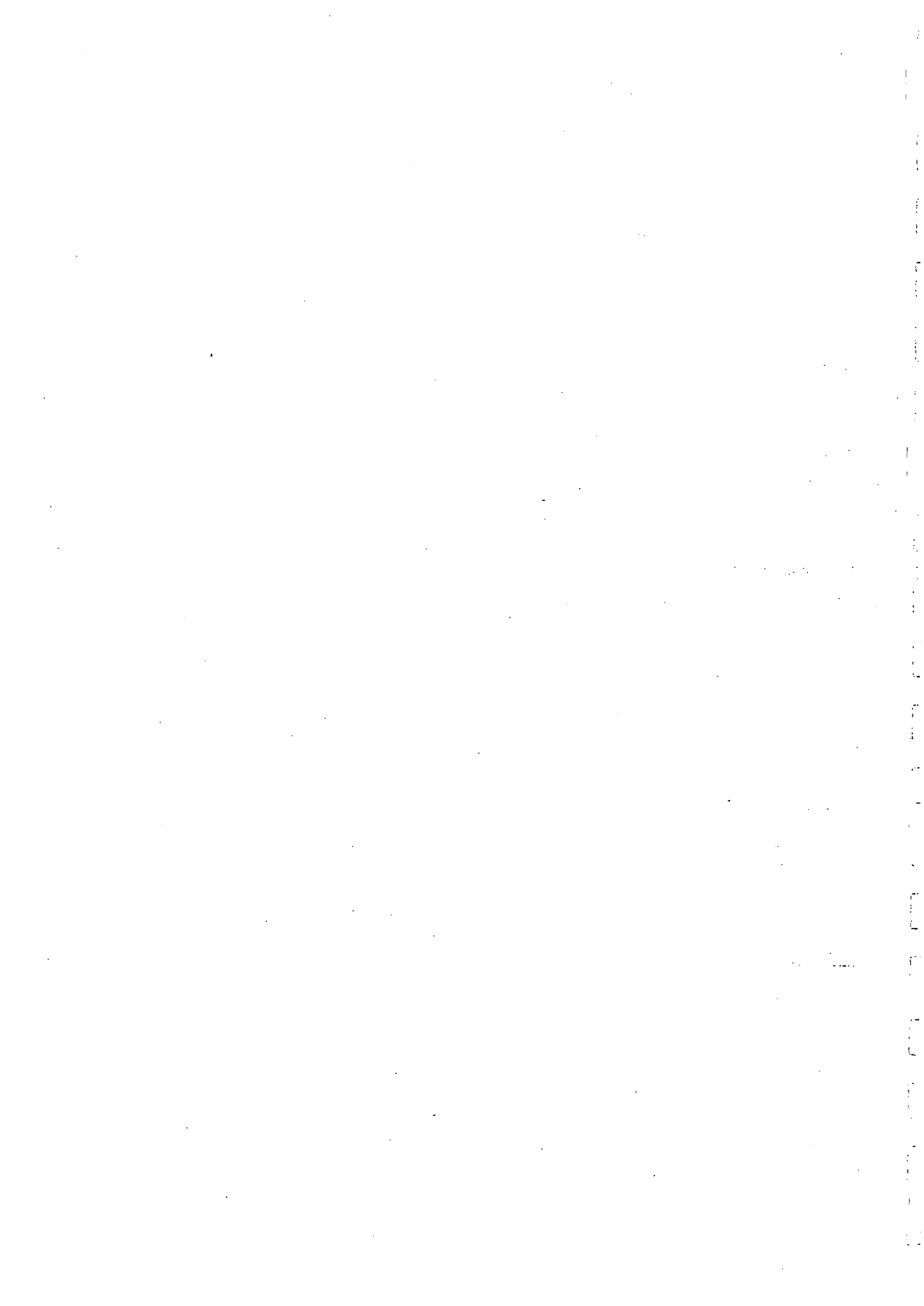


Signed by
for and on behalf of
THE HOUSE OF PERFUME



Signature

in the presence of Makany Rutke



KA/A/LL/D/1/20020

8th October, 2013

Mr. Ndruva Muli EBS,
Principal Secretary,
Ministry of Transport & Infrastructure
P.O. Box 52592 - 00100
NAIROBI

Dear

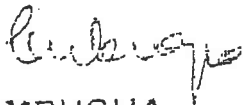
RE: LEGAL FEES

Ngatia and Associates were appointed by Kenya Airports Authority as our Advocates in all cases pertaining to World Duty Free Ltd and Diplomatic Duty Free. They have since forwarded their legal fees for three cases herein attached as follows;

- a) Repossessions of Duty free shops and lounges
- b) High Court Miscellaneous. Application No. 67 of 2013- Kenya Airports Authority Vs World Duty Free Ltd
- c) High Court Civil suit no 327 of 2013 – Kenya Airports Authority Vs Diplomatic Duty Free Ltd

We would like to seek your guidance and advice with respect to payment of the said fees.

Yours Sincerely



LUCY MBUGUA
AG. MANAGING DIRECTOR

Encl.

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KENYA AIRPORTS AUTHORITY ACT
(Chapter 395 Of the Laws of Kenya)
RESOLUTIONS
OF
THE BOARD OF DIRECTORS OF
KENYA AIRPORTS AUTHORITY
("KAA")

Passed on Tuesday, 13th May, 2014

BOARD OF DIRECTORS RESOLUTIONS

At the 195Bth (Statutory) Board of Directors Meeting of KAA duly convened and held at KAA Headquarters Boardroom on Tuesday, 13th May 2014, the Board RESOLVED and approved the following:

A: IN RESPECT OF MATTERS ARISING ON 190TH, 191ST & 192ND BOARD OF DIRECTORS' MEETING:-

1. The Board approves the recommendation of management to adopt the corporate balanced scorecard, to enhance the Authority's Performance Management.
2. The Board noted that the letters issued to officers on poor score are meant to encourage staff to enhance achievement in Performance, but although are not part of immediate penalization of officers, Human Resource is to incorporate matters of performance contracting into the annual appraisal system.

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CS

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- (a) Kenya Airways;
- (b) The KAPU Commandant, in respect of which a letter should be sent to the Inspector General of Police;
- (c) National Intelligence Service, in respect of which the Ministry of Interior and Coordination of National Government will do the needful; and
- (d) Kenya Defence Forces (KDF), in respect of which the Ministry of Interior and Coordination of National Government will do the needful.

5. In respect of legal services, the Board took note of the fee notes which had been sent to the Authority by the law firm of M/s Ngatia & Associates which has been representing the Authority on duty free shop claims at both Jomo Kenyatta International Airport and Moi International Airport, as follows:

- (1) Item (i) - High Court Miscellaneous Application No. 67 of 2013: KAA -vs- World Duty Free Ltd (WDF), on setting aside Arbitral Award of US Dollars 49,096,557 issued on 5th December 2012 against the Authority:
 - Kshs.76,262,069/-, less rebate of 10 million = Kshs.66,262,069/-
- (2) Item (ii) - HCCC No. 327 of 2013: DDF -vs- KAA, on seeking injunction orders to stop eviction and force renewal of lease:
 - Kshs.17,400,000/-, less rebate of 10 million = Kshs.7,400,000/-
- (3) Item (iii) - Repossessions of Duty Free Shops & Lounges from World Duty Free Ltd (WDF)/Kenya Duty Free (KDF) and Diplomatic Duty Free (DDF)
 - Kshs.290,850,000/-, less rebate of Kshs.40 million = Kshs.250,850,000/-

The Board made the following recommendations:-

- (a) The Authority to pay for both items (i) and (ii) as per submitted invoices, which the Authority has already received. A fee of Kshs.58,000,000/- of which advance of Kshs.20,000,000/- is paid (with a balance of Kshs.38,000,000/-) in respect of item (i); and Kshs.7,400,000/- in respect of item (ii) as agreed with the law firm. The Board noted the nature of the substantial claims against the Authority, and further noted that the total recommended amounts fall within the applicable scales of The Advocates (Remuneration) Order, 2013 & 2014.
- (b) The Authority to negotiate with the law firm on payment for item (iii) so as to establish reasonableness of the fees in terms of the achievements (works and/or services) that have been obtained through the law firm and to apportion the fees to

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each achievement. In this regard, a requisite board paper on such observations on reasonableness of the fees should be submitted by management to the Board for consideration and direction.

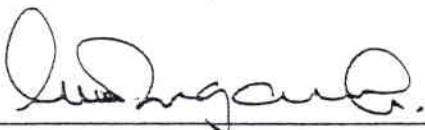
(c) The law firm should, in the meantime, submit to the Authority a formal Deed of Settlement that was agreed upon the parties (Kenya Airports Authority and World Duty Free Ltd (WDF)/Kenya Duty Free (KDF) and Diplomatic Duty Free (DDF) and the same be submitted to the Board for consideration and direction.

(d) The recommendations herein from the Board should be submitted to the parent Ministry (MOTI) so as to consider the same for directions as the Authority awaits the Attorney General's legal opinion.

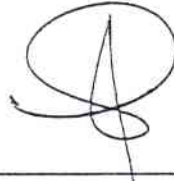
6. In respect of the current Ag. Corporation Secretary/ Chief Legal Officer

The item of the agenda had no paper presented. The Board resolved to discuss the matter in a subsequent meeting.


Dated this 20th of May 2014.

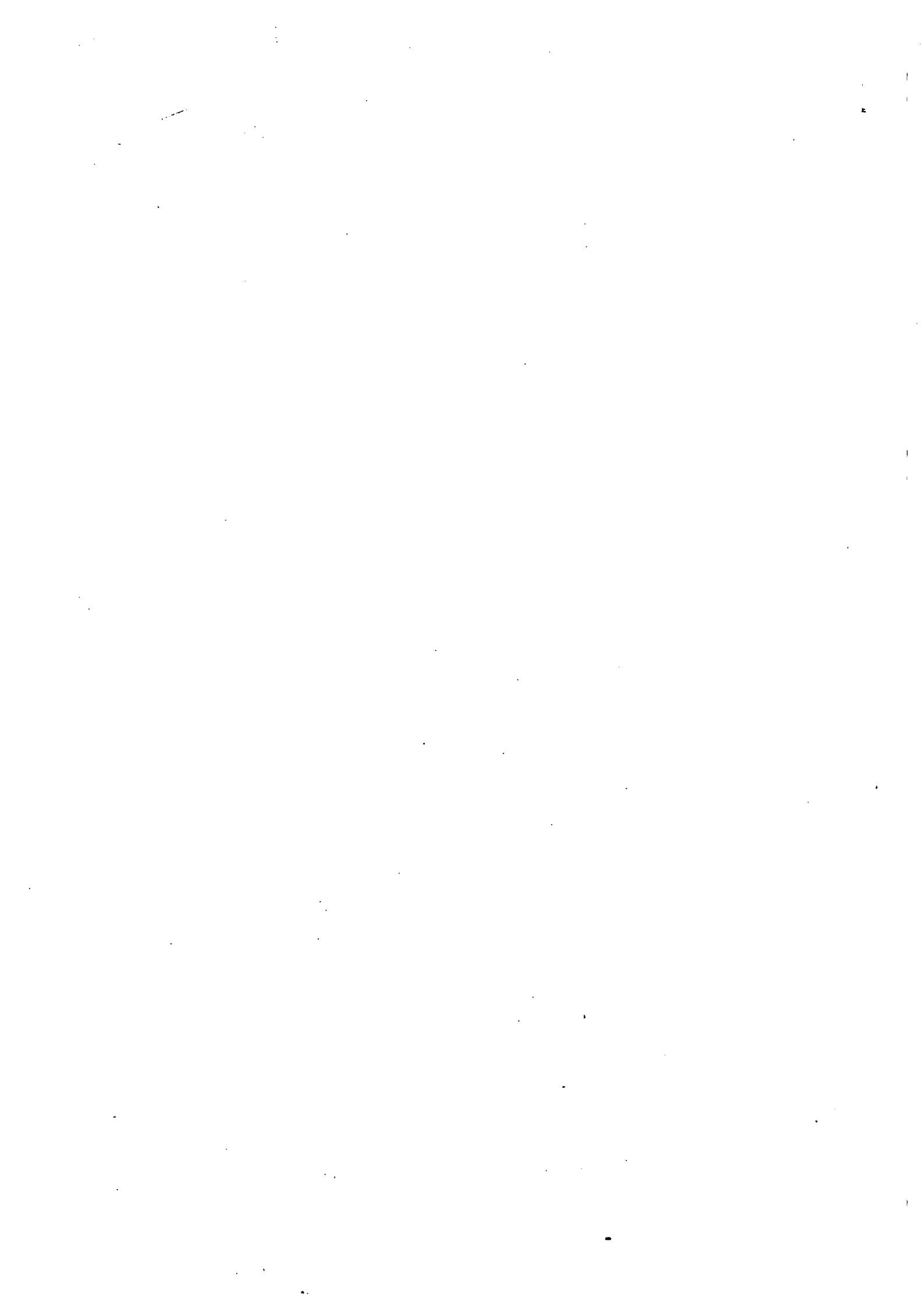


PROF. MUTUMA MUGAMBI, MBS
CHAIRMAN



VICTOR ARIKA
AG. CORPORATION SECRETARY







MINISTRY OF TRANSPORT AND INFRASTRUCTURE
OFFICE OF THE PRINCIPAL SECRETARY, NAIROBI

Telephone: (+254 20) 2729200
Fax: (+254 20) 2726300
Email: ps@transport.go.ke

MINISTRY OF TRANSPORT AND INFRASTRUCTURE
P.O. BOX 30000, NAIROBI
KENYA

Ms. Mary Mwangi
Managing Director
Kenya Airports Authority
NAIROBI

Dear *MD*,

PROFESSIONAL LEGAL FEES ON LEGAL REPRESENTATION IN RESPECT OF CLAIMS BY WORLD DUTY FREE LIMITED/DIPLOMATIC DUTY FREE LIMITED

Reference is made to your letter ref. KAA/II/02/975/VOI.1(63) dated 21st May, 2014 on the above subject.

The issue of legal fees for M/s Ngatia & Associates was forwarded to the Attorney General's Office for legal opinion. The Ministry notes that authority for payment for professional services can only be granted by a Procuring Entity's Tender Committee based on its budget and not the Board or the Ministry.

Kindly take necessary action.

Yours Sincerely

Nduva Muli, EBS
PRINCIPAL SECRETARY

John Mwangi

Handwritten notes:
The legal fees...
as per request...
attached...
released by the...
enclosed...



*Received by
Samo Wood
9:00am
10/5/14*



0.1 x 10¹² cells



Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: +254 - 020 - 8221111 / 6611000 / 6612000
Fax: +254 - 020 - 822078, 827304
Email: info@kaa.go.ke
www.kenyaairports.go.ke

Our Ref: LL/192/2013

10th November, 2014

Ngatia & Associates
Advocates
Commissioner for Oaths
Bishops Garden Towers
2nd Floor
P. O. Box 56688 - 00200
NAIROBI

ATTN: Fred Ngatia

Dear Sir,

RE: WORLD DUTY FREE COMPANY LIMITED AND DIPLOMATIC DUTY
FREE LIMITED

We refer to the above matters and write further to our letter of 21st October, 2014.

While considering an update on the matters, the Board of Directors, at its meeting held on 30th September, 2014 noted as follows:-

1. Item (i) and (ii) fee notes have been paid in full.
2. Your fee note dated 30th September, 2013 at item (ii) makes mention of relinquishment of the arbitral award and at (iv) terminate all cases against the client pending in all courts and ensure that all those cases were marked as withdrawn.

The Board resolved that you avail documentary proof of relinquishment of the arbitral award together with confirmation that all cases have been marked as withdrawn.

The foregoing is a condition precedent to payment of any further legal fees in the matters.

Yours faithfully,

KKisila

Katherine N. Kisila
Corporation Secretary

Appendix II



MINUTES OF THE MEETING HELD ON 4TH JULY, 2013 AT FAIRVIEW HOTEL NAIROBI TO DISCUSS THE ISSUES RELATED TO DUTY FREE SHOPS JKIA

Present

- | | |
|------------------------|--|
| Mr. Fred Ngatia | - Meeting Chairman,
External Lawyer representing
KAA |
| Mr. Victor Arika | - Ag. Corporation Secretary
KAA |
| Ms. Lucy Mbugua | - GM Marketing & Business
Development KAA |
| Mr. Francis Ngigi | - Project Manager
KAA |
| Ms. Margaret Munene | - Legal Counsel KAA |
| Mr. Benard Kalove | - Lawyer representing KDF |
| Mr. Sukhdev Kumar Puri | - GM DDF |
| Mr. Rahul Sood | - GCEO |
| Ajay Kothari | - GM KDF |

Min 1/2013 Introduction

The Meeting was called to order at about 02:45pm and was chaired by Mr. Fred Ngatia. After a brief introduction of the members present, the Chairman informed the meeting that any agreement that might be arrived at in the meeting will be on a without prejudice basis with a clear mandate to sought out various issues related to Duty Free shops at Jomo Kenyatta International Airport (JKIA). He also stated that as much the Authority would like Diplomatic Duty Free (DDF)/Kenya Duty Free (KDF) to carrying on with its business investment at the airport, DDF/KDF must equally taking into account the ongoing development works of the airport facilities. In this regards, it was noted that the meeting must be conducted with honesty and utmost transparency between KAA and DDF/KDF.

Min 2/2013 Adoption of the Agenda

It was noted that the principal Agenda for the Meeting was to deliberate on two issues namely:-

- 1. The Bonded Warehouse (store) which is preventing the Contractor to complete the ongoing works at JKIA Terminal 4. While addressing this aspect, KAA and DDF/KDF had to discuss and agreed upon the terms and conditions for relocation of the said store.*
- 2. The Terminal 4 with regard to the disputed advertisement.*

Min 3/2013

The Bonded Warehouse (store) which is preventing the Contractor to complete work at JKIA Terminal 4

The Chairman informed the meeting that ongoing construction works at Terminal 4 had come to a standstill because of the place occupied by the Bonded Warehouse (store) belonging to DDF/KDF. The DDF/KDF representatives were therefore informed that the way to go about the scenario would be to relocate for purposes of the project going on.

The DDF/KDF representatives together with their lawyer advised the meeting that they were willing to have the Bonded Warehouse relocated to a space at cargo village. They however requested KAA if they could consider giving them an alternative space within JKIA Terminal area instead of the one available at cargo village. DDF/KDF indicated that the place at cargo village would subject them to security risks. For clarity purposes, KAA

representatives informed the meeting that there was no available space at JKIA Terminal, and that the only space available was at the cargo village area.

DDF/KDF requested that in the event that they have to utilize the space available at cargo village, then entrance to the building should be rerouted for security purposes. At the same time, they requested KAA to talk to customs for clearance purposes.

On the issue of relocation, the members observed and agreed as follows:

- (i) *It is DDF/KDF's statutory duty to address any customs issues with the Customs Department should it relocate the Bonded Warehouse (store).*
- (ii) *There be site visit at the proposed space at cargo village area for the Bonded Warehouse on Friday 5th July 2013 at 10:30 am between the representatives of both KAA and by DDF/KDF.*
- (iii) *DDF/KDF KDF would meet the cost of renovating the proposed Bonded Warehouse at the cargo village area. As KAA was looking at the minimum time for construction, DDF/KDF agreed to take into account the issue of timeframe.*

The terms for the Bonded Warehouse

KAA proposed to give DDF/KDF a contract for one year but DDF/KDF requested for two years to enable them recovered the amount of money they are going to spend in renovating the proposed Bonded Warehouse.

It was agreed that contract duration will be agreed in the next meeting which will be scheduled after the proposed site visit.

Min 4/2013

The Terminal 4 with regard to the disputed advertisement (Exclusivity Right)

DDF/KDF requested KAA to allocate to them a space measuring 250m at Terminal 4 without KDF going through tender. The Chairman however advised that doing so would be in breach of the Public Procurement and Disposal Act and Rules as both parties are duty bound to comply with the

law. The Chairman informed the meeting that the issue of exclusivity right which relying on by DDF/KDF shall be addressed at the next meeting.

Min-5/2013

AOB- Date of next meeting

The Chairman thanked all present for attending the meeting.

It was agreed that the next meeting shall be held on 9th July 2013 at 12:30pm.

There being no further business the Meeting closed at 03:50pm.

**CONFIRMED AS A TRUE RECORD OF THE PROCEEDINGS OF
THE MEETING HELD ON 4TH JULY 2013.**

VICTOR ARIKA
AG. CS - KAA

FRED NGATIA
LAWYER FOR KAA

DATE: _____

DATE: _____

Appendix 13



MINUTES OF THE MEETING HELD ON 9TH JULY, 2013 AT ANDREWS APARTMENTS NAIROBI TO DISCUSS THE ISSUES RELATED TO DUTY FREE SHOPS JKIA

Present

Mr. Fred Ngatia	-	Lawyer representing KAA
Mr. Victor Arika	-	Ag. Corporation Secretary, KAA
Ms. Lucy Mbugua	-	GM Marketing & Business, Development KAA
Mr. Francis Ngigi	-	Project Manager KAA
Ms. Margaret Munene	-	Legal Counsel KAA
Mr. Benard Kalove	-	Lawyer representing DDF/KDF
Mr. Kamlesh Pattni	-	Owner of DDF/KDF
Mr. Rahul Sood	-	GCEO
Mr. Ajay Kothari	-	GM KDF

AGENDA

1. Opening remarks
2. Bonded warehouse
3. Terminal 4
4. AOB

~~Minute 2013~~: Opening Remarks

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The meeting was called to order at 01.00 pm and was chaired by Mr. Fred Ngatia, an external lawyer representing KAA. The Chairperson welcomed all the members and stressed the importance openly addressing the issues amicably with honesty and transparency without and use of ex parte Court Order obtained surprisingly from the back.

Min 2/2013: Bonded Warehouse

Relocation

The Chairperson sought to know from the representatives of DDF/KDF if they visited the site for the bonded warehouse at the cargo village as agreed in the previous meeting. DDF/KDF confirmed that they had visited the site. When asked how long it would take DDF/KDF's contractor to conclude putting up the bonded warehouse, they indicated that it would take one and a half month. KAA requested for three weeks given the urgency of continuing with the ongoing terminal project. Members thereafter agreed that DDF/KDF will relocate the bonded warehouse, and KAA will therefore issue a Letter of Offer for that purposes as soon as possible.

License Duration for the New Premises at Cargo Village

The meeting was informed that KAA was willing to license the new premises at cargo village for a period of one year. DDF/KDF on the other hand requested KAA to consider a period of two years which is renewable.

As a good will KAA, agreed for a period two years renewable subject to availability of space, and subject nonetheless to earlier determination to be provided in a formal license agreement.

Min 3/2013: - Terminal 4

DDF/KDF informed the meeting that given that they have the exclusivity clause in their lease, they requested that they be allocated 250 square meters in the new terminal (T4). DDF/KDF informed the meeting that they had assured their partner based in Dubai (Suzanne International) that they are likely to get a space at Terminal 4. KAA representatives informed the meeting that the Authority is looking for one operator in Terminal 4 since there is only one duty free shop which cannot be split. Therefore, KAA is willing to reach out to DDF/KDF in accordance with the law in obtaining duty free shop at Terminal 4 openly and transparently by a tender. For clarity purposes, the representatives from DDF/KDF were then taken through the Terminal 4 architectural plan by KAA.

DDF/KDF informed the meeting that as they discuss out of court settlement, the same should be fair and reasonable. They were informed that the Authority is willing to give as much as it can however within the law. KAA however informed the meeting that they will consult further and see whether there is a way out in terms of space at Terminal 4.

~~Min 4/2013~~: - AOB

Premises currently occupied by KDF

The Authority informed the representatives from KDF that there were two premises that KAA would want them to relinquish namely – airline lounges at Gate 6 and Gate 11 – as operation of airport lounges is a part of the KAA's core business. Therefore, the Authority intends to take back the lounges and manage them directly in connection with the airlines. KAA indicated several complaints from the Airlines have been received that passengers are not receiving good service from the lounges. The meeting was informed that the Airlines do not have lounges at the departures and the Authority's first priority would be issuance of lounges to Airlines. In view of the above, DDF/KDF was requested to urgently relinquish the business class lounge it currently occupies.

It was agreed that the next meeting will be held on 22nd July 2013. There being no other business the meeting ended at 3:40pm.

**CONFIRMED AS A TRUE RECORD OF THE PROCEEDINGS OF THE
MEETING HELD ON 9TH JULY 2013**

VICTOR ARIKA
AG. CS - KAA

FRED NGATIA
LAWYER FOR KAA

DATE: _____

DATE: _____



Wetang'ula, Adan, Makokha & Company
Advocates, Commissioners for Oaths, Notaries Public & Patent Agents

A. S. Adan LLB (Hons) LLM NBI
D. Abdulrahman LLB (Hons), NBI
M. M. Bakari LLB (Hons) NBI, LLM UK
Yunis H.O. Mohamed, LLB (Hons), NBI
Naima Sheikh, LLB (Hons), READING
Ibrahim Adan, LLB (Hons) NBI

A. S. Makokha LLB (Hons), NBI
N. S. Wattang'ah LLB (Hons), MOI
P.M. Milimo LLB (Hons), MOI
N. M. Mukisu LLB (Hons), SHIV

Our Ref: **Wam/C/55/2013** Please reply to Nairobi/Mombasa/Bungoma ofc and quote our reference **29th May, 2014**

Your Ref: **TBA**

Managing Director.
Kenya Airports Authority
Head Office – Airport North Road
P. O. Box 19001-00501
NAIROBI.

30 MAY 2014
Mombasa



Attn: Mrs Lucy Mbugua

Dear Madam,

RE: MOI INTERNATIONAL AIRPORT

We refer to your letter dated 8th May 2014 wherein you belatedly purport to offer our client a nominal space of 40 square metres at Moi International Airport.

At the lengthy negotiations between the parties in August 2013, the Cabinet Secretary, Ministry of Transport & Infrastructure expressly directed you to allocate our client premises measuring at least 200 square metres at the above Airport. Despite this clear order which was made in the presence of all persons in attendance, you made every effort to obstruct the process of our client obtaining the premises. You have done everything in your power to ensure that no letter of offer is issued and flatly declined to take any telephone call we made to you. The undersigned has attended a number of your board of directors meeting where directors have been astonished by your acts which are calculated to deny our client the premises which were part and parcel of the global settlement which was reached by the parties.

Our Client's representatives travelled to the Airport and found that you have divided the space into 3 shops each measuring approximately 40 square meters. You directed your officers to allocate our client the shop which is at the furthest end and which is the least favourable. It appears that you intend to allocate the other 2 shops to persons who are more favoured.

.../2 **WAM**

Nairobi Office:
Bruce House, 12th Floor, Standard Street
P.O. Box 10741 - 00100, Nairobi, Kenya
Tel: 254-020-316455, 2220498
Fax: 254-020-2210484
E-mail: info@wetangulawam.co.ke

Mombasa Office:
Royal Bldg, 1st Floor, Digo Rd
Opp. Bank of Baroda
P.O. Box 88356 - 80100
MOMBASA
Tel: 254-041-2315456/7, Tel Fax: 254-041-2315457

Western Office:
Bungoma Town Hall, Moi Avenue
P.O. Box 427
Bungoma
Tel: 254-055-30523, 30571

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We have been instructed by our client to inform you that our Client rejects your offer and cannot take possession of premises as the process is skewed in favour of other competitors. Further, since you have refused to implement a fundamental part of the agreement, which was reached by the parties, the agreement stands rescinded and parties are at liberty to take whatever action they perceive appropriate.

The substantial claims which were proposed to be settled will be revived since the agreement has been rescinded due to your renegeing on the terms thereof. All those monetary claims and consequential losses are directly attributable to your incomprehensible desire to rescind an agreement which was to the best advantage of KAA. As the agreement has ceased to exist, we shall continue with whatever action which is to our Client's advantage.

Yours faithfully,



Ahmed Adan
For: WETANG'ULA, ADAN, MAKOKHA & COMPANY
ADVOCATES
/ca

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CONFIDENTIAL

29th January, 90

DOA/C2/28/VOL. I

Permanent Secretary,
Provincial Administration & Internal Security,
Office of the President,
P.O. Box 30510,
NAIROBI.

This is the exhibit marked 'C-1' referred to in the
affidavit of
ENG. STEPHEN [Signature]
before me this 19th day of Feb 1990 at 16:30
[Signature]
Commissioner for Oaths

EXPANSION BY KENYA DUTY FREE LIMITED:
AT JKIA - IMPLICATIONS

The above company had been allocated an area in Unit 1 for the development of duty free shops. Work had already started and the progress is so far satisfactory. We, however, have problems in monitoring the works as the company seems to have very little regard for the requirement of the department.

Recently the company has been able to obtain approvals to carry out construction in areas earlier not approved very much against the objection by our technical officers. This trend is bound to continue given that they have sought further approval to occupy some operational areas of the airport and their plans pose great danger to the smooth and safe operation of the airport. In particular we would like to draw your attention to the fact that as managers our primary responsibility is to provide for the comfort and safety of the passengers and aircraft. Unfortunately we are likely to deviate from these noble objectives if we continue to allow this company to occupy any portion of the terminal building unrestrained.

Some of the areas they occupied without proper approval have already given rise to serious worries as they have blocked some of the public utilities and government operational areas without providing suitable alternatives. They have recently also submitted plans of their expansion programme which if allowed to go ahead would seriously affect airport security and capacity adversely.

Since there has been no formal communication giving guidance regarding the objective of this company we have found it extremely difficult to assist them without compromising our goal as airport operators. We fail to see how as duty free concessionaires they should be allowed to expand to other areas which have nothing to do with duty free activities. In particular we would like to point out that M/S Kenya Duty Free Limited want to occupy over 1000m² of the terminal building and in the process will obstruct or force us to lose most of our passenger processing facilities. They want to provide lounge facilities and cafeterias which are not necessarily duty free activities. Already we have lost to them Government VIP Lounge in Unit 1, and are likely to lose the Unit 2 one as well. This poses a big dilemma as we shall be left with no Government lounge for handling state guests travelling on scheduled flights.

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May we get your guidance regarding the development intended for this company and request that we be given an opportunity to comment on aspects of expansion which are likely to have adverse effect on our operations.

E. A. OMAISE
Asst. DIRECTOR OF AIRPORTS

GAD/mcc

BOARD OF AIRLINE REPRESENTATIVES

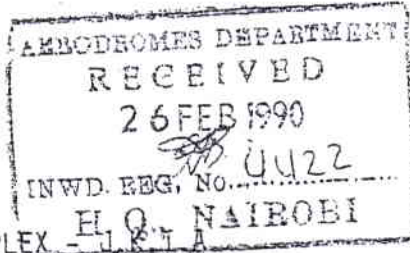
P.O. BOX 47641, NAIROBI, KENYA.

19th February 1990

CONFIDENTIAL

The Hon. B. Nabwera, M.P.
Minister of State,
Office of the President,
P.O. Box 30510,
NAIROBI.

*See in Kenya Duty Free
File
JF 23.2.90*



Dear Sir,

RE: KENYA DUTY FREE COMPLEX

As Chairman of the Board of Airline Representatives I am writing to you to express the deep concern of all member airlines in Kenya regarding the Kenya Duty Free complex at JKIA.

At the inception of the project no consultation was entered into with the airport users as to the disruption that will ensue during the construction or the facilitation implications of the finished complex.

JKIA is already very congested and uncomfortable for passengers at certain peak times and it is now learned that gate 7 is to be converted into yet another Duty Free shop, thereby reducing available space further.

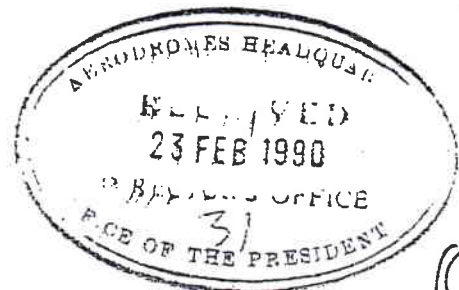
The Director of Aerodromes has written to the 5 airlines who operate First Class Lounges adjacent to gate 12 to vacate before 5 March 1990. The airlines concerned will be corresponding individually regarding their respective lounges. The concern of the Board of Airline Representatives (BAR) is that airlines who have their own lounges are able to offer their own specific service to their premium passengers in this only comfortable area at the airport. The state of the airconditioning, toilets, lighting and seating in the main terminal are unacceptable. To have one common lounge for all carriers is also unacceptable to the BAR as the size alone would destroy any exclusivity.

Through your Ministry the BAR requests that the Airport Authority take urgent steps to improve the basic passenger and ramp facilities at the airport before concentrating on the Duty Free complex. The airbridge, flight information system, public address systems, baggage belts and lights require urgent attention along with the airconditioning, toilets, lighting and seating as mentioned above. In addition, the BAR proposes that the available space in the check-in areas at JKIA be re-allocated in relation to the scale of activities of the different airline users, so as to ease congestion and give more equitable distribution of space than at present.

In conclusion I would respectfully request an urgent meeting between the BAR Facilitation Subcommittee and your Ministry/the Director of Aerodromes to discuss these urgent issues.

Yours faithfully,

M. Revis
M. Revis
CHAIRMAN, BOARD OF AIRLINE REPRESENTATIVES



Copy to the Director of Aerodromes

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~~CONFIDENTIAL~~

Appendix 17

Telegrams: "SHIRIA", Nairobi
Telephone: Nairobi 27461
When replying please quote



ATTORNEY-GENERAL'S CHAMBERS
P.O. BOX 40112, NAIROBI
KENYA

Ref. No. CONF/AGRE/100/122
and date

24th June..... 19.93

Prof. P.M. Mbithi, EBS
Permanent Secretary,
Secretary to the Cabinet &
Head of Public Service
Office of the President
NAIROBI

Dear *P.M. Mbithi*

AGREEMENT BETWEEN THE GOVERNMENT OF KENYA
AND THE HOUSE OF PERFUME

I refer to your letter Ref. No. OP.9/171A of June 21, 1993 on the above Agreement.

I have carefully considered the provisions of the Agreement and wish to advise as follows:-

1. Nature of the Agreement

Clause 1 of the Agreement clearly states the intention of the parties. That intention was to enter into a lease agreement which was to contain clauses including those set out in sub-clauses 1(i) to (iv).

Clause 2 of the Agreement is of particular legal importance. It sets out conditions precedent to the assumption of rights and obligations by the parties. A condition precedent in law is the 'sine qua non' (Cardinal requirement) to getting a thing done. The parties could not derive any benefits from the contract unless the conditions precedent were met.

Condition precedent 2A(iii) provides:

"..... that the Attorney-General of the Government has certified in writing that the persons executing this Agreement on behalf of the Government are duly empowered to sign on behalf of the government"

Having carefully studied the file on this matter, I have no evidence on record that the Attorney-General did certify in writing that execution of the agreement on behalf of the Government was done in accordance with the laws of Kenya. The Agreement was not vetted by this Office at least from the records I have, prior to execution. From a legal point of view therefore, all the conditions precedent to the effectiveness of the Agreement were not met. The legal effect is that the Agreement never came into force at all. Neither party can therefore, rely on it to justify any action and/or omission.

2. Legal capacity of the signatories

It is trite law that parties cannot contract out of the express provisions of a written law unless that law so provides. Legal capacity to commit Government on contracts depends on the due compliance with the statutory

~~CONFIDENTIAL~~

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provisions relevant to the rights and obligations the Government is assuming. It is on this point that I wish to specifically respond to the issue raised in your letter.

Section 4 of the Exchange Control Act (Chapter 113 of the Laws of Kenya) requires any person in or resident in Kenya who is entitled to procure inter alia, foreign currency, to offer it for sale to an authorised dealer, unless the Minister consents to his retention and use thereof. The power to give the requisite consent was vested in the Central Bank of Kenya vide Legal Notice No. 18 of 1968.

Clause 4(ix) in the Agreement which you referred to in your letter was a direct contravention of section 4 of the Exchange Control Act unless the consent of the Minister was obtained. We have no evidence on our file that such consent was ever obtained. In the circumstances, the signatories to the Agreement could not bind the Government on such an undertaking that contravenes the law. The signatories lacked legal capacity to bind the Government into such commitment. Clause 4(ix) was a nullity 'ab initio' (from the start) and therefore unenforceable in law. House of Perfume and its principals cannot rely on an illegality to take foreign exchange out of the country. ;

the signatories had taken legal advice prior to signing the Agreement, they would have pointed this out. Indeed if we had been asked to meet condition precedent 2A(iii) of the Agreement, we would have drawn the attention of Government on this illegality.

In conclusion, I wish to state that House of Perfume has committed a criminal offence and they cannot rely on an illegal provision in the Agreement to evade prosecution. I wish to point out however that a decision as to whether the culprits should be prosecuted or not requires careful consideration in view of the prominence they would put to the fact that they relied on an agreement signed by very senior officers of the Government. This may end up embarrassing the Government.

Yours

B.P. Kubo
B.P. KUBO
SOLICITOR GENERAL



GENERAL REGISTRY

ISLE OF MAN

WORLD DUTY FREE COMPANY LIMITED

47053

Handwritten notes:
The above mentioned company was incorporated on the 15th December 1989 and has continued in existence since that date to the present time.
The present officials of the company are as follows:-
Directors
Nasir Ibrahim Ali
Businessman/General Manager
Khanbhayata Kishor Chandra Mohanlal
Owner Construction Company
Abdul Rahim Mohammed
Yousef Mohammed
Dubai Police Officer
Secretary
Auckland Secretaries Limited
Exchange House, 54-58 Athol Street, Douglas, Isle of Man

I certify that the above mentioned company was incorporated on the 15th December 1989 and has continued in existence since that date to the present time.

The present officials of the company are as follows:-

Directors

Nasir Ibrahim Ali
WD-3 Roundabout 3, P.O. Box 16892, Jebel Ali, U.A.E.
Businessman/General Manager

Khanbhayata Kishor Chandra Mohanlal
P.O. Box 329, Sharjah, United Arab Emirates
Owner Construction Company

Abdul Rahim Mohammed
Yousef Mohammed
P.O. Box 8222, Dubai, United Arab Emirates
Dubai Police Officer

Secretary

Auckland Secretaries Limited
Exchange House, 54-58 Athol Street, Douglas, Isle of Man

The present Registered office is situate at Third Floor, Exchange House, 54-58 Athol Street, Douglas, Isle of Man.

There are no documents on the file relating to the winding-up or striking-off.

This 19th day of August 1996

Handwritten signature: Caldwell

Deputy Assistant Chief Registrar

22. Nitrogen



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No. F. 55/2001



Sh. S. C. M. T. J. J.

CERTIFICATE OF COMPLIANCE

With section 366 of the Companies Act, Cap. 486

I hereby Certify,

that *[Handwritten signature and notes]*

WORLD DUTY FREE COMPANY LIMITED.....

a Company incorporated in BRITISH VIRGIN ISLANDS.

has this day delivered to me for registration the documents and particulars specified in section 366 of the Companies Act (Cap. 486)

Given under my hand at Nairobi this TWENTY FIRST day of NOVEMBER ~~XXXXXX~~ TWO THOUSAND AND ONE

Sgd. W.K.T. RICHU.
Snr. Dy. Registrar of Companies

S. 2. 1. 1. 1. 1.



Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

Appendix 20

KAA/CM/GM VOL 1 (2)

CONFIDENTIAL

5th September 2013

Cabinet Secretary
Ministry of Transport & Infrastructure
Transcom House
NAIROBI

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Dear

SUBJECT: NEGOTIATION REF KAA'S AND DUTY FREE OPERATORS

KAA has at least 10 cases pending in court relating to duty free facilities. All the cases revolve around Kamlesh Pattni whose tentacles reach far and wide. With the likelihood that litigation in court would derail KAA's long term plans it was decided that KAA pursues out of court settlement with the owners of World Duty Free for whom Pattni seems to be the front.

Fred Ngatia has been leading our team in the said negotiations on the progress. On 4th September Ngatia and his team made a presentation to the full Board. He also introduced Advocate Adan who is representing the other party. The Board was very encouraged that there was a window of opportunity to finally deal conclusively with this 25 year old problem. The Board therefore approved that Ngatia proceeds to finalize this matter for eventual approval by the Board and the Ministry of Transport and Infrastructure.

The resolutions passed by the Board are appended for your information. The Board wishes to thank you and your PS for the continuing support on this matter

Yours Sincerely,

PROF. MUTUMA MUGAMBI, MBS
CHAIRMAN
KENYA AIRPORTS AUTHORITY

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CC: **Nduva Muli, EBS**
Principal Secretary
Ministry of Transport & Infrastructure
Transcom Hse
NAIROBI

Fred Ngatia
Ngatia & Associates
Bishops Gardens Towers
Bishops Rd
P.O. Box 56688-00200
NAIROBI

Dear Fred

Fred Ngatia



**MINUTES OF THE 180TH (SPECIAL) BOARD OF DIRECTORS MEETING
HELD ON 4TH SEPTEMBER, 2013 IN THE BOARDROOM, KENYA AIRPORTS
AUTHORITY HEADQUARTERS, NAIROBI**

Present

Prof. Mutuma Mugambi	-	Chairman
Mr. Gabriel Kivuti	-	Director
Mr. Kulow M Hassan	-	Director
Ms. Lucy Mbugua	-	Ag. Managing Director
Mr. Nicholas Bodo	-	Alternate Director Ministry of Transport & Infrastructure
Mrs. Beatrice Gathirwa	-	Alternate Director Ministry of National Treasury
Mr. Joseph Irungu	-	Alternate Director Ministry of Interior & Coordination of National Government

In attendance

Mr. Victor Arika	-	Ag. Corporation Secretary
Ms Margaret Munene	-	Legal Counsel (Recording)
Mr. Fred Ngatia	-	External Lawyer, KAA
Mr. Tom Macharia	-	External Lawyer, KAA
Mr. Ahmed Adan	-	External Lawyer, World Duty Free

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KENYA AIRPORTS AUTHORITY ACT

(Chapter 395 Of the Laws of Kenya)

RESOLUTIONS

OF

THE BOARD OF DIRECTORS OF

KENYA AIRPORTS AUTHORITY

("KAA")

Passed on 4th September 2013

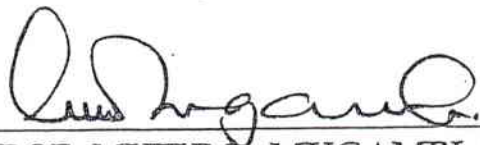
RESOLUTIONS OF THE BOARD OF DIRECTORS

At the 180th Special Board of Directors Meeting of KAA duly convened and held at KAA Headquarters Boardroom on Wednesday, 4th September 2013, during which the Board of Directors deliberated on presentations on negotiation made by the external lawyer representing KAA, MR. FRED NGATIA, and the external lawyer representing both World Duty Free Limited ("WDF") trading as Kenya Duty Free (KDF) and Diplomatic Duty Free Limited ("DDF"), MR. AHMED ADAN, the Board RESOLVED as follows:

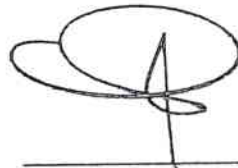
1. **That** the said external lawyer, MR. FRED NGATIA is hereby empowered by the Board to take part in, and defend the interests of the Authority in negotiations with the said external lawyer, MR. AHMED ADAN, representing WDF and DDF with regard to claims on Duty Free shops at all Airports in Kenya.
2. **That** the following conditions precedent that ought to be fulfilled by WDF and DDF are to be captured in the negotiation settlement:-
 - a) *Withdrawal of all cases.*

- b) *Setting aside of the Award made by the Arbitrator, Hon. Justice (Rtd) E. Torgbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013.*
- c) *They shall not have any further claims for damages for the recent and previous evictions.*
- d) *Publicly and formally stating that they shall not have any further claims whatsoever against the Authority or the Kenyan Government in all Airports.*
3. **That** KAA in exchange will identify available space to their new associated company.
4. **That** the Acting Managing Director is hereby authorized to work with the Authority's external counsel **MR. FRED NGATIA**, and update the Board accordingly on the proposed final negotiated settlement for the Board's approval.
5. **That** the final negotiated settlement shall be submitted by the Board to the Cabinet Secretary of the Ministry of Transport and Infrastructure for due approval.
6. **That** consequently all license agreements drafted must be reviewed before execution with a view to protect the Authority's interest.

Dated this 4th day of September 2013.



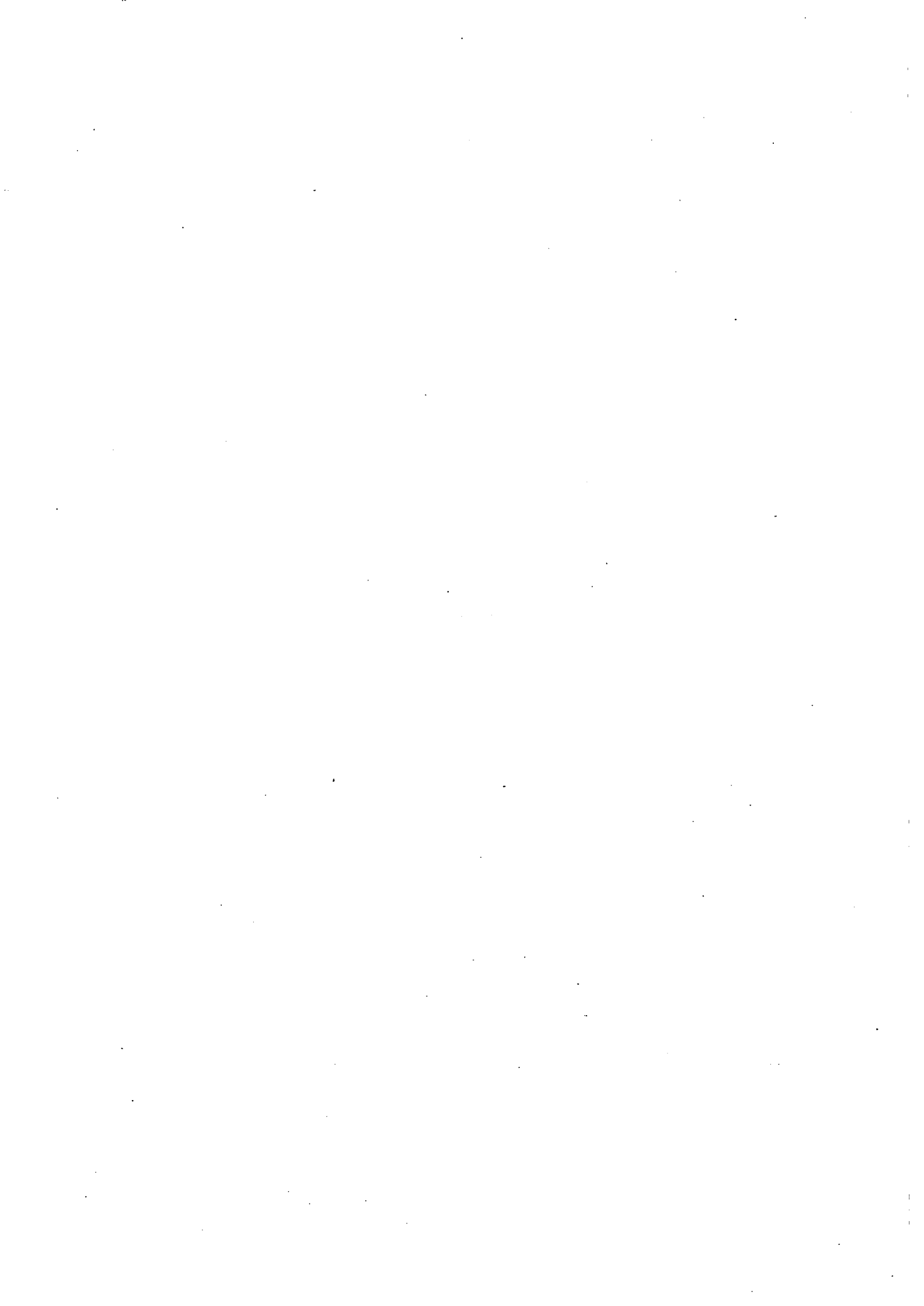
PROF. MUTUMA MUGAMBI, MBS
CHAIRMAN
SECRETARY



VICTOR ARIKA
AG. CORPORATION

GA

AS



Dated this

day of

2013

Deed of Settlement

Between

1. WORLD DUTY FREE COMPANY T/A KENYA DUTY FREE COMPLEX , DIPLOMATIC DUTY FREE LIMITED AND KAMLESH M.D. PATNI

2. KENYA AIRPORTS AUTHORITY AND THE HON. CABINET SECRETARY, MINISTRY OF TRANSPORT & INFRASTRUCTURE

DRAWN BY:

Ngatia & Associates Advocates
Bishops Garden, Towards 2nd Floor,
Bishops Road,
P. O. Box 56688 -00200
Nairobi

Ag. 11/10/09

DEED OF SETTLEMENT

THIS DEED OF SETTLEMENT is made this day of 2013 BETWEEN:-

3. World Duty Free Company T/A Kenya Duty Free Complex, Diplomatic Duty Free Limited and KAMLESH M.D. PATTNI of one part hereinafter referred collectively as Party A
4. Kenya Airports Authority (KAA) and The Hon. Cabinet Secretary, Ministry of Transport of the other part hereinafter referred collectively as Party B; and

WHEREAS

- A. The Parties are currently engaged in, or otherwise affected by, litigation pending in various Courts in Kenya (the "Legal Proceedings")
- B. In order to ensure the reconciliation, good commercial tenant landlord relationship and also to avoid the expense, inconvenience and distraction of litigation, the Parties have agreed in a good faith and reasonable basis to settle, compromise, and resolve all disputes and liabilities pursuant to the Legal Proceedings and any other outstanding or potential disputes or misunderstanding in connection with or in relation to the duty free shops operations at airports on the terms set out in this Deed .

NOW, THEREFORE, in consideration of the mutual covenants, undertakings and promises herein exchanged, the sufficiency and adequacy of which is hereby acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree as follows:-

1. Definitions and Interpretation

1.1 In this Deed (including the Recitals), unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings -

- 1.1.1 "Advocates" means the legal representatives appointed by the Parties in connection with the Legal Proceedings;
- 1.1.2 "Business Day" means a day (other than a Saturday, Sunday or gazetted public holiday in Kenya) on which banks and financial institutions are normally open for the conduct of normal banking business in Nairobi;
- 1.1.3 "Deed" means this Deed of Settlement;
- 1.1.4 "Settlement Date" means the date on which the last of the Legal Proceedings is marked as settled (*Settlement of Legal Proceedings*); and

1.2 In this Deed: -

- 1.2.1 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.2 an expression which denotes -
 - 1.2.2.1 one gender includes the other gender;
 - 1.2.2.2 a natural person includes a juristic person and vice versa; and
 - 1.2.2.3 the singular includes the plural and vice versa;



- 1.2.3 any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Deed, shall be given effect to as if it were a substantive provision in the body of the Deed;
- 1.2.4 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Deed;
- 1.2.5 defined terms appearing in this Deed in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.2.6 reference to "days" shall be construed as calendar days unless qualified by the word "Business", in which instance the meaning given to it in clause 1 herein shall apply. Any reference to "business hours" shall be construed as being the hours between 08h30 and 17h00 Kenyan time;
- 1.2.7 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 1.2.8 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.2.9 no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision; and

2. Settlement Terms

The Parties hereby agree to the unconditional settlement of the Legal Proceedings on the terms set out in this Deed. For avoidance of doubt all legal proceedings between the parties will be deemed settled as between the Parties upon signing of this deed of settlement.

2.1 Settlement of Legal Proceedings

- 2.1.1 The Parties shall, as soon as reasonably practicable after the execution of this Deed but at any rate within seven (7) days from the date of this Deed procure their respective Advocates to file with the Relevant Courts the necessary consent letters or other documents or motions as are required to unconditionally mark each and every Legal Proceeding as settled with no order as to costs.

2.1.1.1 each of the A Party and the B Party shall jointly exercise their best endeavors to procure that the parliamentary investigations relating to the evictions and the Parties pending before the Parliamentary Departmental Committee or any committee or organ of Parliament or other government body are withdrawn or otherwise terminated or discharged forthwith without any adverse finding or conclusion being made in respect of any of the Parties, such action to be taken forthwith.

- 2.1.2 In order to secure the Parties' obligations hereunder and ensure the simultaneous settlement of all the Legal Proceedings so as to achieve the intention of the Parties, the Parties hereby agree, and shall procure, that all the Consent Letters shall, upon being

future, whether directly or indirectly, immediate or consequential, including loss of profits, anticipated savings, business opportunity or goodwill (whether known or unknown and whether foreseen or unforeseen) based on any action taken or not taken by any of the Parties, their employees or agents before the Settlement Date.

- 2.3 For the avoidance of doubt, the rights and remedies of the Parties hereby terminate and extinguish by the mutual agreement of the Parties to the intent that none of the Parties shall henceforth maintain any claim of any nature whatsoever in respect thereof against the others and their respective employees or agents.
- 2.4 Each Party represents and warrants to the others that:-
- 2.4.1 it has the power to enter into and to exercise its rights and to perform its obligations hereunder;
- 2.4.2 it has taken all necessary action to authorize the execution of and the performance of its obligations under this Deed;
- 2.4.3 the obligations expressed to be assumed by it under this Deed are legal, valid, binding and enforceable;
- 2.4.4 neither the execution nor performance of this Deed shall contravene any provision of:-
- 2.4.4.1 any existing law, treaty or regulation;
- 2.4.4.2 any obligation which is binding upon it or upon any of its assets.
- 2.5 Each Party represents and warrants to the others that:-
- 2.5.1 the statements made in this Deed are true and accurate in all respects;
- 2.5.2 it has executed this Deed without any duress, undue influence, corruption or misrepresentation whatsoever;
- 2.5.3 the obligations expressed to be assumed by it under this Deed are legal, valid, binding and enforceable;
- 2.5.4 upon settlement of the Legal Proceedings, it shall have no outstanding claim against the other Parties, save for any claims arising from a breach of this Deed;
- 2.5.5 it has had the opportunity to seek independent legal advice of its choice and is signing this Deed fully aware of its terms which it considers reasonable in all circumstances.

3. General and Mutual Release

Except claims arising from breach of this deed, each Party hereby forever releases, acquits and discharges the others and all of its parent, subsidiary and affiliated entities, officers, directors, shareholders, employees, agents, servants, attorneys, assigns, divisions, predecessors and successors-in-interest, trustees and Advocates, from any and all past, present and future causes of action, claims, rights, obligations and demands of every kind and nature, whether known or unknown and whether foreseen or unforeseen, arising out of or related to:-

- 3.1 the Legal Proceedings;
- 3.2 any contracts, agreements, promise or instruments which formed the basis of the Legal

Proceedings including but not limited to all claims that were brought or could have been brought in the Legal Proceedings and relating to the causes of action or purported causes of action giving rise to the Legal Proceedings already in court

- 3.3 any liability for any losses or damages which it may have suffered, or might suffer in the future, whether directly or indirectly, immediate or consequential, including loss of profits, anticipated savings, business opportunity or goodwill based on any action or omission by any of the Parties, their employees or agents before the Settlement Date.

4. ASSIGNING DUTY FREE SPACES TO A NEW ENTITY

- 4.1 Party A assigns all spaces occupied in the airports prior to 31st July 2013 to SUZAN GENERAL TRADING JLT which is a company incorporated in Dubai, United Arab Emirates and registered in Kenya as a foreign Company No. ____ (hereinafter referred to as "SUZAN") pursuant to the provisions of Section 366 of the Companies Act, Cap 486, Laws of Kenya.

- 4.2 Party B hereby irrevocably undertakes to grant leases to SUZAN over all spaces, shops and lounges in the airports occupied, prior to 31st July 2013, by party A for a term of five (5) years three (3) months effective from 1st day of September 2013 except spaces and lounges or shops surrendered or replaced with other spaces. Party B further undertakes to provide all necessary approval and assistance to SUZAN that is required to restore the demolished shops to the original state and accord full co-operation and ensure quiet and peaceful occupation by Suzan of the premises.

- 4.3 It has been expressly agreed that Business/First Class Lounge situated direct opposite of the Government VIP Lounge shall be allocated to the national carrier Kenya Airways to operate and Party A and/or their assignee hereby relinquish the said lounge and surrender it to Party B for the purpose of allocating the same to Kenya Airways Limited. The Parties expressly agreed to relocate the bonded warehouse to the Cargo Village from where Suzan shall operate and supply its shops with duty free shops. The current bonded warehouse is hereby repossessed by Party B for public use.

- 4.4 Party B shall allocate to Suzan two shops each measuring 250 square meters at Terminal 4 for a term five (5) years and three (3) months.

Party A relinquishes:

- a. Its claim for exclusive right (monopoly) to operate/control duty free shops and advertising rights at all the airports.
- b. Claims contained in the arbitral award by the sole arbitrator dated for 42 million dollars and interest.
- c. Damages arising from the eviction operations carried out by Party B on 31st July 2013.

5. Good Faith and Mutual Respect

- 5.1 The Parties undertake to each other to observe the utmost good faith in finalizing, implementing and carrying out all actions and other activities as may be necessary to conclude the settlement provided herein and provide reasonable assistance and co-operation to the other Party at all times in connection with the terms hereof.

- 5.2 Each Party undertakes to the other that he/it shall not directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass or obviate the terms of this Deed.

5.3 Each Party recognizes, acknowledges and accepts that the settlement provided herein and the understanding, arrangement and cooperation envisaged under this Deed requires Parties to conduct themselves on the basis of good faith and mutual respect in relation to each other. Accordingly, each Party undertakes to the other that it/he will treat the other Parties with utmost respect and procure its/his directors, shareholders, employees, servants, agents and representatives to do the same and at all times observe and comply with the terms of this Deed.

5.4 The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Deed.

6. Costs

Each Party shall bear its own legal and other costs incurred in connection with the Legal Proceedings, including any legal fees or costs incurred in the preparation and performance of this Deed.

7. No Liability

Each Party agrees that the execution of this Deed as contemplated herein is entirely for the purposes of compromise and settlement of the alleged claims under the Legal Proceedings. Neither the compromise nor settlement of the claims subject to this Deed nor anything contained herein shall be construed as an admission by either Party of liability or responsibility to any person or entity under the Legal Proceedings.

8. Public Relations

No announcement, communication or other disclosure concerning this Deed or the matters provided or contemplated herein shall be made by any of the Parties save in a form and substance, in the manner and at the time agreed by the Parties in writing and as required in this Deed.

9. Confidentiality

Each of the Parties shall treat as strictly confidential the provisions of this Deed, the process of negotiations and all information about the other Party obtained or received by it as a result of the negotiations, entering into or performing its obligations under this Deed and shall not publish or otherwise disclose to any other person such information except where:-

9.1 it is required during any court proceedings or by the provisions of any law, statute or by any regulatory or governmental body having jurisdiction over it or by the rules or regulations of any recognized securities exchange; or

9.2 such disclosure is to its professional advisers in relation to the negotiation, entry into or performance of this Deed or any matter arising out of the same.

10. Indemnification

Notwithstanding anything contained herein to the contrary, each Party shall indemnify the other Party and their respective officers, directors, shareholders, employees and all of their parent, subsidiary and associated entities, as well as any successors, assigns and other legal representatives, from and against any and all claims, damages, costs, expenses and other liabilities (including attorneys' fees and investigation, defense, or other costs) arising out of any breach of its obligations under the terms of this Deed, as the case may be, or in connection with the breach of its representations, warranties or covenants or its acts or omissions relating to its performance of its obligations under this Deed.

11. Benefit

This Deed shall extend to and be binding upon the Parties and their respective predecessors-in-interest, successors-in-interest, assigns, subsidiaries, parent companies, associated and affiliated entities, joint venturers, partners, directors, officer, shareholders, agents, employees and attorneys.

12. Notices

12.1 All notices, requests and other communication given or made under this Deed shall be given or made in writing, signed by or on behalf of the Party giving it and served by being delivered personally or sending it by email or by registered post to the Party due to receive the notice, request or other communication at the address set out in the First Schedule or such other address as that Party may (for the purposes of this clause) specify from time to time in writing to the other Party.

12.2 In the absence of evidence of earlier receipt of any notice or communication so served, the notice or communication shall be deemed to have been received:-

12.2.1 in the case of personal service, on delivery;

12.2.2 in the case of email transmission, on the earlier of (i) the time of acknowledgment of receipt by the addressee or (ii) upon receipt by the sender of proof of delivery of the email transmission in the form of a mail delivery report except where the time of transmission is not during the addressee's normal business hours in which case it shall be 9.30 a.m. on the next Business Day; and

12.2.3 in the case of registered post, five (5) days from the date of posting.

12.3 Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

13. Governing Law and Jurisdiction

This Deed shall be governed by and construed in accordance with the laws of Kenya. The Parties agree that the exclusive venue for any legal proceeding of whatever nature concerning the interpretation or enforcement of this Deed shall be Nairobi, Kenya and, subject to the clause relating to *Dispute Resolution*, each Party consents to and acknowledges the exclusive jurisdiction of Kenyan courts and the venue specified in this clause.

14. Dispute Resolution

14.1 Amicable Resolution

In the event of any dispute between the Parties relating to this Deed, the Parties in dispute shall seek to initially resolve the dispute by good faith negotiations between them. The Parties shall endeavour to resolve such dispute through good faith negotiations. In the event of the dispute not being resolved within fifteen (15) days of the dispute arising (being the date on which a Party shall have notified the other(s) in writing of the occurrence of a dispute) ("Dispute Date"), the Parties shall immediately seek settlement in the manner set out below.

14.2 Mediation

If a dispute arises out of or in connection with this Deed, including any question as to its existence, validity or termination, which dispute shall not have been resolved by amicable

resolution as herein (*Amicable Resolution*), the Parties in dispute agree to seek amicable settlement by mediation to be conducted by advocates Fred Ngatia and Ahmed Adan or other persons jointly appointed by them (the "Designated Mediators"). If the Designated Mediators or any of them or any person jointly appointed by them declines or is unwilling to act as mediator, or, if following commencement of the mediation proceedings, the dispute shall not have been resolved within ten (10) days, the dispute shall be referred to arbitration as set out under the arbitration clause herein below. The Parties shall supply to the mediators any and all documents and information relevant to the dispute.

14.3 Arbitration

- 14.3.1 if the dispute has not been settled pursuant to the mediation as contemplated in this Deed within twenty five (25) days from the Dispute Date, or, if attempts to refer the dispute to mediation have failed altogether in the circumstances described hereinabove (*Mediation*), such dispute shall be referred to and finally resolved by arbitration in accordance with the provisions of the sub-clauses below;
- 14.3.2 the dispute shall be referred to a three arbitrators mutually agreed by the Parties in dispute or if the Parties to the dispute are unable to agree upon the persons to be appointed as arbitrators within twenty (20) days from the date of the notice requesting arbitration, the arbitrators shall, at the request of any Party to the dispute, be appointed by the Chairman of the Kenyan Chapter of the Chartered Institute of Arbitrators;
- 14.3.3 except as stated herein, arbitration proceedings shall be conducted in accordance with the provisions of the Kenyan Arbitration Act, 1995;
- 14.3.4 if for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in same manner as the original arbitrator;
- 14.3.5 the decision of the arbitrators shall be final and binding on the Parties to the extent permitted by the law;
- 14.3.6 the seat of arbitration shall be in Nairobi, Kenya or such other place as the Parties may agree in writing;
- 14.3.7 any arbitration in terms of this clause (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration; and
- 14.3.8 notwithstanding the above provisions of this clause, a Party shall be entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

15. General

- 15.1 Each Party acknowledges that it has participated in the negotiation and drafting of this Deed and has had an opportunity to consult with legal counsel of its own choice. The language of this Deed therefore shall not be presumptively construed either in favour of, or against, any Party solely by virtue of that Party's alleged status as the drafter of this Deed.
- 15.2 This Deed, (together with any documents or agreements referred to in it), constitutes the entire agreement between the Parties with respect to the matters contained in this Deed, and supersedes all previous undertakings, commitments, promises or representations with respect

to those matters and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Deed not incorporated in this Deed shall be binding on the Parties.

- 15.3 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Deed will be of any force or effect unless in writing and signed by the Parties.
- 15.4 No waiver of any of the terms and conditions of this Deed will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of a Party in exercising any right, power or privilege hereunder shall not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 15.5 Each Party warrants to the other that the person signing this Deed on its behalf has carefully read the foregoing provisions and knows and fully understands the contents hereof, that such signatory is duly authorized and empowered to execute this Deed on behalf of the Party for and on behalf of whom he has signed and to legally bind such Party to the terms herein, and that such signatory hereby signs and executes this Deed freely and voluntarily.
- 15.6 All provisions and the various clauses of this Deed are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision or clause of this Deed which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Deed shall remain of full force and effect. The Parties shall substitute and negotiate in good faith, if necessary, new provisions under reasonable terms and conditions and in compliance with the intentions of the Parties as contained herein. The Parties declare that it is their intention that this Deed would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 15.7 This Deed may be executed in counterparts, and that the Parties' signatures need not appear on the same original signature page. Each counterpart when signed by one or more of the Parties shall be deemed an original, and all of which together shall constitute one and the same.

IN WITNESS WHEREOF the Parties have executed this Deed by their duly authorized representatives on the day and year first hereinbefore written.

Sealed with the common seal of
World Duty Free Company T/A
Kenya Duty Free Complex
In the presence of:

Seal

Director
Name.....
Address.....
Signature.....

Director/Secretary

Name.....)
Address)
Signature)

Sealed with the common seal of)
Diplomatic Duty Free Limited)
In the presence of:)

Director)
Name.....)
Address)
Signature)

Director/Secretary)
Name.....)
Address)
Signature)

Signed Sealed and Delivered as a Deed)
Kamlesh M.D. Patni)

In the presence of:)
Advocate)

Seal

Signature

Sealed with the common seal of)
Kenya Airports Authority)
In the presence of:)

Director)
Name.....)
Address)
Signature)

Seal

Director/Secretary)
Name.....)
Address)
Signature)

Signed Sealed and Delivered as a Deed)
By the Hon. Cabinet Secretary)
Eng. Michael Kamau)



Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

16th September, 2013

Ngatia & Associates
Advocates
Bishops Garden Towers
2nd Floor
Bishops Road
P O Box 56688-00200
NAIROBI

Dear Sir,

RE: LETTERS OF OFFER FOR SUZAN GENERAL TRADING

We refer to the above matter.

Forwarded herewith please find the revised letters of offer in respect of the Cargo Village, Gate 6, Gate 7 (two spaces) and Gate 12.

Kindly acknowledge receipt.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Munene', is written over the signature line.

**M Munene
Legal Counsel**

Appendix 22





Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

KAA/JKIA/11/02

16th September 2013

Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Dear Sir,

RE: LETTER OF OFFER TO PROVIDE CUSTOMS BONDED WAREHOUSE SERVICES AT JOMO KENYATTA INTERNATIONAL AIRPORT

The Kenya Airports Authority (hereinafter referred to as "the Authority") wishes to grant you a lease at the Authority's premises at Cargo Village to provide Customs bonded warehouse services ("the services") at the Jomo Kenyatta International Airport "the airport". The services whose scope is outlined herein below shall be operated at the space to be occupied in the airport as per the following Terms and Conditions and subject to the making of a formal Lease.

1. PARTIES

The parties to the Lease Agreement shall be:

- a. **LESSOR**
Kenya Airports Authority
P. O. Box 19001
NAIROBI.
- b. **LESSEE**
Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE



8. INTEREST ON LATE PAYMENT

The Lessee shall pay interest on any rent due under this Lease which is not paid within Seven (7) days from the date which the payment is due, whether formally demanded or not. The interest will be calculated from the date on which the rent is due to the date of payment at the rate of two percent (2%) to be calculated on monthly basis.

9. THE PREMISES UNDER LEASE

The Authority hereby grants you space to undertake the services as indicated in Clause 2 above provided ALWAYS that you, as a lessee, shall comply with all terms and condition relating to the premises under which the space is located.

10. STANDARD OBLIGATIONS OF THE LESSEE

- a. Payment of Rent including any Service Charge and Security Fee or such other charge as may be put in place by the Authority;
- b. Maintain business decorum and conduct expected of an entity working in an airport of the stature of JKIA;
- c. Ensure due delivery of quality services;
- d. Observing the provisions of the Kenya Airports Authority Act, any other relevant written law;
- e. Meeting any requirements as may be required by the Authority, including but not limited to the following:
 - i. The employees must be uniformed
 - ii. The employees must hold a security pass to the airport at your own cost.
 - iii. Display of name tag etc.
 - iv. Liaise with the Airport Manager in achieving Airport Service Quality (ASQ) targets as agreed from time to time.
- f. You or your employees or agent should not solicit or tout for clients;
- g. ~~You should not transfer the Lease or any portion of the operations under the lease without prior written approval of the Authority. The Authority may accordingly terminate the Lease without notice upon the breach of this clause by the lessee.~~
- h. You fully acknowledge that the services are undertaken within an airport and due to the nature of the airport specifically with regard to security, safety and development works, the Authority shall have the sole discretion with regard to relocation, eviction, resizing, regulating entry and exit points, controlling terms of access of the service area.

11. LEASSEE'S OBLIGATION TO MEET PREPARATION EXPENSES

All costs or expenses incurred in the preparation and completion of the Lease Agreement together with any taxes, levies, duty, registration fees and any other disbursements shall be borne by you.

12. LEASE TERMINATION

- a. **Termination on Default:** The Authority may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Lessee, terminate the Agreement in whole or in part:-
- i. If the Lessee fails to commence or to provide any or all of the services within the period(s) specified.
 - ii. If the lessee fails to perform any other obligation(s) under the Agreement.
 - iii. If the Lessee in the judgment of the Authority has engaged in corrupt or fraudulent practices, or activities that may put the Authority in disrepute during the currency of the Agreement.
- b. **Termination on Insolvency:** The Authority may at any time terminate the Agreement by giving notice to the Lessee if the Lessee becomes bankrupt or otherwise insolvent, in which case, the termination will be without compensation to the Lessee, PROVIDED that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to the Authority.

13. SURRENDER OF AUTHORITY'S PROPERTY UPON TERMINATION

The Lessee shall surrender in accordance with the Agreement any property belonging to the Authority in good and serviceable state including but not limited to:

- a. The space occupied
- b. Furniture and fittings
- c. Security passes and badges
- d. Any other item as may have been inventoried at the commencement of the Agreement

14. REDEVELOPMENT AND UPGRADE OF AIRPORT

The lessee acknowledges that due to various activities undertaken by the lessor in the airport ~~as well as any redevelopment and upgrade programs that it may set up in the airport thereby~~ occasioning execution of the works in the airport, the lessee may be required to relocate to a different location within the airport or suspend operations after due notification by the lessor. The lessor shall not be liable whatsoever to the lessee for such suspension of operations or relocation save only for deferment of lessee rent for the applicable period.

15. RELOCATION

Upon **seven (7) days'** written notice to the Lessee, the Lessor reserves the right to reduce the leased space, and/or relocate the lessee to another space within the Airport, and/or stop the Lessee's operation at the leased space without the Lessor accruing any liability.

16. **VACATING THE SERVICE AREA UPON TERMINATION**

Upon the termination of this Agreement for whatever reason, the Lessee shall be required to vacate any space and/or premises granted by the Authority immediately but in any event not later than Five (5) working days after the effective date of termination. In vacating, the Lessee shall be required to clear any of its property within the Airport. Upon the lapse of this period, the Authority shall move into the premises to remove such property, take inventory of the same whether the Lessee shall be present or not and proceed to restore the same at the cost of the Lessee. The Authority shall not be held liable for any claims resulting from any of its actions under this clause.

17. **RENEWAL OF LEASE**

If the lessee makes a written request for renewal at least six (6) months prior to the expiry of this lease and is not in breach of any condition herein and the Lessor is not desirous of taking over the space, a renewal of the lease will be negotiated and agreed upon by the parties including the term of the lease as well as other terms.

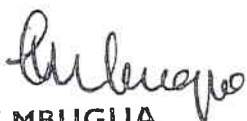
18. **ACCEPTANCE IN PRINCIPLE**

By the accepting of the terms of this Letter of Offer, you are deemed to approve the standard form of lease and agree to execute and return the lease when it is submitted to you. This invitation will remain open for acceptance within **FIVE (5) DAYS** from the date of delivery of the offer letter, and may only be accepted as required herein below under the following terms:

- a) This letter is sent to you in duplicate. Acceptance shall be in writing on the duplicate of this letter and shall be effective only when signed in duplicate, together with unconditionally payment of the quarterly fee specified hereunder forwarded to us. If such a written acceptance and payment specified herein is not received within the stipulated period, this offer will lapse.
- b) Upon receipt of your confirmation and the quarterly rent as required and subject to confirmation from the lessor, we will arrange for the lease agreement to be sent to you for execution.

The Lease Agreement must be executed and returned to the lessor within thirty (30) days after its delivery to you.

Yours faithfully


LUCY MBUGUA
Ag. MANAGING DIRECTOR



Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

KAA/JKIA/11/02

16th September 2013

Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Dear Sir,

**RE: LETTER OF OFFER TO PROVIDE AND OPERATE A DUTY FREE
OUTLET AT JOMO KENYATTA INTERNATIONAL AIRPORT ("JKIA") -
GATE 6**

The Kenya Airports Authority (hereinafter referred to as "the Authority") wishes to grant you a lease and the Authority's premises at the Jomo Kenyatta International Airport "the airport". The services whose scope is outlined herein below shall be operated at the space to be occupied in the airport as per the following Terms and Conditions and subject to the making of a formal Lease.

I. PARTIES

The parties to the Lease Agreement shall be:

- a. **LESSOR**
Kenya Airports Authority
P. O. Box 19001
NAIROBI.

- b. **LESSEE**
Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Please note that any notice, request, consent and/or approval made pursuant to this Lease shall be in writing and shall be deemed to be effective only at the time of receipt thereof and only when received by the parties to whom they are addressed at the above indicated addresses.

2. LEASE AND SCOPE OF BUSINESS

The Authority hereby grants you a lease to operate the business, which shall be limited to the following scope unless otherwise amended by you pursuant to the Authority's approval:

- i. *To provide and operate a duty free outlet.*

3. REQUIRED DOCUMENTS

Having duly signed the Confirmation and Acceptance Form, you will be required to peruse and execute a Lease Agreement in respect of the subject space.

4. CONDITION PRECEDENT

Your due acceptance of this Letter of Offer by signing of the Form of Confirmation and Acceptance herein is the condition precedent to execution of the Lease Agreement between the parties.

5. LEASE TERM

This Lease shall be valid for a period of **Five (5) years and Three (3) Months** commencing from **1st October 2013**.

6. RENT

The total annual rent will be **US\$14,571.94 per annum** payable quarterly in advance in the manner and amounts shown in the Schedule annexed hereto;

Location	Area	Rate Annual	Rent	Service Charge	Total Annual Rent
	M ²	US\$	US\$	25%	US\$
Gate 6	33.79	345	11,657.55	2,914.39	14,571.94

7. MODE OF PAYMENT

To enable you conclude partitioning and /or stock display you will be entitled to a grace period of **one (1) month** from **1st October 2013** after which you will commence payment of the rent from **1st November 2013**. Further, throughout the contract term, the rent shall be payable on quarterly basis and in advance.

8. INTEREST ON LATE PAYMENT

The Lessee shall pay interest on any Rent due under this Lease which is not paid within Seven (7) days from the date which the payment is due, whether formally demanded or not. The interest will be calculated from the date on which the rent due to the date of payment at the rate of two percent (2%) to be calculated on monthly basis.

9. THE PREMISES UNDER LEASE

The Authority hereby grants you space to undertake the services as indicated in Clause 2 above provided ALWAYS that you, as a lessee, shall comply with all terms and condition relating to the premises under which the space is located.

10. STANDARD OBLIGATIONS OF THE LESSEE

- a. Payment of Rent including any Service Charge and Security Fee or such other charge as may be put in place by the Authority;
- b. Maintain business decorum and conduct expected of an entity working in an airport of the stature of JKIA;
- c. Ensure due delivery of quality services;
- d. Observing the provisions of the Kenya Airports Authority Act, any other relevant written law;
- e. Meeting any requirements as may be required by the Authority, including but not limited to the following:
 - i. The employees must be uniformed
 - ii. The employees must hold a security pass to the airport at your own cost.
 - iii. Display of name tag etc.
 - iv. Liaise with the Airport Manager in achieving Airport Service Quality (ASQ) targets as agreed from time to time.
- f. You or your employees or agent should not solicit or tout for clients;
- g. You should not transfer the Lease or any portion of the operations under the lease without prior written approval of the Authority. The Authority may accordingly terminate the Lease without notice upon the breach of this clause by the lessee.
- h. You fully acknowledge that the services are undertaken within an airport and due to the nature of the airport specifically with regard to security, safety and development works, the Authority shall have the sole discretion with regard to relocation, eviction, resizing, regulating entry and exit points, controlling terms of access of the service area.

II. LESSEE'S OBLIGATION TO MEET PREPARATION EXPENSES

All costs or expenses incurred in the preparation and completion of the Lease Agreement together with any taxes, levies, duty, registration fees and any other disbursements shall be borne by you.

12. **LEASE TERMINATION**

- a. **Termination on Default:** The Authority may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Lessee, terminate the Agreement in whole or in part:-
- i. If the Lessee fails to commence or to provide any or all of the services within the period(s) specified.
 - ii. If the lessee fails to perform any other obligation(s) under the Agreement.
 - iii. If the Lessee in the judgment of the Authority has engaged in corrupt or fraudulent practices, or activities that may put the Authority in disrepute during the currency of the Agreement.
- b. **Termination on Insolvency:** The Authority may at any time terminate the Agreement by giving notice to the Lessee if the Lessee becomes bankrupt or otherwise insolvent, in which case, the termination will be without compensation to the Lessee, PROVIDED that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to the Authority.

13. **SURRENDER OF AUTHORITY'S PROPERTY UPON TERMINATION**

The Lessee shall surrender in accordance with the Agreement any property belonging to the Authority in good and serviceable state including but not limited to:

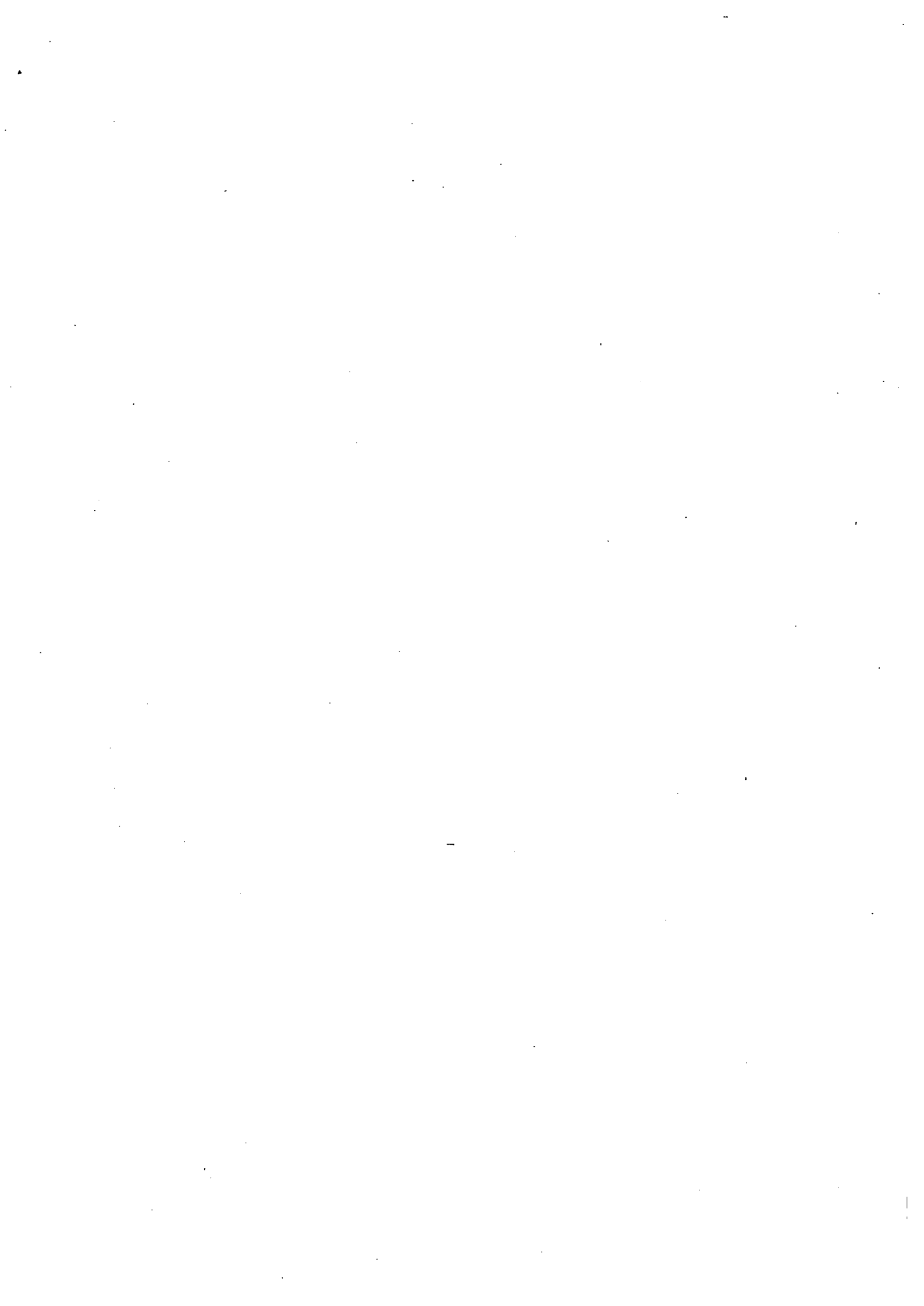
- a. The space occupied
- b. Furniture and fittings
- c. Security passes and badges
- d. Any other item as may have been inventoried at the commencement of the Agreement

14. **REDEVELOPMENT AND UPGRADE OF AIRPORT**

~~The lessee acknowledges that due to various activities undertaken by the lessor in the airport as well as any redevelopment and upgrade programs that it may set up in the airport thereby occasioning execution of the works in the airport, the lessee may be required to relocate to a different location within the airport or suspend operations after due notification by the lessor. The lessor shall not be liable whatsoever to the lessee for such suspension of operations or relocation save only for deferment of lessee fee for the applicable period.~~

15. **RELOCATION**

Upon seven (7) days' written notice to the Lessee, the Lessor reserves the right to reduce the leased space, and/or relocate the lessee to another space within the Airport, and/or stop the Lessee's operation at the leased space without the Lessor accruing any liability.



16. VACATING THE SERVICE AREA UPON TERMINATION

Upon the termination of this Agreement for whatever reason, the Lessee shall be required to vacate any space and/or premises granted by the Authority immediately but in any event not later than Five (5) working days after the effective date of termination. In vacating, the Lessee shall be required to clear any of its property within the Airport. Upon the lapse of this period, the Authority shall move into the premises to remove such property, take inventory of the same whether the Lessee shall be present or not and proceed to restore the same at the cost of the Lessee. The Authority shall not be held liable for any claims resulting from any of its actions under this clause.

17. RENEWAL OF LEASE

If the lessee makes a written request for renewal at least six (6) months prior to the expiry of this lease and is not in breach of any condition herein and the Lessor is not desirous of taking over the space, a renewal of the lease will be negotiated and agreed upon by the parties including the term of the lease as well as other terms.


18. ACCEPTANCE IN PRINCIPLE

By the accepting of the terms of this Letter of Offer, you are deemed to approve the standard form of lease and agree to execute and return the lease when it is submitted to you. This invitation will remain open for acceptance within **FIVE (5) DAYS** from the date of delivery of the offer letter, and may only be accepted as required herein below under the following terms:

- a) This letter is sent to you in duplicate. Acceptance shall be in writing on the duplicate of this letter and shall be effective only when signed in duplicate, together with unconditionally payment of the quarterly fee specified hereunder forwarded to us. If such a written acceptance and payment specified herein is not received within the stipulated period, this offer will lapse.
- b) Upon receipt of your confirmation and the quarterly rent as required and subject to confirmation from the lessor, we will arrange for the lease agreement to be sent to you for execution.

The Lease Agreement must be executed and returned to the lessor within thirty (30) days after its delivery to you.

Yours faithfully


LUCY MBUGUA
Ag. MANAGING DIRECTOR



Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

CAA/JKIA/11/02

16th September 2013

Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Dear Sir,

**RE: LETTER OF OFFER TO PROVIDE AND OPERATE A DUTY FREE
OUTLET AT JOMO KENYATTA INTERNATIONAL AIRPORT ("JKIA") -
GATE 7**

The Kenya Airports Authority (hereinafter referred to as "the Authority") wishes to grant you a lease and the Authority's premises at the Jomo Kenyatta International Airport "the airport". The services whose scope is outlined herein below shall be operated at the space to be occupied in the airport as per the following Terms and Conditions and subject to the making of a formal Lease.

I. PARTIES

The parties to the Lease Agreement shall be:

- a. **LESSOR**
Kenya Airports Authority
P. O. Box 19001
NAIROBI.

- b. **LESSEE**
Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Please note that any notice, request, consent and/or approval made pursuant to this Lease shall be in writing and shall be deemed to be effective only at the time of receipt thereof and only when received by the parties to whom they are addressed at the above indicated addresses.

2. LEASE AND SCOPE OF BUSINESS

The Authority hereby grants you a lease to operate the business, which shall be limited to the following scope unless otherwise amended by you pursuant to the Authority's approval:

- i. *To provide and operate a duty free outlet.*

3. REQUIRED DOCUMENTS

Having duly signed the Confirmation and Acceptance Form, you will be required to peruse and execute a Lease Agreement in respect of the subject space.

4. CONDITION PRECEDENT

Your due acceptance of this Letter of Offer by signing of the Form of Confirmation and Acceptance herein is the condition precedent to execution of the Lease Agreement between the parties.

5. LEASE TERM

This Lease shall be valid for a period of **Five (5) years and Three (3) Months** commencing from **1st October 2013**.

6. RENTS

The total annual rent will be **US\$29,411.25 per annum** payable quarterly in advance in the manner and amounts shown in the Schedule annexed hereto;

Location	Area	Rate Annual	Rent	Service Charge	Total Annual Rent
	M ²	US\$	US\$	25%	US\$
Gate 7	68.2	345	23,529.00	5,882.25	29,411.25

7. MODE OF PAYMENT

To enable you conclude partitioning and /or stock display you will be entitled to a grace period of **one (1) month** from **1st October 2013** after which you will commence payment of the rent from **1st November 2013**. Further, throughout the contract term, the rent shall be payable on quarterly basis and in advance.

8. INTEREST ON LATE PAYMENT

The Lessee shall pay interest on any rent due under this Lease which is not paid within Seven (7) days from the date which the payment is due, whether formally demanded or not. The interest will be calculated from the date on which the rent due to the date of payment at the rate of two percent (2%) to be calculated on monthly basis.

9. THE PREMISES UNDER LEASE

The Authority hereby grants you space to undertake the services as indicated in Clause 2 above provided ALWAYS that you, as a lessee, shall comply with all terms and condition relating to the premises under which the space is located.

10. STANDARD OBLIGATIONS OF THE LEASEE

- a. Payment of rent including any Service Charge and Security Fee or such other charge as may be put in place by the Authority;
- b. Maintain business decorum and conduct expected of an entity working in an airport of the stature of JKIA;
- c. Ensure due delivery of quality services;
- d. Observing the provisions of the Kenya Airports Authority Act, any other relevant written law;
- e. Meeting any requirements as may be required by the Authority, including but not limited to the following:
 - i. The employees must be uniformed
 - ii. The employees must hold a security pass to the airport at your own cost.
 - iii. Display of name tag etc.
 - iv. Liaise with the Airport Manager in achieving Airport Service Quality (ASQ) targets as agreed from time to time.
- f. You or your employees or agent should not solicit or tout for clients;
- ~~g. You should not transfer the Lease or any portion of the operations under the lease~~ without prior written approval of the Authority. The Authority may accordingly terminate the Lease without notice upon the breach of this clause by the lessee.
- h. You fully acknowledge that the services are undertaken within an airport and due to the nature of the airport specifically with regard to security, safety and development works, the Authority shall have the sole discretion with regard to relocation, eviction, resizing, regulating entry and exit points, controlling terms of access of the service area.

11. LEASEE'S OBLIGATION TO MEET PREPARATION EXPENSES

All costs or expenses incurred in the preparation and completion of the Lease Agreement together with any taxes, levies, duty, registration fees and any other disbursements shall be borne by you.

12. LEASE TERMINATION

- a. **Termination on Default:** The Authority may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Lessee, terminate the Agreement in whole or in part:-
- i. If the Lessee fails to commence or to provide any or all of the services within the period(s) specified.
 - ii. If the lessee fails to perform any other obligation(s) under the Agreement.
 - iii. If the Lessee in the judgment of the Authority has engaged in corrupt or fraudulent practices, or activities that may put the Authority in disrepute during the currency of the Agreement.
- b. **Termination on Insolvency:** The Authority may at any time terminate the Agreement by giving notice to the Lessee if the Lessee becomes bankrupt or otherwise insolvent, in which case, the termination will be without compensation to the Lessee, PROVIDED that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to the Authority.

13. SURRENDER OF AUTHORITY'S PROPERTY UPON TERMINATION

The Lessee shall surrender in accordance with the Agreement any property belonging to the Authority in good and serviceable state including but not limited to:

- a. The space occupied
- b. Furniture and fittings
- c. Security passes and badges
- d. Any other item as may have been inventoried at the commencement of the Agreement

14. REDEVELOPMENT AND UPGRADE OF AIRPORT

~~The lessee acknowledges that due to various activities undertaken by the lessor in the airport~~ as well as any redevelopment and upgrade programs that it may set up in the airport thereby occasioning execution of the works in the airport, the lessee may be required to relocate to a different location within the airport or suspend operations after due notification by the lessor. The lessor shall not be liable whatsoever to the lessee for such suspension of operations or relocation save only for deferment of lessee fee for the applicable period.

15. RELOCATION

Upon **seven (7) days'** written notice to the Lessee, the Lessor reserves the right to reduce the leased space, and/or relocate the lessee to another space within the Airport, and/or stop the Lessee's operation at the leased space without the Lessor accruing any liability.



16. VACATING THE SERVICE AREA UPON TERMINATION

Upon the termination of this Agreement for whatever reason, the Lessee shall be required to vacate any space and/or premises granted by the Authority immediately but in any event not later than Five (5) working days after the effective date of termination. In vacating, the Lessee shall be required to clear any of its property within the Airport. Upon the lapse of this period, the Authority shall move into the premises to remove such property, take inventory of the same whether the Lessee shall be present or not and proceed to restore the same at the cost of the Lessee. The Authority shall not be held liable for any claims resulting from any of its actions under this clause.

18. RENEWAL OF LEASE

If the lessee makes a written request for renewal at least six (6) months prior to the expiry of this lease and is not in breach of any condition herein and the Lessor is not desirous of taking over the space, a renewal of the lease will be negotiated and agreed upon by the parties including the term of the lease as well as other terms.

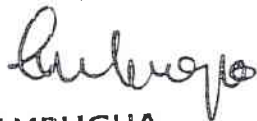
17. ACCEPTANCE IN PRINCIPLE

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- a) This letter is sent to you in duplicate. Acceptance shall be in writing on the duplicate of this letter and shall be effective only when signed in duplicate, together with unconditionally payment of the quarterly fee specified hereunder forwarded to us. If such a written acceptance and payment specified herein is not received within the stipulated period, this offer will lapse.
- b) Upon receipt of your confirmation and the quarterly rent as required and subject to ~~confirmation from the lessor, we will arrange for the lease agreement to be sent to you for~~ execution.

The Lease Agreement must be executed and returned to the lessor within thirty (30) days after its delivery to you.

Yours faithfully



LUCY MBUGUA
Ag. MANAGING DIRECTOR



Kenya Airports Authority

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Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

CAA/JKIA/11/02

16th September 2013

Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Dear Sir,

**RE: LETTER OF OFFER TO PROVIDE AND OPERATE A DUTY FREE
OUTLET AT JOMO KENYATTA INTERNATIONAL AIRPORT ("JKIA") -
GATE 7**

The Kenya Airports Authority (hereinafter referred to as "the Authority") wishes to grant you a lease and the Authority's premises at the Jomo Kenyatta International Airport "the airport". The services whose scope is outlined herein below shall be operated at the space to be occupied in the airport as per the following Terms and Conditions and subject to the making of a formal Lease.

I. PARTIES

The parties to the Lease Agreement shall be:

- a. **LESSOR**
Kenya Airports Authority
P. O. Box 19001
NAIROBI.

- b. **LESSEE**
Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Please note that any notice, request, consent and/or approval made pursuant to this Lease shall be in writing and shall be deemed to be effective only at the time of receipt thereof and only when received by the parties to whom they are addressed at the above indicated addresses.

2. LEASE AND SCOPE OF BUSINESS

The Authority hereby grants you a license to operate the business, which shall be limited to the following scope unless otherwise amended by you pursuant to the Authority's approval:

- i. *To provide and operate a duty free outlet.*

3. REQUIRED DOCUMENTS

Having duly signed the Confirmation and Acceptance Form, you will be required to peruse and execute a Lease Agreement in respect of the subject space.

4. CONDITION PRECEDENT

Your due acceptance of this Letter of Offer by signing of the Form of Confirmation and Acceptance herein is the condition precedent to execution of the Lease Agreement between the parties.

5. LEASE TERM

This Lease shall be valid for a period of **Five (5) years and Three (3) Months** commencing from **1st October 2013**.

6. RENT

The total annual rent will be **US\$36,246.56 per annum** payable quarterly in advance in the manner and amounts shown in the Schedule annexed hereto;

Location	Area	Rate Annual	Rent	Service Charge	Total Annual Rent
	M ²	US\$	US\$	25%	US\$
Gate 7	84.05	345	28,997.25	7,249.31	36,246.56

7. MODE OF PAYMENT

To enable you conclude partitioning and /or stock display you will be entitled to a grace period of **one (1) month** from **1st October 2013** after which you will commence payment of the rent from **1st November 2013**. Further, throughout the contract term, the rent shall be payable on quarterly basis and in advance.

8. INTEREST ON LATE PAYMENT

The Lessee shall pay interest on any rent due under this Lease which is not paid within Seven (7) days from the date which the payment is due, whether formally demanded or not. The interest will be calculated from the date on which the rent due to the date of payment at the rate of two percent (2%) to be calculated on monthly basis.

9. THE PREMISES UNDER LEASE

The Authority hereby grants you space to undertake the services as indicated in Clause 2 above provided ALWAYS that you, as a lessee, shall comply with all terms and condition relating to the premises under which the space is located.

10. STANDARD OBLIGATIONS OF THE LEASEE

- a. Payment of rent including any Service Charge and Security Fee or such other charge as may be put in place by the Authority;
- b. Maintain business decorum and conduct expected of an entity working in an airport of the stature of JKIA;
- c. Ensure due delivery of quality services;
- d. Observing the provisions of the Kenya Airports Authority Act, any other relevant written law;
- e. Meeting any requirements as may be required by the Authority, including but not limited to the following:
 - i. The employees must be uniformed
 - ii. The employees must hold a security pass to the airport at your own cost.
 - iii. Display of name tag etc.
 - iv. Liaise with the Airport Manager in achieving Airport Service Quality (ASQ) targets as agreed from time to time.
- f. You or your employees or agent should not solicit or tout for clients;
- g. You should not transfer the Lease or any portion of the operations under the lease without prior written approval of the Authority. The Authority may accordingly terminate the Lease without notice upon the breach of this clause by the lessee.
- h. You fully acknowledge that the services are undertaken within an airport and due to the nature of the airport specifically with regard to security, safety and development works, the Authority shall have the sole discretion with regard to relocation, eviction, resizing, regulating entry and exit points, controlling terms of access of the service area.

11. LEASEE'S OBLIGATION TO MEET PREPARATION EXPENSES

All costs or expenses incurred in the preparation and completion of the Lease Agreement together with any taxes, levies, duty, registration fees and any other disbursements shall be borne by you.

LEASE TERMINATION

- a. **Termination on Default:** The Authority may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Lessee, terminate the Agreement in whole or in part:-
- i. If the Lessee fails to commence or to provide any or all of the services within the period(s) specified.
 - ii. If the lessee fails to perform any other obligation(s) under the Agreement.
 - iii. If the Lessee in the judgment of the Authority has engaged in corrupt or fraudulent practices, or activities that may put the Authority in disrepute during the currency of the Agreement.
- b. **Termination on Insolvency:** The Authority may at any time terminate the Agreement by giving notice to the Lessee if the Lessee becomes bankrupt or otherwise insolvent, in which case, the termination will be without compensation to the Lessee, PROVIDED that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to the Authority.

13. SURRENDER OF AUTHORITY'S PROPERTY UPON TERMINATION

The Lessee shall surrender in accordance with the Agreement any property belonging to the Authority in good and serviceable state including but not limited to:

- a. The space occupied
- b. Furniture and fittings
- c. Security passes and badges
- d. Any other item as may have been inventoried at the commencement of the Agreement

14. REDEVELOPMENT AND UPGRADE OF AIRPORT

The lessee acknowledges that due to various activities undertaken by the lessor in the airport as well as any redevelopment and upgrade programs that it may set up in the airport thereby occasioning execution of the works in the airport, the lessee may be required to relocate to a different location within the airport or suspend operations after due notification by the lessor. The lessor shall not be liable whatsoever to the lessee for such suspension of operations or relocation save only for deferment of lessee fee for the applicable period.

15. RELOCATION

Upon **seven (7) days'** written notice to the Lessee, the Lessor reserves the right to reduce the leased space, and/or relocate the lessee to another space within the Airport, and/or stop the Lessee's operation at the leased space without the Lessor accruing any liability.

16. VACATING THE SERVICE AREA UPON TERMINATION

Upon the termination of this Agreement for whatever reason, the Lessee shall be required to vacate any space and/or premises granted by the Authority immediately but in any event not later than Five (5) working days after the effective date of termination. In vacating, the Lessee shall be required to clear any of its property within the Airport. Upon the lapse of this period, the Authority shall move into the premises to remove such property, take inventory of the same whether the Lessee shall be present or not and proceed to restore the same at the cost of the Lessee. The Authority shall not be held liable for any claims resulting from any of its actions under this clause.

17. RENEWAL OF LEASE

If the lessee makes a written request for renewal at least six (6) months prior to the expiry of this lease and is not been in breach of any condition herein and the Lessor is not desirous of taking over the space, a renewal of the lease will be negotiated and agreed upon by the parties including the term of the lease as well as other terms.

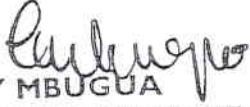
18. ACCEPTANCE IN PRINCIPLE

By the accepting of the terms of this Letter of Offer, you are deemed to approve the standard form of lease and agree to execute and return the lease when it is submitted to you. This invitation will remain open for acceptance within **FIVE (5) DAYS** from the date of delivery of the offer letter, and may only be accepted as required herein below under the following terms:

- a) This letter is sent to you in duplicate. Acceptance shall be in writing on the duplicate of this letter and shall be effective only when signed in duplicate, together with unconditionally payment of the quarterly fee specified hereunder forwarded to us. If such a written acceptance and payment specified herein is not received within the stipulated period, this offer will lapse.
- b) Upon receipt of your confirmation and the quarterly rent as required and subject to confirmation from the lessor, we will arrange for the lease agreement to be sent to you for execution.

The Lease Agreement must be executed and returned to the lessor within thirty (30) days after its delivery to you.

Yours faithfully


LUCY MBUGUA
Ag. MANAGING DIRECTOR





Kenya Airports Authority

Head Office, Airport North Road
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CAA/JKIA/11/02

16th September 2013

Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Dear Sir,

**RE: LETTER OF OFFER TO PROVIDE AND OPERATE A DUTY FREE
OUTLET AT JOMO KENYATTA INTERNATIONAL AIRPORT ("JKIA") -
GATE 12**

The Kenya Airports Authority (hereinafter referred to as "the Authority") wishes to grant you a lease and the Authority's premises at the Jomo Kenyatta International Airport "the airport". The services whose scope is outlined herein below shall be operated at the space to be occupied in the airport as per the following Terms and Conditions and subject to the making of a formal Lease.

I. PARTIES

The parties to the Lease Agreement shall be:

- a. **LESSOR**
Kenya Airports Authority
P. O. Box 19001
NAIROBI.

- b. **LEASEE**
Suzan General Trading JLT t/a
Suzan Duty Free
2508, One Lake Plaza,
Jumeirah Lakes Towers,
P. O. Box 14401, Dubai, UAE

Please note that any notice, request, consent and/or approval made pursuant to this Lease shall be in writing and shall be deemed to be effective only at the time of receipt thereof and only when received by the parties to whom they are addressed at the above indicated addresses.

2. LEASE AND SCOPE OF BUSINESS

The Authority hereby grants you a lease to operate the business, which shall be limited to the following scope unless otherwise amended by you pursuant to the Authority's approval:

- i. *To provide and operate a duty free outlet.*

3. REQUIRED DOCUMENTS

Having duly signed the Confirmation and Acceptance Form, you will be required to peruse and execute a Lease Agreement in respect of the subject space.

4. CONDITION PRECEDENT

Your due acceptance of this Letter of Offer by signing of the Form of Confirmation and Acceptance herein is the condition precedent to execution of the Lease Agreement between the parties.

5. LEASE TERM

This Lease shall be valid for a period of **Five (5) years and Three (3) Months** commencing from **1st October 2013**.

6. RENT

The total annual rent will be **US\$14,015.63 per annum** payable quarterly in advance in the manner and amounts shown in the Schedule annexed hereto;

Location	Area	Rate Annual	Rent	Service Charge	Total Annual Rent
	M ²	US\$	US\$	25%	US\$
Gate 12	32.5	345	11,212.50	2,803.13	14,015.63

7. MODE OF PAYMENT

To enable you conclude partitioning and /or stock display you will be entitled to a grace period of **one (1) month** from **1st October 2013** after which you will commence payment of the rent from **1st November 2013**. Further, throughout the contract term, the rent shall be payable on quarterly basis and in advance.

8. INTEREST ON LATE PAYMENT

The Lessee shall pay interest on any rent due under this Lease which is not paid within Seven (7) days from the date which the payment is due, whether formally demanded or not. The interest will be calculated from the date on which the rent due to the date of payment at the rate of two percent (2%) to be calculated on monthly basis.

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10. STANDARD OBLIGATIONS OF THE LEASEE

- a. Payment of Rent including any Service Charge and Security Fee or such other charge as may be put in place by the Authority;
- b. Maintain business decorum and conduct expected of an entity working in an airport of the stature of JKIA;
- c. Ensure due delivery of quality services;
- d. Observing the provisions of the Kenya Airports Authority Act, any other relevant written law;
- e. Meeting any requirements as may be required by the Authority, including but not limited to the following:
 - i. The employees must be uniformed
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12. LEASE TERMINATION

- a. **Termination on Default:** The Authority may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Lessee, terminate the Agreement in whole or in part:-
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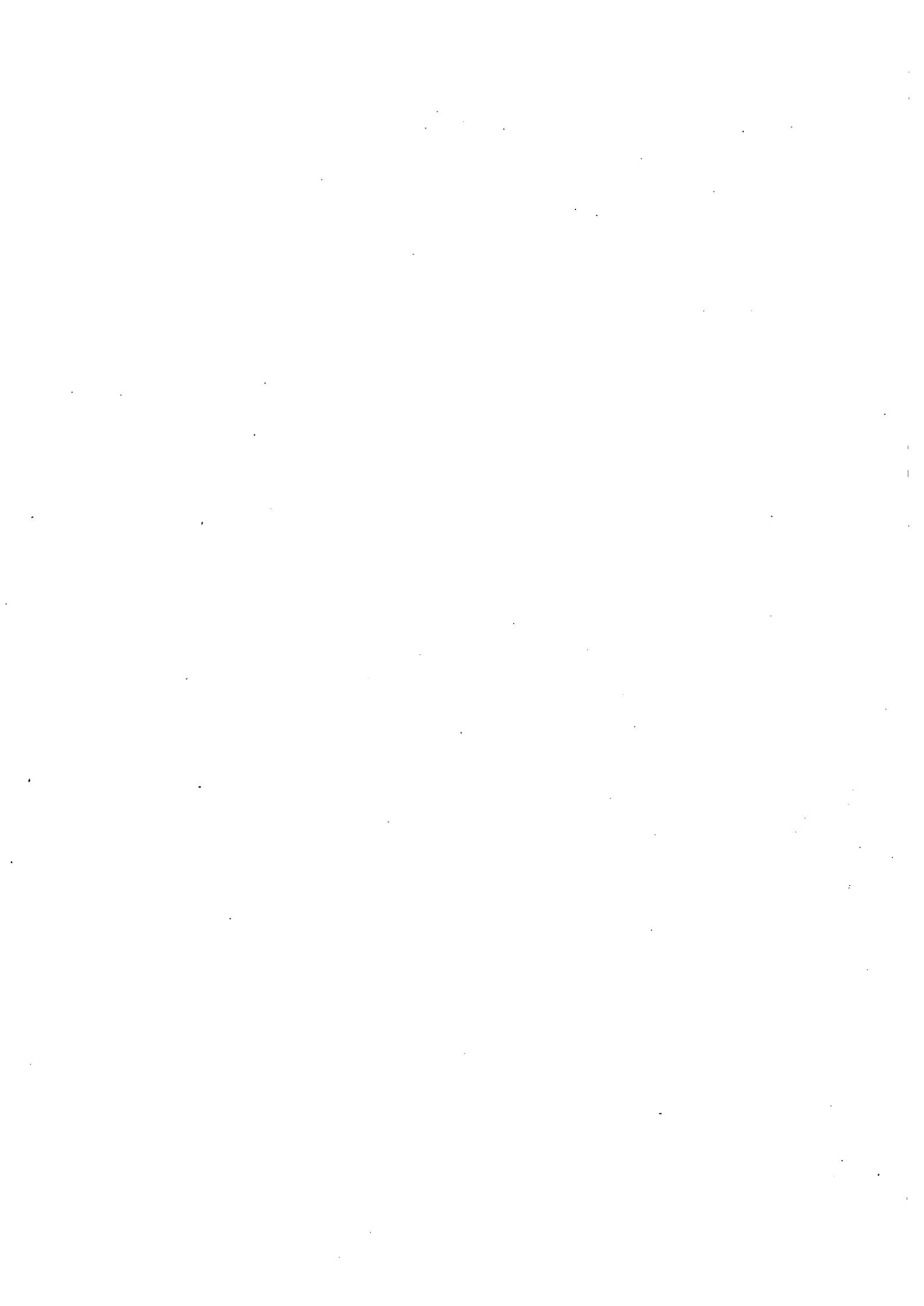
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Upon **seven (7) days'** written notice to the Lessee, the Lessor reserves the right to reduce the leased space, and/or relocate the lessee to another space within the Airport, and/or stop the Lessee's operation at the leased space without the Lessor accruing any liability.



16. YACATING THE SERVICE AREA UPON TERMINATION

Upon the termination of this Agreement for whatever reason, the Lessee shall be required to vacate any space and/or premises granted by the Authority immediately but in any event not later than Five (5) working days after the effective date of termination. In vacating, the Lessee shall be required to clear any of its property within the Airport. Upon the lapse of this period, the Authority shall move into the premises to remove such property, take inventory of the same whether the Lessee shall be present or not and proceed to restore the same at the cost of the Lessee. The Authority shall not be held liable for any claims resulting from any of its actions under this clause.

17. RENEWAL OF LEASE

If the lessee makes a written request for renewal at least six (6) months prior to the expiry of this lease and is not in breach of any condition herein and the Lessor is not desirous of taking over the space, a renewal of the lease will be negotiated and agreed upon by the parties including the term of the lease as well as other terms.

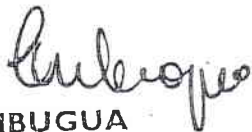
18. ACCEPTANCE IN PRINCIPLE

By the accepting of the terms of this Letter of Offer, you are deemed to approve the standard form of lease and agree to execute and return the lease when it is submitted to you. This invitation will remain open for acceptance within **FIVE (5) DAYS** from the date of delivery of the offer letter, and may only be accepted as required herein below under the following terms:

- a) This letter is sent to you in duplicate. Acceptance shall be in writing on the duplicate of this letter and shall be effective only when signed in duplicate, together with unconditionally payment of the quarterly fee specified hereunder forwarded to us. If such a written acceptance and payment specified herein is not received within the stipulated period, this offer will lapse.
- b) Upon receipt of your confirmation and the quarterly rent as required and subject to ~~confirmation from the lessor, we will arrange for the lease agreement to be sent to you for~~ execution.

The Lease Agreement must be executed and returned to the lessor within thirty (30) days after its delivery to you.

Yours faithfully



LUCY MBUGUA
Ag. MANAGING DIRECTOR

MINISTRY OF TRANSPORT AND INFRASTRUCTURE

PRESS RELEASE

During my recent appearance before the Parliamentary Committee on Infrastructure, I made it abundantly clear that persons who intend to use our public facilities for trade should display goodwill and conduct business in accordance with acceptable practices devoid of intrigues.

In this regard, I wish to report the following:-

- (a) World Duty Free Company Ltd has today renounced the Arbitral Award that was made by Retired Justice Torgbor in which Kenya Airports Authority was ordered to pay in excess of Shs. 4.2 billion. That award has been renounced and lawyers have been instructed to set it aside in entirety.
- (b) World Duty Free Company Ltd and Diplomatic Duty Free Company Ltd have both agreed and undertaken never to claim and/or demand any compensation now or in future regarding repossession of the shops and passenger lounges which was carried out by Kenya Airports Authority.
- (c) World Duty Free Company Ltd and Diplomatic Duty Free Company Ltd have agreed to withdraw the multitude of cases pending in various courts against Kenya Airports Authority and/or the government of the Republic of Kenya.
- (d) World Duty Free Company Ltd and Diplomatic Duty Free Company Ltd have surrendered all the premises which they had occupied for the last 25 years. The premises were repossessed in the early morning of 1st August 2013 and today, both companies have


Σελ. 10

freely and voluntarily accepted to surrender the premises to Kenya Airports Authority.

The foregoing are landmark events. After a struggle spanning the last 25 years, Kenya Airports Authority has re-claimed its premises. Indeed, one of the premises hitherto occupied by World Duty Free Company Ltd is a passenger lounge which is now being occupied by Kenya Airways.

I am extremely gratified by the role played by various dedicated officers whose dedication was crucial in resolution of this long outstanding dispute. I wish to convey our sincere gratitude to His Excellency the President for his guidance and steadfast support during the entire period. This exercise should send a clear message that the Jubilee Government is committed to nothing less than candid and transparent business practices.

Issued by:


Eng. Michael Kamau, CBS
Cabinet Secretary
Ministry of Transport and Infrastructure
NAIROBI

16th September 2013

END

Appendix 24

1. Today I am here by the will of almighty to give up on my long running disputes over Duty Free with KAA. Let all glory and praise be to God for what I say here today as it is ^{for} ~~not of my will but~~ ^{only of God's} by will of God.
2. As a responsible citizen, I do not wish to fight the Authority which has been put in place by the Almighty God
3. I can fight the court cases but have opted out for peace. I and my family also need to have peace and as the bible says, "blessed are the peacemakers"
4. I want to live a peaceful life without being harassed in the name of GIL ~~which was a project to overcome donors embargo by the then~~ Government. I want to live peacefully and want the authority to give me peace.
5. I am settling the duty free disputes further to my ^{exclusive} surrender of Grand Regency Hotel.
6. ^{Bible says} What good is it if we gain the whole world but loose our soul? So I say what good is it if I gain the whole duty free monopoly for eternity but lose my soul/peace and have to keep fighting the same authority under whose rule I live in this Kenya of ours.
7. When I surrendered the Grand Regency Hotel, I was setting a president for other people under investigations or allegations that they have taken public money, institution or land to follow suit and surrender and start a fresh life. What I got in return was insult, abuse, Bad publicity and betrayals because very powerful and wealthy people warned me not to surrender anything, leave alone Grand regency because I will not get any recognition for it. I know very well that there were many other people who were waiting to surrender after I surrendered Grand Regency hotel but when it turned out that I did not get any recognition, the people willing to surrender changed their minds. Now my prayer to the new Government is to close the past by forgiving and recognizing those who repent and restitute and only punish those who do not repent and restitute. Let us all embrace the spirit of repentance and forgiveness and nation building because our Lord also forgave us.

1872

8. When I surrendered a 5 billion GRH, I was assured by the authorities that upon the said restitution, will be free of all case & accusations in relation to the GIL. Now by this further restitution I pray that this Government will allow me peace & freedom from all the past to concentrate on m-service to God and gospel preaching without the stigma of GIL.

9. I believe if my restitutions agreements including this one is appreciated by the Gov. then many people with disputes against the Gov. and those having cases in court against the Government shall be encouraged, to retribute & settle their disputes with the Gov. Those are my prayers

10. To the people who demolished shops & destroyed goods. I have forgiven them, just as my God has forgiven me.

11. I am not sad because I am losing the Duty Free, but I am happy because God is using , me to show the world that his words are coming true. *that HCC*

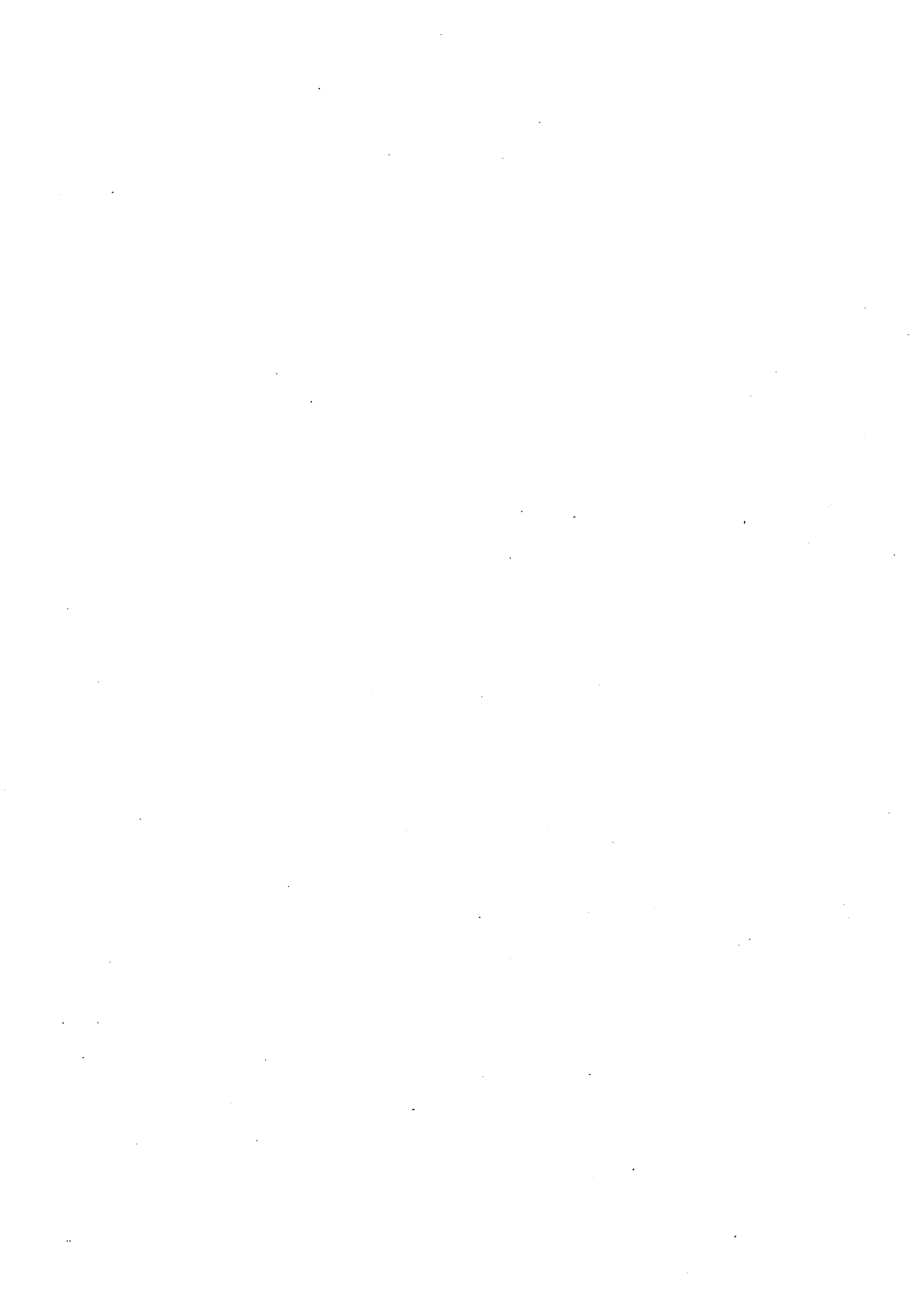
12. Sometimes what appears Evil or Bad, God turns it into Good. If you just surrender to God *is ways* and do not repay evil to evil but evil with Good. *Key*

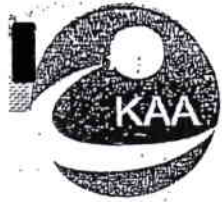
13. To end I take solace in the test job went through and I quote
-Job 1:21

and he said, "Naked I came from my mother's womb, and naked shall I return. The LORD gave, and the LORD has taken away; blessed be the name of the LORD." For by faith in him he shall restore many folds as he is my Jehovah fire.

14. Let all know Psalms 74:26 that God is my strength; and he is all I ever need. God bless KAA and God bless us all.

15. By this settlement I would request the Government to give me Peace and to recognize my restitutions and give me a chance to work on our Nation Bldg., job creations and betterment of Kenyans by God grace of business.





Kenya Airports Authority

Appendix 20

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: 254 - 020 - 822111 / 6611000 / 6612000
Fax: 254 - 020 - 822078, 827304
E-mail: info@kenyaairports.co.ke
www.kenyaairports.co.ke

25th September, 2013

Ngatia & Associates
Advocates
Bishops Garden Towers
2nd Floor
Bishops Road
P O Box 56688-00200
NAIROBI

Dear Sir,

RE: DRAFT LEASE FOR SUZAN GENERAL TRADING

We acknowledge with thanks receipt of your email received on 23rd September 2013 forwarding the draft lease between KAA and Suzan General Trading.

We wish to suggest the following amendments:-

1. At clause 3(c) replace the word 'rent' with the word 'tenant'.
2. Under clause 3 (e) on payment of charges levied to Telkom Kenya Limited we suggest you substitute as follows:-

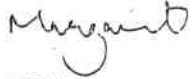
"To pay all data connections provided for by Kenya Airports Authority".
3. At clause 6 (c) iii delete in line 9 "equal" and replace with "comparable size depending with availability" further delete the words in bold "and it is complimentary to his business".
4. Under the same clause 6 at (j) on renewal of lease we suggest you delete the following:-
"Provided that the tenant has applied to the landlord for the renewal of this lease six months before the expiry of this lease the Landlord shall automatically renew the lease for a further term of Five (5) years and three (3) months on the same terms and conditions save that the rent for the new term shall be increased by 15% of the rental paid for the last quarter by the tenant at the expiry of the lease" and substitute as follows:-

А. В. Хлопков



"If the tenant makes a written request at least six (6) months prior to the expiry of this lease and is not in breach of any condition herein and the landlord is not desirous of taking over the space, a renewal of the lease will be negotiated and agreed upon by the parties including the terms of the lease as well as other terms".

Yours faithfully,


M Munene
Legal Counsel

NGATIA & ASSOCIATES

ADVOCATES
COMMISSIONER FOR OATHS

FRED NGATIA LL.B. (NRB), LL.M. (L.S.E)

BISHOPS GARDEN TOWERS
2ND FLOOR
BISHOPS ROAD
P.O. BOX 56688-00200
NAIROBI
KENYA
TEL: 2733652/2733653
FAX: 2733656

email: ngatiaassociates@gmail.com

Your Reference:

Our Reference: FN/036/2013

Date: 30/09/2013

E.K. Mutua & Company
Advocates
View Park Towers

11th Floor,
NAIROBI.

ATTN: MR. ERIC MUTUA

Dear Sir,

**RE: WORLD DUTY FREE COMPANY LIMITED AND
DIPLOMATIC DUTY FREE LIMITED**

Parties did agree that all pending matters in court be marked as withdrawn and/or settled. Consequently, as regards all matters pending in the High Court, please draw consent letters as hereunder;

"Please record the undernoted orders by consent of the parties hereto;

BY CONSENT

- (a) That this suit be marked as settled and each party do bear its costs.
- (b) That any interim orders issued herein be marked as discharged."

Please ensure that names of the law firms on record are correctly set out.

As regards appeals in the Court of Appeal, do prepare a letter requesting that the appeal be marked as withdrawn with no order as to costs. Please site the correct rule in the Court of Appeal Rules which would entitle a party to withdraw the appeal.

Do sign all the letters (4 copies) and forward the same to us for onward dispatch for execution by your counterparts.

Yours faithfully,

**NGATIA & ASSOCIATES
ADVOCATES**

C.C:Client


Abbeville 26

freely and voluntarily accepted to surrender the premises to Kenya Airports Authority.

The foregoing are landmark events. After a struggle spanning the last 25 years, Kenya Airports Authority has re-claimed its premises. Indeed, one of the premises hitherto occupied by World Duty Free Company Ltd is a passenger lounge which is now being occupied by Kenya Airways.

I am extremely gratified by the role played by various dedicated officers whose dedication was crucial in resolution of this long outstanding dispute. I wish to convey our sincere gratitude to His Excellency the President for his guidance and steadfast support during the entire period. This exercise should send a clear message that the Jubilee Government is committed to nothing less than candid and transparent business practices.

Issued by:


Eng. Michael Kamau, CBS
Cabinet Secretary
Ministry of Transport and Infrastructure
NAIROBI

16th September 2013

END

135





Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: +254 - 020 - 822111 / 6611000 / 6661200
Fax: +254 - 020 - 822078, 827304
Email: info@kenyaairports.co.ke
www.kenyaairports.co.ke

Appendix 2

LL/192/2013

8th December 2014

Ngatia & Associates
Advocates
Bishops Garden Towers
2nd Floor
P.O. Box 56688 -00200
NAIROBI

Attn: Fred Ngatia

Dear Sir,

**RE: WORLD DUTY FREE COMPANY LIMITED AND DIPLOMATIC
DUTY FREE LIMITED**

Thank you for your letter dated 21st November 2014, the contents whereof have been noted.

As you rightly point out in your letter, the Authority has had endless court wrangles with World Duty Free Company Limited and Diplomatic Duty Free Limited (hereinafter referred to as the company). It is in the Authority's best interests that these court wrangles be brought to a definitive end.

Whilst Management and the Board are extremely appreciative of all the efforts you have made towards disentangling the Authority from the company's clutches, there is a legitimate concern that the Authority is not yet free of the company.

The matter of your fees need not be subjected to arbitration. The Authority has paid your interim fee notes in the sum of Kshs. 73,662,069 for services rendered as outlined in the fee notes.

1


NGATIA & ASSOCIATES ADVOCATES RECEIVED
17 DEC 2014
Name: <i>W. J. C. Ngatia</i>
Title: <i>Advocate</i>
Signature: <i>W. J. C. Ngatia</i>

Appendix 2

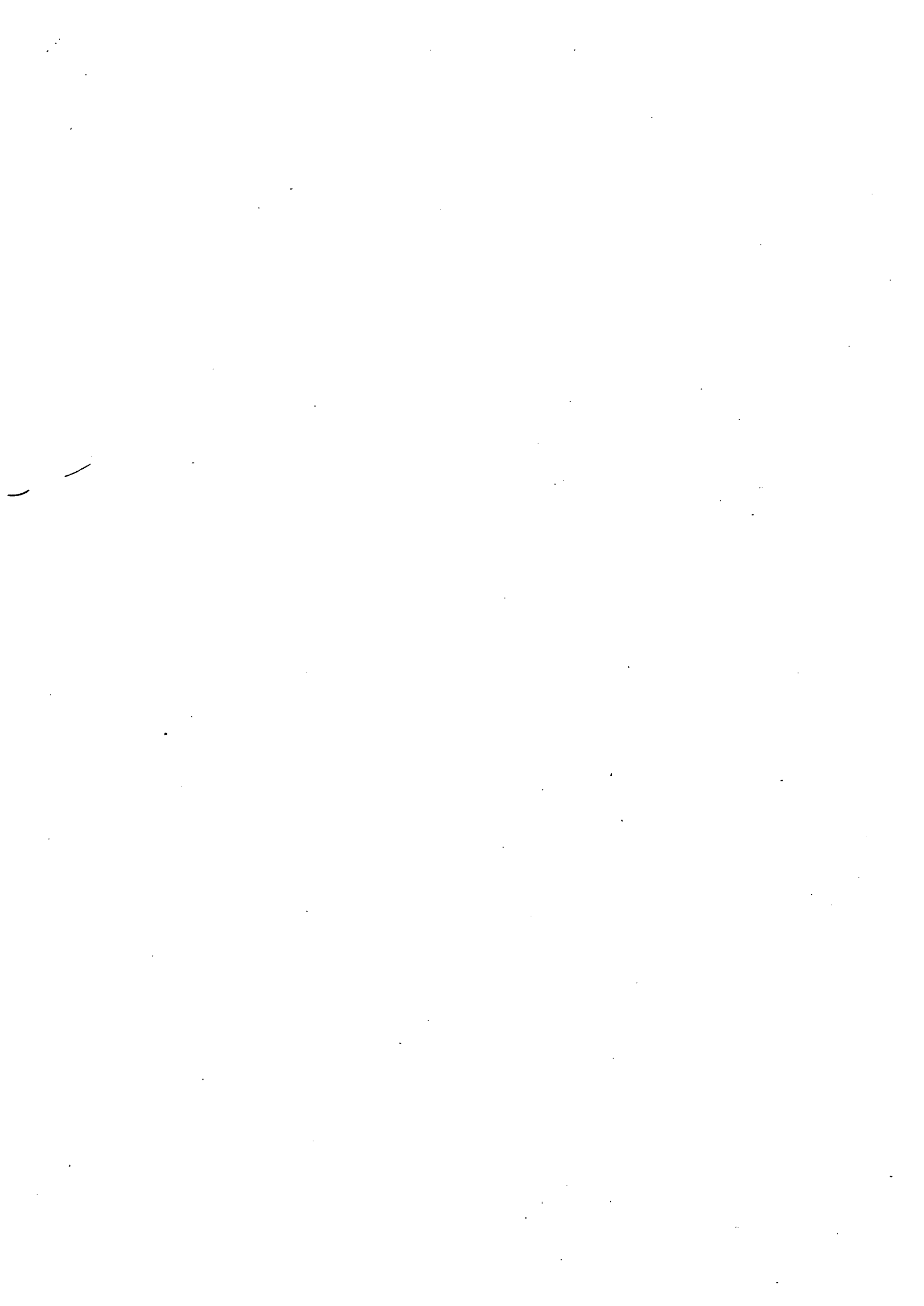
The Authority is amenable to settling your final fee note in a sum to be agreed upon in tandem with termination of all the cases pending in all courts ,details of which we shall avail shortly.

We are committed to an amicable resolution of the matter of your fees and reiterate the Board and Management's gratitude for your services.

Yours faithfully,



LUCY MBUGUA
MANAGING DIRECTOR



APPENDIX

The Legal team that was appointed by KAA comprises the following advocates, namely;

- a) Ahmednasir Abdullahi S.C
- b) Eric Mutua
- c) Mansur Issa
- d) Tom Macharia
- e) Fredrick Ngatia

The Legal team makes the following proposal:

- i) It is in the interest of KAA and the public that all the cases filed by World Duty Free/Diplomatic Duty Free be marked as withdrawn and/or settled in tandem with the agreement which was reached between World Duty Free/Diplomatic Duty Free on the one hand and KAA and Government of Kenya on the other hand in September 2013.
- ii) Sufficient, admissible and relevant evidence is available which would enable the Legal team to successfully apply to court for each and every case filed by World Duty Free/Diplomatic Duty Free against KAA to be marked as withdrawn and/or settled.
- iii) To enable the Legal team undertake the task set out in paragraph (ii) above, it is critical that KAA constitutes a team to urgently discuss and/or negotiate with World Duty Free /Diplomatic Duty Free on the issues which were discussed in August/September 2013. KAA should endeavor to reach consensus with World Duty Free/Diplomatic Duty Free on any outstanding issue. In the event that consensus is reached, parties will execute appropriate consents seeking each suit to be marked as withdrawn and/or settled.
- iv) If no consensus is reached and given the evidence which is available, KAA will instruct the Legal team to file an application in every pending suit in court seeking that the suit be marked as withdrawn and/or settled. KAA shall render all necessary support to the Legal team to ensure the timely and efficacious conduct of the applications.

8.2.16.1997

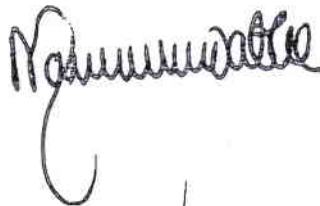
- v) Once all the cases are successfully withdrawn and/or marked as settled, KAA should tabulate the legal services rendered by the Legal team, analyse the benefits which have been achieved by the Legal team and discuss the fees payable for the legal professional services which have been rendered to KAA. A true and faithful evaluation should be carried out to determine the appropriate fees due and payable to the Legal team.
- vi) Pending the exercise set out in paragraph (v) hereinabove, the fee note(s) issued to KAA shall be held in abeyance to await conclusion of the outstanding legal tasks.
- vii) ~~For success to be achieved as envisaged herein, KAA shall display utmost good faith and desist from any acts which would obstruct the desired conclusion of the protracted dispute with World Duty Free/Diplomatic Duty Free.~~

DATED at Nairobi this 28th day of April 2015.

Ahmednasir Abdullahi

Eric Mutua

Mansur Issa



Tom Macharia



Fredrick Ngatia





Telegraphic Address:
FINANCE-NAIROBI
Telephone: Nairobi 338141
When replying please quote
Ref. No. MPC/RTP/14/A(83)
and date

MONOPOLIES AND PRICES
COMMISSION
P.O. Box 30007
NAIROBI

15th August 19.96

The Managing Director
Kenya Airports Authority
P.O. Box 19001
Nairobi.

CONFIDENTIAL

ATTN: J. ONGERA (Miss)



Dear Madam,

RE: RESTRAINT OF TRADE: MAYA FREE LTD ("MAYA") AND GOGEE LTD
("GOGEE") Vs KENYA DUTY FREE LTD AND KENYA AIRPORTS AUTHORITY
(KAA)

I refer to your letter Ref. No. KAA/C2/28/VOL.3 of 9th August, 1996 concerning the above issue.

Maya and Gogee jointly submitted a complaint to the Monopolies and Prices Commission on 27th June, 1991 as provided in Section 13 of the Restrictive Trade Practices, Monopolies and Price Control Act, Cap. 504, the Laws of Kenya.

Their allegations were founded on the following events emanating as a result of the contract between the House of Perfume (Kenya Duty Free Ltd) and the Government of Kenya:-

- i. Maya and Gogee had operated at the duty free area of the Jomo Kenyatta International Airport (JKIA) since 1986 as lessees of Kenya Airports Authority but were expelled from the said area to give room to the exclusive occupation of the Kenya Duty Free Ltd,
- ii. The action to remove them was prompted by, *inter alia*, the following clauses in the lease agreement between Kenya Duty Free Ltd and the Kenya airports Authority:-

P.S. xibn...
P.S. xibn...

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- a) 4 (ii) ...the Government represents and covenants that none of the lease which have been granted by the Government and are presently in force in the Complexes are capable or will be capable of being renewed by the existing lessees and that on expiry of such leases, the Government shall neither renew such leases nor grant new leases to any person other than the company (Kenya Duty Free Ltd) in accordance with Clause 1",
- b). 3(A)(i) ... in consideration of the annual payment...referred to in clause 1 (iii), the Government further agree that the company (Kenya Duty Free Ltd) shall have the sole and exclusive right ("agency") within the area ... designated as the airports,
- (ii)... to operate the Complexes commercially for its own benefit freely and without restraint; and no other person or individual whatsoever shall be entitled to the same without the prior written consent of the company (Kenya Duty Free Ltd),

The analysis undertaken thereafter pursuant to the above clauses revealed that successful execution of the said contract was a contravention of the following stipulations provided in the aforementioned Competition Act:-

- i. Section 6(1)(i)....an agreement ... between persons to allocate territories or markets for the disposal of goods;
- ii. Section 10 (a),(c) and (d)... whereby a person whether as principal or agent, *inter alia*:
- (a)... drives a competitor out of business or deter a person from establishing a competitive business in Kenya or in a specific area;
- (c)...to induce a competitor to shut down whether temporarily or permanently an existing wholesale or retail outlet for the sale of services or deter a person from establishing any such facility;
- (d)... induce a competitor to desist from producing... or trading in any goods or deter a person from trading in any goods..., shall be guilty of an offence.

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- iii. The Contract also engendered unwarranted concentration of economic power as enshrined in Section 23 of the said Act. These actions had the overt implication of removing all other competitors in the said geographical and national market thus in essence creating a monopoly.

In the interest of creating and maintaining structurally competitive markets that will ensure efficiency, equal and fair participation in this realm of economic liberalization, it was unwise to institute such a monopoly situation to a single participant.

Equally the contract between the House of Perfume (Kenya Duty Free Ltd) and the Government was made on 24th April, 1989 when the Competition Act was already operational and no technical opinion was sought from the Commissioner of Monopolies and Prices before sanctioning the same.

It is worth noting that after receiving the application by Maya and Gogee and evaluating its implication *vis a vis* the provisions of the said Act the Monopolies and Prices Commission decided to invoke section 15; in line with the powers bestowed upon the Commissioner to institute litigation. The same was communicated to the Attorney General's Office for approval and further legal guidance.

A rejoinder from the Solicitor General opined that the agreement failed to meet the essentials of a valid contract and neither party privy to it could therefore rely on it to justify any action and/or omission.

On the other hand, the Government Legal Advisor, Attorney General in his response expressed, subject to any vitiating circumstances, that the contract was valid under the Government Contracts Act; it having been signed and counter-signed by those by Law empowered to do so. Equally in his view, the grounds on which the complainants found their suit were not sufficient to demonstrate an offence having been committed under the Competition Act.

The Monopolies and Prices Commission, following our explained understanding of the aforementioned Act, still holds that the Law was broken. But the final determination on the



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legality of this contract rests with the Attorney General from whom I may advise you to consult before proceeding as is necessary.



S.W. WAINAINA (MISS)

COMMISSIONER: MONOPOLIES AND PRICES

cc. The Permanent Secretary

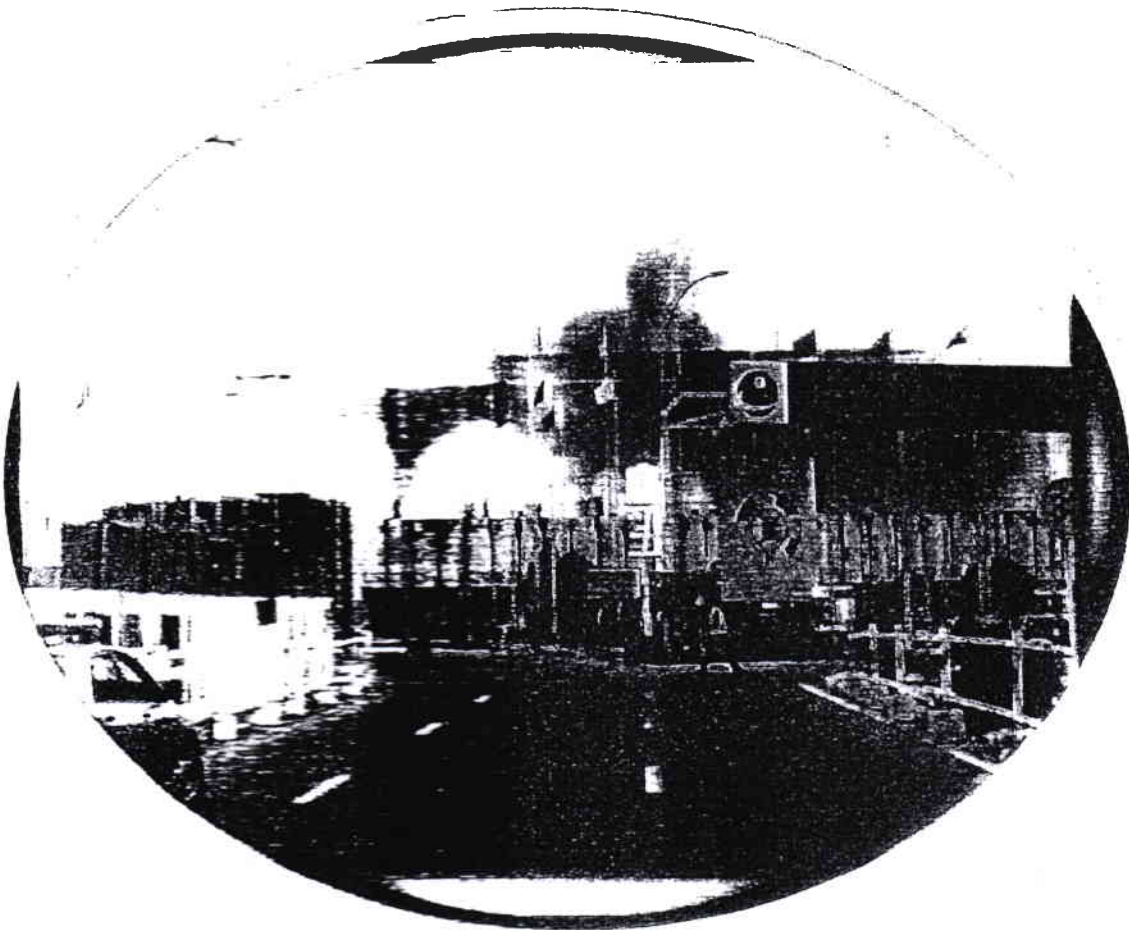
Treasury

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(140)

INVESTIGATION REPORT INTO JOMO
KENYATTA INTERNATIONAL AIRPORT FIRE
INCIDENT THAT OCCURRED ON THE
7TH AUGUST, 2013

=====



JOMO KENYATTA INTERNATIONAL AIRPORT
07TH AUGUST, 2013 AT 0700 HRS

Αποστολή 30

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1.2 BACKGROUND

The report on investigation into fire incident that occurred at Jomo Kenyatta International Airport on Wednesday 7th August 2013 at about 0440 hours was reported to the Kenya Airport Police Unit Control Room by the Police Duty Officer, Inspector Christopher Mbogho of JKIA police station who received information from the Immigration Officers working at Immigration Arrival 2 that there was fumes of smoke emanating from the their work station within the International arrival Terminal building. The smoke developed into visible fire. The Kenya Airport Authority fire fighters responded promptly and were later on joined by fire engines from Nairobi County amongst them, Nairobi county fire department, NYS, Kenya Pipeline, and Kenya Army. The fire huge and fierce which took the fire fighters 6hrs to contained it. By that time it had gutted down the entire roof of the International Arrivals building that houses numerous business premises and government offices, destroying properties whose exact value is yet to be determined by the various insurance companies and owners. The collateral damage extended to gate 9 up to 14 where most of electrical appliances, ceilings, elevators, windows, doors, money dispensing machines (ATM), office equipment, Forex Bureaus among other items were extensively damaged. The damage extended up to the airside and the parking zone as a result of a blast that shattered the glass windows due to the pressure that had built up along the walk ways linking immigration 1 & 2. The ceilings and roof tops at the Immigration's Arrival 1 and 2 caved in due to intense heat and eventually collapsed.

The inferred blast was caused by convectional current which rose above the

burning fire, carrying with it hot sparks, ~~being at~~ the surroundings in which it passed through. The Aluminium ~~metal~~ ~~bars~~ and ceiling materials caused the fire to spread due to ~~conduction~~. The ~~case~~ was NOT consistent with that caused by an explosive, ~~explosive device or~~ ~~incinances~~.

2.0 INVESTIGATION

2.1 INVESTIGATION PROCESS

Following the fire outbreak, an ~~Investigation Team~~ was immediately constituted to investigate and ~~ascertain the cause~~ of fire. The team encompassed officers from various ~~government~~ agencies and incorporated foreign fire investigators from USA, Canada and Britain.

2.2 INVESTIGATION TEAM

The respective key members were from the following entities:-

1. Directorate of Criminal Investigations
2. Kenya Airports Police Unit
3. Anti-Terrorism Police Unit
4. Bomb Disposal Unit
5. National Counter Terrorism Centre
6. National Intelligence Service
7. Public Works – Fire Investigation Section
8. Kenya Power and Lighting Company
9. Government Chemist Analyst
10. USA Federal Bureau of Investigations

11. Royal Canadian Government Representative

12. British High Commission Representative

2.3 THE SCOPE OF INVESTIGATIONS

The team, after initial analysis, agreed to investigate the cause of fire in the following perspective:

1. Terrorist act
2. Arson
3. Electrical

2.4 EVIDENCE COLLECTION METHODS

Given the unique nature of the incident, the investigating team employed varied methods of evidence collection. This included:-

1. Interviews
2. Statements recording
3. Collection of exhibits and samples
4. Photography
5. Video recordings
6. Analysis of Closed Circuit Television (CCTV)
7. Observation
8. Expert reports

3.0 HISTORY OF JOMO KENYATTA INTERNATIONAL AIRPORT

Jomo Kenyatta International Airport (JKIA) is an international airport located in Embakasi, Nairobi County, and fifteen (15) kilometers southeast of Nairobi Central Business District (CBD).

It opened its doors on 9th March 1958 as Embakasi Airport and later renamed Nairobi International Airport in 1964.

THE AERIAL VIEW OF THE AIRPORT

 The image part with relationship  r1d7 was not found in the file.

In 1972 more structures were built amongst them the International Arrivals Terminal Building that caught fire on Wednesday 7th August 2013 at about 0430 hours.

INTERNATIONAL ARRIVALS TERMINAL BUILDING BEFORE THE FIRE INCIDENT



The International Arrivals Terminal Building was officially opened on 14th March 1978 by the first President of the Republic of Kenya, Jomo Kenyatta. Later on the Nairobi International Airport was renamed to Jomo Kenyatta International Airport on 22nd August 1978, in honor of the late first president of the Republic of Kenya.

The airport has since improved service delivery to various clients and currently facilitates a daily traffic flow of about sixteen thousand (16,000) passengers. The airport offers services to over thirty seven (37) International and Domestic airlines besides handling over 300 million kilograms of cargo per annum.

In 1991, the Government of Kenya transferred ~~ownership and~~ management of JKIA and other civilian airports and airstrips ~~within the country~~ to Kenya Airports Authority (KAA) through "The Kenya ~~Airports Authority Act~~".

The airport is currently undergoing major ~~construction~~ including Unit 4 and on its completion will have the capacity ~~to handle double~~ the current capacity.

Given the role that JKIA plays in the country's ~~economy~~, it is classified as a VITAL INSTALLATION that MUST be safeguarded at all ~~times~~.

4.0 INCIDENT DESCRIPTION

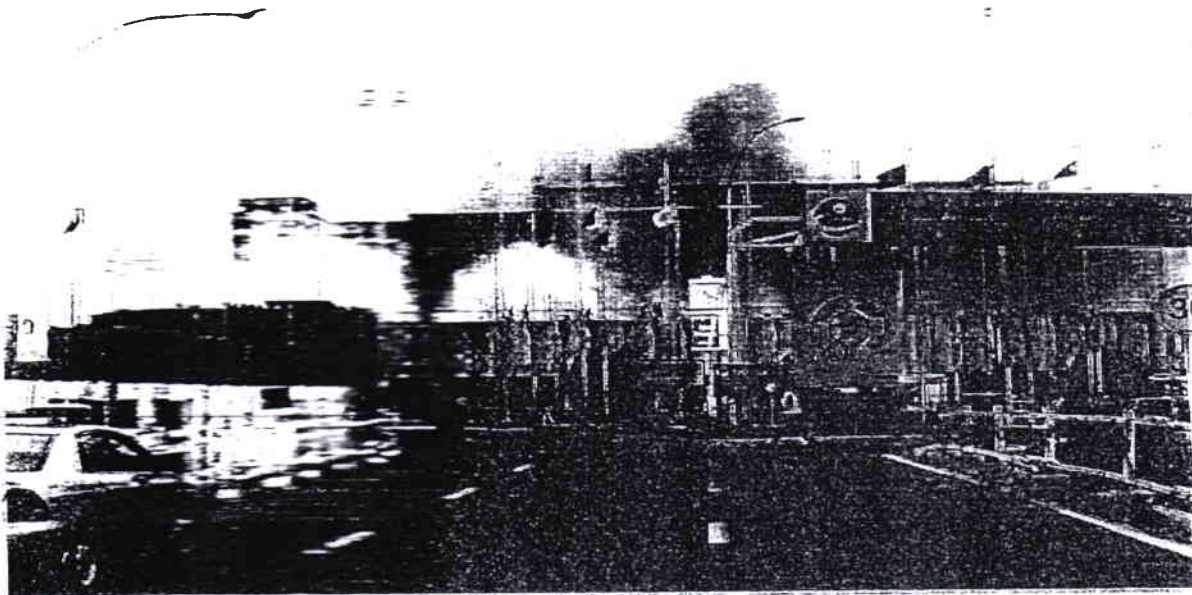
4.1 FIRE

Since its inception, the airport had not experienced ~~any serious~~ incident until Wednesday the 7th August 2013 at about 0430 hours when fire broke out at the immigration arrivals 1 and 2 within International Arrivals Terminal building. The fire gutted down most of the building and destroyed properties worth millions of shilling.

It was fortunate that no deaths or injuries were reported during the incident.

Following the fire incident the airport was closed for about 24 hours.

GENERAL VIEW OF INTERNATIONAL ARRIVAL TERMINAL BURNING



4.2 EMERGENCY RESPONSE

The fire engines from Nairobi County responded promptly to fight off the fire after being informed by Kenya Police Service Nairobi Area Control Room who had been informed by the Kenya Airports Police Unit. Fire engines from Kenya Pipeline Corporation, Kenya Army, Nairobi County Government, National Youth Service, Group 4 Security Services and Kenya Airports Authority teamed up to fight the fire that was eventually contained at about 1100 hours of the same day. The building however, continued smoldering for another forty eight (48) hours.

FIRE ENGINES FIGHTING FIRE



5.0 INCIDENT ANALYSIS

5.1 THE FIRE ANALYSIS

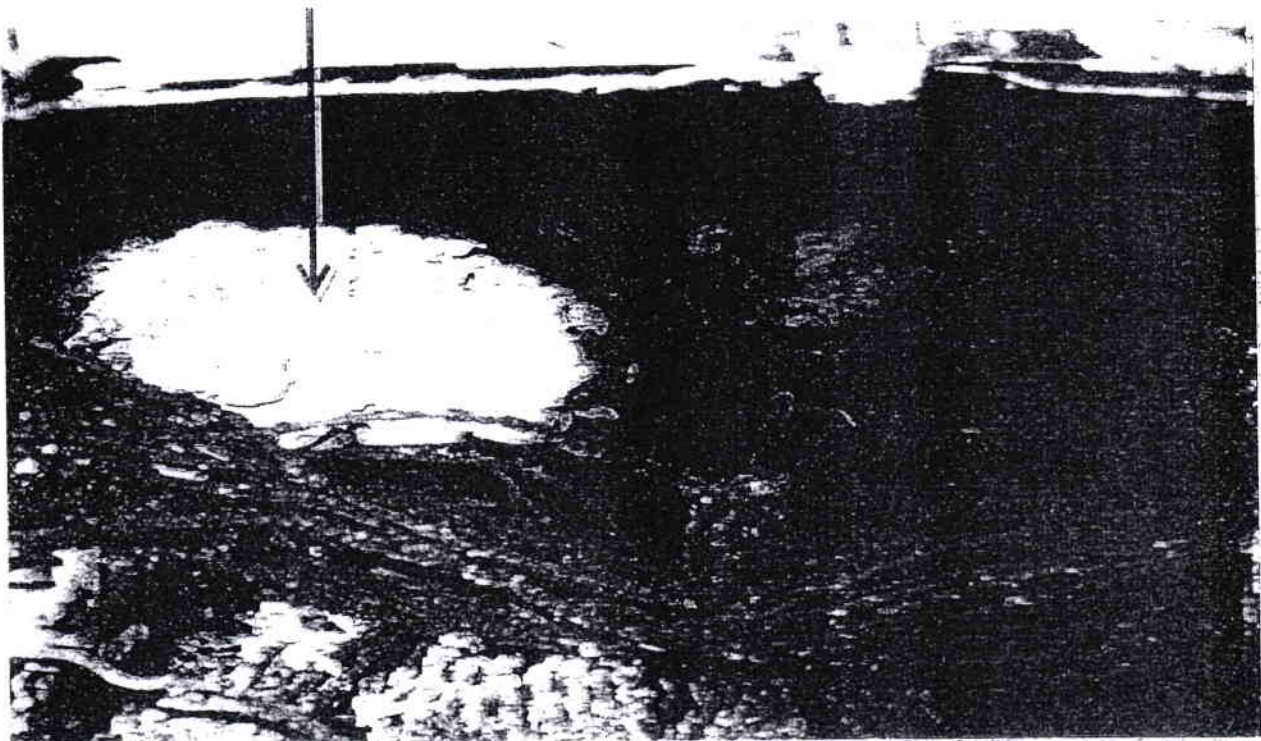
The evidence collected from the witnesses and CCTV footage supported the fact that smoke was first seen emanating from the ceiling roof of Immigration Arrival 2 at around 0430 hours and within minutes, the building burst into flames. Though smoke was emanating from the ceiling roof of Immigration Arrivals 2, it did not prove that the roof was the origin of fire.

The witnesses' accounted that when they accessed the Kenya Airports Authority Information Control Room/office; they experienced a smell of "burnt rubber-like" scent but could not establish where it was coming from.

In the course of assessing and reassessing the scene, the investigation team, in the company of David Kariuki Nguthi, Electrical Expert from Public Works Department found and examined an Electric Distribution Board (a sub-distribution board connected to the main distribution board) that is sandwiched between the Kenya Airports Authority Server room and Kenya Airports Authority Information Control room/office.

David, in his expertise, established that the referred electric distribution board had electric cables that underwent oxidation and overheating as shown in the picture below.

WHITE SURFACE IN THE ELECTRIC DISTRIBTRIBUTION BOARD DUE TO OXIDATION



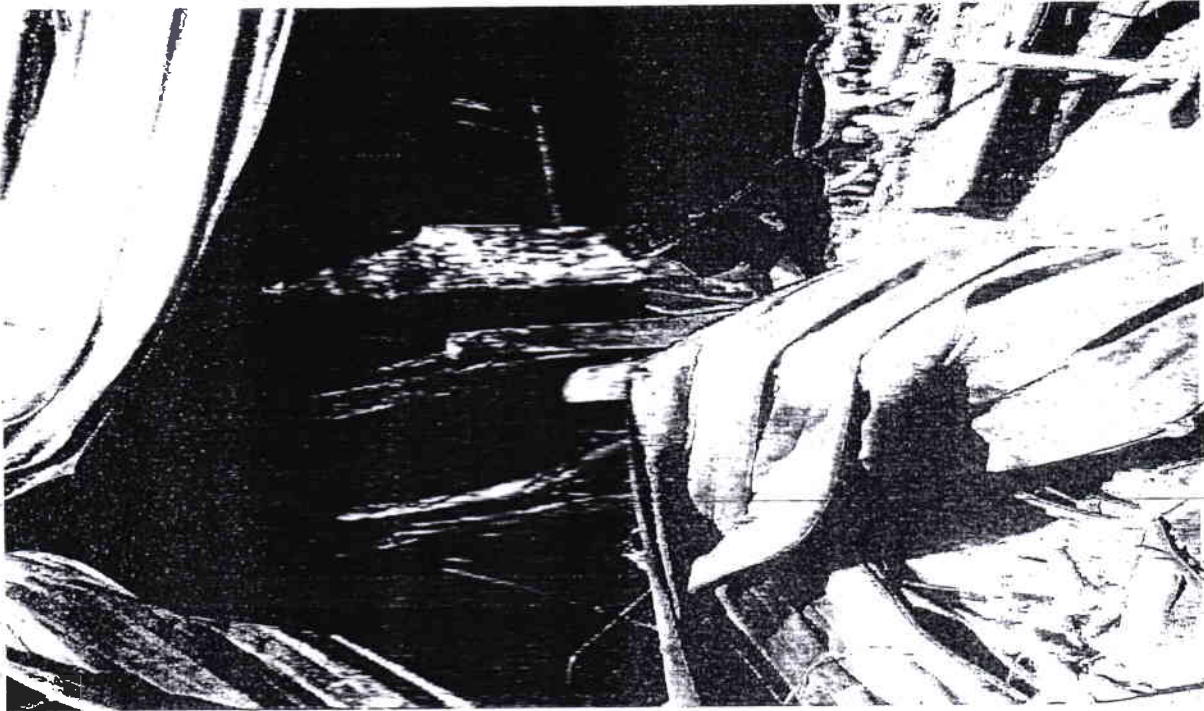
He also found out that;

1. The isolation switch in the electric distribution board had burnt out due to intense heat making it difficult to know the rating.
2. The main cable to the electric distribution board was burnt and broken.
3. The main isolation rated 160A at the main distribution board was found to be "off" position.

David explained that within the distribution board, there was an isolator switch which may have been corroded due to heating of the contacts (electric cables) thus creating more resistance and heat between the contacts. The resultant heat was transferred to the insulating material that eventually got destroyed, exposing bare live conductors. The exposed live wires created contact with the earth cable line which in turn attempted to conduct power in the opposite direction but due to resistance, it heated up gradually and became hot, burning off the mechanical cover. Once the mechanical cover got burnt, the conductors got into contact with the metallic tray (a tray where the electric cables ran in) and the steel beams within the ceiling roof of the affected building. The steel beams got energized and became hot hence short-circuiting the conductors.

BROKEN ELECTRICAL CABLE





According to David's ~~electrical~~ report, the conductors broke down due to insulation failure and metal degradation. The metal works eventually absorbed heat causing combustible material in contact to ignite. This process resulted into a "flush-over" point occurring before total failure and then on-going arcing occurring, generating enough heat for ignition of cable insulation and ceiling that were close to this electrical arcing.

6.0 FINDINGS

6.1 TERRORISM ACT

The team conducted thorough interviews, analysis of recorded statements, reviewing of CCTV footage and physical assessment of the area to establish whether there was any involvement of acts of terror in the incident.

Mr. Eliud Langat (SP), Bomb expert confirmed in his report that there were no explosives, explosive devices and/or ordinances that ignited or accelerated the fire.

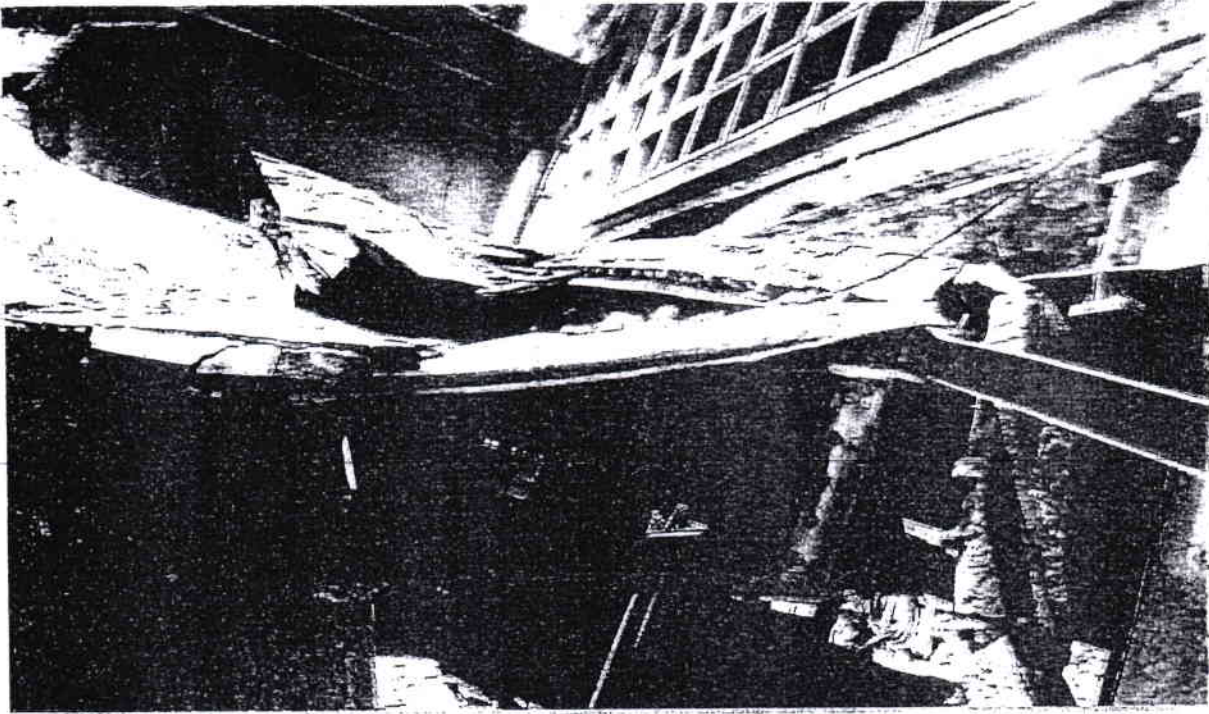
Mr. Simon Nandi Sunguti, Government Chemist Analyst, analyzed various items and exhibits samples collected from the scene and his report indicated that there were no any traces of explosive and foreign materials.

Mr. Boniface N. Mwilu from National Counter Terrorism Centre ascertained in his report that the incident had no link to terrorism.

Robert Jeffer, an investigator from British High Commission added that had the fire been caused by an explosive device, most of the building parts and accessories would have been BLOWN OUTWARDS. Contrary to this, parts of the building's ROOF CAVED INWARDS.

The team established that even though some of the witnesses' heard a mini-explosion within the fire duration and area, the explosion was NOT CONSISTENT with that caused by EXPLOSIVES, EXPLOSIVE DEVICES and/or ORDINANCES

PART OF THE ROOF THAT CAVED AT THE INTERNATIONAL ARRIVALS BUILDING



Though terror acts are not only limited to explosion and explosive devices, after taking into account all the above facts, the team ruled that there was NO any involvement of TERRORISTS ACTS in the incident.

6.2 ACT OF ARSON

The witness testimony which included recorded statements and interviews established that the smoke was first seen emanating from the ceiling roof around the Area of Immigration Arrivals 2.

Sgt. Joseph Kolum, a Computer and Cellular Investigator with Anti-Terrorism Police Unit reviewed the CCTV footage with the team and established that the smoke was captured emanating from some location near the Immigration Offices. The CCTV displayed how the intensity of smoke increased gradually until it engulfed all areas that were captured within the building.

Senior Sergeant (w)Bev Csikos of Royal Canadian Mounted Police led the Investigation Team to excavate debris on the floor area within the Kenya Airports Authority Information Control Room where the fire was suspected to have originated. According to Senior Sergeant (w) Csikos the fire would have created a depression on the floor if it could have started from there. The team established that there was no depression on the floor.

EXCAVATION OF DEBRIS AT KAA INFORMATION CONTROL ROOM FLOOR



Robert Martin, Fire Investigation ~~Expert~~ from United States of America, said that most arson fires are always conveniently set on from the ground/floor of buildings. He added that it ~~would be~~ very difficult for an arsonist to gain access within the ceiling roof and set on fire in it without being noticed by anyone or getting captured by the CCTV cameras.

The team analyzed all the above facts and based on the findings, witness' testimonies, CCTV footage and experts' assessments, the team concluded that the fire was not set on from the floor. The above findings are inconsistent with those of arson cases hence the team concurred that there was no arson involvement in the fire incident.

6.3 ELECTRIC FAULT

The International Arrivals building of JKIA had several electrical appliances that have been used over the years without causing any major incident. However, history cannot rule out any unfortunate occurrence in the future.

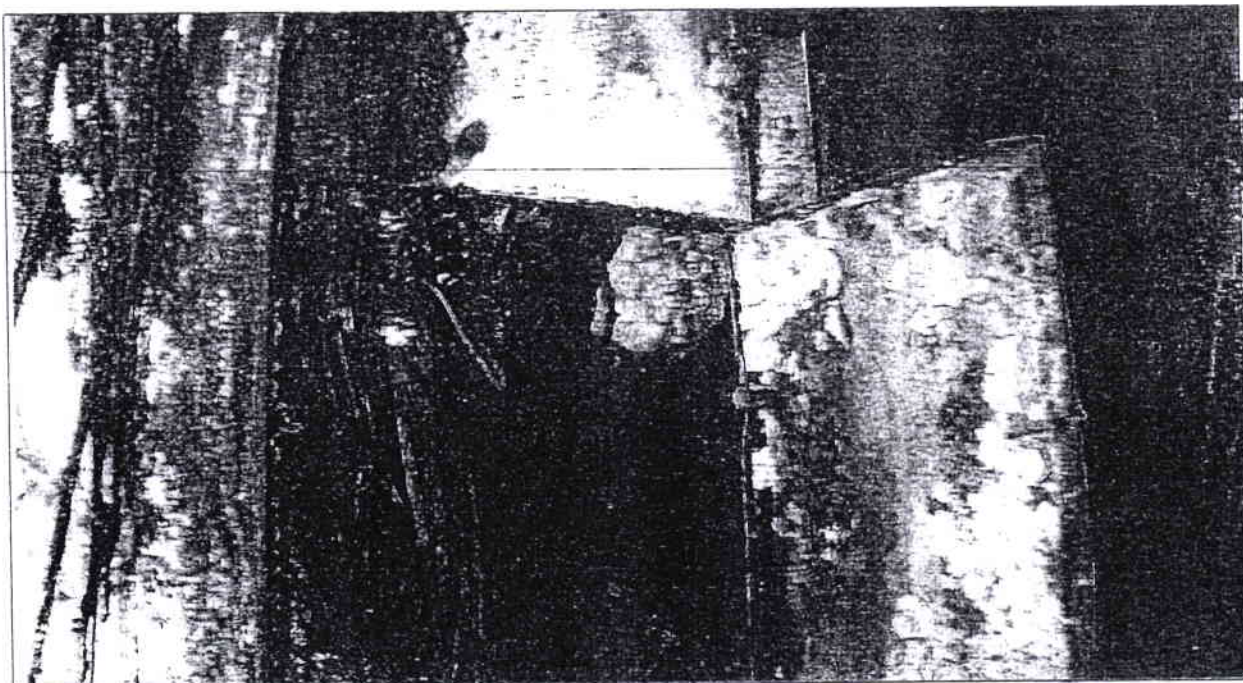
Among the items that were found in the building that were using electric power included the following;

1. Air conditioners
2. Computer Servers
3. computers
4. Electric kettle
5. Flight Information Display System (FIDS)
6. Lighting bulbs
7. Room heaters
8. Printers
9. Microwaves

Mr. David Kariuki Nguthi, Electrical Expert with Public Works Department informed the team that these appliances drew their power from a designated central Electric Distribution Board.

The Electric Distribution board had one visible Isolator Switch and it was meant turn on/off the power to areas connected to it.

ELECTRIC DISTRIBUTION BOARD



The team analyzed interview results and statements recorded from witnesses to establish whether any of the electrical appliances within the building had malfunctioned prior to the fire incident. It was established that there was no malfunctioning electrical appliance except the electric kettle which was found to have been unserviceable for the preceding three (3) months.

The team analyzed the performance of the Kenya Airports Authority server equipment room within the building to find out whether it overheated and

affected the electric cables. It was established that there were air conditioners in the server room that regulated temperature hence over heating was unlikely to have occurred.

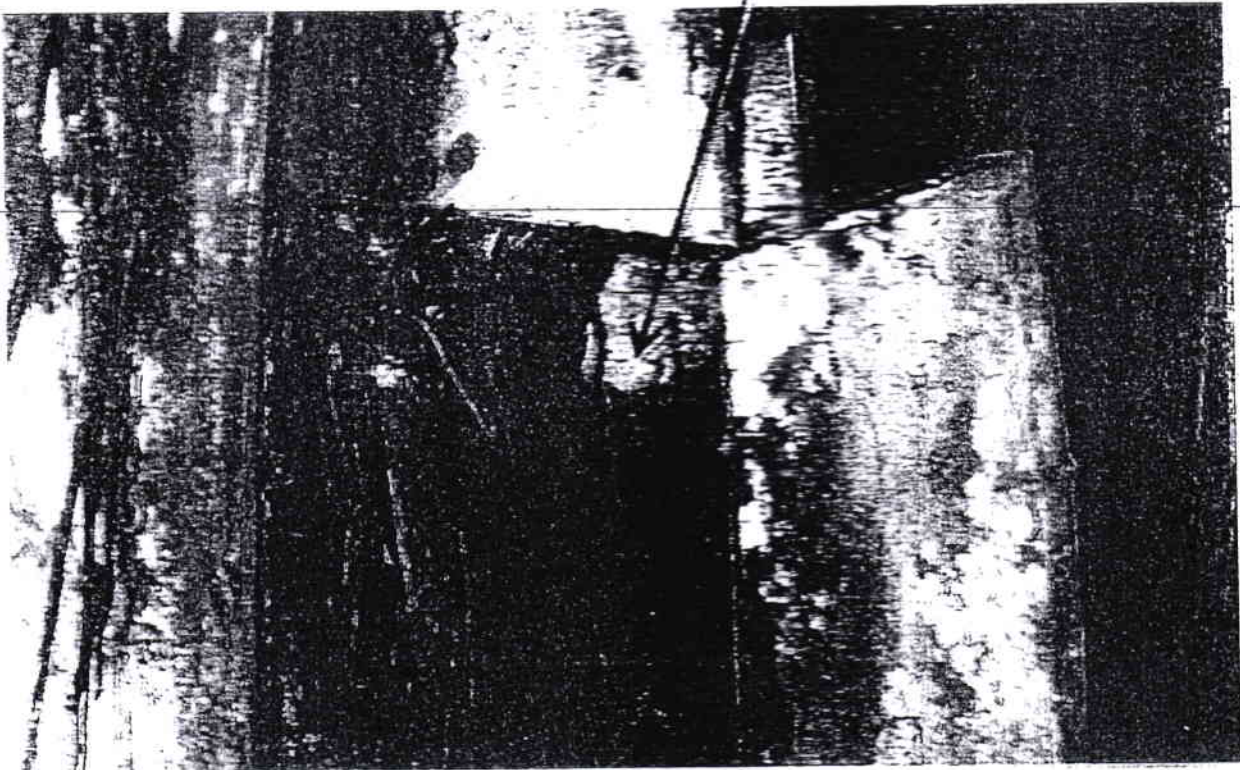
Mr. Idd Murunga, Chief Fire Officer from Public Works Department said that if fire would have started in the server room, then the personnel at the Kenya Airports Authority Information Control Office would have felt heat emanating from the room and burning smell as the fire progressed.

The team, drawing support from accounts of witnesses' who were within the building, established that before fire outbreak, some of electrical appliances and electrically supported gadgets went off yet there was no power outage within the airport. Among the items that went off were Kenya Airports Authority Public Address System, Computer Monitors and Flight Information Display System. This pointed out to the team that there must have been an electrical fault within the system.

Mr. Idd Murunga a Fire Expert with Public Works Department after assessing the electrical distribution board and switched between the Kenya airports authority information control room/office and the server room belonging to Kenya airport authority said that the insulation in the electric distribution board was damaged by overheating. This overheating exposed the copper conductors leading into a contact with metal casing and resulted into a continuous sparking.

Mr. David Kariuki Nguthi an Electric Expert with the Public Works Department concurred with Mr. Murunga and ascertained in his report that

the fire was caused by electrical arcing due to accumulation of dirt on contacts or loose terminal connection on the isolator terminals shown below



7.0 KEY FINDINGS

7.1 PYROLYSIS OF FIRE

It was evident from CCTV footage review and statements of witnesses that smoke spread in the areas of Simba II lounge kitchenette, former duty free shop, staircase leading to Simba II lounge, church, mosque areas and Kenya Airports Authority Information Control Room/Office among other areas, it did



not necessarily imply that fire originated in those areas but denoted existence of fire. This was because smoke travelled for considerable distance from the Electrical distribution board by reason of air currents. It started as a small fire which boiled up in the ceiling for some time, gradually resulting to large quantities of smoke. Other material also started burning and emitting varied quantities of smoke with varied characteristic smell.

The smoke has characteristic of rising when heated since it becomes less dense than air. When it cools the density increases and its heavier particles start to descend again. Due to heating within the building, smoke was driven upwards through the lift shafts, staircases, light wells and any vertical openings which were in communication with the compartment in which the fire occurred. The smoke rose more vertical until it stroke the roof or ceiling then started to spread sideways.

7.2 GROWTH AND SPREAD OF FIRE

About 75% of the heat from the fire was carried away by air and other gases in the conventional mode. Due to heating the air became less dense than the surrounding atmosphere and mixed with gases produced by fire then moved upwards forming convectional currents that carried with them heat and smoke. The high temperature of these rising gases lighted up all the combustible materials in their path.

The supply of air was not cut off hence the displacement of air upwards drew fresh air towards the fire that also got heated and rose upwards, continuing the process of convection. The convection process increased oxygen supply that reached the fire, fueling its intensity. The force of these currents became enormous and large masses of air drew in over the fire together with violent turbulence and rushed upwards in assort of whirlwind. This upward rush was capable of lifting burning materials and dropping them over wide areas starting new fires.

Consequently, the extreme heat vaporized most of the water directed to extinguish the fire and the water never reached the flames source. Ceiling convectional currents spread sideways while others were forced downwards. A thick layer of heated air was formed under the fire which progressed to the floor below.

The objects that were in the neighborhood of fire were exposed directly to radiated heat from the flames. The intensity of radiated heat reached these combustible materials and became heated to an ignition point.

Metals are good conductors of heat hence steel beams and columns that were heated at one end, carried the heat throughout their lengths. This resultant heat caused combustible materials to smoulder up to ignition point.

7.3 DEVELOPMENT OF FIRE

Fire began without visible flames in the electrical distribution board causing the heated currents to rise in the ceiling. It smouldered for some time before any sign of fire could be noticed. Suddenly the fire burst out of its relatively small pockets of local heats, setting the whole building into flames within minutes and raged with such violence that no part of it could be saved.

The limited supply of oxygen within confined space of the ceiling roof did not hinder the fire from smouldering. Combustible solids smoulder gradually when the proportion of oxygen supply is less than a third (1/3) of the normal requirement. There was no much convection going on due to limited ventilation but there was radiation and limited convection that led to gradual built up of heat from decomposing materials like gases and vapour that were produced but could not escape.

There was also pressure that caused the windows and ceiling roof to collapse leading to contact between the heated inside atmosphere and the outer cold air. When the inner atmosphere reached the right temperature and concentration it resulted to a "flush-over" and ignited explosively. Some of the witnesses accounted that they heard a mini-explosion during the fire incident; this was as a result of the "flush-over"

8.0 THE CAUSE OFFIRE

From the evidence collected, experts' reports and eye witness's account, it is evident that the fire was an accidental incident that resulted from arcing that started from the Electric Distribution Board. The fire incident was an accidental act beyond human detection and control.

9.0 RECOMMENDATIONS

Though the fire incident was accidental due to electric power fault at the Electric Distribution Board, the investigation team recommends the following to avert future fire incidents in all airports in Kenya.

1. Kenya Airports Authority must purchase and maintain sufficient multipurpose Firefighting Engines that can serve in fighting both airplane and domestic fires. The engines must be situated at strategic places, not only at the airside but also at terminal buildings amongst other key installations in the airport.
2. The Kenya Airports Authority must strengthen the manpower of firefighters within all airports and facilitate them to acquire modern firefighting skills and equipment.
3. Architectural designs of the buildings within the airports must accommodate access ways for fire engines, firefighters and their equipment.

4. The airports buildings must be fitted with smoke/fire detectors.
5. All electrical connections within the airports must be subjected to periodical audits by an external authorized institution.
6. All airports must be subjected to periodical fire and safety inspection by an external authorized institution.
7. All personnel working at the airports must be subjected to proper training and/or sensitization on fire drills and response.
8. The security agents and other key stake holders in all airports must be placed under a central command coordinated through the Emergency Operation Centre.
9. All airports must have an alternative Emergency Operation Centre and be located in separate strategic buildings within the airport.
10. Disaster preparedness and awareness must be done periodically in all airports.
11. The Kenya Airports Authority training school must be equipped with a fire training system that will impart realistic skills to firefighters in their profession. The training school must make use of simulators with a variety of internal and external fire scenarios.

10.0 APPENDICES

10.1 CCTV FOOTAGE REPORT

10.2 NATIONAL COUNTER TERRORISM CENTRE FIRE INQUIRY REPORT

10.3 REPORT OF A GOVERNMENT ANALYST -1

10.4 REPORT OF A GOVERNMENT ANALYST -2

10.5 REPORT OF A GOVERNMENT ANALYST -3

10.6 DEPARTMENT OF PUBLIC WORKS FIRE REPORT

10.7 DEPARTMENT OF PUBLIC WORKS ELECTRICAL FIRE REPORT

10.8 CID BOMB DISPOSAL UNIT REPORT

2



Kenya Airports Authority

Head Office: Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: +254 (0)20 821111 / 821100 / 821200
Fax: +254 (0)20 822000 / 827304
Email: info@kenyaairports.co.ke
www.kenyaairports.co.ke

KAA/8/193/2013-14 VOL.1(20)

30TH JANUARY, 2015

Mr. Nduva Muli, EBS
Principal Secretary
Department of Transport
Ministry of Transport & Infrastructure
Transcom House
NAIROBI

Dear 

**RE: CONCESSION AGREEMENT FOR DEVELOPMENT AND MANAGEMENT
OF DUTY FREE RETAIL SERVICES UNDER A SINGLE MASTER LICENSE
AT
THE JOMO KENYATTA INTERNATIONAL AIRPORT
BETWEEN
KENYA AIRPORTS AUTHORITY
AND
DUFRY INTERNATIONAL AG**

Reference is made to the captioned agreement which was first signed by the parties on 15th October, 2014. On or about 18th December, 2014 our attention was drawn by the Cabinet Secretary, Ministry of Transport & Infrastructure to certain clauses (hereinafter referred to as the contentious clauses) in the Agreement that required to be expunged lest the concessionaire would enjoy contractual privileges that were not envisaged by the Tender Document and were not the intent of the Authority.

The foregoing necessitated a comprehensive review of the Concession Agreement which was undertaken by the undersigned in liaison with external counsel charged with the matter Mr. Kennedy Ogetto in consultation with Dufry's Principal in Madrid, Spain, their Legal Team in Miami, Florida, the Managing Director designate of Dufry Kenya and one of their Kenyan representatives.

The outcome of the lengthy deliberations and extensive negotiations was the removal of the contentious clauses and the comprehensively revised Agreement forwarded herewith.

Here below are the contentious clauses:-

- (a) The Concessionaire shall be the exclusive concessionaire in the Terminal and shall have the right to sublet any and all areas within the areas of operation with the consent of the Authority. The Authority agrees not to move flights from the Terminal but in case the Authority has to move due to commercial reasons, then the Concessionaire will be allocated a substantially similar alternative operating area.

18. 21. 1904

This Clause has been amended.

- (b) The Authority shall provide adequate and appropriate ~~offices and warehouse~~ storage spaces for use by the Concessionaire as agreed ~~by both parties~~.

This Clause has been amended.

- (c) In the event that ~~temporary facilities are created for the handling of international~~ departing or arriving passengers, the ~~Concessionaire shall have the right to~~ develop and operate retail areas at such temporary ~~facilities on an ad-hoc~~ basis.

This Clause has been deleted.

- (d) In the event that the Authority further develops ~~terminal facilities other than the~~ Terminal, the ~~Concessionaire shall be granted a priority over the Concessions~~ within such facilities, upon terms and conditions substantially similar to this Agreement with due adjustments of the rates.

This Clause has been deleted.

- (e) The Authority shall regularly consult with the Concessionaire to ~~discuss~~ the arrangement of new space for the maximization of commercial ~~benefits~~ of both parties given due regard to the availability of new space and the flow of passengers.

This Clause has been deleted.

The following are the highlights of changes made in the Agreement:-

ARTICLE I

Clause 7

Commencement of services – 4 months after Dufry obtains all necessary approvals from KAA. It was agreed that it is only fair to require Dufry to discharge its financial obligations upon formal commencement of operations.

Clause 12

Definition of "Duty free retail shops" has been introduced to expressly ~~exclude other current~~ and future commercial undertakings at the terminal.

ARTICLE II

Clause 4(a)

Rent of Kshs.2000 per square feet shall be adjusted to reflect inflationary rates.

Although the Tender document did not provide for escalation of rent, we negotiated this in favour of KAA as it is good commercial practice.

ARTICLE V

Clause 4(a)

The Concessionaire shall be ~~the sole~~ the master licensee for the Development and Management of Duty Free Retail Services in the Terminal and shall have the right with the consent of the Authority, ~~to use~~ and all space granted to it under this contract.

ARTICLE XII

Clause 4(a)

Supersession - This clause ~~was~~ provides that this agreement constitutes the entire agreement between the parties and supersedes all previous understandings and agreements between the parties, whether oral and written.

The import of this clause is that the Agreement executed by the parties on 15th October, 2014 is a nullity. The legal status of the said Agreement is as if it was never signed.

This clause further goes on to provide that no amendment or addition shall be of any force or effect unless reduced to writing and signed by both parties.

Clause 4(d)

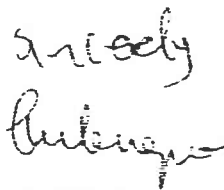
A new clause has been introduced to provide that nothing in this Agreement prevents the parties from agreeing in good faith on necessary adjustments resulting from operational or commercial imperatives or necessary design changes and which do not materially or substantially derogate from the terms of this agreement.

This clause has been introduced to facilitate reasonable flexibility in operations for the good of the parties. It is meant to address unforeseen circumstances that may need to be quickly addressed as long as material changes are not made to the Agreement.

Conclusion

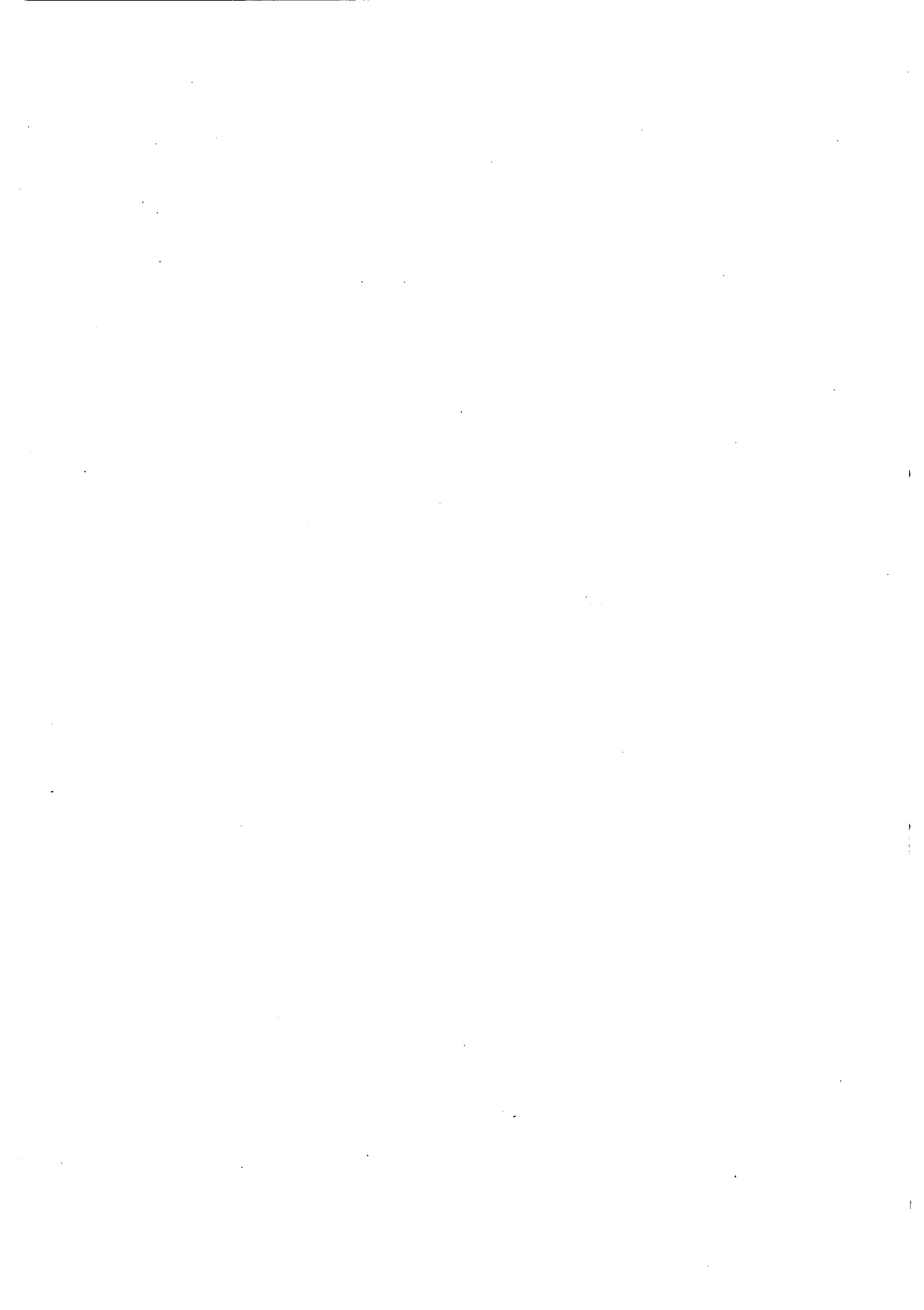
The new Concession Agreement between Dufry International AG and KAA is now duly executed and one original counterpart is forwarded herewith for your records.

Yours



LUCY MBUGUA
MANAGING DIRECTOR

Encl.



DATED.....DAY OF.....2003

KENYA AIRPORTS AUTHORITY.

=to=

**WORLD DUTY FREE COMPANY LIMITED
(t/a KENYA DUTY FREE COMPLEX)**

LEASE

=of=

Duty Free Premises

=In=

“THE PASSENGER TERMINAL BUILDING”

=on=

**L.R. NO. 24937, JOMO KENYATTA INTERNATIONAL
AIRPORT, NAIROBI**

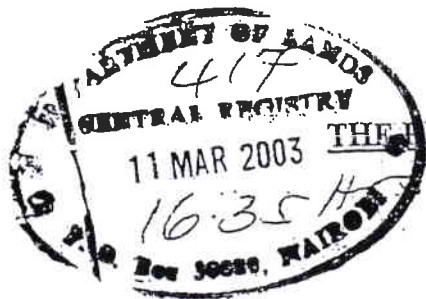
**KERIAKO TOBIKO ESq
ADVOCATE
NAIROBI.**

NYIHA, MUKOMA & Co. ADVOCATES
P. O. Box 28491-00100, NAIROBI

RECEIVED
Date 22/07 Time 4:00
Name Siga

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Appendix 3



REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT
(Chapter 281)
REGISTRY OF TITLES
(INLAND REGISTRY)

TITLE NUMBER I.R No. 90243/1

IR 91542

THIS LEASE is made the 29th day of JANUARY 2003
BETWEEN KENYA AIRPORTS AUTHORITY a body corporate established under
the Kenya Airports Authority Act (CAP. 395), having its registered office at Nairobi in
the Republic of Kenya and of P. O. Box 19001 Nairobi (hereinafter called "the Lessor,"
which expression shall where the context so admits include its successors and assigns) of
the one part and **WORLD DUTY FREE COMPANY LIMITED** a company
incorporated in the British Virgin Island (Reg. No. 466408) and carrying on business in
the republic of Kenya as **KENYA DUTY FREE COMPLEX** and of P.o. Box 19122
Nairobi (hereinafter called "The Lessee" which expression shall where the context so
admits include its successors and assigns) of the other part:-

WHEREAS:

- (A) The Lessor is registered as proprietor as lessee from the Government of Kenya for a term of Ninety Nine (99) years from 1st May 2001 (Subject to such charges leases caveats (if any) and encumbrances as are notified by the Memorandum endorsed hereon and to the Statutes special conditions encumbrances and other matters referred to or contained in a Grant registered in the Registry of Titles at Nairobi as Number I.R No. 90243/1) of **ALL THAT** piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the said Republic of Kenya containing by measurement Four Three Nine Eight Decimal Seven (4398.7) of an acres or thereabouts known as Land Reference Number 24937, comprised in the said Grant the dimensions abutments and boundaries of which are more particularly delineated and described on Land Survey Plan Number 234878 deposited in the Survey Records Office at Nairobi and thereon bordered red;
- (B) The Lessor has caused to be constructed on the said piece of land an Airport known as the Jomo Kenyatta International Airport (hereinafter called "The Airport") and has erected within the Airport a building known as "**PASSENGER TERMINAL BUILDING**" (hereinafter called "the Building") comprising offices, retailing and duty free Shops, Check-in-counters, restaurants and the usual conveniences therewith;
- (C) **AND PURSUANT** to an Agreement between the Government of Kenya and the **HOUSE OF PERFUME** dated 27th April, 1989 and which granted the Lessee the exclusive right to construct, maintain and operate

I CERTIFY THAT THE STAMPS APPEARING
HEREIN WERE ENDORSED ON THIS DOCUMENT
ON THE 6th OF JANUARY 2003
Collector of Stamp Duties

Handwritten signatures and initials, including a circled '40'.



Duty Free Complexes at the Airport (hereinafter called the "original Agreement").

- (D) **AND PURSUANT FURTHER** to the Decree given on **10th July, 2002** by the High Court of Kenya at Nairobi (Hon. Mr. Justice Mbatia) in HCCC Nos. 492 of 1999 & 464 of 2000.
- (E) The Lessor has agreed with the Lessee to grant to it a Lease of such portion of the premises in the Building as is more particularly described hereinafter for the term, at the rent and subject to the Covenants and conditions hereinafter contained.

NOW THIS LEASE WITNESSETH that in Consideration of the Rent hereinafter reserved and of the Covenants by the Lessee hereinafter contained the Lessor **HEREBY LEASES** unto The Lessee all those premises more particularly described in the Schedule hereto (hereinafter called "The demised premises") for the purpose of establishing operating and managing thereat Duty Free shops.

TOGETHER WITH the right for the Lessee to use in common with other Lessees of the building their servants and licensee's during such reasonable business hours as the Lessor may from time to time determine **PROVIDED THAT** if the Lessee shall give to the Lessor or its care taker reasonable notice of the Lessee's desire The Lessor will make suitable arrangements for the Lessee and members of the Lessee's staff to obtain access to the demised premises at such other time as the Lessee may require.

- (a) The entrance, halls stairs landing passages and lifts for the purpose of only egress from the ingress to the demised premises.
- (b) The lavatories washing and other conveniences provided by the lessee.

EXCEPTING AND RESERVING unto the Lessor and other Lessees of the building the free and uninterrupted used of all running water pipes, electric conduits wire and drains (if any) in through or under the demised Premises or any part thereof and the right of the Lessor to enter the demised Premises at all reasonable hours for the purpose of inspecting adding or repairing the same and the lessor making good any damage done in the course thereto.

TO BE HELD by the Lessee as Tenant for the space of **TEN (10)** years with effect from 10th July 2002 (hereinafter called "the term") subject nevertheless to determination as hereinafter provided at an Annual rent of **United States Dollars Four Hundred and Nine Thousand Four Hundred and Forty Six (US\$ 409,446.00)** for the first Two (2) years of the term hereby granted (hereinafter called "the said Rent") which sum shall be paid clear of all deductions in advance quarterly instalments respectively of **United States Dollars One Hundred and Two Thousand Three Hundred and One Cents**

[Handwritten initials]

[Handwritten signature]

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Fifty (US\$ 102,361.50) each, on the first day of each quarter by crossed cheque drawn in the name of the Lessor. Thereafter the rate shall automatically increase as hereunder set out;

- (a) For the next four (4) years of the term an Annual rent of United States Dollars Five Hundred and Seventy Three Thousand Two Hundred Twenty Four Cents Forty (US\$ 573,224.40) which sum shall be payable as aforesaid in advance quarterly instalments of United States Dollars One Hundred and Forty Three Thousand three Hundred and Six Cents Ten (US\$ 143,306.10) each and;
- (b) For the remainder of the term (i.e. four (4) years) an Annual rent of United States Dollars Eight Hundred and Two Thousand Five Hundred and Fourteen Cents Fifteen (US\$ 802, 514.15) which sum shall be payable as aforesaid in advance quarterly instalments of United States Dollars Two Hundred Thousand Six Hundred and Twenty Eight Cents Fifty Five (US\$ 200,628.55) each:-

INTERPRETATION

1. In this lease where the context so admits;

- (i) The expression "The Lessor" shall mean Kenya Airports Authority or the person for the time being entitled in the reversion immediately expectant upon the term hereby granted.
- (ii) The expression "the Lessee" shall include the Successors in title and assigns of the Lessee.
- (iii) The expression "Person" shall include a body corporate and vice versa.
- (iv) If the Lessee shall at any one time be more than one individual the expression the "Lessee" shall be deemed to include also a reference to each of them and any covenant or agreement on the part of the Lessee herein contained shall take effect as joint and several covenants or agreements.
- (v) "Airport" means the Jomo Kenyatta International Airport (JKIA) including any buildings, installations and equipment erected thereon.
- (vi) 'Managing Director' means the Managing Director appointed under S.6 of the KENYA AIRPORTS AUTHORITY ACT (CAP 395) Laws of Kenya.
- (vii) "Duty Free Shops" means the shops established and specially designed by the Lessee at the demised premises for exhibiting and selling duty free goods, and

the usual conveniences and facilities related or connected therewith for the comfort of air passengers.

- (viii) "Duty Free Goods" means all goods sold at the duty free shop units wholly exempt from duty and are sold only to bonafide Air passengers (with varied Air tickets) Transiting or departing from the Airport.
- (ix) "Rent" is inclusive of 25% Service charge.

LESSEE'S COVENANTS

2. ~~The Lessee~~ to the intent that the obligations hereinafter set out may continue through ~~at the~~ continuance of the said term **HEREBY COVENANTS** with the Lessor and ~~as~~ as follows:-

TO OPERATE A DUTY FREE SHOPS

- (a) To establish operate and manage Duty Free Shops at the demised premises to the highest international standards in the industry and in accordance with the provisions herein and in strict compliance with the provisions of any Act Rules or regulations governing the demised premises and the conduct of the Duty Free Shop business.

TO SELL DUTY FREE GOODS AND PROVIDE FACILITIES TO BONAFIDE AIR PASSENGERS ONLY

- (b) To use the demised premises to sell Duty Free goods and provide other related facilities bonafide Air passengers (with valid Air tickets) transiting, departing or arriving from the Airport.

TO ENSURE ADEQUATE STOCK OF HIGH QUALITY GOODS

- (c) At all times to ensure that the Duty Free Shops have adequate stock with wide variety and selection of high quality and merchantable goods.

TO FURNISH AND DECORATE THE DEMISED PREMISES

- (d) At Lessee's own expense to furnish and effect internal design and decoration on the demised premises to the standard prevailing in other International Airport.

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TO SUPERVISE AND OPEN DUTY FREE SHOPS AT ALL TIMES

- (e) To supervise and control the operation of the Duty Free Shop in the demised premises to ensure that they are at all times open and available to Air Passengers and that adequate uniformed staff are always present to attend to the customers.

TO PAY RENT

- (f) To pay the rent hereinbefore reserved at the times and in the manner aforesaid clear of all deductions whatsoever.
- (g) To pay all charges for water, electricity and other utilities consumed in the demised premises within seven (7) days of the same being due.
- (h) To maintain and keep in proper condition all electric and water fitting and installations and such other equipment as may be provided by The Lessor in the demised premises.

TO KEEP PREMISES IN GOOD REPAIR

- (i) To keep the demised premises in good and tenable repair and condition (Fair wear and tear excepted).
- (j) Not to install any equipment with the capacity above 3 Kilowatts or 13 ampere without the prior written consent of the Lessor which consent shall not be unreasonably withheld.
- (k) To ensure that all the material times the Lessee's use of electric current on demised premises shall not exceed the capacity of the existing feeders to the building or of the risers or wiring installations installed in the buildings.
- (l) Not to make any alterations or additions to the electrical equipment or appliances installed in the demised premises (even if the said equipment or appliances have been installed by the lessee) without the prior written consent of the Lessor which consent shall not be unreasonably withheld.

SECURITY RULES AND REGULATIONS

- (m) To strictly comply with the Airport's Security rules and regulations in force for the time being and those promulgated from time to time by the Lessor and shall indemnify The Lessor for any loss or damage incurred by the Lessor as a result of The Lessee's or its employees or agents failure to observe or comply with such regulations..

LESSEE'S EMPLOYEES

- (n) To employ such servants and/or Agents of apparent good character and moral conduct who shall adhere to the rules and regulations of the Lessor in respect to points and routes to and from the Buildings and the restricted areas.

NOT TO OBSTRUCT

- (o) Not to obstruct nor permit or suffer its servants and/or agents to obstruct in any manner the corridors, passageways and staircases in the buildings and in any other place within the Airport **AND FURTHER** not to place anything or deposit or obstruct the means of access to the demised premises.

TO REDECORATE

- (p) In the last year of the said term, or upon sooner determination thereof to well and sufficiently clean off and subject to the proviso hereinafter contained paint with two coats of good emulsion oil or the other good quality paint and in such manner and style and of such colour or colours as the Lessor may reasonably determine all the inside parts of the demised premises previously or usually painted and to clean off and polish all polished wood (if any) in a proper and workmanlike manner and to the reasonable satisfaction of the Lessor; **PROVIDED ALWAYS** that nothing contained herein shall require the Lessee to put or keep the demised premises in any better state or condition of decoration than they were at the commencement of the said term.

FLIGHT INFORMATION DISPLAYS

- (q) Nothing herein contained or implied shall prevent or be deemed to prevent the Lessor from installing operating in the demised premises such flight Information Display and Public Systems Visual and or/ calling or warning systems as the Lessor may consider necessary for the efficient operation of the Airport.

TO PERMIT ENTRY BY LANDLORD TO INSPECT AND REPAIR ETC.

- (r)(i) To permit the caretaker employed by the Lessor to enter the demised premises in the ordinary course of his duty, accompanied the Lessee's staff and with prior notice for the purposes of examining the condition thereof or of doing such repairs alterations additions improvements renewals or other things as may be required with as little inconveniences as possible **PROVIDED ALWAYS** that the rent hereby reserved shall not in any way be abated while such repairs alterations additions improvements and renewals or other things as aforesaid are being done nor shall the Lessor be liable to the Lessee in any way for loss or interruption of business of the Lessee arising therefrom or otherwise howsoever **PROVIDED**

ALSO that in case of extreme urgency such as fire, explosion or other emergency the requirement of prior notice under this sub clause may be dispensed with.

TO REPAIR DEFECTS

- (ii) Before the expiration of twenty one (21) days notice in that behalf given by the Lessor to carry out any repairs, and/or make good any damage caused to the demised premises or to any fixtures or equipment therein by the Lessee installing or removing any fittings or resulting from fire explosion air conditioning or electrical short circuit flow or leakage of water or steam or by bursting or leaking pipes or plumbing works or from any other causes or any other kind whatsoever due to the neglect, carelessness, omission, commission, by the Lessee, or its servants and or agents.

RIGHT OF LESSOR TO FORCE ENTRY IN CERTAIN CASES

- (iii) In the event of an emergency namely fire, defective sanitary fitting, water pipes and electric services it shall be permissible for the Lessor to enter the demised premises and during such entry the Lessor shall exercise reasonable care to the property of the Lessee.

NOT TO INSTALL OR ALTER DESIGN OR PLAN WITHOUT LESSOR'S APPROVAL

- (s) Not to install build alter the design and/or building plan of the demised premises nor permit to be installed, partitioned built or altered the design and/or building plan of the demised premises without obtaining the written consent of the Lessor, PROVIDED ALWAYS that if the Lessor shall grant its consent (which consent shall not be unreasonably withheld) then the following provisions shall apply:-

- (i) All designs and/or building plans or specifications in respect of such installations partitions building alteration or additions shall first be approved by the Lessor's duly authorised Architect.
- (ii) The Lessee shall at its own cost and expenses obtain the necessary approvals from appropriate Government and Local Authorities.
- (iii) All such works installations partitions, building, or additions shall be carried out at the sole expense of the Lessee in such reasonable manner and times as the Lessee may designate PROVIDED ALWAYS the Lessee abides by the provisions and terms as may be specified in the design or building plan as approved by the Lessor.

NOT TO JEOPARDIZE THE LESSOR'S INSURANCE

- (v) Not to do or permit or suffer to be done anything whereby any insurance of the buildings against loss or damage by fire or other cause may become void or voidable or whereby the rate of premium for any such insurance may be increased AND to repay the Lessor all sums paid by way of increased premium and all expenses incurred by it in or about the renewal of such policy rendered necessary by a breach of this covenant and agreement AND ALSO in the event of any insurance moneys being withheld or wholly or partially irrecoverable by reason of any breach or non-observance of this present covenant to indemnify the Lessor in respect of the cost of a proportionate part thereof of rebuilding subject to the Lessor's own specifications or ~~reinstating~~ the same.

INDEMNITIES

- (x) The Lessee shall indemnify the Lessor against;

- (i) Any loss or damage to the property of the Lessor (fair wear and tear excepted) caused by the Lessee or its employees and or agents.
- (ii) All actions, proceedings, claims, costs and demands for personal injury (including injury resulting in death) or to property which may be made against The Lessor or any of its servant or agent arising out of or in connection with anything done, permitted or omitted in or upon the demised premises or within the Airport or its servants or agents. FURTHER The lessee shall keep the Lessor indemnified against all costs claim demands and expenses whatsoever arising in connection with the provisions of the services by the Lessee hereunder without prejudice to The Lessee's covenants to Indemnify the Lessor as aforesaid The Lessee shall during the continuance of this lease be responsible for its employees agents or invitees in relation to the provisions of the services and shall take out and maintain such insurance as the lessee may consider Necessary to cover its liability in respect of personal injuries or death of such employee agent or invitees The Lessee shall at the request of the Lessor produce to the lessor for inspection copies of the relevant policy or policies of insurance together with receipt in respect of premium paid under such policy or policies.

REIMBURSE SHORTFALL IN INSURANCE MONEYS AND REBUILDING COSTS

- (v) In the event of the building or the demised premises or any part thereof or of the fixtures and fittings or any part thereof being damaged or destroyed by fire at any time during the said term and the insurance money effected thereon being wholly or partially irrecoverable by reason solely or in part of any act or the default of the Lessee or the Lessee's servants, agents or visitors then the Lessee shall pay







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the Lessor the whole or (as the case may be) a fair proportion of the cost of completely re-building and reinstating the same and any dispute as to the proportion to be so contributed by the Lessor or otherwise in respect of or arising out of this provision to be referred to arbitration in accordance with the provisions of the Kenya Airports Authority Act (Chapter 395) and the Arbitration Act 1995 or any Act amending or replacing the same.

NOT TO TRANSFER SUBLET ETC.

- (w) During the term herein granted the lessee shall not transfer, assign, sublet, underlet the demised premises or any part thereof **FURTHER** not to charge mortgage or in any manner whatsoever part with possession of the demised premises without the prior written consent of the Lessor which consent shall not be unreasonably withheld.

RESTRICTION ON PLACING OF SIGNS ETC.

- (x) Not to erect, display or use any electric sign or electric lights or installation for the purpose of advertisement and/or sign boards in or outside the demised premises without the written consent of the Lessor which consent shall not be unreasonably withheld **AND FURTHER** not to affix or exhibit any name or writing or, any signboard or advertisement in the demised premises without the consent in writing from the Lessor.

PROHIBITION OF OPEN OR INTERNAL COMBUSTION

- (y) Not to permit any open or internal combustible fire to be burned within the demised premises not to permit to be bought or kept in or on the demised premises any inflammable combustible explosive fluid material chemical or substance or other objectionable odours to permeate from the demised premises without the written consent of the Lessor.

NOT TO COMMIT OR PERMIT ANY NUISANCE

- (z) To observe and conform to all the rules and regulations from time to time made by the Managing Director of the Lessor for the Management of the Airport and not to permit to be done upon the demised premises anything which may be a nuisance, annoyance or disturbance to the Lessor or other occupants and/or Passengers, Visitors to the buildings or the Airport.

TO COMPLY WITH THE REGULATIONS OF THE KENYA AIRPORTS AUTHORITY ACT (CAP. 395)

- (aa) The Lessor has entered into the lease in pursuance of the powers vested in it under the Kenya Airports Authority Act (CAP. 395) and notwithstanding anything to

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the contrary expressed or implied, the provisions of the Kenya Airports Act shall apply and be deemed to be included in the Lease.

TO GIVE NOTICE OF ANY ORDERS FROM ANY COMPETENT AUTHORITY

- (bb) Within seven (7) days from the date of service thereof to give full to the lessors of any notice order or proposal given made or issued under or by virtue of any Law or regulations or directions there under by any competent authority affecting the demised premises.

TO DELIVER VACANT POSSESSION

- (cc) At the expiration or sooner determination of the said term to yield up the demised premises to the lessor with the lessor's fixtures and fittings thereto (if any) in such good and tenantable repair condition (fair wear and tear expected and with all locks keys and fastenings complete AND The Lessee's obligations to perform and observe its covenants shall survive the expiration or other termination of the said term AND if the last day of the said term shall fall on a Sunday this lease shall expire on the business day immediately succeeding.

TO USE GOODS ENTRANCE PROVIDED BY THE LESSOR

- (dd) The Lessee in common with other persons entitled to use the same shall use only such means of access as The Lessor shall from time to time reasonably direct to deliver stock and goods to and to remove stock, goods or merchandise and refuse from the demised premises and such use thereof by other persons entitled to use the same and in no case shall The Lessee place or leave any of its stock goods or refuse in any other part of the building or of the Airport except in the demised premises.

ESTABLISH A REFUSE DISPOSAL SYSTEM

- (ee) The Lessee shall at all times provide and use an efficient and hygienic system at the demised premises for disposing of refuse arising from the operation of the Duty Free Shop to the Lessor's satisfaction.

TO PREPARE LAYOUTS PLANS AND SPECIFICATIONS OF THE DEMISED PREMISES

- (ff) The Lessor shall forthwith upon the execution of this lease proceed to layout, paint decorate, furnish illuminate and equip the area demised to high duty free standard and in strict accordance with the plans specifications and proposals approved by the lessor.

NOT TO ENGAGE IN TOUTING OR OTHER UNFAIR PRACTICES

- (gg) The Lessee shall not engage in any form of touting or in any acts likely to disparage the goods or services offered by the other lessees of the building.

TO COMPLY WITH HEALTH REQUIREMENTS

- (hh) To comply with health requirements in and around the Airport which The Lessor may from time to time promulgate and allow the designated representatives of The Lessor including its medical officer at all reasonable times to inspect the demised premises.
- (ii) Not to abuse destroy damage the water sources and drainage facilities provided in the buildings in and/or about the Airport so as to create a nuisance or sanitary situation prejudicial to public health. AND. The Lessee hereby covenants with the Lessor that breach of this clause whether by default failure acts omissions negligence after The Lessor has given The Lessee reasonable notice to make good such abuse, destruction or damage and The Lease has failed or refuse to do so AND in such case The Lease may exercise its right to forfeit the lease and repossess the demised premises without any compensation to the Lessee and forfeiting in full or in part the amount deposited by the Lessee.

NOT TO USE PREMISES AS A FACTORY

- (ij) Not to use the demised premises or any part thereof in such a way as to render the same subject to the provisions of the factories Act (Chapter 514) without the written consent of the Lessor but such consent shall not be unreasonably withheld.

TO COMPLY WITH ALL LAWS AND REGULATIONS APPLICABLE

- (kk) To comply with all laws regulations and requirements of the Government or any local authority having jurisdiction in any manner whatsoever in connection with the conduct of the duty free Shop business and to indemnify The Lessor against any loses or damages resulting from the Lessee's failure to comply with any such requirements.
- (ll) Not to hold nor permit and/or suffer to be held any Auction at the demised premises.

LESSEE NOT TO PAY FURTHER RENT AFTER EXPIRATION OF THE TERM

- (mm) Not by any cheque or otherwise purport to pay any rent in respect of any respect period after expiration of the term hereby granted or use any period after the expiration of the term hereby granted or any entries in respect thereof purported to have been made in the books on the Lessor (all of which shall be deemed to have

been demanded or made through inadvertence or error) as grounds for fresh tenancy and no fresh tenancy of any description or duration whatsoever after the expiration of the said term shall on any account whatsoever be deemed to have come about except by written agreement between the parties in pursuance of the provisions of clause 15 hereof.

TO PAY COSTS OF THIS LEASE STAMP DUTY ETC.

- (nn) To pay all costs (including The Lessor's Advocate Fee) in connection with the preparation and completion of this lease and two counter parts part thereof with stamp duty registration fee and disbursements.

TO USE DEMISED PREMISES AS DUTY FREE SHOP TO EXHIBIT AND SELL DUTY FREE GOODS

- (oo) To use the demised premises to establish operate and manage Duty Free Shop for the purposes of exhibiting and selling to bonafide Air Passengers duty free goods and for purposes reasonably connected therewith.

RE-ENTRY BY LESSORS UPON LESSEE'S BANKRUPTCY OR LIQUIDATION ETC

- (pp) The Lessor shall have the right to forfeit and re-enter the demised premises if the Lessee shall:-
- (i) commit any breach and omit to perform any agreement or condition on its part expressed or implied herein, after the Lessor has given notice of such breach and the lessee has failed to remedy the breach within the notice period
 - (ii) is adjudicated bankrupt or
 - (iii) being a corporate entity goes into liquidation and/or insolvency.
 - (iv) Enter into any agreement for the benefit of the lessee's creditors by composition or otherwise, or suffer any distress or execution to be levied upon the property or goods of the lessee:

LESSOR'S COVENANTS

3. The Lessor hereby covenants with the Lessee as follows:-

TO PERMIT LESSEE QUIET ENJOYMENT OF THE DEMISED PREMISES:

- (a) That the Lessee paying the rent hereinbefore reserved and observing and performing the covenants herein shall peacefully hold and quietly enjoy the demised premises for the term hereby granted without interruption by the Lessor or any person lawfully claiming under or in trust for the Lessor.

**TO GRANT EXCLUSIVE RIGHTS TO THE LESSEE INCLUDING RIGHT TO
CONSTRUCT A TRANSIST HOTEL**

(b) In addition, the Lessor has pursuant to Clause 3(A) of the original agreement agreed to grant to the Lessee the sole and exclusive right within the area presently designated or which may in future be designed as an airport (including any airport terminus) to carry out Duty Free operations and to;

(i) - construct, develop and furnish the duty free complex.

(ii) maintain and freely and commercially operate the complex.

(iii) within the area demised, to construct and operate a Transit Hotel with a minimum bed capacity of eight (8) persons together with restaurant and bar facilities for Transit Passengers only.

PROVIDED that the Lessor shall not grant to any other person a right to construct or operate a similar facility without prior written consent (which consent shall not be a unreasonably withheld) of the Lessee.

TO KEEP COMMON AREAS LIGHTED AND IN GOOD REPAIR

(c) Unless prevented by any cause beyond its control to keep clean and adequately lighted the terminal entrance hall handing passages and washing conveniences during such hours as the Lessor may reasonably decide and to maintain in good working order and repair all apparatus equipment plant and machinery serving passengers lifts and the electric lighting and other appliances in the common Parts of the buildings.

**TO KEEP EXTERNAL STRUCTURES OF THE BUILDING
IN GOOD CONDITION.**

(d) To keep the main walls and roofs and other exterior structural and common parts of the buildings in good repair and decorative conditions and the lifts lighting and sanitary installation in good working order and condition according to the requirements standards and regulations observed in International Airports.

CLEANING OBLIGATIONS AND SECURITY

(e) To employ and maintain such staff as may be necessary to carry out the cleaning obligations on the part of the Lessor herein contained and such security personnel as the Lessor may from time to time consider necessary for the security and protection of the buildings.

TO INSURE THE BUILDINGS

- (f) To keep the main Buildings insured against loss and damage by fire explosion aircraft crash and other aerial devices or articles or aviation risks dropped therefrom and to rebuild or reinstate the buildings and the entrance halls landings passages and lifts giving access thereto so far as the same may be damaged or destroyed and to apply all moneys received by virtue of such insurance in making good the loss or damage in respect of which the same shall have been received but without prejudice to the Lessee's liability to pay or contribute towards the costs thereof in the event of the insurance money being wholly or partially irrecoverable by reason of any act or default of the Lessee whether by his servants agents or invitees.

TO PAY RENT (IF ANY) AND OBSERVE SPECIAL CONDITIONS AND RESTRICTIONS IN THE GRANT.

- (g) To pay the rent (if any) reserved by and to perform and observe the special conditions, restrictions and covenants in the Grant under which the said land and the Buildings are held and to indemnify the Lessee from and against all actions proceedings costs damages, claims and demands in respect thereof.

4. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

TERMINATION OF LEASE

- (a) If the rent hereby reserved or any additional part thereof shall be in arrears for Thirty (30) days from the due date whether the same shall have been legally demanded or not or if the demised premises become vacant or deserted or if there shall be breach or non performance or observance by the Lessee of any of the covenants agreements conditions restrictions stipulations and provisions herein contained or if the lessee for the time being shall be a company and shall enter into liquidation whether compulsory or voluntary (not being a voluntary liquidation merely for the purpose of reconstruction or amalgamation) or if the lessee for the time being shall be a person or persons and shall commit any act of bankruptcy or enter into any agreement or make any arrangement with or for the benefit of his/her or their creditors for liquidation for his or their debts composition, or suffer any distress or execution to be levied on the property of the Lessee then and in such case it shall be lawful for the Lessor at any time thereafter to re-enter upon the demised premises or any part thereof in the name of whole by any action or proceeding or by force and thereupon shall absolutely terminate the term of this Lease but without prejudice to the right of action of the Lessor in respect of any antecedent breach of any covenants or provisions herein contained.

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RENT ARREARS AND DISTRESS FOR RENT

- (b) If the Lessee shall default in paying the rent herein reserved such sum shall be recoverable (whether formally demanded or not) as rent in arrears AND the power of the Lessor to distrain upon the demised premises for rent in arrears including any such sum as aforesaid shall extend to and include the Lessee's Fixtures and Fittings not otherwise distrainable by law which may from time to time be thereon. FURTHER the lessor shall charge interest on such rent arrears, from the date of such default whether formally demanded or not until payment thereof in full, such rate being the highest of commercial bank lending rates obtaining in Kenya at the time of such payment.

DAMAGE TO OR DESTRUCTION OF THE DEMISED PREMISES

- (c) If the demised premises are so damaged or destroyed by fire as to be unfit for occupation or use in whole or in part and the insurance in respect thereof has not become vitiated by an act or omission of the Lessee or that of its servants or agents then the rent hereby reserved or a proper proportion thereof according to the extent of the damage shall from the date of such damage or destruction and until the demised premises shall have been reinstated cease to accrue and any aspect concerning the cessation or proportionate reduction of the rent according to the extent of the damage shall be referred to a valuer to be mutually appointed by the parties hereto or in the absence of agreement on such appointment as shall be appointed by the Chairman of the Law Society of Kenya for the time being and the decision of such valuer shall be final and binding on the parties hereto PROVIDED THAT if the demised premises have not been so reinstated to be fit for use and occupation within three (3) months of their destruction or damage as aforesaid the Lessee may at its own option and on giving one (1) calendar month's notice in that behalf determine the term hereby granted and on expiration of such notice the term hereby granted shall cease and determine accordingly but without prejudice to any right of action or remedy of either party against the other in respect of any antecedent breach of any covenants conditions or provisions herein contained and PROVIDED ALSO that the Lessee shall not have any such right of determination of the term hereby created as is contemplated by section 108 (e) of the Indian Transfer of Property Act 1882 except as aforesaid.

LIMITATION OF LESSOR'S LIABILITY FOR LOSS DAMAGE ETC.

- d) Except as to its obligations as defined under the Occupiers Liability Act (Cap. 34) the Lessor shall not be liable for any loss damage or injury caused to the Lessee or to the Lessee's servants agents or invitees or to the property of the Lessee or of such other persons such damage or injury having been caused by:-
- (i) Any defects in the demised premises or in the buildings or of any defect in electric wiring or insulation thereof gas pipes or from broken stairs

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or from bursting leakage or running over of any tank tub washstand cistern closet or waste pipes drain or any other pipe or tank in upon or about the demised premises nor from the escape of steam or hot water from any boiler or radiator.

- (ii) Any defective or negligent construction or maintenance of the lifts or the lighting or equipment or other parts of the structure of the buildings.
- (iii) Any lack or shortage of electricity water or drainage.
- (iv) Any act or default negligent or otherwise of any other lessees or tenants of the buildings or any portion thereof including such other Lessee's servants or agents.
- (v) Any fire explosion (however occurring) falling plaster steam rain or leaks from any part of the buildings or from the pipes appliances or plumbing works or from the roofs or from any other place or by dampness howsoever occurring.

WAIVER OR VARIATION OF PROVISIONS OF LEASE

- (e) (i) Each and every of the Lessee's covenants herein contained shall remain in full force both at law and in equity notwithstanding that the Lessor shall have waived or released in any way whatsoever similar covenants affecting other Lessees of the building.
- (ii) No provision in this Lease shall be waived or varied by either party hereto except by agreement in writing which agreement shall be prepared and if the case so requires be duly registered in the land titles Registry at the sole expense of the Lessee.
- (iii) The failure by the Lessor to seek redress for any breach of or to insist upon the strict compliance of any of the terms and conditions of this Lease or any of the (Lessor's) Rules and Regulations as hereinbefore mentioned shall not prevent any subsequent act which would have originally constituted a breach from having all the force and effect of any original

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breach and the receipt by the Lessor of any rent with knowledge of such breach shall not be deemed to be a waiver of such breach.

- (iv) If the lessee is desirous of taking a further term of the demised premises from the expiration of the term hereby granted, on terms and conditions to mutually agreed between the parties then the lessee shall not less than three (3) months before the expiration of the term hereby granted give to the lessor in writing its intentions and if it shall have paid the rent hereby reserved and shall have reasonably preformed and observed the covenants contained herein, then the lessor shall renew this lease on terms and conditions to be mutually agreed upon by the parties.

SERVICE OF NOTICE

- (f) Any notice communication or statement provided for by this Lease **SHALL BE IN WRITING** and shall be deemed to be sufficiently served if addressed to the Lessee and delivered to the demised premises or sent by registered post to the Lessee's last known address and any notice or communication to the Lessor shall be sufficiently served if sent by registered post to the Lessor's last known address or served on its agent or duly authorized to receive or who has in fact on its behalf collected the rent of demised premises. **PROVIDED ALWAYS THAT:** any notice or statement served by registered post shall be deemed to have been served within three (3) days following the day of posting if within Nairobi and seven (7) days if outside Nairobi.

APPLICATION OF FUNDS

- (i) If any amounts remitted by or for the Lessee shall be insufficient to meet the total of all sum due and payable by the Lessee to the Lessor to the date of payment, the Lessor shall apply the amount so remitted as follows:-

FIRSTLY in or towards the payment of any charges and liabilities payable by the Lessee hereunder;

SECONDLY in or towards payment of interest on arrears of rent chargeable.

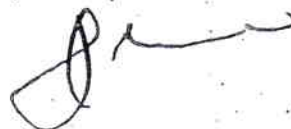
THIRDLY in or towards payment of rent due but not paid.

SUB HEADINGS.

- (h) The sub headings to the clauses in this Lease are intended for ease of reference only and shall not be considered or taken into account in the construction of this lease or any part thereof.

ACCEPTANCE

5. **AND THE LESSEE** hereby accepts this Lease subject to the condition ~~restrictions stipulations and covenants set forth herein~~ **PROVIDED ALWAYS** that the provisions of S.33(1) of the Kenya Airports Authority (Act CAP.395 Laws of Kenya) shall apply in the event of breach of the covenants terms and/or dispute in the interpretation of this lease.

A handwritten signature in cursive script is written above a rectangular stamp that has been crossed out with diagonal lines.A handwritten signature in cursive script.A handwritten signature in cursive script.The number 57 is handwritten inside a circle. Below the circle is a rectangular stamp that has been crossed out with diagonal lines.



IN WITNESS WHEREOF this Lease has been duly executed by the parties hereto the day and year first hereinbefore.

SCHEDULE OF THE DEMISED PREMISES REFERRED TO HEREINBEFORE

- (i) **ALL THAT** area of floor space certified by the Lessor's Architect to **comprise Two Thousand and Forty Seven Decimal Two Three (2,047.23) square meters** or thereabouts situate at the International departures area of the Building and which for purposes of identification is shown marked "A" on the Sketch Plan annexed hereto and thereto bordered red.

THE COMMON SEAL OF KENYA AIRPORTS AUTHORITY)

was hereunto affixed in the presence of:-)

DIRECTOR)

SECRETARY)

THE COMMON SEAL OF WORLD DUTY FREE COMPANY LTD)
t/a KENYA DUTY FREE COMPLEX)

was hereunto affixed in the presence of:-)

DIRECTOR)

DIRECTOR/SECRETARY)

THE MEMORANDUM HEREINBEFORE REFERRED TO

1. The Government Lands Act (Chapter 280).
2. The Special Conditions contained in the said Grant registered as Number I.R. 90243/1.

LAND TITLES REGISTRY - NAIROBI REGIST.
REGISTRATION OF TITLE ACT

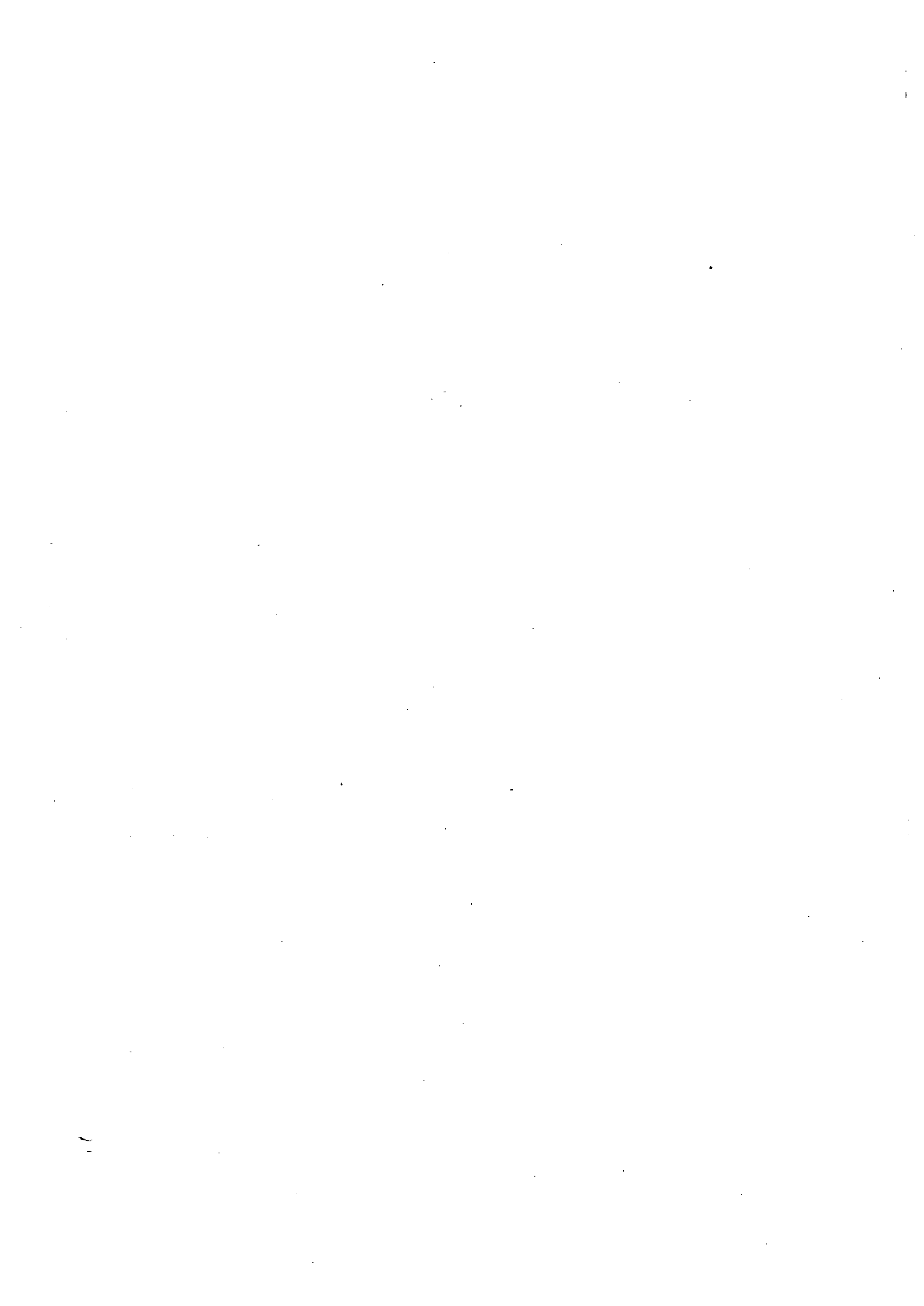
REGISTERED AS No. I.R. 91542/1

PRESENTED 11th March 2005

TIME 16:35 HRS)

Registrar of Titles
J. W. Mwangi

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(58)





OFFICE OF THE ATTORNEY-GENERAL AND DEPARTMENT OF JUSTICE

STATEMENT OF THE ATTORNEY GENERAL ON KENYA AIRPORTS AUTHORITIES (KAA)

Mr. Chairman, Hon. Members,

Firstly I thank you for having invited me to this meeting and hope that I will be of assistance in clarifying issues relating to this subject matter.

MANDATE

The Office of the Attorney General draws its mandate from Article 156 of the Constitution of Kenya 2010 which vests on the Attorney General the responsibility of being the Principal Legal Adviser to the Government, to ensure that the rule of law is promoted, protected and upheld and defend the public interest.

Further the Office of the Attorney General Act No. 49 of 2012 clearly spells out the functions of the office that include:

- i. Advising Government Ministries, Departments, Constitutional Commissions and State Corporations on legislative and other legal matters;
- ii. Negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties for and on behalf of the Government and its agencies; and
- iii. Performing any function as may be necessary for the effective discharge of the duties and the exercise of the powers of the Attorney-General.

Herebelow please find answers to the question on the extent of the involvement of the Office of the Attorney-General and Department of Justice on matters touching on:-

1. The role of my office in the drafting of the contracts between KAA and Dufry International to manage duty free shops at the Jomo Kenyatta and Moi International Airports

1.1. These contracts were not forwarded to this office for vetting and review, nor were my office involved in drafting the said contracts.

2. Arbitral Award of Kshs. 4.3billion to World Duty Free Ltd in regard of HCCC 413 of 2008

2.1. This ~~office~~ was not involved in this suit nor were we parties to the suit

3. High Court Case No.45 of 2015 granting World Duty Free Ltd sole and exclusive rights to operate duty free at Jomo Kenyatta and Moi International Airports

3.1. This office was not involved in this suit nor were we parties to the suit

4. Local Directors of

a) Nuance Group Ag

b) Dufry International Ag

c) Suzan Trading Jtl

d) World Duty Free Ltd

e) Diplomatic Duty Free Ltd

f) Kenya Duty Free Complex

Attached hereto please find a comprehensive report from the Registrar of Companies on this question.



Mr. Chairman, that is the end of my submission

Thank you.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Githu Muigai.

GITHU MUIGAI
ATTORNEY GENERAL

7th April 2015

Encl.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL AND
DEPARTMENT OF JUSTICE

RE: COMPANIES PARTICULARS

We refer to the letter dated 26.03.2015 addressed to the Hon. Attorney General from the National Assembly, REF KNA/PIC/CORR/2015(78). We submit herein information relating to the companies as requested.

1. NUANCE GROUP AG and KENYA DUTY FREE LTD

The above names do not appear in the database of registered companies or business names.

2. DUFY INTERNATIONAL AG

The above name does not appear in the database of registered companies or business names. However, there is a company registered under the name, Dufry Kenya Limited in which Dufry International Ag is a shareholder.

Dufry Kenya Limited is registered on 7th November 2014 as a private company, registration number CPR/2014/166715.

The directors/ shareholders are as follows:

<u>Directors</u>	<u>Address</u>	<u>Nationality</u>	<u>Shares</u>
Xavier Rossinyol Espel	214 Buckhauserstrasse 11,8048, Zurich, Switzerland	Spanish	Nil
Miguel Angel Martinez Suarez	Calle Ribera Del Loira, 38 4 Planta Zurich, Switzerland 28042 Madrid, Spain	Spanish	Nil

Non director shareholder

Dufry International Ag (A limited liability company incorporated in Switzerland as no CH-270.3.002.354-9)	Brunngaesslein 12,Ch - 4052 Basel Switzerland	Swiss	60
Dufry Participations Ag (A limited liability company incorporated in Switzerland as no CH-270.3.002.857-3)	Brunngaesslein 12,Ch - 4052 Basel Switzerland	Swiss	<u>40</u>
Total Shares			<u>100</u>

The Registered Office is;

LR No 209/8287, ICEA Building, 4th Floor, Kenyatta Avenue,
P.O. Box 30333-00100
Nairobi.

3. SUZAN TRADING JTL

The above name does not appear in the database of registered companies or business names. However, there is a company known as Suzan General Trading JLT, whose particulars are as follows;

Suzan General Trading JLT is a company registered in Dubai, UAE. It is registered in Kenya as a foreign company and issued with a certificate of compliance on 30th March 2010, registration number CF/2010/20695.

The directors/ shareholders at registration are as follows:

<u>Directors</u>	<u>Address</u>	<u>Nationality</u>	<u>Shares</u>
Arif Yusuf Hafiz	P.O. Box 40182 Nairobi	Indian	Nil
Sankar Anantha	P.O. Box 40182 Nairobi	Indian	Nil

The registered office is;

LR NO 1870/111/461 Cargo village, Jomo Kenyatta International Airport
P.O. Box 40182
NAIROBI

Authorized person is Odhiambo M T Adala of P.O Box 40182 Nairobi

4. WORLD DUTY FREE LTD

The above company does not appear in our database of registered companies or business name. However, we have a company known as **World Duty Free Company Limited**. This is a company incorporated in the British Virgin Islands. It is registered in Kenya as a foreign company and issued with a certificate of compliance in 2001 as, registration number F55/2001

According to return of alteration of particulars of directors dated 30.05.2003 and 17.02.2004, (in a temporary file), the directors are as follows:

<u>Directors</u>	<u>Address</u>	<u>Nationality</u>	<u>Remarks</u>
Arif Mapara	P.O. Box 39778 Dubai, UAE	British	Replaced MinalMorarji
Harjit Singh	P.O. Box 39778 Dubai, UAE	Malaysian	Replaced MukeshVaya
Arif Hafiz	P.O. Box 39778 Dubai, UAE	Indian	Replaced KamleshPattni

The Registered Office is;

LR No. 21919, Jomo Kenyatta International Airport
P.O. Box 19122,
Nairobi.

Authorized person is Ajaykumar Kothari, P.O. Box 19122, Nairobi.

5. AFRICA DUTY FREE LTD

This company was registered on 05.09.2003 as a private company, registration number C105501

According to the annual return for the year 2009, dated 13th February 2009 and form 203A dated 16.06.2011, the directors/ shareholders are as follows:

<u>Directors</u>	<u>Address</u>	<u>Nationality</u>	<u>Shares</u>
Arif Yusuf Hafiz	P.O. Box 1458-00100 Nairobi	Indian	1
Harjit Singh Gurdev Singh	P.O. Box 1458-00100	Kenyan	1

Mukesh Vaya	Nairobi P.O. Box 12505 Nairobi	Kenyan	<u>Nil</u>
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Total Shares	<u>2</u>
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The Registered Office Is;

LR No. 1870/111/461 School lane Westlands, Nairobi
P.O. Box 12505
Nairobi.

6. DIPLOMATIC DUTY FREE LTD

This is a company registered in Ras Al Khaimah, UAE . It is registered in Kenya as a foreign company and issued with a certificate of compliance on 08.10.2009, registration number CF/2009/10973

The directors at registration were as follows:

<u>Directors</u>	<u>Address</u>	<u>Nationality</u>	<u>Shares</u>
Sankar Ananthanarayan	P.O. Box 11401 Dubai UAE	Indian	Nil
Arif Yusuf Hafiz	P.O. Box 11401 Dubai UAE	Indian	Nil

The Registered Office Is;

Corner House 8th Floor, Kimathi Street,
P.O. Box 10741-00100,
Nairobi.

Authorised person is Ahmed Adan of P.O BOX 10741-00100 Nairobi.

There is a local company also known as Diplomatic Duty Free Ltd, whose particulars are as follows;

This company was registered on 21.01.1999 as a private company, registration number C84173. According to the annual return for the year 2013, dated 1st August 2013, the directors/ shareholders are as follows:

<u>Directors</u>	<u>Address</u>	<u>Nationality</u>	<u>Shares</u>
Gaurang Harishbhai	P.O. Box 11110-00100 Nairobi	Indian	2
Garwal Abhimanyu	P.O. Box 1458-00606 Nairobi	Kenyan	Nil

Non director shareholder

Gihon Holdings Limited	P.O. Box 17870, Jebel Ali free zone	600
Solitaire Holdings Limited	P.O. Box 14401, Hamrain Centre Diera Dubai UAE	<u>398</u>
	Total Shares	<u>1000</u>

The Registered Office is;

LR No. 21919, Jomo Kenyatta International Airport
P.O. Box 1110-00100,
Nairobi.

7. KENYA DUTY FREE COMPLEX

The above business name was registered on 14th August 1990 as registration number BN153060, nature of business is retail and whole trade in duty free goods

The proprietor is; World Duty Free Company Limited

The registered office is;

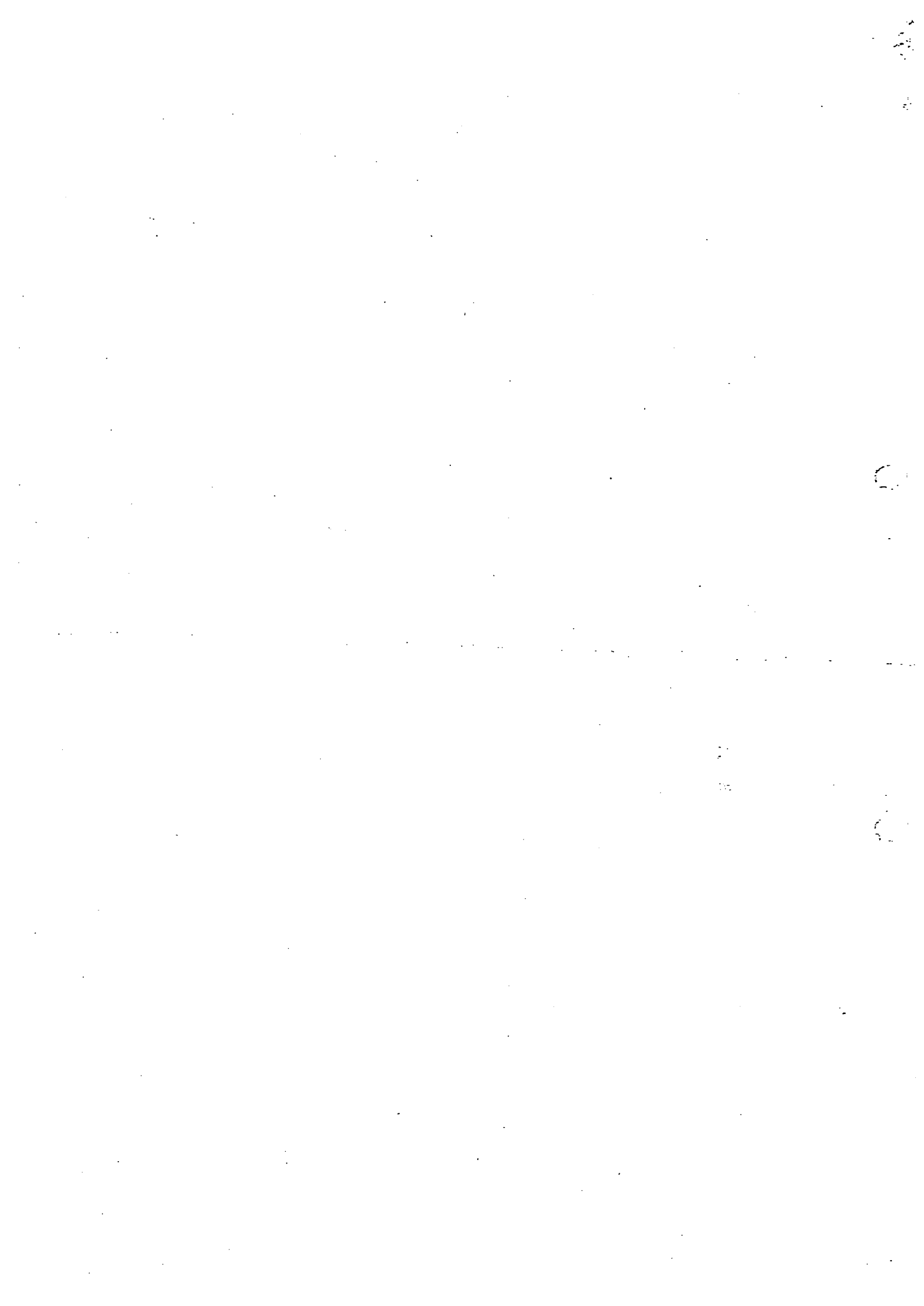
LR No 209/477/52, Silopark House, City Hall Way, Jomo Kenyatta International Airport, Nairobi & Moi international Airport, Mombasa.
P.O. Box 19122,
Nairobi.



JANE JORAM

SNR. DEPUTY REGISTRAR GENERAL

9th April 2015



**COMMITTEE
MINUTES**

MINUTES OF THE 144TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SUNDAY, 08TH NOVEMBER, 2015 IN BAOBAB CONFERENCE ROOM, SERENA BEACH HOTEL AT 4:00 PM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Dr. Oburu Oginga, MGH, MP
6. Hon. Franklin Mithika Linturi, MP
7. Hon. John Olago Aluoch, MP
8. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP

9. Hon. (Eng.) John Kiragu, MP
10. Hon. Beatrice Nkatha Nyaga, HSC, MP
11. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
12. Hon. Cornelly Serem, MP
13. Hon. John Muchiri Nyaga, HSC, MP
14. Hon. John Ogutu Omondi, MP
15. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
16. Hon. Irungu Kang'ata, MP
17. Hon. Abdullswamad Sheriff Nassir, MP
18. Hon. Bernard Munywoki Kitungi, MP
19. Hon. Ejidius Njogu Barua, MP
20. Hon. Mary Sally Keraa, MP
21. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

22. Hon. Adan Mohammed Nooru, MP
23. Hon. Elias Bare Shill, MP
24. Hon. Wafula Wamunyinyi, MP
25. Hon. Sammy Silas Komen Mwaita, MP
26. Hon. Korei Ole Lemein, MP
27. Hon. Johana Kipyegon Ngeno, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant II
3. Mr. Phillip Lekarkar - Clerk Assistant III
4. Mr. Peter Mwaura - Legal Counsel I
5. Mr. Vitus Owino - Research Officer I

OFFICE OF THE AUDITOR GENERAL

- Mr. Obed Chweya - Senior Manager
Mr. Romanus Ochieng - Manager

THE NATIONAL TREASURY

Mr. John Munge - Accountant 1

MIN.NO./PIC/1156/2015: PRELIMINARIES

The Chair called the meeting to order at ten minutes to twenty minutes to Ten O'clock. The Prayer was read by Hon. Mary Sally Keraa MP.

MIN. NO./PIC/1157/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes was deferred to the next sitting.

MIN.NO./PIC/1158/2015: CONSIDERATION OF THE DRAFT SPECIAL REPORT ON KENYA AIRPORTS AUTHORITY DUTY FREE CONTRACTS AT JOMO KENYATTA INTERNATIONAL AIRPORT AND MOI INTERNATIONAL AIRPORT: 1989 TO 2015

The Committee considered and unanimously adopted, albeit with the following amendments, the Special Report on the Kenya Airports Authority World Duty Free Shops Master Concessionaire: 1989 to 2015 having been proposed by Hon. proposed by Hon. Cornelily Serem, MP and Seconded by Hon. John Muchiri Nyagah, MP.

Under General Committee Observations

Paragraph No. 9, "Terminal 1 facility" should read "Terminal 1A facility".

Paragraph No. 12, it should be noted that, Eng. Michael Kamau did not table any evidence before the Committee to indicate that all the filed cases against KAA by WDF/DDF have been withdrawn.

Paragraph No. 13, the Committee noted that Eng. Michael Kamau made a false representation that an Agreement had been reached between Kamlesh Pattni and KAA on the withdrawal of the WDF/DDF cases, but did not table before the Committee the terms and conditions of the withdrawal of the filed cases. Further, the said Agreement has never been filed in court. Kenya Airports Authority proceeded to forcefully evict the tenants who in turn have sued the Authority for damages.

Paragraph No. 21, insert the words "in the registered companies' database" after the words "However"

Under General Committee Recommendations

Paragraph No. 1, upon conclusion of their Report, EACC ought to avail a copy of their investigations to the Public Investments Committee.

Paragraph No. 3, insert the words "as a matter of national interest" immediately after the words "takes over". Further to remove the words "to protect" that appears immediately after "amicable manner"

Introduce new Paragraph No. 3 to read "THAT Eng. Michael Kamau, the ~~suspended~~ CS, MOTI should be held individually responsible for his failure of ~~not following through~~ and ensuring that a deed of settlements is entered between KAA and WDF/DDF to protect public interests. This failure has exposed KAA and the Kenya tax payer to a contingent liability of not less than Kshs. 17.15 billion.

Paragraph No. 5, to read as follows "THAT Eng. Stephen Gichuki as the then CEO be held personally criminally/civilly liable for abuse of office by ~~executing the forceful eviction~~ of WDF/DDF from JKIA at night using hired goons without ~~taking due consideration~~ of the legal and financial implication of the action on KAA and the ~~businesses operating~~ at the duty free shops in JKIA. Through his action, Kenya public stands to lose ~~not less than~~ Kshs. 7 billion which WDF/DDF is claiming for loss incurred during ~~forceful eviction~~."

Under Paragraph No. 6, insert the words "if any" after the word "losses" and delete the words "amicably conclude the matter."

Paragraph No. 8, add "s" to the word "start" and replace the word "~~domesticated~~" with "domesticating".

Under Paragraph No. 9, insert the words "contested" after the word "Ngatia's" and insert the word "rushed" before the word "forceful".

Paragraph No. 11, secretariat to cite the relevant laws for instance Article 227 of the Constitution.

Paragraph No. 12, delete the word "with" and replace with the word "to".

Paragraph No. 13, add "Ministry responsible for Air Transport and Efficiency Monitoring Unit (EMU) to form part of the technical team.

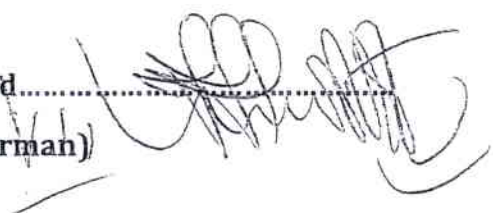
MIN. NO./PIC/1159/2015: ANY OTHER BUSINESS

The Committee resolved to consider the Sub-Committee Report on Procurement and Disposal of Scrap Metal, Scrap Cast Iron and Scrap Locomotive Materials at Kenya Railways Corporation from Financial Years 2008/2009 to 2012/2013 on Monday, 8.30am.

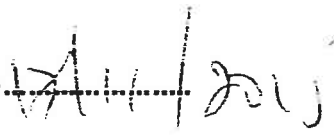
MIN. NO./PIC/1160/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at five minutes to seven o'clock until Monday, 9th November, 2015 at 8:30am.

Signed.....
(Chairman)



Date.....



MINUTES OF THE 88TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 27TH AUGUST 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, MP
4. Hon. Elias Bare Shill, MP
5. Hon. Dr. Oburu Oginga, MGH, MP
6. Hon. Wafula Wamunyinyi, MP
7. Hon. Sammy Silas Komen Mwaita, MP
8. Hon. John Olago Alnooch, MP
9. Hon. (Eng). John Kiragu, MP
10. Hon. (Maj.) (Rtd) John Waluke Kacyi, MP
11. Hon. Abdullswamad Sheriff Nassir, MP
12. Hon. Beatrice Nkatha Nyaga, FSC, MP
13. Hon. Bernard Muniywoki Kimangi, MP
14. Hon. Cornelly Serem, MP
15. Hon. Ejidius Njogu Barua, MP
16. Hon. Irungu Kang'ata, MP
17. Hon. Johana Kipyegon Ngeno, MP
18. Hon. John Muchiri Nyaga, FSC, MP
19. Hon. John Ogutu Omondi, MP
20. Hon. Korei Ole Lemein, MP
21. Hon. Mary Sally Keraa, MP
22. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

23. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
24. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
25. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP

ABSENT WITHOUT APOLOGY

26. Hon. Adan Mohammed Nooru, MP
27. Hon. Franklin Mithika Linturi, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- Ms. Susan Maritim - Clerk Assistant I
Ms. Rose Wanjohi - Clerk Assistant II
Mr. Philip Lekarkar - Clerk Assistant III
Mr. Peter Mwaura - Legal Counsel I
Mr. Charles Atamba - Research Officer III

OFFICE OF THE AUDITOR GENERAL

- Mr. Obed Chweya- Senior Manager, Audit
Mr. Isaac Nyagah - Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge- Accountant I

INSPECTORATE OF STATE CORPORATIONS

Mr. O.M Mugo - Senior Supervisor

WITNESSES: NATIONAL CRIME RESEARCH CENTRE (NCRC)

1. Mr. J. Oriri Onyango - Chief Executive Officer, NCRC
2. Ms. Josephine Mandere - Accountant
3. Ms. Margaret Kariuki - Senior Assistant Accounts Attorney General's Office
4. Mr. Stephen M. Muteti - Principal Researcher

MIN.NO./PIC/746/2015: PRELIMINARIES/INTRODUCTIONS

The Chair called the meeting to order at twenty-fiveminutes past ten o'clock followed by self-introduction of all those present.

MIN. NO./PIC/747/2015: CONFIRMATION OF MINUTES

Minutes of the 73rd Sitting were confirmed as a true record of proceedings as Proposed by Hon. Wafula Wamunyinyi, MP and Seconded by Hon. (Eng.) John Kiragu, MP.

Minutes of the 74th Sitting were confirmed as a true record of proceedings as Proposed by Hon. Bernard Munywoki Kitungi, MP and Seconded by Hon. Beatrice Nkatha Nyagah, MP.

Minutes of the 75th Sitting were confirmed as a true record of proceedings as Proposed by Hon. Elias Bare Shill, MP and Seconded by Hon. Beatrice Nkatha Nyagah, MP.

Minutes of the 76thSitting were confirmed as a true record of proceedings as Proposed by Hon. Elias Bare Shill, MP and Seconded by Hon. Beatrice Nkatha Nyagah, MP.

Minutes of the 77thSitting were confirmed as a true record of proceedings as Proposed by Hon. Cornelly Serem, MP and Seconded by Hon. Mary Sally Keraa, MP.

Minutes of the 78thSitting were confirmed as a true record of proceedings as Proposed by Hon. Elias Bare Shill, MP and Seconded by Hon. Cornelly Serem, MP.

Minutes of the 79thSitting were confirmed as a true record of proceedings as Proposed by Hon. Francis Mwanzia Nyenze, EGH, MP and Seconded by Mary Sally Keraa, MP.

Minutes of the 80thSitting were confirmed as a true record of proceedings as Proposed by Hon. Cornelly Serem, MP and Seconded by Hon. Beatrice Nkatha Nyagah, MP.

Minutes of the 81stSitting were confirmed as a true record of proceedings as Proposed by Hon. Mary Sally Keraa, MP and Seconded by Hon. Cornelly Serem, MP.

Minutes of the 82ndSitting were confirmed as a true record of proceedings as Proposed by Hon. Wafula Wamunyinyi MP and Seconded by Hon. Cornelly Serem, MP.

Minutes of the 83rd Sitting were confirmed as a true record of proceedings as Proposed by Hon. Abdullswamad Sheriff Nassir, MP and Seconded by Hon. Korei Ole Lemein, MP.

Minutes of the 84th Sitting were confirmed as a true record of proceedings as Proposed by Hon. Korei Ole Lemein, MP and Seconded by Hon. Mary Sally Keraa, MP.

Minutes of the 85th Sitting were confirmed as a true record of proceedings as Proposed by Hon. Cornelly Serem, MP and Seconded by Hon. Johana Kipyegon Ng'eno, MP.

Minutes of the 86th Sitting were confirmed as a true record of proceedings as Proposed by Hon. Francis Mwanzia Nyenze, EGH, MP and Seconded by Hon. Korei Ole Lemein, MP.

Minutes of the 87th Sitting were confirmed as a true record of proceedings as Proposed by Hon. Cornelly Serem, MP and Seconded by Hon. Francis Mwanzia Nyenze, EGH, MP.

MIN.NO. /PIC/748/2015: MATTERS ARISING

The Committee requested the secretariat to write a reminder letter to the following institutions to avail the additional information as earlier requested

- (i) National Museums of Kenya
- (ii) National Social Security fund
- (iii) Nakumatt Holdings

MIN.NO./PIC/749/2015: REPORT OF THE AUDITOR GENERAL ON THE ACCOUNTS OF NATIONAL CRIME RESEARCH CENTRE (NCRC) FOR 2010/2011 - 2013/2014 FINANCIAL YEARS

The Chief Executive Officer, National Crime Research Centre, Mr. J. Oriri Onyango, accompanied by Ms. Josephine Mandere, Accountant; Ms. Margaret Kariuki, Senior Accountant Office of the Attorney General and Mr. Stephen M. Muteti appeared before the Committee to adduce evidence on the accounts of National Crime Research Centre (NCRC) for financial year 2010/2011 to 2013/2014.

MIN. NO./PIC/750/2015: UNQUALIFIED ACCOUNTS FOR FY 2010/2011 TO 2011/2012

The Committee was informed that National Crime Research Centre received an unqualified report for the FYs 2010/2011 to 2011/2012.

The Committee commended the Centre for the clean reports.

MIN.NO. /PIC/751/2015: PARAGRAPH 1 OF FINANCIAL YEARS 2012/2013 ACCOUNTS-PROPERTY, PLANT & EQUIPMENT

The Committee heard that in the year 2007, the Centre inherited assets of an unknown value from the Office of the Attorney General and Department of Justice which have not

been taken on-charge to date. Consequently, the fixed assets balance of Kshs. 12,290.75 reflected in the statement of financial position could not be confirmed.

Management Response

The CEO, National Crime Research Centre (NCRC) informed the Committee that the Centre inherited the assets from the then State Law Office currently the Office of the Attorney General and Department of Justice. The assets were procured by the said office to facilitate the operationalization of the Centre. Upon delinking of NCRC from the Office of the Attorney General and the Department of Justice, the assets remained with the Centre. They could not be posted into the books because they had not been handed over to the Centre officially. However the Centre has since identified the said assets and written to the Office of the Attorney General and Department of Justice vide letter referenced NCRC/CONF/SG/VOL.II/(221) dated 12th September, 2014 on the said matter. The Centre has not received response from the said office. But they intend to make a follow up of the matter.

Committee Observations

The Committee observed that

- (i) The handing over of the assets, some of which were working tools like computers, had taken inordinately long. The equipment may by now be obsolete but nevertheless, the handing over must be done so as to resolve the outstanding query.
- (ii) There was no evidence of further written communication with the Office of the Attorney General after the letter dated 12th September 2014.

Management Response to the Committee Observations

The CEO, NCRC informed the Committee that he had spoken verbally to the Attorney General on the matter, though he was yet to follow up with a written letter.

Ms. Margaret Kariuki representing the Office of the Attorney General assured the Committee that she would follow up the matter to conclusion.

Committee Resolutions

The Committee resolved that the CEO, NCRC should expedite handing over of the assets by writing another letter and further presents a status report to the Committee not later than two weeks from the date of this meeting.

Additional Comments and Clarifications

- (i) **If the Centre has undertaken research on terrorism and radicalization:** This is one of the topics in the Centre's program to be researched in the FY 2015/2016. Research Topics are decided by a Board made up of persons in the justice system depending on the magnitude of the topic.

- (ii) **Public Awareness and sensitization on the Centre's existence and mandate:** The Centre has been in existence for three years. They have researched on the causes of crime and have partnered with several institutions on the same.
- (iii) **The number of employees in the institution:** The Centre is understaffed which includes only two researchers.
- (iv) **Any partnership between the Centre and the Kenyan School Curriculum with a view of incorporating criminology in school curriculum?** The Centre does not have the mandate to advise learning institutions on inclusion of criminology in the curriculum.
- (v) **Partnership with other partner with other research and learning institutions for technical and financial support:** The Centre's Governing Council has representation from University of Nairobi, Kenyatta University and Jomo Kenyatta University of Agriculture & Technology.
- (vi) **The number of research publications the Centre has produced:** They have several publications disseminated to the Government Agencies concerned with the administration of criminal justice and other stakeholders.

Committee Resolution/Way Forward

The Committee advised the Centre to expand its horizons and partner with other research and learning institutions for technical and financial support and to raise the profile of the Centre.

The Committee resolved that NCRC provides the Committee with its **Strategic Plan and Staff Establishment**.

MIN. NO./PIC/752/2015: ANY OTHER BUSINESS

Committee Programme of Business for Recess Period: The Committee resolved to sit for the first three weeks of the recess period (1st to 17th September 2015) then break for another two weeks until the House resumes from recess (6th October 2015).

Questions: Hon. Irungu Kangata requested that the matter of failure to advertise for procurement of legal services by Athi Water Service Board and IEBC be brought before the Committee. The Committee resolved that IEBC was an independent commission and falls under the purview of Public Accounts Committee while Athi Water Services Board was a State Corporation and thus should have been referred to PIC for response.

Committee Report Writing Session: The Committee resolved to hold the next writing session preferably at Keekorok Lodge in the Maasai Mara in the first week of October 2015.

MIN. NO./PIC/753/2015: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at half past eleven o'clock.

Signed.....
(Chairman)

Date.....

MINUTES OF THE 76TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 22ND JULY 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 PM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Dr.Oburu Oginga, MGH, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Adan Mohammed Nooru, MP
6. Hon. Elias Bare Shill, MP
7. Hon. Sammy Silas Komen Mwaita, MP
8. Hon. John Olago Aluoch, MP
9. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
10. Hon. Beatrice Nkatha Nyaga, HSC, MP
11. Hon. Bernard Munywoki Kitungi, MP
12. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
13. Hon. Ejidius Njogu Barua, MP
14. Hon. Johana Kipyegon Ngeno, MP
15. Hon. John Muchiri Nyaga, HSC, MP
16. Hon. John Ogutu Omondi, MP
17. Hon. Korei Ole Lemein, MP
18. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

19. Hon. Wafula Wamunyinyi, MP
20. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
21. Hon. (Eng). John Kiragu, MP
22. Hon. Irungu Kang'ata, MP
23. Hon. Cornelly Serem, MP
24. Hon. Mary Sally Keraa, MP

ABSENT WITHOUT APOLOGY

25. Hon. Francis Mwanzia Nyenze, MP
26. Hon. Franklin Mithika Linturi, MP
27. Hon. Abdullswamad Sheriff Nassir, MP

IN-ATTENDANCE

Hon. Alfred Keter, MP – Nandi Hills Constituency

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant II
3. Mr. Philip Lekarkar - Clerk Assistant III
4. Mr. Peter Mwaura - Legal Counsel I
5. Charles Atamba - Researcher Officer III

OFFICE OF THE AUDITOR GENERAL

Mr. Obed Chweya - Senior Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

WITNESSES: WORLD DUTY (WDF) FREE LTD

1. Mr. Paul KamleshPattni - Director World Duty Free Ltd
2. Mr. Abdul Dawood - Legal Assistant
3. Mr. Kelvin Dias - Legal Secretary
4. Mr. Nicholas Maingi - Legal Clerk

MIN. NO./PIC/642/2015: PRAYERS/PRELIMINARIES

The Chair called the meeting to order at two minutes past eleven O'clock. Prayer was read by Hon. Elias Bare Shill, MP.

MIN. NO. /PIC/643/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the previous sitting was deferred to the next meeting.

MIN. NO. /PIC/644/2015: INTRODUCTIONS

Self-introduction of all those present was done.

MIN. NO. /PIC/645/2015: EVIDENCE ON KAA - WORLD DUTY FREE TENDERS

Mr. KamleshPattni made the following oral presentation:

1. World Duty Free Ltd initially started in 1989 as House of Perfume, which was the investment division of Dubai-based group, Al Ghurair Enterprises with interest in banking, shopping malls and hotels. Al Ghurair invested USD 12 Million in improving Jomo Kenyatta International Airport (JKIA), and consequently it was granted the concession to operate duty free shops in the then current airports and future airports in Kenya.
2. House of Perfume later changed its name to World Duty Free Company Limited operating in Kenya as Kenya Duty Free Ltd.
3. An Agreement was entered into on 27th April 1989 between the House of Perfume (the Company) and the Government of Kenya acting on behalf of the then Aerodromes Department in respect of duty free spaces at JKIA and Moi International Airport (MIA) in Mombasa for a term of 10 years, renewable upon expiry.
4. Clause 3(A) and 3(H) of the Agreement stated as follows:

3(A). The House of Perfume would have the exclusive rights to operate duty free facilities at the demised premises and at any other premises which in future could be designated as an airport.

3(H). No other person or would firm would operate a duty free facility in an Airport unless the House of Perfume gave its consent.

5. The Agreement was amended on 11th May 1990 to substitute the House of Perfume with World for Duty Free (WDF)- registered in the Isle of Man.
6. In 1994, Kenya Airports Authority (KAA) was established as a statutory body and took over the operations and responsibilities of Aerodromes Department after it ceased to exist. The contract was then deemed to have been made with KAA and new lease agreement was subsequently signed on 15th August 1995 substituting KAA as lessor while WDF remained as the lessee. The effective date of the lease was 1st July 1990 for a term of 10 years with the option of further renewal for a further term of 10 years subject to renegotiation of the rent payable to the KAA. Other terms of the agreement remained unchanged.
7. In 2002, the monopoly of operation of duty free shops at the airports by WDF was challenged in court and consequently KAA gave out the duty free shops located at JKIA to other operators despite the Agreement of exclusive rights being in force. A settlement was afterwards made in court with consent of KAA via a decree dated 1st July 2002.
8. Upon expiry of the 'first lease' a further 'second lease' (consisting of three lease agreements for three different duty free spaces) of 10 years period was entered into between KAA and WDF/DDF Company Limited on 29th January 2003. The Agreement contained the same clauses for sole and exclusive rights and automatic option of renewal for a further term of 10 years as the first lease.
9. In 2007, having traded as the owner of WDF for a long period of time, Mr. Pattni requested KAA that the leases be transferred to Diplomatic Duty Free (DDF) a locally incorporated company. As a result, most of the spaces previously occupied by WDF were transferred to DDF and two leases with respect to the transfer, were signed on 5th March 2007 and 14th September 2007. The two leases were for a term of 6 years each effective from 1st March 2007 and 1st August 2007 and thus were due to lapse on 31st March 2013 and 1st July 2013 respectively.
10. In March 2012, WDF pursuant to the renewal clause 4 (e) (iv) WDF notified KAA of its intention to renew the lease dated 29th January 2003 at JKIA and MIA for a further 10 years to permit it to continue operating the duty free shops at the airports. In February 2013, negotiations for renewal of the leases were initiated by WDF/DDF and after several meetings between the two parties, an agreement was reached to renew the leases.
11. As the date of expiry of the leases approached, KAA began giving unreasonable demands and conditions and it became evident that KAA was not willing to renew the

lease agreements. WDF went to court seeking conservatory orders for temporary extension of the leases as negotiations for renewal of the leases continued between WDF/DDF and KAA.

12. WDF obtained court orders prohibiting KAA from repossessing the premises demised to WDF or granting leases to any third party, and compelling KAA to renew leases dated 5th March 2007 and 14th September 2007 for a term of 6 years each, pending inter-parties hearing which was scheduled for 9th August, 2013. The orders were issued by the High Court on 30th July 2013 and copies were allegedly served to the KAA Managing Director on 31st July 2013.
13. Occupation of the duty free shops at JKIA by WDF/DDF continued until 31st July 2013 midnight when about 200 people allegedly led by Eng. Warutere carried out a raid on WDF/DDF shops with the aim of evicting WDF/DDF from the Airport's duty free premises. 22 shops together with first class lounges were destroyed and goods looted in spite of the conservatory court orders and an agreement of continued occupation of the premises arrived at between KAA and WDF 2 days before the eviction.
14. Prior to the eviction exercise WDF had other pending court cases against KAA of claim for damages of shops destroyed at the Airport in earlier raids on WDF duty free shops.
15. The goods that were destroyed/looted in the raid belonged to Suzan Duty Free, a company that was supplying goods to WDF/DDF outlets. The two companies entered into business partnership after WDF sold part of its shareholding to Suzan Duty Free for supplying goods. After the raid Suzan Duty Free notified KAA that goods belonged to them and not WDF/DDF.
16. The directors of Suzan DF sought for a meeting with the then KAA Managing Director Ms. Lucy Mbugua seeking to negotiate and arrive at an amicable settlement without resorting to litigation. This was in consideration that Suzan Duty Free will be allowed to reestablish themselves at the Airport duty free shops. In the negotiations, Suzan Duty Free was represented by Mr. Ahmed Adan whilst KAA was represented by a team of lawyers led by Mr. Fred Ngatia, others being Mr. Ahmednassir, Mr. Tom Macharia and Mr. Eric Mutua. WDF/DDF also participated in the negotiations where it was represented by Wetangula and Makokha Co. Advocates.
17. An acceptable Agreement was reached subject to fulfillment of some pre-conditions by both parties. WDF/DDF was to fulfill the following:-
 - a) Withdrawal of all cases against KAA by WDF/DDF,
 - b) Setting aside of the Arbitral Award made by Hon. Justice (Rtd). E. Togbor,
 - c) Withdrawal of further claims for damages for the recent and previous evictions,
 - d) Publicly and formally stating that they shall have no further claims whatsoever against KAA.

18. KAA in exchange would identify available spaces at the airports and allocate them to Suzan Duty Free.
19. Lawyers Mr. Ahmed Adan acting for Suzan Duty Free and Mr. Fred Ngatia KAA were to finalise the details of the settlement agreement. WDF/DDF was excluded from the negotiations.
20. He consented to the Deed Settlement on the presumption that the lawyers for both parties had already reached a consensus on final details of the settlement agreement and that KAA would meet its part of the Agreement in full. In the Settlement Agreement, KAA was to allocate Suzan Duty Free - the new Company taking over from WWD/DDF 250 square metres of space in Terminal 1A, four shops and a bonded warehouse at JKIA and first Class lounge with a total area of 126.882 square metres at Terminal 1 and a bonded warehouse.
- ~~21. After a few days he (Mr. Kamlesh Pattni) was informed that a press conference had been arranged by KAA Public Relations firm Oglivy and the then KAA Ag. Managing Director, Ms. Lucy Mbugua.~~
22. In the Press Conference he accepted to surrender all premises allocated to WDF/DDF, exclusivity and monopoly of operating the duty free shops, renounced the arbitral award and undertook to withdraw the numerous cases pending in various courts filed against KAA and to never claim or demand any compensation then or in future regarding repossession of the shops and lounges by KAA.
23. After signing of the Deed Settlement and the Press Release at Transcom House, KAA reneged on the Agreement and refused to execute its part of the Agreement. The spaces identified for allocation to Suzan Duty Free of 250 square metres in JKIA Terminal 1A and first class lounge in MIA were never allocated. Instead KAA allocated other spaces in JKIA and MIA to Duty Free that were not part of the settlement Agreement. KAA informed Suzan Duty Free that the space at Terminal 1A would be for public use and for passenger movement and resting, awaiting transit.
24. The space of 250 square metres at JKIA Terminal 1A identified for allocation to Suzan Duty Free was offered to private individuals and first class lounge allotted to a private company Swiss Port while various other shops were given to other people without a tendering process.
25. Again, the monopoly and exclusivity of operation of Airport duty free shops which WWD/DDF had surrendered was given to another duty free operator named Dufry, through an Agreement with similar features and form as the 1989 House of Perfume/GoK Agreement except that it was worded using the phrase '*no other person will be allowed to operate duty free shop at the airport*'. The controversial award of exclusivity and monopoly of operation of the duty free shops raised questions which allegedly led to dismissal of some officers of KAA.
26. Due to KAA's failure to fulfill its part of the Deed Settlement and the subsequent allocation of duty free shops to Dufry, further negotiations collapsed and WDF/DDF filed a suit in court contesting the validity of the Agreement made between KAA and Dufry.

27. Mr. Pattni maintained that the Agreement entered into by KAA and Dufry which gave Dufry exclusivity and monopoly to operate duty free shops was not binding since the earlier Agreement made between WWD/DDF for operation of the same duty free shops with exclusivity was still in force because it was not legally terminated.
28. Currently Terminal 1A space is not occupied or in use by WDF/DDF, Suzan Duty Free, Dufry or any other local duty free operator. The space has been allocated to another Company called MAYA on the pretext of temporary licence which expired on September, 2014 and renewed under unclear circumstances. Allocation of the space was done in disregard of tendering procedures.
29. MAYA had operated at the duty free area at JKIA since 1986 but was expelled from the Airport to give room to the exclusive occupation of the WDF when it started occupation of shops at the Airport as House of Perfume.
30. He affirmed that all along he had been acting in utmost good faith and was willing to implement his part of the Settlement Agreement and the current ~~statement~~ is as a result of KAA failing to meet the terms set out in the Settlement Deed.

Committee Queries

1. On whether there was an existing court injunction before the eviction at JKIA on the night of 31st July 2013, Mr. Pattni informed the Committee that WDF had obtained temporary court orders restraining KAA or its agents from repossessing from duty free shops occupied by WDF/DDF at the Airport or allocating the same shops/spaces to other operators until a settlement agreement on renewal of the leases is reached.

The orders had been in force since November 2012 and were extended through another injunction 2 days prior to eviction until hence there was no window period that KAA would exploit to evict WDF/DDF from the Airport.

2. On the value of duty free goods and alleged trading of duty free goods outside the designated duty free areas, he informed the Committee that due to the high number of passengers in JKIA and MIA there is a high business turnover and in addition it's a fast business with high profit margins. Apart from the Airport shops WDF/DDF also operated other outlets at the former Grand Regency Hotel and at the Village Market for diplomats.
3. On the relationship between Mr. Kamlesh Pattni and Suzan Duty Free considering that they were both represented by the same lawyers; Wetangula, Adan and Makokha Co. Advocates during negotiations, Mr. Pattni maintained that there was no business relationship between him as an individual and Suzan Duty Free Company and that Wetangula and Makokha Co. Advocates were only acting as advocates for both WDF and Suzan Duty Free.

MIN. NO./PIC/646/2015:

**DIRECTORS/SHAREHOLDERS OF WORLD DUTY
FREE COMPANY LIMITED BVI**

Mr. Kamlesh Pattni provided the names of directors/shareholders of WDF Company as at 14th November 2013 as follows:-

NAMES	ADDRESS	NATIONALITY	SHARES
Mr. Mukesh Vaya	P. O. Box 12505 Nairobi	Kenyan	166,668
Mr. Harjit Singh Gurdev	P. O. Box 12505 Nairobi	Indian	166,666
Mr. Kamlesh Pattni	P. O. Box 12505 Nairobi	Kenyan	166,666
Mr. Kevin Dias	P. O. Box 12505 Nairobi	Kenyan	Nil

MIN. NO./PIC/647/2015: CURRENT STATUS OF COURT CASES

Mr. Kamlesh submitted to the Committee a list of all pending court cases against KAA. The Company is still pursuing the cases in court and has not withdrawn any.

He stated that the arbitration case filed in the International Centre for Settlement of Investments Disputes Tribunal, Washington D.C was not between him and Mr. Nassir Ibrahim. Mr. Ibrahim had sued the Government of Kenya seeking colossal amount for compensation for breaching the contract to operate duty free shops at JKIA. WDF was also not party to the case. Nassir Ibrahim lost the case.

He denied any role in deportation of Mr. Ibrahim Ali from Kenya.

Committee observations

The Committee observed that;

1. The sole intention of Mr. Kamlesh Pattni was to perpetually retain all the spaces at the duty free area at JKIA and MIA, either in the name of the WDF/DDF or through other associated companies with different names.
2. The Deed Settlement Agreement between KAA and WDF/DDF was never concluded in full because neither of the parties fulfilled the pre-conditions to meet their part of the bargain. This contributed to the current stalemate.
3. Mr. Kamlesh Pattni has not filed consent in court to set aside the Arbitral Award made by Hon. Justice (Rtd). E. Togbor.
4. During the negotiations on settlement Agreement Mr. Pattni participated as a director of WDF not for Suzan Duty Free.

5. Suzan Duty Free had no contractual relationship with KAA hence had no *locus standi* on any dealings in the matter.
6. WDF/DDF negotiated for ~~duty~~ free spaces at the airport only for it to relinquish the same space to Suzan Duty Free.
7. The leases and Deed Settlement negotiations all along were between Mr. Kamlesh Pattni, WDF/DDF and KAA. Suzan Duty Free was not party to the agreements at any point. It is therefore not clear how does Suzan Duty Free inherited the space awarded to WDF/DDF.
8. During the negotiations on the Settlement Agreement Mr. Kamlesh Pattni introduced Suzan Duty Free as a business partner.
9. It is not clear whether Suzan Duty Free and WDF/DDF companies share directorship.
10. The International Centre for Settlement of Investment Disputes based in Washington D.C found the contract ~~initially~~ signed in 1989 with GoK was procured illegally and had no force of law.
11. KAA continued to perpetuate an illegality by signing new contracts of exclusivity and monopoly of operation ~~at the~~ airports with other subsequent companies.

Way Forward

The Committee directed Mr. Pattni to submit the following information:-

1. An organized and logically arranged submission with annexes;
2. A copy of the signed court consent served to KAA restraining repossession/eviction WDF/DDF from JKIA;
3. Documentary evidence to prove that Suzan Duty Free bought shares from WDF/DDF,
4. A chronology of the change of names of the companies associated with him dealing in duty free business from the House of Perfume to date.

The information is to be submitted latest Thursday 30th July, 2015.

MIN. NO./PIC/648/2015: ANY OTHER BUSINESS

No other business arose

MIN. NO./PIC/649/2015: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at three minutes past five o'clock until 23rd July, 2015 at 10.00am.

Signed.....

(Chairman)

Date.....

27/8/2015

MINUTES OF THE 68TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 16TH JULY 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
 2. Hon. Sammy Silas Komen Mwaita, MP - Chaired the Session
 3. Hon. Adan Mohammed Nooru, MP
 4. Hon. Franklin Mithika Linturi, MP
 5. Hon. John Olago Aluoch, MP
 6. Hon. (Eng). John Kiragu, MP
 7. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
 8. Hon. Bernard Munywoki Kitungi, MP
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9. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
 10. Hon. Cornelly Serem, MP
 11. Hon. Ejidius Njogu Barua, MP
 12. Hon. John Ogutu Omondi, MP
 13. Hon. Mary Sally Keraa, MP

ABSENT WITH APOLOGY

14. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
15. Hon. Francis Mwanzia Nyenze, MP
16. Hon. Dr.Oburu Oginga, MGH, MP
17. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
18. Hon. Wafula Wamunyinyi, MP
19. Hon. Elias Bare Shill, MP
20. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
21. Hon. Abdullswamad Sheriff Nassir, MP
22. Hon. Beatrice Nkatha Nyaga, HSC, MP
23. Hon. Irungu Kang'ata, MP
24. Hon. Johana Kipyegon Ngeno, MP
25. Hon. Korei Ole Lemein, MP

ABSENT WITHOUT APOLOGY

26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

Hon. Major Marcus Muluvi, MP - Kitui East Constituency

COMMITTEE SECRETARIAT

Ms. Susan Maritim	-	Clerk Assistant I
Ms. Rose Wanjohi	-	Clerk Assistant II
Mr. Philip Lekarkar	-	Clerk Assistant III
Mr. Charles Atamba	-	Research Officer III

OFFICE OF THE AUDITOR GENERAL

Mr. Obed Chweya	-	Senior Manager, Audit
Ms. Tabitha N. Waweru	-	Acting Director, Audit
Mr. Philip Mutai	-	Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Gerald Mwangi	-	Assistant Inspector General(C)
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WITNESS: SOUTH EASTERN KENYA UNIVERSITY (SEKU)

Prof. Geoffrey Muluvi	-	Vice Chancellor, South Eastern Kenya University
Prof. Reuben Muasya	-	Deputy Vice Chancellor, Finance, Planning & Development
Mr. James Kiburi	-	Deputy Director, Min. of Education, Science & Technology, Alternate to PS- SEKU
Ms. Albina Kathambi	-	Assistant Chief Internal Auditor
Mr. Moffat Njoroge	-	Senior Accountant
Mr. E.M Kitati	-	Deputy Finance Officer

MIN. NO./PIC/562/2015: PRAYERS/PRELIMINARIES

The Chair called the meeting to order at half past ten o'clock. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP read the Prayer.

MIN.NO. /PIC/563/2015: CONFIRMATION OF MINUTES

Minutes of the 67th Sitting were confirmed as a true record of the proceedings as proposed by Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP and seconded by Hon. Mary Sally Keraa, MP.

MIN. NO./PIC/564/2015: MATTERS ARISING

Under Min. No./PIC/558/2015 on Objectives of the Tendering (iii), the word 'development' was misspelt.

MIN. NO./PIC/565/2015: INTRODUCTIONS

Self-introduction of all those present was conducted.

MIN NO./PIC/566/2015: PROCEDURAL MATTER

Under Standing Order 90, the following Members declared their interest in relation to Prof. Geoffrey Muluvi, Vice Chancellor, South Eastern Kenya University:-

1. Hon. Marcus Muluvi MP declared that Prof. Muluvi is his younger brother;
2. Hon. Bernard Kitungi MP declared that Prof. Muluvi is his close friend.

MIN. NO./PIC/566/2015: EVIDENCE BY SOUTH EASTERN KENYA UNIVERSITY MANAGEMENT ON AUDITED ACCOUNTS FOR FY 2010/2011 TO 2012/2013

Prof. Geoffrey Muluvi, Vice Chancellor, South Eastern Kenya University was accompanied by Prof. Reuben Muasya, Deputy Vice Chancellor, Finance, Planning & Development; Mr. James Kiburi, Deputy Director, Ministry of Education, Science & Technology, alternate to PS-SEKU; Ms. Albina Kathambi, Assistant Chief Internal Auditor; Mr. Moffat Njoroge, Senior Accountant and Mr. E.M Kitati, Deputy Finance Officer who appeared before the Committee to ~~adduce~~ evidence on the Report of the Auditor General on the University's financial statements for the financial years 2010/2011 to 2012/2013.

MIN. NO./PIC/567/2015: PARAGRAPH 1 OF THE FYS 2010/2011 TO 2011/2012 AND PARAGRAPH 2 OF FY 2012/2013 ACCOUNTS: PROPERTY, PLANT AND EQUIPMENT:

The Committee was informed that as previously reported, Property, Plant and Equipment of Kshs. 1,591,548,511 balance includes three (3) parcels of land under reference; LR No. 13529, LR No. 12970 and LR No. 209/10350 all valued at Kshs. 569,880,000 and against which the respective ownership documents are registered in the name of the defunct Ukamba Agricultural Institute Limited (UKAI). Similarly, the deeds for two other parcels under ref no. LR No. 13529 in Kitui and LR No. 12970 at Emali are held by various private individuals purporting to be directors of the Agricultural Institute. In addition, parcel reference; LR No. 13529 situated in Kitui and LR No. 209/10350 in Nairobi Milimani area are, under dispute. It is not possible to confirm ownership of the parcels of land and accuracy of the Property, Plant and equipment balance for the year.

Management Response

The Vice-Chancellor, South Eastern Kenya University (SEKU) informed the Committee that there has been dispute over the legal ownership over the three parcels of land, namely L.R No. 209/10350 (Nairobi); L.R No. 13529 (Kitui) and L.R. No. 12970 (Emali) that the University inherited, by virtue of clause 4 of the Legal Notice No, 102 of 15th July, 2008.

The legal dispute concerning the ownership and the efforts the University Management has undertaken to resolve the issue as detailed below:

(1) Land in Kitui - L.R. No. 13529

The University has physical possession over the land but the title document is currently held, by some former directors of Ukamba Agricultural Institute Limited (UKAI) who have adamantly refused to hand them over to them over to the University. The two cases relating to this parcel of land are shown below:

(a) HCCC NO. 107 OF 2010 (Machakos) - Muinde Masai & 314 others -vs- County Council of Kitui & South Eastern University College:

- (i) This case relates to the parcel of land known as L.R. No. 13529 in Kitui. The suit was filed by Maingi Mbinzu & 314 others claiming ownership of 9,500 acres of the 10,000 acres of land in Kitui.
- (ii) The suit was struck out by Lady Justice, B. Thuranira Jaden and orders dated 1/10/2013 issued to remove the plaintiffs from the land.
- (iii) The plaintiffs who were squatters on the land were removed by the University.
- (iv) There was an attempt by UKAI to obtain a loan from K. Rep Bank using the land in Kitui as collateral. However, this was intercepted by SEKU advocates who managed to have the bank's lawyers prepare a discharge of charge. The Bank proceeded to forward the discharge to UKAI for them to discharge the property.

(b) Petition No. 11 of 2010

- (i) The petition was filed by UKAI for purposes of quashing the Gazette Notice No. 102 of 2008 due to alleged breach of UKAI's fundamental rights to property as they alleged that the Legal Notice was issued without consulting them.
- (ii) The Matter was stayed pending the determination of HCCC No.136 of 2009 and the judge further ruled that the status quo relating to L.R. No. 20911 0350 (Nairobi) ; L.R. No. 13529 (Kitui) and L.R. 12970 (Emali) be maintained.

(2) Land in Nairobi - L.R. NO.209/10350

The ownership of this parcel of land has been in dispute. The University was in possession of the title fully endorsed by the registrar of Titles in the name of the University until 3rd July, 2015 when the National Bank of Kenya released the title to **Mr. Stephen Ndambuki Muli** and **Mr. Eric Mutinda Mutisya** who are officials of UKAI following a court order that was issued by the resident magistrate. The University had deposited the title with the National Bank for safe custody. The details of the legal dispute are as enumerated below:

(a) Miscellaneous Application No. 571 of 2015 - Ukamba Agricultural Institute Limited - Vs- National Bank Of Kenya Limited

- (i) This application was filed by the former directors of UKAI in the resident magistrate's court seeking for the release of the title document of L.R. NO. 209/10350, Nairobi from National Bank who were the custodians of the title document. The application was heard and orders issued ex-parte on 3rd July, 2015
- (ii) The Bank notified the University of the said Orders on 6th July, 2015.
- (iii) The University lawyers proceeded to seek for orders restraining the bank from releasing the title to the former directors. The University further wrote to the Bank to refrain from releasing the Title to persons who were not officials of the University.
- (iv) Despite the efforts of the University and its lawyers; the Bank proceeded to issue the title to the purported directors.
- (v) The University lawyers have managed to obtain further orders directing that the former Directors of UKAI produce the title document in court
- (vi) The University lawyers have managed to obtain further orders stating that the status quo in respect of L.R. No. 209/10350 be maintained.

(b) HCCC NO.136 OF 2009 - Ukamba Agricultural Institute Limited (UKAI) -Vs- South Eastern University College and City Council of Nairobi.

- (i) The plaintiffs (UKAI) moved to court seeking for a permanent injunction to have the South Eastern Kenya University College and the City Council of Nairobi restrained from interfering with the possession enjoyed by UKAI over L.R. No. 209/10350 situated in Upper Hill Nairobi.
- (ii) The interim application for injunctive reliefs was heard by Justice Nambuye who dismissed the application for injunction on the grounds that the former directors of UKAI had no authority to deal with the properties of UKAI.
- (iii) The main suit is still pending in court and both parties have filed their submissions awaiting the determination by the court.

(c) Petition No. 96 of 2012

- (i) The petition was filed by South Eastern University College seeking for orders that their rights to property and fair administration action had been denied and violated by the Registrar of Titles who had threatened to cancel the entry of the Legal Notice No. 102 of 2008 against L.R. No. 209/10350.

- (ii) A ruling was delivered by Justice Majanja on 29th March 2012 restraining the Registrar of Titles from issuing any provisional title or permitting any dealings in any manner whatsoever with L.R. No. 209/10350 and the orders were to remain in force until 25th April 2012. The orders were extended to 17/7/2012.
- (iii) The University lawyers have made several attempts to ascertain the status of the application at the lands office to no avail.

(d) Petition No. 11 of 2010

- (i) The petition was filed by UKAI for purposes of quashing the Gazette Notice No.102 of 2008 due to alleged breach of UKAI's fundamental rights to property as they alleged that the Legal Notice was issued without consulting them.
- (ii) The Matter was stayed pending the determination of HCCC. No.136 of 2009 and the judge further ruled that the status quo, relating to L.R. No. 209/10350 (Nairobi); L.R. No.13529 (Kitui) and L.R. No.12970 (Emali) be maintained.

(e) Miscellaneous Application No. 578 Of 2010 - In The Matter of LR. No.209/10350 Nairobi - Ukamba Agricultural Institute Limited -Vs- National Bank of Kenya Limited.

- (i) The application was filed by UKAI seeking for orders that National Bank Ltd who were the custodians of the title document with respect to L.R. No. 209/10350 surrender the document to Mr. Stephen Muli, the Chairman of UKAI.
- (ii) The application was dismissed by the then Judge, Kalpana Rawal.

(f) HCCC NO. 172 OF 2012 - Dubai Bank Kenya Limited -Vs- Ukamba Agricultural Institute Limited.

- (i) Despite several suits pending in court, the former directors of UKAI attempted to sell and transfer L.R. NO. 209/10350 (Nairobi) to Dubai Bank Ltd.
- (ii) After UKAI failed to complete the transaction, Dubai Bank Ltd Directors filed a suit before the High Court for orders to compel UKAI to complete the said transaction, failure to which a vesting order would be issued for the Registrar of Titles to compel him to register the transfer (Upon service of the pleadings, UKAI did not appear in court and a vesting order was issued by Hon. Justice Ogolla, Ex-parte.
- (iii) Upon learning of the order, through a resolution of council, the University lawyers sought to be enjoined as an interested party in the suit and the case is pending in court.

(3) Land in EMALI - L.R. NO. 12970

The University is not in possession of the title document. The legal title to the land is in the hands of the former UKAI directors who have also refused to issue the same to the University. It has also written to the Cabinet Secretary, Ministry of lands, Housing and Urban Development and the Chairman, National Land Commission seeking for their assistance in obtaining new grants for its parcels of land.

The land is subject to one suit, namely:

a) Petition No. 11 of 2010

- (i) The petition was filed by UKAI for purposes of quashing the Gazette Notice No. 102 of 2008 due to alleged breach of UKAI's fundamental rights to property as they alleged that the Legal Notice was issued without consulting them.
- (ii) The Matter was stayed pending the determination of HCCC. No.136 of 2009 and the judge further ruled that the status quo relating to L.R. No. 209/10350 (Nairobi); L.R. No.13529 (Kitui) and L.R.12970 (Emali) be maintained.

4. OTHER INTERVENTIONS

The Vice- Chancellor, SEKU informed the Committee that other than the court cases, the University has sought for assistance from various avenues in order to safeguard its parcels of land, namely:

- (i) It has through its lawyers, written to the Chief Justice seeking his assistance to fast-track the determination of HCCC 136 of 2009 to enable the other cases pertaining to the University land to be determined.
- (ii) It has also written to the Cabinet Secretary, Ministry of Lands, Housing and Urban Development and the Chairman, National Land Commission seeking their assistance in obtaining new grants for its parcels of land. The Chairman of the National Land Commission has responded and affirmed their commitment in resolving the issue since they are vested with power to deal with public land.
- (iii) The University reported the purported sale of the L.R. No. 209/10350 to the Director, Criminal Investigation Department vide letter dated 28th November, 2012
- (iv) The University also wrote to the Permanent Secretary, Ministry of Higher Education (as it was then) on 5th November, 2012 informing them of the same.

Committee Queries & Management Response

The Committee raised queries and received responses as follows:

- (i) **Has the National Land Commission responded to the University letter dated 10th March 2015?**

Response: No, the National Land Commission is yet to respond to letter.

- (ii) **Who conducted the land valuation of the university land?**

Response: The valuation of both land and buildings was conducted by government valuer.

- (i) **Explain the process leading to change of UKAI to SEKU and the reluctance by former UKAI Board of Directors to hand over titles to the management of SEKU.**

Response: UKAI was set up in the 1970s as a training institute, with a governing structure which comprised of a Board of Trustees on whom was vested the land and assets and a Board of Directors who did the daily running of the institute. The County Council of Kitui granted UKAI 10,000 acres held in trust. The Board of Trustees together with the local leaders requested for an upgrade to a constituent College of University of Nairobi, which was granted in 2008. UKAI was then dissolved vide Legal Notice No 102 (4) of The University of Nairobi Act (Cap 210) of 2008 and all rights, liabilities and assets which they held were automatically conferred on SEKU. Further, the land in Makueni had also been granted by the Makueni County Council.

It is thus not clear why UKAI Directors continue to lay claim to the SEKU land while the Institute was legally dissolved and all rights transferred to SEKU.

- (ii) **What action did the University take on the matter of Dubai Bank filing a suit to compel transfer of title for land that UKAI had attempted to sell with a copy of the title?**

Response: the University complained to the Judicial Service Commission on the matter of Dubai Bank but were yet to receive any response. They had also requested to be enjoined in the suit by Dubai Bank as an interested party.

- (iii) **Which action did the University management take when it learnt that the National Bank of Kenya gave the original title LR.No. 209/10350 to the Directors of UKAI because of a court order yet it was registered in SEKUs name who had deposited it with them?**

Response: Initially when they were informed that the court order had been issued to give the title LR. No. 209/10350 for land in Nairobi, held by National Bank of Kenya, they requested and received a stay in the orders but delivered them to the

Bank at around 5:00pm by which time the Bank had already discharged the original title to the Directors of UKAI.

(iv) Does SEKU have a legal department?

Response: Yes, SEKU has a lawyer who is charged with handling all University legal matters.

Committee Resolutions

The Committee resolved:

- 1) The management provides a brief on how Ukamba Agricultural Institute Limited (UKAI) came into existence and how it changed to South Eastern Kenya University.
- 2) The management was also requested to submit to the Committee a copy of the valuation report.
- 3) That the following persons be invited to adduce additional evidence on the land issues facing SEKU:
 - (i) Managing Director, National Bank of Kenya to explain the matter of the title LR. No. 209/10350.
 - (ii) Chairman, National Land Commission.
 - (iii) Cabinet Secretary, Ministry of Land, Housing & Urban Development
 - (iv) Directors of Ukamba Agricultural Institute Limited
 - (v) Trustees of Ukamba Agricultural Institute Limited.

MIN. NO./PIC/568/2015:

**PARAGRAPH 1 OF THE FY 2012/2013 ACCOUNTS:
ACCURACY OF FINANCIAL STATEMENTS**

The Committee heard that, the University did not maintain proper books of account including the general ledger and subsidiary ledgers during the year. The trail balance was therefore prepared from schedules whose accuracy, reliability and completeness could not be ascertained. Further, the statement of cash flows incorrectly includes under cash flow from investing activities, prior year adjustments on work in progress of Kshs. 10,737,105. Also, Government grants on capital projects are incorrectly reflected as having decreased by Kshs. 42,877,574 instead of capital grants received of Kshs. 233,412,699. Consequently, it has not been possible to confirm accuracy and completeness of the of the University's financial statements for the year.

Management Response

The Vice-chancellor, SEKU informed the Committee that the University did not keep complete books of accounts. The Schedules used to extract the trial balance were supported by the cash

book. However, due to challenges associated with manual record-keeping, an ERP system was procured in August 2013 to automate the financial system. The new system automatically generates financial statements, trial balance and general ledger. The inclusion of Kshs. 10,737,105 in the cash flow statement denotes adjustments to work in progress that had previously been overstated in FY 2011/2012. The overstated work in progress as shown in the schedule for property, plant and equipment under note 14 was paid using subsequent certificates in the FY 2012/2013 which directly impacted on the cash flow statement.

Government grants on capital projects were incorrectly reflected as having decreased by ~~Kshs. 42,877,574~~ instead of capital grants received of Kshs. 233,412,699. However, this amount was decreased capital grants in the movement of the accumulated fund between ~~Kshs. 1,527,269,335~~ and Kshs. 1,570,146,910 for the FYs 2012/2013 and 2011/2012 respectively.

Committee Observation

The Committee observed that most of the queries raised had been addressed except the matter of the government grants which were yet to be adjusted.

Management Response to the Committee observation

The Vice- Chancellor, in response to the Committee observation, informed them that the adjustments would reflect in the FY 2013/2014 report.

MIN. NO./PIC/569/2015: PARAGRAPH 3 OF FY 2012/2013 ACCOUNTS: PRIOR YEAR ADJUSTMENTS

The Committee heard that the financial statements reflected under Note 18 were prior year adjustments of Kshs. 276,290,274 made on capital fund during the year under review. However, no detailed analysis or supporting documents were made available for audit confirmation.

Management Response

The Vice- Chancellor, SEKU, informed the Committee that the contractors' pending payments amounting to Kshs. 90,290,274 which had been accrued as part of the capital grant due from the government had to be adjusted in accumulated funds. In addition, liquidation of short term investments amounting to Kshs. 180,000,000 in the form of call deposits had been erroneously recognized through the capital grant account in the FYs 2010/2011 and 2011/2012. The Kshs. 96,290,274 and Kshs. 180,000,000 which total to Kshs. 276,290,274 was adjusted to the accumulated funds to reflect the actual amount, which is disclosed in note no. 18 of the financial statements.

The Committee concluded taking evidence on the matter.

**MIN. NO./PIC/570 /2015: PARAGRAPH 4 OF FY 2012/2013 ACCOUNTS:
FINANCIAL IMPROPRIETIES**

The Committee heard that the financial statements reflect under note 7, administrative expenses of Kshs. 95,737,349 which includes Kshs. 19,294,906 spent on transport and fuel expenses. However, fuel amounting to Kshs. 1,596,801 drawn by motor vehicles serving various campuses was not supported by work tickets or detail orders. In addition, fuel worth Kshs. 338,345 drawn by various vehicles attached to various campuses could not be traced to the work tickets of the respective motor vehicles. Consequently the propriety of the expenditure of Kshs. 1,935,146 included in administration expenses could not be confirmed.

Management Response

The Vice- Chancellor, SEKU, informed the Committee that ~~there was~~ no financial impropriety. Work tickets not available during the period of audit were ~~later~~ availed. Further, some of the work tickets had been confiscated by the Government Vehicle Check Unit.

The Committee concluded taking evidence on the matter.

**MIN.NO./PIC/ 571/2015: PARAGRAPH 5 OF FY 2012/2013 ACCOUNTS:
UNSUPPORTED EXPENDITURE**

The Committee heard that a total of Kshs. 7,057,962 spent on additions to furniture/equipment and computers/accessories at Kshs. 5,370,040 and Kshs. 1,687,922 respectively, were not supported with payment voucher or invoices. Also, a fixed assets register was not produced for audit review. As a result, propriety of the expenditure could not be confirmed.

Management Response

The Vice-Chancellor, SEKU, informed the Committee that assets procured during the year amounting to Kshs. 1,687,922 and Kshs. 5,370,040 being acquisitions of computers and office furniture, fittings and equipment respectively having supporting documents in the form of payment vouchers, Goods Received Notes and Minutes of the relevant procurement and tender committee.

The Committee concluded taking evidence on the matter.

MIN. NO./PIC/572/2015: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/573/2015: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at five minutes to twelve o'clock.

Signed.....

(Chairperson)

Date.....

21st July 2015

**MINUTES OF THE 67TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY, 14TH JULY 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS
AT 10:00 A.M.**

PRESENT

1. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
2. Hon. Francis Mwanzia Nyenze, MP
3. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. (Eng.) John Kiragu, MP
6. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. Bernard Munywoki Kitangi, MP
9. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP

10. Hon. Cornelly Sereni, MP
11. Hon. John Muchiri Nyaga, HSC, MP
12. Hon. John Ogutu Omondi, MP
13. Hon. Korei Ole Lensen, MP
14. Hon. Mary Sally Keraa, MP

ABSENT WITH APOLOGY

15. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
16. Hon. Dr. Oburu Oginga, MGH, MP
17. Hon. Wafula Wamunyinyi, MP
18. Hon. Elias Bare Shill, MP
19. Hon. John Olago Aluoch, MP
20. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
21. Hon. Abdullswamad Sheriff Nassir, MP
22. Hon. Irungu Kang'ata, MP
23. Hon. Johana Kipyegon Ngeno, MP
24. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITHOUT APOLOGY

25. Hon. Adan Mohammed Nooru, MP
26. Hon. Franklin Mithika Linturi, MP
27. Hon. Ejidius Njogu Barua, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|---------------------|---|----------------------|
| Ms. Susan Maritim | - | Clerk Assistant I |
| Ms. Rose Wanjohi | - | Clerk Assistant II |
| Mr. Philip Lekarkar | - | Clerk Assistant III |
| Mr. Peter Mwaura | - | Legal Counsel I |
| Mr. Charles Atamba | - | Research Officer III |

OFFICE OF THE AUDITOR GENERAL

Mr. Obed Chweya - Senior Manager, Audit
Mr. John Wangila - Manager, Audit
Mr. Geoffrey Wandabwa - Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Isaac Odek - Senior Assistant Inspector General

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

WITNESSES PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Mr. Maurice Juma - Director General
Mrs. Rose Nyamweya - General Manager Finance and Administration
Mrs. Jane Njoroge - General Manager, Technical Services
Peter Wangai - Compliance Officer

MIN. NO./PIC/550/2015: PRAYERS

The Chair called the meeting to order at twenty minutes past ten o'clock. Hon. Korei Ole Lemein, MP read the Prayer.

MIN. NO. /PIC/551/2015: CONFIRMATION OF MINUTES

Minutes of the 66th Sitting were confirmed as a true record of the proceedings as proposed by Hon. Korei Ole Lemein, MP and seconded by Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP.

MIN. NO./PIC/552/2015: MATTERS ARISING

Under the list of attendance it was noted that the designations of Mr. Stephen Karani Karanu and Mr. Omae Nyarandi were interchanged. Mr. Stephen Karani Karanu is Audit Manager, Office of the Auditor General while Mr. Omae Nyarandi is the General Manager Corporate Services, Kenya Ports Authority.

MIN. NO./PIC/553/2015: INTRODUCTIONS

Self-introduction of all those present was conducted.

In attendance from Public Procurement & Oversight Authority were Mr. Maurice Juma, the Director General, Mrs. Rose Nyamweya, General Manager Finance & Administration, Mrs. Jane Njoroge, General Manager, Technical Services and Mr. Peter Wangai Compliance Officer.

MIN. NO./PIC/554/2015:

**EVIDENCE BY DIRECTOR GENERAL PUBLIC
PROCUREMENT OVERSIGHT AUTHORITY**

The Director General Public Procurement Oversight Authority (PPOA) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the Financial Years 2008/2009 to 2013/2014 and Development and Management of the Master Concessionaire at the New Jomo Kenyatta International Airport (JKIA) Terminal Unit 4- Re-tender.

MIN. NO./PIC/555/2015:

**UNQUALIFIED REPORTS FOR THE FINANCIAL YEARS
2008/2009 - 2011/2012 and 2013/2014**

The Committee heard that the Authority was established on 1st January 2007 when the Public Procurement and Disposal Regulations (PPDR), 2006 came into operation. The first audited financial statements were for 2008/2009 financial year which included comparative figures for 2007/2008. In the financial years 2008/2009 to 2011/2012 and 2013/2014 the Authority received unqualified audit reports.

MIN. NO./PIC/556/2015:

CAPITAL GRANTS FINANCIAL YEAR 2012/2013

Audit Query

The Committee heard that included in the Authority's financial statements for the year ended 2012/2013 is capital grants totaling to Kshs. 43,661,026 as disclosed in under note 13, however these grants which relates to the assets transferred by the Treasury to the Authority in the 2008/2009 financial year have not been accounted for as per the International Accounting Standards number 20 which require such grants to be reflected initially as deferred income and systematically recognized as income over the useful life of the related assets or by deducting the grants from the fair value of the assets and systematically reducing it from the depreciation expense over the useful life of the related assets.

Further, no disclosures have been made on the accounting policy adopted in the presentation of the grants in the financial statements, contrary to Section 39 (a) of the standard which requires such disclosures to be made. In the circumstances it has not been possible to confirm the accuracy of the carrying value of the grants totaling to Kshs. 43,661,026 as at 30th June, 2013.

Management Response

The Director General informed the Committee that the capital grants were not treated in the proper way and that the Authority sought concurrence of the Auditor General for correcting the error. In line with IAS 20, The Authority proposed to account for the grant by deducting it from the fair value of the asset and systematically reducing it from the depreciation expense over the useful life of the related assets in a letter to the Auditor

General Ref. PPOA 1/28 Vol. III (8) of 10th February 2014. The Authority confirmed that if the Auditor General concurred with the proposed treatment, the Authority would disclose the accounting policy adopted in the presentation of the grants in the financial statements. The Authority further followed up for the concurrence of the proposed treatment through letters Ref. PPOA/28 VOL. I/91 dated 9th April, 2014, PPOA1/28 VOL. III (12) dated 21st May, 2014 and PPOA1/28 VOL. 1/93 dated 9th September 2014.

The Auditor General clarified that the correctness of the proposed treatment could only be confirmed in the subsequent year's audit. In the audit of the financial year 2013/2014 it was confirmed that the financial statements were ~~presented~~ fairly in all material aspects, the financial position of the Authority, its performance and cash flows for year then ended 30th June 2014 were in accordance with the International Public Sector Accounting Standards and complied with the Public Procurement and Disposal Act, 2005.

The Committee observed that;

- 1. The Authority has been recording surpluses in their financial statements during the years it has been in operation.**
- 2. The Authority was given a qualified opinion in the 2012/2013 financial year due one treatment in the entire set of accounts which could have been resolved and corrected upon consultation with the Office of the Auditor General.**

The Committee directed the Office of the Auditor General to ensure that audited entities adjust their financial statements during the period of audit or immediately after the audit on issues that can be resolved instead of giving the entities qualified opinion to be corrected in the subsequent year.

On the surplus recorded by the Authority, the Director General informed the Committee that the surplus is as a result of the funds not spent because of the minimal activities during the initial stages of its inception. The surplus funds are not returned to the National Treasury but is retained and used to meet the budget shortfall in the subsequent year due to inadequate budget allocation from the Exchequer. The surplus will be cleared and will not be reflected in the next financial statements due to;

- a) Increased responsibility arising from the expanded mandate of oversight of procurements in the county governments;
- b) Need for replacement of depreciated assets;
- c) Setting up Regional offices across the country; and
- d) Motivation of staff being a regulator and an oversight institution.
- e) Enhancing capacity to carry out procurement audits of public entities on application of the procurement regulations including compliance to the requirement of 30% allocation of tenders to the youth.

MIN. NO./PIC/557/2015: EVIDENCE ON PROCUREMENT PROCESS OF INTEGRATED CUSTOMS MANAGEMENT SYSTEM (iCMS) TENDER BY KENYA REVENUE AUTHORITY.

The Director General PPOA informed the Committee that there was an appeal that was lodged with the Public Procurement Review Administrative Board on the matter. Hearing was done on 13th July and the ruling was due to be made on 14th July in the afternoon hence a comprehensive report on the matter can only be issued after the decision has been made.

The Committee requested the Director General to furnish it with a copy of the Public Procurement Review Administrative Board on the matter on or before Friday 17th July 2015.

MIN.NO./PIC/558/2015: DEVELOPMENT AND MANAGEMENT OF THE MASTER CONCESSIONAIRE AT THE NEW JOMO KENYATTA INTERNATIONAL AIRPORT (JKIA) TERMINAL UNIT 4 RE-TENDER.

The Director General PPOA informed the Committee that;

Kenya Airports Authority (KAA) wished to engage a reputable Duty Shops developer and operator to manage its duty free offering at the new JKIA Terminal Unit 4. The successful tenderer was expected to develop the facility at JKIA at their own costs, as per the plans to be submitted and approved by KAA. The initial contract was for 10 years with an option for renewal for a further term not exceeding 5 years.

The objectives of the tender were:

- (i) Creation of a new retail experience for passengers at JKIA by maximizing on commercial offering by creating a retail platform to showcase any brands, new products and better services at competitive prices.
- (ii) Boost its non-aeronautical portfolio by generating additional revenues from the new duty free operations.
- (iii) Boost the economy as the development was expected to inject over USD. 2 billion into the national economy. The development was also expected to generate over 100 jobs.

The procurement was initiated through advertisement notices dated 4th and 7th October, 2013. Tenders were opened on 25th October, 2013 where ten (10) bidders submitted their bids.

The evaluation was carried out and an evaluation report prepared with recommendation to award the tender to M/S NUANCE GROUP AG at USD. 120,000 and a concession rate of 12.5

on net sales. The Tender Committee awarded the tender as recommended by the Evaluation Committee.

The award of the tender was challenged at the Public Procurement Administrative Review Board (Review Board) by UNIFREE Duty Free, SUZAN General Trading JTL, Flemingo International (BVI) Ltd and Dufry International AG. Upon hearing the parties and reviewing the procurement records availed by KAA, the Review Board annulled the award and directed the Procuring Entity to re-tender afresh. The successful bidder M/S NUANCE GROUP AG moved to the High Court for judicial review (Misc. Application No. 463 of 2013). The application was withdrawn by the applicant before hearing and KAA re-started the procurement afresh.

Procurement Process

The tender was re-advertised on 26th and 28th March, 2014 in the Daily Nation Newspaper and the Standard Newspaper respectively. According to the tender notice, the initial deadline for submission of tenders was 18th April at 10:00am. However, the deadline for submission /opening date of the tender was extended through addenda Nos. 1 to 9 from 18th April, 2014 to 8th July, 2014.

The technical proposals were opened in the presence of the bidders' representatives on 18th July, 2014. The Tender Opening Committee members comprised Maltida Jepkosgei, Nelson Obwoye, Sammy Kemboi, Lawrence Amima and Jane Kamau. Out of 28 firms that bought the tender documents, the following five (5) firms responded:

1. Dufry International AG
2. Atu Turizm Isletmeciligi A. S
3. AER Rianta International (ARI)
4. Paragon Holdings
5. Flemingo International (BVI) Ltd

Evaluation

Evaluation was conducted by a Committee of four members namely Anthony Kulei, Wilfred Ndegwa, Margaret Muraya and Martin Kamau. The process was conducted in three stages; preliminary, technical and financial evaluation stages.

Preliminary Evaluation

Preliminary Evaluation was based on the criteria set out under 2.20 of the Appendix to Instructions to tenderers to determine the responsiveness of the tenders to the mandatory requirements which included: Tender Security, Dully filled declaration form, Certificate of Incorporation, Original and Copy of Tender Documents, Confidential Business Questionnaire, Litigation History, Audited accounts 2010, 2011 and 2012, Power of Attorney and Joint Venture Agreement.

Two bidders namely Paragon Holdings and Flemingo International (BVI) Ltd were disqualified for failing to meet some of the tender requirements. According to the Evaluation Report, Paragon Holdings did not use the correct tender document while Flemingo International (BVI) Ltd provided audited accounts for 2012 and 2013 instead of audited accounts for 2010, 2011 and 2012; Flemingo Duty Free Shop Mumbai Private Ltd; one of the subsidiaries, did not provide audited accounts; and the other subsidiary Flemingo International Ltd did not provide other documents as required By clarification No. 2 namely Registration /Incorporation Certificate, dully filled Confidential Business Questionnaire form, dully filled declaration form, dully filled litigation history form and detailed company profile. They only provided audited accounts.

Three bidders Dufry International AG, Atu Turizm Isletmeciligi A. S and AER Rianta International (ARI) met the mandatory requirements and therefore qualified for the technical evaluation.

TECHNICAL EVALUATION

Technical Evaluation was conducted in two stages as follows:

Part A: Technical Mandatory Requirements

The evaluation criteria and the results were as follows:

1. Ability to access funds necessary for investment of at least USD 5.0 million;
2. Minimum annual turnover of not less than USD 50 million for 2010, 2011 and 2012;
3. Experience and capacity to develop and operate duty free shop (Minimum experience of 3 years):
 - a) Reference letters for each airport
 - b) Copies of leases/ agreements/contracts

AER Rianta International (ARI) was disqualified at this stage for failing to provide evidence and capacity to develop and manage duty free shops under a single master license. They also did not provide evidence of having operated three airports with annual passenger traffic of at least 7 million.

The other two bidders Dufry International AG and Atu Turizm Isletmeciligi A. S were qualified to move to the next stage of technical evaluation.

Part B: Technical Mandatory Requirements

In this stage evaluation was based on the following criteria;

- | | |
|----------------------------|------------|
| 1. Experience | - 10 marks |
| 2. Concept and fit out | - 15 marks |
| 3. Brand and products line | - 25 marks |

- | | |
|--|------------|
| 4. Marketing plan | - 4 marks |
| 5. Customer standards and quality control | - 6 marks |
| 6. Management and operation | - 15 marks |
| 7. Financial performance , EPOS and recording system | - 10 marks |

According to the evaluation report, Dufry International AG and Atu Turizm Isletmeciligi A. S scored 85.45% and 84% respectively and therefore qualified for financial evaluation having attained the cut-off score of 70 out of 90. The evaluation report is dated 18th July, 2014.

Tender Adjudication

The evaluation report was presented to the Tender Committee in its meeting held on 31st July, 2014. The Committee rejected the recommendation of the Evaluation Committee and directed the committee to re-evaluate all the technical proposals. This was based on the concerns raised by Flemingo International BVI Ltd and Aer Rianta International who objected the results of the evaluation.

Re-evaluation

Paragon Holdings was disqualified at the preliminary failing to use the revised tender documents. The revised tender documents were issued through the addendum No. 9 of 18th June, 2014. The other 4 bidders qualified for technical evaluation.

Technical Evaluation

The technical evaluation was repeated using the same evaluation criteria as in the first evaluation. All the 4 bidders were found responsive in the technical evaluation having attained the cut-off score of 70 marks out 90 and therefore proceeded to the financial evaluation.

Financial Evaluation

The financial evaluation comprised of two parts, minimum annual guarantee subject minimum of USD 120, 000 exclusive of taxes and a license fee of at least 20% based on gross annual sales. The financial proposals accounted for 10 marks.

The financial proposals were opened on 12th August, 2014 in the presence of bidders' representatives. The financial proposals were as follows:

No.	Bidder's Name	Amount quoted (USD)	Technical Scores
1	Dufry International AG	3,500,000	83.61
2	Atu Turizm Isletmeciligi A. S	4,126, 000	78.2
3	AER Rianta International (ARI	2,000, 000	87.2
4	Flemingo International (BVI) Ltd	3, 765, 420	79.3

The technical scores and financial proposals were combined using the formula provided in the tender documents. The formula was as follows:

Final Score (100) = Technical Score + Financial score (where the maximum score of 10 marks on the financial scores were on pro-rata basis)

The scores were as follows:

No.	Bidder's Name	Technical Scores	Amount quoted (USD)	Maximum financial proposal	Financial score pro-rata	Final score	Ranking
1.	Dufry International AG	83.61	3,500,000	4,126,000	8.482	92.09	1
2.	Atu Turizm Isletmeciligi A. S	78.2	4,126,000	4,126,000	10	88.2	2
3.	AER Rianta International (ARI	87.2	2,000,000	4,126,000	4.847	92.05	3
4	Flemingo International (BVI) Ltd	79.05	3,765,420	4,126,000	9.126	88.16	4

Recommendation

The Evaluation Committee recommended the award of the tender to Dufry International at an annual guarantee of USD 3.5 million per annum exclusive of taxes subject to an annual license fee at the rate of 20% on annual gross sales on account of having the highest combined technical and financial score.

Tender Award

In its meeting held on 14th August, 2014 the tender committee concurred with the recommendation of the Evaluation Committee and awarded the tender to Dufry International A. G

Notification of Award

The successful and unsuccessful bidders were notified vide letters dated 15th August, 2014. The unsuccessful bidders except Paragon Holdings were informed the reasons why their tenders were not successful.

Prior to signing the contract, the Flemingo International BVI and Atu Turizm Isletmeciligi A. S lodged requests for review Nos. 34/2014 and 35/2014 respectively at the Review Board. The requests were dismissed by the Review Board.

At the same time Suzan General Trading JTL moved to the High Court and lodged Judicial Review No. 339/2014 on the ground that the Procuring Entity did not comply with the

decision of the Review Board to retender the and enlarge the specifications to make them more inclusive. The Court dismissed the matter.

Contract

The Procuring Entity and the successful bidder entered into a written contract agreement. The contract is dated 15th October, 2014 and was for an initial 10 year renewable for a further 5 years subject to satisfactory performance.

PPOA observed the following on the Tender

1. Evaluation was not concluded within 15 days as prescribed by Regulation 5 (4)(b) of the Public Procurement and Disposal (Amendment) Regulations, 2013. There is no evidence presented to PPOA showing that the Accounting Officer extended the tender evaluation period pursuant to Regulation 14(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
2. The Tender Committee did not award the tender within the 30 days after the tender opening as envisaged by Regulation 18(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
3. Paragon Holdings did not use the revised tender documents and therefore, the Evaluation Committee disqualified their tender at the preliminary evaluation stage. The decision of the Evaluation Committee was punitive to the bidder since they ought to have evaluated their tender using the criteria that was in the tender document and make a decision on whether to accept or reject it based on the outcome of the evaluation.
4. According to the first evaluation report, Flemingo International (BVI) Ltd submitted audited accounts for 2012 and 2013 instead of 2010, 2011 and 2012. Further Flemingo Duty Free Shop Mumbai Private Ltd did not submit audited accounts for the required period 2010, 2011 and 2012. Their tender was therefore disqualified. However upon review of the tender document, PPOA noted that Flemingo Duty Free Shop Mumbai Private Ltd had submitted audited accounts for 2011 and 2012 though this could not make their tender responsive since the requirement was audited accounts for 2010, 2011 and 2012.
5. In the second evaluation, the failure to meet the requirement on submission of audited accounts by Flemingo International BVI and Flemingo Duty Free Shop Mumbai Private Ltd as indicated in paragraph 4 above was considered minor deviation. The Evaluation Committee erred by considering a mandatory requirement a minor deviation contrary to Section 64 (1) of the Public Procurement and Disposal Act, 2005 that *a tender is responsive if it conforms to all the mandatory requirements in the tender documents*.

Conclusion

Based on the analyzed documents submitted by KAA to PPOA, the non-compliance issues highlighted above may not have materially affected the outcome of the tendering process. For instance, the requirement on submission of audited accounts was considered a minor deviation during the second evaluation, Flemingo International BVI who benefited from the waiver did not emerge as the lowest evaluated bidder.

However, it is not clear why KAA opted for a combined score criteria of evaluation, hence combining technical with financial score, where a maximum score of 10 marks on financial scores were on pro-rata basis. This is a method commonly used in Request for Proposals. All the 4 bidders qualified on technical evaluation having attained a cut-off 70 out of 90 marks. If the financial proposals were evaluated independently from the technical proposals, then the Procuring Entity would have earned USD 626, 000 more (4,126, 000 - 3, 500,000), which is the price difference between the highest price bid Atu Turizm Isletmeciligi A. S and Dufry International AG who was awarded the contract.

Committee Observations

The Committee observed that;

1. The contract was for a specified surface area of the duty free shops and would not have been in order to vary the area tendered for and seek to allocate part the space to somebody else. This is inconsistent with the tendering conditions particularly if the area was specified in the bid documents.
2. The Procuring Entity applied quality cost-based selection method by combining technical and financial evaluation as opposed to least cost-selection method which led to loss of USD 626, 000. This method is normally used for consultancy services and request for proposals.
3. Prudence and good thought was never applied while drawing the criteria of evaluation in the tender documents thus the Procuring Entity failed to get the best value for money. The objective of the tender should have been to get the best price.

Report by the Inspectorate of State Corporations on KAA Duty Free Master Concessionaire Tender

Mr. Isaac Odek Senior Assistant Inspector General (Inspectorate of State Corporations) informed the Committee that:

1. The Inspectorate prepared a Report on the Master concessionaire at the new JKIA Terminal unit 4 at the request of the National Treasury and State Corporation Advisory Committee.

2. The contract initially signed on 15th October 2014 contained contentious clauses not suitable for the country. KAA was tasked by the Ministry to address the issues and report to the KAA Board before re-doing the contract. KAA altered the clauses and signed a second contract with Dufry International Ltd on 15th January, 2015 which is currently in force.
3. Mr. Kamlesh Pattni failed to meet his part of the agreement including withdrawal of Kshs. 5 billion arbitral award, additional costs for damages and of the cases in court.
4. The tender documents used by KAA in tendering for the contract had several flaws and KAA did not disclose full information on the nature of the agreement that gave a leeway for inclusion of the contentious clauses.

The Committee requested the Inspectorate to submit a copy of the report to the Committee on or before Thursday 16th July, 2015.

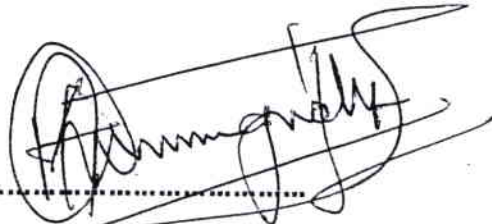
MIN. NO./PIC/559/2015: RESCHEDULING OF MEETINGS

Because of the engagement of several Committee members in other functions on Wednesday 15th July, 2015, the Committee resolved to reschedule all the meetings scheduled for the same date.

The Committee also resolved to reschedule the meeting with the Kenya Revenue Authority until the Committee receives the PPRAB ruling on the iCMS tender.

MIN. NO./PIC/560/2015: ADJOURNMENT

There being no other business, the Chair adjourned the meeting at two minutes past noon until Thursday 16th July, 2015 at 10:00 am.

Signed.....
(Chairperson)

Date.....

MINUTES OF THE 61ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 23RD JUNE, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairman
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairman
3. Hon. Dr. Oburu Oginga, MGH, MP
4. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
5. Hon. Elias Bare Shill, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. John Olago Aluoch, MP
8. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP

9. Hon. (Eng.) John Kiragu, MP
10. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
11. Hon. Abdullswamad Sheriff Nassir, MP
12. Hon. Beatrice Nkatha Nyaga, HSC, MP
13. Hon. Bernard Munywoki Kitungi, MP
14. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
15. Hon. Cornelly Serem, MP
16. Hon. Ejidius Njogu Barua, MP
17. Hon. Irungu Kang'ata, MP
18. Hon. John Muchiri Nyaga, HSC, MP
19. Hon. John Ogutu Omondi, MP
20. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

21. Hon. Wafula Wamunyinyi, MP

ABSENT WITHOUT APOLOGY

22. Hon. Francis Mwanzia Nyenze, MP
23. Hon. Adan Mohammed Nooru, MP
24. Hon. Franklin Mithika Linturi, MP
25. Hon. Johana Kipyegon Ngeno, MP
26. Hon. Korei Ole Lemein MP
27. Hon. Mary Sally Keraa, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|---------------------|---|----------------------|
| Ms. Susan Maritim | - | Clerk Assistant I |
| Ms. Rose Wanjohi | - | Clerk Assistant II |
| Mr. Philip Lekarkar | - | Clerk Assistant III |
| Mr. Peter Mwaura | - | Legal Counsel I |
| Mr. Charles Atamba | - | Research Officer III |

MIN.NO./PIC/489/2015: PRAYERS

The Chair called the meeting to order at thirty minutes past Ten o'clock. Hon. Abdullswamad Sherriff Nassir, MP said the Prayer.

MIN.NO. /PIC/490/2015: PRELIMINARIES/INTRODUCTIONS

The Chair welcomed the delegation to Washington DC back home and requested that the Study Visit Report is prepared and tabled before the short recess scheduled for 10th July 2015.

MIN.NO. /PIC/491/2015: CONFIRMATION OF MINUTES

Minutes of the 40th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP and Seconded by Hon. Elias Bare Shill, MP

Minutes of the 41st Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Bernard Munywoki Kitungi, MP and Seconded by Hon. John Ogutu Omondi, MP

Minutes of the 42nd Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Beatrice Nkatha Nyaga, HSC, MP and Seconded by Hon. Cornelly Serem, MP

Minutes of the 43rd Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP and Seconded by Hon. Onesmus Muthomi Njuki, MP

Minutes of the 44th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. John Ogutu Omondi, MP and Seconded by Hon. Cornelly Serem, MP

Minutes of the 45th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP and Seconded by Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP

Minutes of the 46th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP and Seconded by Hon. Beatrice Nkatha Nyaga, HSC, MP

Minutes of the 47th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. (Dr.) Oburu Oginga, MGH, MP and Seconded by Hon. John Muchiri Nyaga, HSC, MP

Minutes of the 48th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Cornelly Serem, MP and Seconded by Hon. (Maj.)(Rtd.) John Waluke Koyi, MP

Minutes of the 49th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Sammy Silas Komen Mwaita, MP and Seconded by Hon. (Dr.) Oburu Oginga, MGH, MP

Minutes of the 50th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. (Maj.)(Rtd.) John Waluke Koyi, MP and Seconded by Hon. Bernard Munywoki Kitungi, MP

Minutes of the 51st Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. John Muchiri Nyaga, HSC, MP and Seconded by Hon. Irungu Kang'ata, MP

Minutes of the 52nd Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. John Ogutu Omondi, MP and Seconded by Hon. Beatrice Nkatha Nyaga, HSC, MP

Minutes of the 53rd Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. John Ogutu Omondi, MP and Seconded by Hon. (Maj.)(Rtd.) John Waluke Koyi, MP

Minutes of the 54th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP and Seconded by Hon. (Dr.) Oburu Oginga, MGH, MP

Minutes of the 55th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Beatrice Nkatha Nyaga, HSC, MP and Seconded by Hon. Sammy Silas Komen Mwaita, MP

Minutes of the 56th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Irungu Kang'ata, MP and Seconded by Hon. John Muchiri Nyaga, HSC, MP

Minutes of the 57th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP and Seconded by Hon. Beatrice Nkatha Nyaga, HSC, MP

Minutes of the 58th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Irungu Kang'ata, MP and Seconded by Hon. John Muchiri Nyaga, HSC, MP

Minutes of the 59th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. Sammy Silas Komen Mwaita, MP and Seconded by Hon.(Maj.)(Rtd.) John Waluke Koyi, MP

Minutes of the 60th Sitting were confirmed as a true record of the deliberations after being Proposed by Hon. John Ogutu Omondi, MP and Seconded by Hon. (Maj.)(Rtd.) John Waluke Koyi, MP

MIN.NO./PIC/492/2015: MATTERS ARISING

Under **Min. No./PIC/335/2015 of the 41st Sitting**, the Committee sought to know whether Mr. Kamlesh Pattni had been invited to appear before the Committee. He is expected to appear before the Committee during the 2nd week of July 2015.

Under **Min. No./PIC/355/2015 of the 42nd Sitting**, the Committee requested the secretariat to remind Pyrethrum Board of Kenya to submit the additional information as requested in the last meeting with the Committee.

Under **Min. No./PIC/385/2015 of the 45th Sitting**, the Committee requested the Secretariat to write to State Corporations Advisory Committee (SCAC), Privatization Commission and Attorney General to avail submissions on the opinion of the Attorney General on the suitability of Mr. Tendwa to hold the office of Ag. Managing Commissioner and thereafter decide whether to invite them to appear before the Committee.

Under **Min. No./PIC/403/2015 of the 47th Sitting**, the Committee requested the Secretariat to follow up with NSSF to provide the following information as requested earlier.

- (i) Copy of the Concept Paper and Cabinet Memo Approval which allegedly approved the Mavoko Joint Venture Project;
- (ii) Names of the 15 bidders who submitted bids in the earlier tender;
- (iii) Names of the bidders that submitted bids after re-advertisement;
- (iv) The total estimated value of the Mavoko Joint Venture Project;
- (v) Copies of the Joint Venture Agreements and
- (vi) Copies of the bid documents.

Under **Min. No./PIC/416/2015 of the 49th Sitting**, the Committee requested the secretariat to follow up with Hon. Kazungu Kambi to furnish the Committee with the following additional information as earlier requested:-

- (i) Information on why Nairobi City Council suspended the construction of Hazina Towers and how the issues raised were resolved;
- (ii) The Concept paper developed by NSSF for the development of Kenyatta and Mavoko Municipality Joint Venture Projects;

- (iii) Copy of the Cabinet Memorandum he presented to the Cabinet to seek approval of the development of the Kenyatta and Mavoko Municipality Joint Venture Projects;
- (iv) Copy of Cabinet approval for the increase of proposed Mavoko Municipality housing units to 60,000;
- (v) Copy of the Board's Minutes that resolved to revoke the appointment of Mr. Francis Atwoli as a Board Trustee;
- (vi) Attorney General's opinion on the revocation of appointment of Mr. Francis Atwoli as a Board Trustee;

Under **Min. No./PIC/437/2015 of the 52nd Sitting**, the Committee requested the Secretariat to follow up with Cementers Ltd to submit to the Committee a brief containing company profile, jobs undertaken, NSSF advertisements for Hazina project (First & Second) and bid documents for the same as earlier requested.

Under **Min. No./PIC/464/2015 of the 57th Sitting**, the Committee requested the secretariat to remind Adventis Inhouse Africa to submit a written submission of their presentation to the Committee as earlier requested.

In the 58th Sitting, Hon. (Dr.) Obura Oginga, MGH, MP was recorded absent without apology. It should instead be corrected to read 'absent with apology' since he was out on parliamentary business with PIC delegation to Washington DC USA.

MIN. NO./PIC/493/2015: ANY OTHER BUSINESS

The Committee resolved that:-

1. Going forward, the Committee should look out for and participate in international conferences relevant to the Committee's mandate as it is getting increasingly harder to secure appointments for study visits. The secretariat was tasked to search for the conferences. In addition, the secretariat was tasked to write to Australia & Fiji to secure appointments for the Committee's visit.
2. The secretariat to ensure that the Slovakia trip for which the host proposes for September 2015 is secured.
3. The Japan trip will be undertaken after the Committee considers the special audit report from the Auditor General.
4. The Committee deliberated and requested the Secretariat to request for a status report on privatization of sugar companies from the following entities: **Privatization Commission, Parent Ministry and Investment Secretary of the National Treasury.**

5. The Committee also resolved to invite National Bank of Kenya on the issues facing it including but not limited to

- (i) Allegations of asset stripping
- (ii) Staff purging
- (iii) High staff turnover
- (iv) Irregular payments of bonuses and questionable transactions
- (v) Difficulties in renewing the operation license.

After receiving NBK submissions the Committee will invite witnesses including Central Bank of Kenya on the same.

National Bank of Kenya should also be requested to give the status of the original title deeds of KMC being held at National Bank of Kenya even after the GoK had fully paid the loan owed by KMC.

6. The Committee also resolved to invite all the persons mentioned in the 19th PIC report on Cotton Board of Kenya's Riverside Drive property including Hon. John Mututho to adduce evidence on the same.
7. The Committee further resolved as proposed by Hon. Irungu Kang'ata and seconded by Hon. (Dr.) Paul Otuoma, EGH, MP, to conduct investigations on Kenya Airways, Webuye Pan Paper Mills Company and Mumias Sugar Company, on the issues facing them. The Committee further resolved to request information on the same from their Parent Ministries (MOTI and MOALF) and National Treasury.

MIN. NO./PIC/494/2015: ADJOURNMENT & DATE OF THE NEXT MEETING

There being no other business, the Chairman adjourned the meeting at ten minutes to twelve o'clock until Thursday 25th June 2015 at 10:00 am.

Signed.....

(Chairman)

Date.....

25/6/2015

MINUTES OF THE 58TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 16TH JUNE, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairman
2. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
3. Hon. Wafula Wamunyinyi, MP
4. Hon. Elias Bare Shill, MP
5. Hon. John Olago Aluoch, MP
6. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
7. Hon. Bernard Munywoki Kitungi, MP
8. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
9. Hon. Cornelly Serem, MP
10. Hon. Irungu Kang'ata, MP
11. Hon. John Muchiri Nyaga, HSC, MP
12. Hon. John Ogutu Omondi, MP

ABSENT WITH APOLOGY

13. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairman
14. Hon. Francis Mwanzia Nyenze, MP
15. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
16. Hon. (Eng). John Kiragu, MP
17. Hon. Abdullswamad Sheriff Nassir, MP

ABSENT WITHOUT APOLOGY

18. Hon. Dr. Oburu Oginga, MGH, MP
19. Hon. Adan Mohammed Nooru, MP
20. Hon. Franklin Mithika Linturi, MP
21. Hon. Sammy Silas Komen Mwaita, MP
22. Hon. Beatrice Nkatha Nyaga, HSC, MP
23. Hon. Ejidius Njogu Barua, MP
24. Hon. Johana Kipyegon Ngeno, MP
25. Hon. Korei Ole Lemein MP
26. Hon. Mary Sally Keraa, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Ms. Rose Wanjohi	-	Clerk Assistant II
Mr. Philip Lekarkar	-	Clerk Assistant III
Mr. Peter Mwaura	-	Legal Counsel I

OFFICE OF THE AUDITOR GENERAL

Mr. Obed K. Chweya - Senior Manager

KENYA AIRPORTS AUTHORITY

Ms. Lucy Mbugua - Managing Director, KAA (stepped aside)
Mr. Victor Arika - Legal Counsel (stepped aside)
Eng. Francis Ngigi - Project Manager

MIN.NO. /PIC/363/2015: PRELIMINARIES

The Chair called the meeting to order at five minutes past twelve o'clock. Hon. Elias Bare Shill, MP said the Prayer. Self-introduction of all present was done.

MIN.NO. /PIC/364/2015: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO./PIC/365/2015: PROCEDURAL MATTER

The witness, Ms. Lucy Mbugua, Mr. Victor Arika and Eng. Francis Ngigi were put under oath.

MIN.NO./PIC/366/2015: JOINT EVIDENCE BY MS. LUCY MBUGUA, MR VICTOR ARIKA AND ENG. FRANCIS NGIGI: ON KENYA AIRPORTS AUTHORITY DUTY FREE SHOPS TENDER

NEGOTIATIONS WITH DIPLOMATIC DUTY FREE

The Managing Director (suspended) Ms. Lucy Mbugua presented a joint statement. She informed the Committee as follows:

That Diplomatic Duty Free (DDF) initiated the negotiation for renewal of lease via their letter of 19th December 2012. A Committee was appointed by the MD to negotiate with DDF on the renewal of their leases. The following series of meetings were held:-

- (i) 1st Meeting of 4th July 2013: Ms. Mbugua presented that the meeting was held at Fairview Hotel attended by Mr. Fred Ngatia (meeting Chairman), external lawyer representing KAA; Mr. Victor Arika, Ag Corporation Secretary KAA; Ms. Lucy Mbugua, GM Marketing & Business Development KAA; Mr. Francis Ngigi, Project Manager KAA; Ms. Margaret Munene, Legal Counsel KAA; Mr. Bernard Kalove lawyer representing KDF; Mr. Sukhdev Kumar Puri, GM DDF; Mr. Rahul Sood, GCEO and Mr. Ajay Kothari, GM KDF.

The meeting had two agenda points:

a) The Bonded Warehouse (store), which was preventing the Contractor from completing the ongoing, works at JKIA Terminal 4. In their discussion, KAA and DDF/KDF agreed upon the terms and conditions for relocation of the said store. The members observed and agreed as follows:

- (i) It was DDF/KDF's statutory duty to address any customs issues with the Customs Department should it relocate the Bonded Warehouse (store).
- (ii) There was to be a site visit at the proposed space at cargo village area for the bonded warehouse on Friday 5th July 2013 at 10:30 am between the representatives of both KAA and by DDF/KDF.
- (iii) DDF/KDF would meet the cost of renovating the proposed Bonded Warehouse at the cargo village area. As KAA was looking at the minimum time for construction, DDF/KDF agreed to take into account the issue of timeframe.

b) Terminal 4 with regard to the disputed advertisement.

Ms. Mbugua informed the Committee that DDF/KDF requested KAA to allocate to them a space measuring 250sqm at Terminal 4 without KDF going through tender. The Chairman (Mr. Ngatia), however advised that doing so would be in breach of the Public Procurement and Disposal Act and Rules as both parties were duty bound to comply with the law. The Chairman informed the Committee that the issue of exclusivity which was being relied on by DDF/KDF was to be addressed at the next meeting.

(ii) 2nd Meeting of 9th July 2013 at Andrews Apartments. The meeting was attended by Mr. Fred Ngatia, Meeting Chairman, external lawyer representing KAA; Mr. Victor Arika, Ag. Corporation Secretary KAA; Ms. Lucy Mbugua, GM Marketing & Business Development KAA; Mr. Francis Ngigi, Project Manager, KAA; Ms. Margaret Munene, Legal Counsel, KAA; Mr. Benard Kalove lawyer representing KDF; Mr. Kamlesh Pattni owner of DDF/KDF; Mr. Rahul Sood, GCEO and Mr. Ajay Kothari, GM, KDF. This was a follow up meeting to the one held on 4th July 2013.

(a) On the matter of the Bonded Warehouse, the meeting was informed that KAA was willing to license the new premises at cargo village for a period of one year. DDF/KDF on the other hand requested KAA to consider a period of two years, which was renewable. As a goodwill gesture, KAA agreed for a period of two years(renewable) subject to availability of space, and subject

nonetheless to earlier determination to be provided in a formal license agreement.

(b) On Terminal 4, DDF/KDF informed the meeting that given that they had the exclusivity clause in their lease, they requested that they be allocated 250sqm in the new terminal (T4). DDF/KDF informed the meeting that they had assured their partner based in Dubai (Suzanne International) that they were likely to get a space at Terminal 4. KAA representatives informed the meeting that the Authority was looking for one operator in Terminal 4 since there was only one duty free shop, which cannot be split. Therefore, KAA was willing to reach out to DDF/KDF in accordance with the law in obtaining duty free shop at Terminal 4 openly and transparently by an open tender. For clarity, the representatives from DDF/KDF were taken through the Terminal 4 architectural plan by KAA. DDF/KDF informed the meeting that as they discussed out of court settlement, the same should be fair and reasonable. They were informed that the Authority was willing to give as much as it can however within the law. KAA however informed the meeting that they would consult further and see whether there was a way out in terms of space at Terminal 4.

No other negotiation meeting for this team was held after this one.

Committee observations

The Committee observed that

- (i) The meetings chaired by Mr. Ngatia were official and questioned why they were not held at the KAA offices.
- (ii) The Committee sought to know who paid for the expenses of the meeting.
- (iii) The Committee observed that in their submission, Ms. Mbugua presented that it was DDF/WDF who initiated the negotiations for new leases. Yet the letter from DDF/WDF dated 19th December 2012, DDF/WDF are acknowledging a letter from KAA who appear to have initiated the negotiations for renewal of new leases.

Management Response to Committee Observations

Ms. Mbugua in response to the Committee observations informed the Committee that although the meetings that Mr. Fred Ngatia chaired were official, it was still in order for KAA if requested for them to hold such meetings at a neutral location like Fairview and Andrews Apartments. The decision to take the meeting outside KAA offices was made by the then MD Eng. Stephen Gichuki since Ms. Mbugua had not been promoted to MD then. KAA paid the expenses of the first meeting.

Mr. Victor Arika(suspended legal counsel), informed the Committee that although WDF/DDF were acknowledging a letter from KAA on negotiations on the renewal of the leases, there were numerous correspondence from WDF/DDF who initiated the matter. He further presented that since he was on suspension he was not able to access the correspondences between KAA and WDF/DDF on the matter of leases.

Committee Resolutions

The Committee resolved that

- (i) KAA does a brief to clarify why the meetings chaired by Mr. Ngatia were held outside KAA offices yet they were official.
- (ii) KAA provides a copy of the letter dated 13th December 2012.
- (iii) Mr. Arika communicates officially with KAA on the matter of being allowed access to the information as requested by Public Investments Committee. If KAA does not comply, then to let the Committee know with documentary evidence on the same so they can take necessary action.

MIN. NO/PIC/367/2015: REPOSSESSION

Ms. Lucy Mbugua informed the Committee that following the expiry of the lease, Diplomatic Duty Free area was repossessed by KAA on 31st July 2013.

Committee Observation

The Committee observed that Mr. Kamlesh Pattni was still occupying Duty Free premises at JKIA after being kicked out and with no settlement arrived at. It also appears that the MOTI was interfering with the settlement.

MIN. NO./PIC/368/2015: SETTLEMENT WITH DIPLOMATIC DUTY FREE LTD

Ms. Mbugua informed the Committee that negotiation for settlement was initiated at the Ministry of Transport and Infrastructure and KAA does not have the Minutes, as KAA did not chair the meetings and no minutes were availed to them.

- (i) **The 178th (Special) Board of Directors meeting of 14th August 2013:** The Board of Directors held a meeting on 4th September 2013, in which Management briefed the Board on the deliberations of the meeting of 4th and 9th July 2013. The Board commended the Management for the repossession exercise and indicated that KAA cannot compensate DDF/WDF for repossessing its premises, and that in the contrary, it was DDF/WDF who should compensate KAA for any losses occasioned by use of its premises.

(ii) **The 180th (Special) Board of Directors meeting of 4th September 2013:** Ms. Mbugua informed the Committee that, the Board of Directors was informed of the previous meetings of 4th and 9th July 2013. Further, the Board deliberated on presentations on negotiation made by the external lawyer representing KAA, Mr. Fred Ngatia and external lawyer representing World Duty Free Limited (KDF) and Diplomatic Duty Free Limited (DDF), Mr. Ahmed Adan. It considered the matter at length and resolved as follows:-

1. The external lawyer, Mr. Fred Ngatia was empowered by the Board to take in, and defend the interests of the Authority in negotiations with the external lawyer, Mr. Ahmed Adan, representing WDF and DDF with regard to claims on Duty free shops at all airports in Kenya.
2. The following conditions precedent had to be fulfilled by WDF and DDF are to be captured in the negotiation settlement:-
 - (i) Withdrawal of all cases
 - (ii) Setting aside of the award made by the arbitrator, Hon. Justice(Rtd) E. Torngbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013.
 - (iii) They shall not have any further claims for damages for the recent and previous evictions.
 - (iv) Publically and formally stating that they shall not have any further claims whatsoever against the Authority or the Kenyan government in all Airports.
3. The KAA in exchange was to identify available space to the new associated company of WDF and DDF, Suzan Duty Free.
4. The Acting Managing Director was authorized to work with the Authority's external Counsel Mr. Fred Ngatia, and update the Board accordingly on the proposed final negotiated settlement for the Board's approval.
5. The final negotiated settlement was to be submitted by the Board to the Cabinet Secretary of the Ministry of Transport and Infrastructure for due approval.
6. Consequently, all license agreements drafted were to be reviewed before execution with a view to protect the Authority's interest.

Committee Observation

The Committee observed that Minutes of the meeting held with the MOTI were not availed to KAA. It also appears that KAA was being directed on what to do judging from the contents of the letter dated 29th May 2014.

Management Response to Committee Observation

Ms. Lucy Mbugua in response to the Committee observation presented that KAA does not have the Minutes of the meeting that was initiated at the Ministry of Transport & Infrastructure, since no minutes were availed to them.

MIN. NO./PIC/369/2015: PRESS RELEASE

Ms. Lucy Mbugua informed the Committee that a press conference was held at the Ministry of Transport and Infrastructure Board room on 16th September 2013 and a press release was issued in which DDF publicly declared that they had withdrawn all cases against KAA.

MIN.NO./PIC/370/2015: CLAIM BY DDF OF KAA FAILURE TO CONCLUDE THE SETTLEMENT

Ms. Lucy Mbugua informed the Committee that on 30th May 2014, KAA received a letter dated 29th May 2014 from DDF lawyers claiming that DDF could not conclude the settlement as KAA had failed to award the Moi International Airport (MIA) shop space. It should be noted that Terminal 4 (T4) space was never mentioned in the letter. Subsequently to this letter of offer for the MIA space, DDF changed narrative and included T4 issues.

Ms. Mbugua informed the Committee that the settlement has not been completed due to the following challenges:

1. While KAA has done its part of providing spaces to Suzan DF - 4 shops at JKIA, a bonded warehouse at JKIA, a shop at MIA, and a bonded warehouse at MIA, DDF have never reciprocated by way of signing consent letters for court cases withdrawal as an aspect of deed of settlement.
2. DDF has insisted on obtaining space at T4 area that was not agreed as part of the deal.
3. Due to the said insistence by DDF, KAA's external lawyer has not been able to finalize preparation of Deed of settlement.
4. In view of the non-completion of the settlement arrangement, KAA wrote a letter dated 11th February 2015 to the Cabinet Secretary- MOTI seeking his intervention.

Committee Observations

The Committee observed that:-

- (i) KAA kept giving reasons why they could not fulfil their part of the negotiated agreement to allow for signing of Deed Settlement.
- (ii) That it appears that Terminal 4 was never part of the bargain with DDF/KDF. That KAA fulfilled their part of the terms of the negotiations.
- (iii) That it was not clear in which capacity Mr. Ngatia chaired the meetings between KAA and WDF/DDF.
- (iv) That KAA has not achieved much since bringing on board the external lawyers to help resolve the matter of Duty Free cases.

The Committee sought to establish whether there was a conflict of interest in that Mr. Ngatia had earlier represented Mr. Kamlesh Pattni in some legal matters and was now representing KAA against WDF/DDF owned by Mr. Kamlesh Pattni.

Management Response to the Committee Observations

Ms. Mbugua in response to the Committee observations informed the Committee that:-

- (i) KAA did not immediately give space at Moi International Airport (MIA) due to the reorganization and renovations that were taking place. But after the renovations were completed they offered space to DDF at MIA, who did not take up the offer. DDF/KDF continued demanding for space at Terminal 4 at JKIA.
- (ii) Mr. Ngatia was appointed by the then MD as a lawyer to lead the negotiations.
- (iii) WDF/DDF is still at KAA with a new lease and paying rent at the terms of the new lease.
- (iv) KAA did not protest the interference because they had no reason to doubt that the negotiations were being done in good faith. For instance the directive from MOTI that Mr. Ngatia is appointed as an external lawyer of KAA and the allocation of space at JKIA.

She further presented that on the matter of space at MIA, this had been agreed beforehand.

Committee Resolutions

The Committee resolved that

- (i) The former Board Members and the Chair be invited to appear before the Committee to adduce evidence.

(ii) That Ms. Mbugua, Mr. Arika and Eng Ngigi be invited separately to appear again before the Committee.

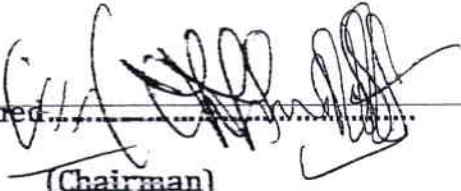
MIN. NO./PIC/371/2015: ANY OTHER BUSINESS

There was no other business before the Committee.

MIN. NO./PIC/372/2015: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at twenty minutes to 12 o'clock until Thursday 18th June 2015 at 10:00 am.

Signed.....



(Chairman)

Date.....

23/6/2015

MINUTES OF THE 54TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 19TH MAY, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Dr. Oburu Oginga, MGH, MP
3. Hon. Franklin Mithika Linturi, MP
4. Hon. Sammy Silas Komen Mwaita, MP
5. Hon. John Olago Aluoch, MP
6. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
7. Hon. Bernard Munywoki Kitungi, MP
8. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
9. Hon. Cornelly Serem, MP

10. Hon. Ejidius Njogu Barua, MP
11. Hon. Irungu Kang'ata, MP
12. Hon. John Muchiri Nyaga, HSC, MP

ABSENT WITH APOLOGY

13. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
14. Hon. Francis Mwanzia Nyenze, EGH, MP
15. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
16. Hon. Adan Mohammed Nooru, MP
17. Hon. Wafula Wamunyinyi, MP
18. Hon. Elias Bare Shill, MP
19. Hon. Beatrice Nkatha Nyaga, HSC, MP
20. Hon. John Ogutu Omondi, MP
21. Hon. Korei Ole Lemein MP
22. Hon. Mary Sally Keraa, MP
23. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITHOUT APOLOGY

24. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
25. Hon. (Eng). John Kiragu, MP
26. Hon. Abdullswamad Sheriff Nassir, MP
27. Hon. Johana Kipyegon Ngeno, MP

IN-ATTENDANCE

SECRETARIAT NATIONAL ASSEMBLY

- | | | |
|---------------------|---|----------------------|
| Ms. Susan Maritim | - | Clerk Assistant I |
| Ms. Rose Wanjohi | - | Clerk Assistant II |
| Mr. Philip Lekarkar | - | Clerk Assistant III |
| Mr. Peter Mwaura | - | Legal Counsel I |
| Mr. Charles Atamba | - | Research Officer III |

OFFICE OF THE AUDITOR GENERAL

Mr. Obed K. Chweya - Senior Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MIN.NO. /PIC/340/2015: PRELIMINARIES

28. The Chair called the meeting to order at three o'clock. The Prayer was said by Hon. Irungu Kang'ata, MP.

MIN.NO. /PIC/341/2015: CONFIRMATION OF MINUTES

Minutes of the 35th Sitting were confirmed as true record of the proceedings after being proposed by Hon. John Olago Aluoch, MP and seconded by Hon. John Muchiri Nyaga, HSC, MP.

Minutes of the 36th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Ejidius Njogu Barua, MP and seconded by Hon. Bernard Munywoki Kitungi, MP.

Minutes of the 37th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Bernard Munywoki Kitungi, MP and seconded by Hon. John Muchiri Nyaga, HSC, MP.

Minutes of the 38th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Ejidius Njogu Barua, MP and seconded by Hon. Sammy Silas Komen Mwaita, MP.

Minutes of the 39th Sitting were confirmed as true record of the proceedings after being proposed by Hon. John Olago Aluoch, MP and seconded by Hon. Bernard Munywoki Kitungi, MP.

MIN.NO. /PIC/342/2015: MATTERS ARISING

Under Min. No. PIC/297/2015: It was reported that the information requested by the Committee from State Corporation Appeals Tribunal has been received.

Under Min. No. PIC/320/2015. It was reported that Eng. Gichuki has submitted the information the Committee had requested regarding the contract between Kenya Airports Authority and World Duty Free Ltd.

MIN.NO. /PIC/343/2015:

EVIDENCE ON PROCUREMENT OF NATIONAL
SOCIAL SECURITY FUND (NSSF) HAZINA
TOWERS PROJECT CONTRACT.

The Committee was informed that:-

The following companies that bided for the tender for the completion of the NSSF Hazina Office Towers have been scheduled to appear before the Committee to adduce evidence on the procurement process of the project.

1. China Jiangxi Int. (K) Ltd
2. Seyani Brothers Co. (K) Ltd
3. N.K Brothers Co. (K) Ltd
4. ~~China Railways No. 5 Engineering~~
5. Tulsi Construction Co.
6. FUBECO (China Fushum)
7. China Jiangxi Int. (K) Ltd
8. Parbat Siyani Construction Co. Ltd
9. China Wu Yi
10. Sinohydro Tianjin Engineering
11. China Aero Technology
12. Sichuan Huashi Enterprises

- (i) China Jiangxi Int. (K) Ltd, Seyani Brothers Co. (K) Ltd, Sinohydro Engineering, China Aero Technology and Sichuan Huashi Enterprises could not reached as at the time of the meeting.
- (ii) Tulsi Construction Co., China Jiangxi Int. (K) Ltd and Parbat Siyani Construction Co. Ltd asked to be given more time to prepare their submissions.
- (iii) China Wu Yi confirmed their availability on Wednesday 20th May, 2015 at 2.30 pm.

N.K Brothers forwarded their submission vide letter Ref. GEN/260/523/15 dated 13th May, 2015 and signed by Pravin M. Khoda.

In their submission they stated that:

- (i) The Company responded to the Tender Notice published in the local dailies on 1st February, 2011 and 16th, February, 2011. They submitted a tender amounting to Kshs. 6,313,909,101 and a time frame of 199 weeks on 4th March, 2011. The tenders were opened publicly on 4th March, 2011.
- (ii) The process of tender evaluation and award was undertaken by the client without the Company's input. The Company had no reason then and now to

lodge any complaints regarding the tender award process as they are of the opinion that the process was done in conformity with normal tendering procedures.

- (iii) The Company was aware of a subsequent tender for the same works, however it did not participate in the tender on account of the workload then.

The Committee observed that the evidence forwarded by N.K Brothers is inadequate and should be invited again to appear before the Committee.

The Committee resolved to invite all companies that had tendered for the contract for a second and last time.


MIN. NO./PIC/344/2015: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/345/2015: ADJOURNMENT

There being no other business, the meeting adjourned at ten minutes four o'clock until Wednesday 20th May 2015 at 10.00 am.

Signed.....


(Chairperson

Date.....

23/6/2015

MINUTES OF THE 44TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 5TH MAY, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Dr. Oburu Oginga, MGH, MP
4. Hon. Adan Mohammed Nooru, MP
5. Hon. Wafula Wamunyinyi, MP
6. Hon. Elias Bare Shill, MP
7. Hon. Sammy Silas Komen Mwaita, MP
8. Hon. Beatrice Nkatha Nyaga, HSC, MP
9. Hon. Bernard Munywoki Kitungi, MP
10. Hon. Cornelly Serem, MP
11. Hon. Ejidius Njogu Barua, MP
12. Hon. John Muchiri Nyaga, HSC, MP
13. Hon. John Ogutu Omondi, MP
14. Hon. Korei Ole Lemein MP
15. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

16. Hon. Francis Mwanzia Nyenze, MP
17. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
18. Hon. John Olago Aluoch, MP
19. Hon. (Dr.) Paul Nyongesa, Otuoma, EGH, MP
20. Hon. Abdullswamad Sheriff Nassir, MP
21. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
22. Hon. Johana Kipyegon Ngeno, MP
23. Hon. Mary Sally Keraa, MP

ABSENT WITHOUT APOLOGY

24. Hon. Franklin Mithika Linturi, MP
25. Hon. (Eng). John Kiragu, MP
26. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
27. Hon. Irungu Kang'ata, MP

IN-ATTENDANCE

SECRETARIAT NATIONAL ASSEMBLY

1. Ms. Susan Maritim - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant II
3. Mr. Philip Lekarkar - Clerk Assistant III
4. Mr. Peter Mwaura - Legal Counsel I
5. Mr. Charles Atamba - Research Officer III

MIN.NO. /PIC/360/2015: PRELIMINARIES

The Chair called the meeting to order at three o'clock. A word of prayer was said by Hon. Cornelly Serem, MP.

MIN.NO. /PIC/361/2015: APPEARANCE OF MR. FRANCIS ATWOLI

The Committee heard that Mr. Francis Atwoli did not attend the meeting as scheduled and had instead sent a request to appear before the Committee on Thursday 14th May, 2015.

The Committee observed that Mr. Francis Atwoli had for the second time failed to honour the Committee's invitation to appear before it to adduce evidence on the National Social Security Fund (NSSF) Hazina Trade Centre Towers and joint ventures for Mavoko Housing and Kenyatta Avenue plot projects. It was resolved that if he fails to appear on the said date, then the Committee would issue a summon to him.

MIN.NO. /PIC/362/2015: CONFIRMATION OF MINUTES

1. Minutes of the 26th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Bernard Munywoki Kitungi, MP and seconded by Hon. Beatrice Nkatha Nyaga, HSC, MP.
2. Minutes of the 26th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Sammy Silas Komen Mwaita, MP and seconded by Hon. Cornelly Serem, MP.
3. Minutes of the 28th Sitting were confirmed as true record of the proceedings after being proposed by Hon. John Ogutu Omondi, MP and seconded by Hon. Bernard Munywoki Kitungi, MP.
4. Minutes of the 29th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Beatrice Nkatha Nyaga, HSC, MP and seconded by Hon. John Ogutu Omondi, MP.
5. Minutes of the 30th Sitting were confirmed as true record of the proceedings after being proposed by Hon. Dr. Oburu Oginga, MGH, MP and seconded by Hon. Beatrice Nkatha Nyaga, HSC, MP.
6. Minutes of the 31st Sitting were confirmed as true record of the proceedings after being proposed by Hon. Adan Mohammed Nooru, MP and seconded by Hon. John Ogutu Omondi, MP.

7. Minutes of the 32nd Sitting were confirmed as true record of the proceedings after being proposed by Hon. Dr. Oburu Oginga, MGH, MP and seconded by Hon. Adan Mohammed Nooru, MP.
8. Minutes of the 33rd Sitting were confirmed as true record of the proceedings after being proposed by Hon. Cornelly Serem, MP and seconded by Hon. Dr. Oburu Oginga, MGH, MP.

MIN.NO. /PIC/363/2015: MATTERS ARISING

1. Under MIN. NOs: PIC/204/2015, PIC/205/2015, PIC/206/2015, PIC/207/2015, PIC/209/2015, PIC/217/2015 and PIC/219/2015 of the 26th Sitting it was noted that the Management of Pharmacy and Poisons Board had not submitted the additional information requested by the Committee during examination of its audited accounts. The secretariat was tasked to write to the Management to submit the required information.
2. Under MIN. NO./PIC/225/2015 of the 27th Sitting regarding the planned foreign study visits it was reported that:

The study visits to Slovak Republic and the United States of America will undertaken between 1st – 5th June, 2015 and the first week of June respectively;

The investigation visit to Japan will be undertaken during the second week of June;

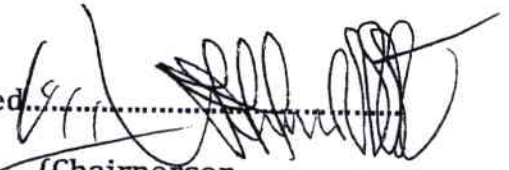
The Ministry of Foreign Affairs and International Trade is yet to contact the Kenya Russia Embassy in Kenya regarding the study visit to Russia; and
3. Under MIN. NO./PIC/232/2015 of the 28th Sitting the Committee resolved to invite the external counsel of KAA M/s Ogetto, Otachi & Company Advocates who drafted the agreement between KAA and Dufry International to clarify the contentious clauses.
4. Under MIN. NO./PIC/244/2015 of the 29th Sitting the Committee resolved to invite both the suspended KAA Managing Director and the former Managing Director Eng. John Gichuki to clarify on the space identified in JKIA Terminal 1A.

MIN. NO./PIC/364/2015: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/365/2015: ADJOURNMENT

There being no other business, the meeting adjourned at eleven minutes past four o'clock until 6th May, 2015 at 10.00am.

Signed  (Chairperson

Date 23/6/2015

MINUTES OF THE 41ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 29TH APRIL, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11:30 A.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairman
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairman
3. Hon. Francis Mwanzia Nyenze, EGH, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
6. Hon. Wafula Wamunyinyi, MP
7. Hon. Elias Bare Shill, MP
8. ~~Hon. Sammy Silas Komen Mwaita, MP~~
9. Hon. John Olago Aluoch, MP
10. Hon. (Eng). John Kiragu, MP
11. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
12. Hon. Abdullswamad Sheriff Nassir, MP
13. Hon. Beatrice Nkatha Nyaga, HSC, MP
14. Hon. Bernard Munywoki Kitungi, MP
15. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
16. Hon. Cornelly Serem, MP
17. Hon. Ejidius Njogu Barua, MP
18. Hon. Irungu Kang'ata, MP
19. Hon. John Ogutu Omondi, MP
20. Hon. Mary Sally Keraa, MP
21. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

22. Hon. Adan Mohammed Nooru, MP
23. Hon. Franklin Mithika Linturi, MP
24. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
25. Hon. Johana Kipyegon Ngeno, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Korei Ole Lemein MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Joash Kosiba - Fiscal Analyst
2. Mr. Peter Mwaura - Legal Counsel I
3. Mr. Charles Atamba - Research Officer III

KENYA NATIONAL AUDIT OFFICE

- Mr. Obed K. Chweya - Senior Manager, Audit
Mr. Boniface Muli - Senior Manager, Audit

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

WITNESSES

1. Eng. Michael Kamau, CBS - Cabinet Secretary Ministry of Transport and Infrastructure (Suspended)
2. Mr. Nduva Muli, EBS - Principal Secretary State Department of Transport (Suspended)

MIN.NO. /PIC/323/2015: PRELIMINARIES

The Chair called the meeting to order at forty five minutes past eleven o'clock. The Prayer was said by Hon. Anthony Kimani Ichung'wah, MP.

MIN.NO. /PIC/324/2015: CONFIRMATION OF MINUTES

Confirmation of minutes of the previous meeting was deferred to the next meeting.

MIN.NO. /PIC/325/2015: EVIDENCE BY ENG. MICHAEL KAMAU AND MR. NDUVA MULI ON THE MATTER OF KENYA AIRPORTS AUTHORITY DUTY FREE CONTRACTS

Eng. Michael Kamau Cabinet Secretary Ministry of Transport and Infrastructure (Suspended) and Mr. Nduva Muli, Principal Secretary State Department of Transport (Suspended) appeared before the Committee to adduce evidence on the matter of Kenya Airports Authority (KAA) Duty Free Contracts.

MIN.NO. /PIC/326/2015: PROCEDURAL MATTER

The two witnesses (Eng. Michael Kamau and Mr. Nduva Muli) were put under oath.

MIN.NO./PIC/327/2015: TERMINATION OF 1989 DUTY FREE CONTRACTS BETWEEN THE GOVERNMENT OF KENYA/ KENYA AIRPORTS AUTHORITY (KAA) AND WORLD DUTY FREE COMPANY LIMITED

Eng. Michael Kamau and Mr. Nduva Muli made a joint submission before the Committee. In their submission they informed the Committee that:

1. On account of subsistence of exclusive and perpetual Agreements made with the Government of Kenya and KAA between World Duty Free (WDF) Company Limited and Diplomatic Duty Free (DDF) Limited, some of which commenced in 1989, KAA was unable to manage its premises in its best interest within the airports. WDF and DDF over the years obtained numerous court orders, which made it impossible for KAA to terminate some of the agreements and repossess some of its property. KAA was even

unable to repossess facilities from WDF that were hampering the work of the contractor of the now completed Terminal 1A at Jomo Kenyatta International Airport (JKIA).

2. External Counsel, Mr. Fred Ngatia recommended that the only way to end the unlawful monopoly that had been granted to WDF/DDF was to carry out a repossession of all premises occupied by WDF/DDF on 31st March 2013 when the leases expired. Subsequently, repossession action was undertaken by KAA and vacant possession was achieved on 1st August, 2013.

MIN.NO./PIC/328/2015: PROCUREMENT OF NGATIA & ASSOCIATES TO REPRESENT THE KAA IN THE MATTER OF WORLD DUTY FREE COMPANY LIMITED VS KAA AND THE SUBSEQUENT COMPENSATION OFFER TO WDF DRAFTED BY MR. FRED NGATIA.

1. In December 2012, Arbitrator, Hon. Justice (Rtd) E. Togbor delivered an arbitration ruling in favour of WDF and DDF of \$49 million against KAA. WDF and DDF then commenced proceedings against KAA.
2. In January 2013 KAA appointed Mr. Ngatia, Mr. Eric Mutua, Mr. Waweru Gatonye, Mr. Mansur Issa, Mr. Tom Macharia and Mr. Ahmednassir to represent KAA in the High Court in a bid to obtain orders to stop the attachment of KAA property to recover the \$ 49 million judgment debt. The action by the said lawyers was successful and the attachment of KAA property was forestalled.
3. Mr. Ngatia was then instructed by KAA to take over the conduct of all matters related to Duty Free Shops and employ mechanisms to ensure that the matters are concluded expediently and effectively put the entire issue to perpetual rest.
4. The procurement of Mr. Ngatia and the other advocates involved was entirely the prerogative of KAA and not the Ministry of Transport and Infrastructure as a separate and distinct procuring entity. At the time Mr. Ngatia and the other advocates were instructed, the Ministry of Transport and Infrastructure did not exist in its current form.
5. Pursuant to resolutions of Board of Directors passed on 4th September 2014 during its sitting of 180th meeting, the Board approved a negotiation process on amicable settlement between KAA and WDF/DDF. The Board empowered the Authority's external counsel, Mr. Fred Ngatia to take part in, and defend the interests of KAA in negotiations with the external lawyer, Mr. Ahmed Adan, representing WDF and DDF with regards to claims on Duty Free Shops at all airports in Kenya.
6. The Board resolved that the following conditions precedent ought to be fulfilled by WDF and DDF and should therefore be captured in the settlement:
 - a. Withdrawal of all cases;

- b. Setting aside of the award made by the Arbitrator, Hon. Justice (Rtd) E. Torgbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013;
- c. They shall not have any other further claims for damages for the recent and previous repossession exercises; and
- d. Publicly and formally stating that they shall not have any further claims whatsoever against KAA or the Kenya Government in all airports.

The Board then resolved to present the outcome of the negotiations to the Cabinet Secretary for Transport and Infrastructure for concurrence once complete.

MIN.NO. /PIC/329/2015: SEPTEMBER PRESS RELEASE ON THE MATTER OF WITHDRAWAL OF THE CASES AGAINST KAA BY WDF AND DDF AND VACATION OF PREMISES AT JKIA AND MOI INTERNATIONAL AIRPORT MOMBASA.

Having completed the negotiation process, the Board then presented the final outcome to the Cabinet Secretary for Transport and Infrastructure. As required by the KAA Board, WDF/DDF were to publicly to state their withdrawal of their claims against the Authority in all airports. In this regard, the Cabinet Secretary Ministry of Transport and Infrastructure, Eng. Michael Kamau and Mr. Kamlesh Pattni representing WDF/DDF held a press conference and issued a Press Release dated 16th September 2013 to that effect.

The Press Conference was attended by:

- | | | |
|------------------------------|---|---|
| 1. Hon. Prof. Githu Muigai | - | Attorney General |
| 2. Eng. Michael Kamau | - | CS, Ministry of Transport and Infrastructure |
| 3. Mr. Nduva Muli | - | PS, State Department of Transport |
| 4. Prof. Mutuma Mugambi, MBS | - | Board Chairman, KAA |
| 5. Ms. Lucy Mbugua | - | Ag Managing Director, KAA |
| 6. Mr. Fred Ngatia | - | External Legal Counsel for KAA |
| 7. Mr. Kamlesh Pattni | - | World Duty Free Limited |
| 8. Mr. Arif Hafiz | - | Suzan General Trading JTL |
| 9. Mr. Ahmed Adan | - | Legal Counsel for WDF & Suzan General Trading |

The lawyers of both parties and the management teams were from that point to implement the settlement agreement and file the same in court in order to bring the matter to a legal end.

**MIN.NO. /PIC/330/2015: ROLE OF THE CABINET SECRETARY IN RESOLVING THE
CONTENTIOUS CLAUSES IN THE MATTER OF
CONCESSIONAIRE CONTRACT SIGNED ON 15TH
OCTOBER, 2014 BETWEEN KAA AND DUFRY
INTERNATIONAL AG.**

1. At the meeting held at the Ministry on 18th December 2014 chaired by the Cabinet Secretary - MOTI, the Cabinet Secretary brought to the attention of KAA Managing Director clauses in the Concession Agreement dated 15th October, 2014 between KAA and Dufry International Ag that were prejudicial to the interest of KAA. The Managing Director was directed to ensure that the Board was informed of this matter and that ~~the negotiations take place between KAA and Dufry to rectify the position. Further, the~~ Managing Director was to revert to the Ministry with explanation as to how these clauses were included in the Agreement.
2. Article V in particular Clause 4 sub-clauses (a), (b), (c), (d) and (e);
 - a) The Concessionaire shall be the exclusive Concessionaire in the Terminal and shall have the right to sublet any and all areas within the areas of operation with the consent of the Authority. The Authority agrees not to move flights from the Terminal but incase the Authority has to move due to commercial reasons, the concessionaire will be allocated a substantially similar alternative operating area.
 - b) The Authority shall provide adequate and appropriate offices and warehouse storage spaces for use by the concessionaire as agreed by both parties.
 - c) In the event that temporary facilities are created for handling of international departing or arriving passengers, the concessionaire shall have the right to develop and operate retail areas such as temporary facilities on a priority basis.
 - d) In the event that the Authority further develops terminal facilities other than the Terminal, the Concessionaire shall be granted priority over the concession within such facilities, upon terms and conditions substantially similar to this Agreement with due adjustments of the rates.
 - e) The Authority shall regularly consult with the Concessionaire to discuss the arrangement of new space for the maximization of commercial benefits of both parties given due regard to the availability of new space and the flow of passengers.

3. The Principal Secretary, State Department of Transport Mr. Nduva Muli vide a letter dated 19th December, 2014 wrote to the Managing Director KAA as a follow up of the meeting and directed as follows:
 - a) To formally explain as to how the Authority entered into an agreement that was prejudicial to its interest;
 - b) To review the Agreement so as to ensure that the Agreement is in line with the tender documents and Government policy and regulations; and
 - c) To bring the matter to the attention of the Board in the earliest opportunity to enable the Board investigate the matter and revert with recommendations to be taken.
4. Vide a letter dated 30th January, 2015 the Authority sent to the Ministry a signed copy of the amended Concession Agreement already executed. The Ministry vide a letter dated 6th February 2015, noted that the subsequent action taken by Management of amending the Agreement did not exhaustively address the prejudicial exposure to the Authority. The letter stated that clause 4 (b) of the amended Concession Agreement was not in the Authority's interest and might have implications on the existing tenants for the reason that the clauses stops the Authority from contracting any other persons or entities from operation of Duty Free Retail Shops at Terminal 1A.

The Committee made the following the Observations:

1. The Contract Agreement signed between KAA and World Duty Free Ltd was not in the best interest of the Authority. Instead, the Agreement gave WDF Ltd exclusive right to manage, occupy and sublet the Authority's terminal facilities at JKIA.
2. The procurement of the legal services Mr. Ngatia and the other advocate was entirely done by KAA and not the Ministry of Transport and Infrastructure and did not adhere to the procurement laws and procedures.
3. KAA did not seek the advice of the Attorney General before entering into the Concession Agreement dated 15th October, 2014 between KAA and Dufry International Ag which contained contentious clauses that were prejudicial to the interests of KAA.
4. The goods that were removed during the eviction that was conducted belonged to Suzan Trading Ltd and not World Duty Free or Diplomatic Duty Free Limited. The alleged losses suffered were therefore of Suzan Trading Ltd.
5. Terminal 1 facilities were not part of the Agreement and yet it is still claimed by WDF.

Way Forward

The Committee directed Eng. Michael Kamau & Mr. Nduva Muli to furnish the Committee with the following:

1. Legal basis for contracting external legal services;
2. Copy of the Contract Agreement between Mr. Fred Ngatia and KAA; and
3. Fee note(s) raised by Mr. Ngatia.

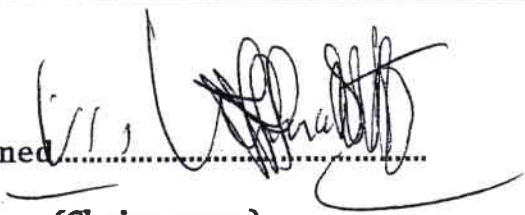
MIN. NO./PIC/331/2015: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/332/2015: ADJOURNMENT

There being no other business, the meeting adjourned at twenty minutes past one o'clock until 2.30pm on the same day.

Signed



(Chairperson)

Date

23/6/2015

MINUTES OF THE 40TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 29TH APRIL, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2.30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
6. Hon. Franklin Mithika Linturi, MP
7. Hon. Elias Bare Shil, MP

8. Hon. Sammy Silas Komen Mwaita, MP
9. Hon. (Dr.) Chrisantus Wamalwa Wakhungu, CBS, MP
10. Hon. (Eng.) John Kiragu, MP
11. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
12. Hon. Abdullswamad Sheriff Nassir, MP
13. Hon. Beatrice Nkatha Nyaga, HSC, MP
14. Hon. Bernard Munywoki Kitungi, MP
15. Hon. Cornelly Serem, MP
16. Hon. Ejidius Njogu Barua, MP
17. Hon. Irungu Kang'ata, MP
18. Hon. John Muchiri Nyaga, HSC, MP
19. Hon. John Ogutu Omondi, MP
20. Hon. Korei Ole Lemein, MP
21. Hon. Mary Sally Keraa, MP
22. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITH APOLOGY

1. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
2. Hon. Adan Mohammed Nooru, MP
3. Hon. Johana Kipyegon Ngeno, MP
4. Hon. John Olago Aluoch, MP
5. Hon. Wafula Wamunyinyi, MP

IN-ATTENDANCE

SECRETARIAT NATIONAL ASSEMBLY

1. Ms. Susan Maritim - First Clerk Assistant
2. Mr. Joash Kosiba - Fiscal Analyst
3. Mr. Peter Mwaura - Legal Counsel I
4. Mr. Charles Atamba - Research Officer III

KENYA NATIONAL AUDIT OFFICE

1. Mr. Obed K. Chweya - Senior Manager, Audit
2. Mr. Henry Makwaro - Audit Manager

NGATIA & ASSOCIATES

Mr. Fred Ngatia

MIN.NO. /PIC/333/2015: PRELIMINARIES

The Chair called the meeting to order at thirty minutes past two o'clock and a word of prayer was said by Hon. Francis Nyenze, MP.

MIN.NO. /PIC/334/2015: CONFIRMATION OF MINUTES.

Confirmation of minutes of the previous sitting was deferred to the next sitting.

MIN.NO./PIC/335/2015: EVIDENCE BY MR. FRED NGATIA, KAA LAWYER

Mr. Fred Ngatia appeared before the Committee to adduce additional evidence on his role as KAA lawyer in the negotiation of settlement with World Duty Free Ltd.

Mr. Ngatia informed the Committee as follows:

1. THAT the Agreement which gave House of Perfume exclusive rights to operate Duty Free shops was signed on 27th April, 1989 and it gave the company exclusive rights to operate duty free complexes at existing and future airports.
 - (i) Paragraph 3(F) of the Agreement reads that "the Company shall be entitled to import into the Republic of Kenya without any restrictions or payment of duty or sales tax, any all products which it or any of its sub-lessees intend to sell at the Complexes.
 - (ii) Paragraph 3 (H) of the Agreement granted House of Perfume exclusive rights to advertise, or to arrange for other persons to advertise sale products within International Airport Terminals.
2. THAT Mr. B. Omuse, Director of Aerodromes, wrote to the PS, Provincial Administration and Internal Security on 29th January 1990 seeking the Ministry's intervention on encroachment by House of Perfume on areas considered security zones.
3. THAT the Board of Airline representatives also wrote to the Minister of State in Office of the President, Hon Burudi Nabwera on 19th February 1990 complaining about notice of eviction to 5 airlines to vacate First Class Lounges to create room for duty free shops.
4. THAT the Solicitor General gave a legal opinion dated 24th June 1990 to the effect that the Agreement of 27th April 1989 was null and void.

5. THAT World Duty Free Company was registered on 15th December 1989 in the Isle of Man. Mr Nassir Ibrahim of the UAE is listed as one of the Directors (copy of registration certificate tabled);
6. THAT Kamlesh Pattni registered a company known as Word Duty Free Company Ltd in the British Virgin Islands on 21st November 2001 (copy of registration certificate tabled).
7. He also tabled a copy of the Award from the International Centre for Settlement of Investment Disputes.

(i) On paragraph 167 of the Award, the Arbitrator observed that Mr. Ali paid a substantial bribe in cash to the Kenyan Head of State in March 1989.

(ii) Ali's case was dismissed (Para 188) by the court.

8. THAT upon enquiry of whether KAA was aware of the decision of the international court on the matter, KAA informed him that they were not aware of it.
9. THAT on 30th January 2013, Eng. Gichuki wrote to Mr. Ngatia instructing him to lead the team of lawyers for the purpose of appealing against the final award by Justice Torgbor.
10. THAT KAA wrote to Mr. Ngatia on 16th March 2013 seeking to deposit Kshs 20 million to Mr Ngatia to cater for expenses of the entire legal team comprising Ngatia & Associates, Ahmednasir Abdikadir & Co, Tom Macharia Advocates and Eric Mutua Advocates. He added that he was paid an additional Kshs. 58 million for his services in the High Court case challenging Arbitral Award by Justice Torgbor. He has however never been paid Kshs. 250 million for his services in the eviction of World Duty Free from KAA premises.
11. THAT the team/sub committee that discussed allocation of space to WDF as compensation for eviction comprised the following:

- | | | | |
|--------|---------------------|---|--|
| (i) | Mr. Fred Ngatia | - | Lawyer representing KAA (Chair) |
| (ii) | Mr. Victor Arika | - | Ag. Corporation Secretary (Secretary) |
| (iii) | Ms. Lucy Mbugua | - | GM Marketing & Business Development at KAA |
| (iv) | Eng. Francis Ngigi | - | Project Manager, KAA |
| (v) | Ms. Margaret Munene | - | Legal Counsel KAA |
| (vi) | Mr. Benard Kalove | - | Lawyer representing DDF/KDF |
| (vii) | Mr. Kamlesh Pattni | - | Owner, DDF/KDF |
| (viii) | Mr. Rahul Sood | - | GCEO |
| (ix) | Mr. Ajay Kothari | - | GM KDF |

12. Mr. Ngatia also submitted the following documents:

- (i) unsigned copy of minutes of meeting held between KAA and World Duty Free Ltd on 9th July 2013 and requested the Committee to obtain the signed copy from KAA management;
- (ii) Letter dated 5th September 2013 from KAA attaching the resolutions made by the KAA Board of Directors at a board meeting held on 4th September 2013. He requested the Committee to also get the complete set of minutes from KAA management;
- (iii) Copy of Draft Deed Settlement that is yet to be assented to by different parties (KAA, CS Transport & Infrastructure and WDF/KDF);
- (iv) Letter dated 16th September 2013 attaching five (5) offer of premises to Suzan General Trading, all dated 16th September, 2013, all signed by Ms. Lucy Mbugua, Ag. Managing Director;
- (v) Press Release by Cabinet Secretary, Ministry of Transport and Infrastructure dated 16th September, 2013;
- (vi) Press release by Mr. Kamlesh Patilni (not signed);
- (vii) Video recording of the press release;
- (viii) Letter dated 25th September, 2013 from KAA to Ngatia & Associates commenting on the leases to Suzan General Trading;
- (ix) Letter dated 30th September 2013 from Ngatia & Associates instructing that premises were available for lease to Suzan General Trading at Moi International Airport, Mombasa;
- (x) Letter dated 8th December 2014 from KAA to Ngatia & Associates expressing appreciation for professional services rendered and need to conclude pending cases in court;
- (xi) Proposal on the way forward may by the Legal Team dated 28th April 2015.

Matters Arising out of the Presentation

The Committee sought the following clarifications

1. **Reasons why the Deed Settlement is still in draft form.** Mr. Ngatia responded that the delay by KAA to allocate Suzan General Trading space at Moi International Airport is one of the main reasons for the non willingness by the Suzan General Trading lawyers to sign the Deed Settlement. He also added that had there been no delay in meeting the conditions agreed on by the two parties, Suzan General Trading would not have demanded space in Terminal 4;

2. **Is the public declaration by Mr. Pattni admissible in a court of law?** Yes.
3. **How many cases have been filed by Mr. Pattni against KAA?** At least 21 cases. KAA to confirm the correct position.
4. **Were Mr. Ngatia's services legally procured?** Yes. He is prequalified as one KAA's panel of lawyers and was given an appointment letter by the KAA management. Mr Ngatia added that KAA (Eng. Gichuki) asked him to lead a team of lawyers but he chose to work with his chosen team of competent lawyers.
5. **Has 1989 Agreement been validated by the 2013-2015 negotiations?** No. The 1989 Agreement remains null and void as determined by the International Court.
6. **Why didn't Ngatia & team not advise KAA to take the matter to local court for determination of validity of the 1989 agreement?** Because there was need to go to court yet an international court had already determined the matter and KAA should have implemented that ruling to its advantage.

Way Forward:

The Committee resolved to invite the KAA team that met with WDF team to adduce additional evidence on the reasons for the delay in signing of the Deed Settlement and allocation of space to WDF as agreed by both parties.

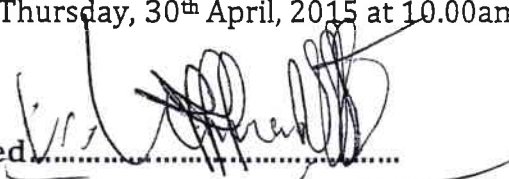
Mr. Kamlesh Pattni and his lawyers should also be invited again to appear before the Committee to give evidence on the matter at hand.

MIN. NO./PIC/336/2015: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/337/2015: ADJOURNMENT

There being no other business, the meeting adjourned at nineteen minutes past five o'clock until Thursday, 30th April, 2015 at 10.00am.

Signed 
(Chairperson)

Date 23/6/2015

MINUTES OF THE 39TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 29th APRIL, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairman
 2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairman
 3. Hon. Francis Mwanzia Nyenze, EGH, MP
 4. Hon. Dr. Oburu Oginga, MGH, MP
 5. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
 6. Hon. Wafula Wamunyinyi, MP
 7. Hon. Elias Bare Shill, MP
-
8. Hon. Sammy Silas Komen Mwaita, MP
 9. Hon. John Olago Aluoch, MP
 10. Hon. (Eng). John Kiragu, MP
 11. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
 12. Hon. Abdullswamad Sheriff Nassir, MP
 13. Hon. Beatrice Nkatha Nyaga, HSC, MP
 14. Hon. Bernard Munywoki Kitungi, MP
 15. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
 16. Hon. Cornelly Serem, MP
 17. Hon. Ejidius Njogu Barua, MP
 18. Hon. Irungu Kang'ata, MP
 19. Hon. John Ogutu Omondi, MP
 20. Hon. Mary Sally Keraa, MP
 21. Hon. Onesmus Muthomi Njuki, MP

ABSENT WITHOUT APOLOGY

22. Hon. Adan Mohammed Nooru, MP
23. Hon. Franklin Mithika Linturi, MP
24. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
25. Hon. Johana Kipyegon Ngeno, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Korei Ole Lemein MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|--------------------|---|----------------------|
| Mr. Joash Kosiba | - | Fiscal Analyst |
| Mr. Peter Mwaura | - | Legal Counsel I |
| Mr. Charles Atamba | - | Research Officer III |

KENYA NATIONAL AUDIT OFFICE

Mr. Obed K. Chweya - Senior Manager, Audit

WITNESS

Eng. Stephen Gichuki - Former Managing Director, KAA

MIN.NO. /PIC/318/2015: PRELIMINARIES

The Chair called the meeting to order at twenty minutes past ten o'clock. The Prayer was said by Hon. Beatrice Nkatha Nyagah, HSC, MP.

MIN.NO. /PIC/319/2015: CONFIRMATION OF MINUTES

Confirmation of minutes of the previous meeting was deferred to the next meeting.

MIN.NO. /PIC/320/2015: EVIDENCE: ENG. STEPHEN GICHUKI, FORMER MANAGING DIRECTOR, KENYA AIRPORTS AUTHORITY

Eng. Stephen Gichuki, Former Managing Director, Kenya Airports Authority in his submissions informed the Committee that he was formerly employed in Aerodrome Department from 1980 after his graduation. He was MD of KAA from April 2010 and retired in August 2013. He worked in various capacities for instance General Manager Operations and at Jomo Kenyatta International Airport as Airport Manager.

He further informed the Committee as follows:

1. The correct position is that the 1989 contract was not terminated during his tenure.
2. Around 2008, Messrs World Duty Free had sued KAA for the loss of business after advertising for tenders for duty free shops in Mombasa and reducing their shops among others in JKIA. The matter had been referred by the Chief Justice Evans Gicheru to retired Justice Torgbor for arbitration. The arbitrator gave a final award of approximately USD 49,000,000 to the claimant.

The Board of Directors during a Special Board Meeting of 28th January 2013, instructed management to identify a team of Legal Counsel to file an appeal on the award. Messrs Ngatia Associates was among the service providers' approved for legal services through KAA Tender Committee meeting under paper 2420 (KAA/M1A/14/02 Vol. VII). The law firm together with their legal team was instructed to file an appeal. They got a court injunction against attachment of the Authority's assets.

Later the firm together with its legal team comprising of Messrs: Ahmednasir, Abdullahi, Eric, Mutua, Mansur Issa and Tom Macharia were asked to handle all the numerous matters of World Duty Free which were pending in court. He had appointed a technical team to work with the external lawyers on the matter. By the time he left Kenya Airports Authority, he had not received any compensation offer.

3. He further informed the Committee that as the MD, he organized and ensured that Mr. Kamlesh Pattni's World Duty Free was evicted from the Airports. He further submitted that the contracts between KAA and World Duty Free were illegal. Mr. Kamlesh Pattni admitted getting the contract fraudulently. He submitted that KAA would be able to provide evidence/ruling that indicates that Mr. Kamlesh Pattni got the duty free contracts fraudulently. The eviction was carried out after the expiration of the leases. He left in August 2013 and he was not involved in the discussions on the compensation.
4. On the issue of the press statement by KAA, CS Ministry of Transport and Infrastructure and Mr. Kamlesh Pattni, there was no figure agreed between KAA and Mr. Fred Ngatia. Mr. Fred Ngatia was the lead lawyer and his fee note for his legal services was approximately Kshs 250 - Kshs 300 Million. When KAA appointed Fred Ngatia as their legal representative, he consolidated all cases between KAA and Pattni.

Committee Observations

The Committee observed as follows:

1. That a fire broke out at the JKIA after Eng. Gichuki had left and it was during that period that the procedure to evict World Duty Free from KAA was in motion. The Committee wondered whether the fire at JKIA was related to the process of evicting World Duty Free from the shops at the Airport.
2. That there was an out of court settlement and the Committee it was not clear what role the role the MD played in it.
3. That there was little information to show that KAA ascertained whether the fee note was in line with the Advocates Remuneration Act.

Way Forward

The Committee resolved that Eng. Gichuki should submit the following by 5th May 2015

- (i) A copy of the Minutes of the Tender Committee he referred to in his submission;
- (ii) The list of the prequalified legal service providers;

(iii) A chronology of events on the

- World Duty Free contracts including the history and background;
- Negotiations between KAA and World Duty Free;
- Appointment letter of Mr. Fred Ngatia as KAA legal representative;
- Eviction of World Duty free from JKIA premises.

(iv) The role he played in the out of court settlement negotiations;

(v) The exact dates of the eviction and when his tenure as MD ended;

(vi) His letter of appointment;

(vii) A brief on Greenfield Terminal Airport.

MIN.NO./PIC/321/2015: ANY OTHER BUSINESS

No other business arose.

MIN.NO./PIC/322/2015: ADJOURNMENT

There being no other business the meeting was adjourned at forty minutes past eleven o'clock.

Signed.....

(Chairman)

Date.....

29/5/2015

MINUTES OF THE 30TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 7TH APRIL, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. Elias Bare Shill, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. ~~Hon. Bernard Munywoki Kitungi, MP~~
9. Hon. Ejidius Njogu Barua, MP
10. Hon. John Ogutu Omondi, MP
11. Hon. Mary Sally Keraa, MP

ABSENT WITH APOLOGY

12. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
13. Hon. John Olago Aluoch, MP
14. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
15. Hon. (Eng.) John Kiragu, MP
16. Hon. Wafula Wamunyinyi, MP
17. Hon. Irungu Kang'ata, MP
18. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
19. Hon. Cornelly Serem, MP
20. Hon. Johana Kipyegon Ngeno, MP
21. Hon. Korei Ole Lemein MP

ABSENT WITHOUT APOLOGY

22. Hon. Adan Mohammed Nooru, MP
23. Hon. Franklin Mithika Linturi, MP
24. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
25. Hon. Abdullswamad Sheriff Nassir, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Susan Maritim - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant II
3. Mr. Philip Lekarkar - Clerk Assistant III
4. Mr. Peter Mwaura - Legal Counsel I
5. Mr. Charles Atamba - Research Officer III

KENYA NATIONAL AUDIT OFFICE

- | | | |
|-----------------------|---|-----------------------|
| 1. Mr. Obed K. Chweya | - | Senior Manager, Audit |
| 2. Mr. Boniface Muli | - | Manager, Audit |

THE NATIONAL TREASURY

- | | | |
|----------------|---|--------------|
| Mr. John Munge | - | Accountant I |
|----------------|---|--------------|

NGATIA & ASSOCIATES LTD.

- | | | |
|-----------------|---|----------------|
| Mr. Fred Ngatia | - | Senior Counsel |
|-----------------|---|----------------|

MIN.NO. /PIC/248/2015: PRELIMINARIES

The Chair called the meeting to order at 3:00 pm. A word of prayer was said by Hon. Francis Mwanzia Nyenze, EGH, MP.

MIN.NO. /PIC/249/2015: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next meeting.

MIN.NO. /PIC/250/2015: EVIDENCE ON THE MATTER OF KENYA AIRPORTS AUTHORITY DUTY FREE SHOPS CONTRACTS

Mr. Fred Ngatia, Senior Counsel Ngatia & Associates appeared before the Committee to adduce evidence on the matter of Duty Free Master Concessionaire.

Mr. Fred Ngatia informed the Committee that;

Introduction:

1. In June, 2013 the Cabinet Secretary, Ministry of Transport and Infrastructure, together with the Management of Kenya Airports Authority made a request to him to carry out an in depth analysis of the World Duty Free saga from its inception in 1989 and find out ways by which the company could be evicted from Jomo Kenyatta International Airport (JKIA); Moi International Airport (MIA) and Wilson Airport. The Company was occupying almost 80% of all the duty free premises and successive administrations had tried and failed to evict the company.
2. Considering this was a massive undertaking, he requested and was granted authority to work together with Ahmednassir Advocates. In the subsequent consultation with the client, he was accompanied by Mr. Ahmednassir, Mr. Mansour Issa, Oriara and Company advocates and Mr. Eric Mutua.
3. In a lease which was made on 27th April 1989, World Duty Free (WDF) was granted a monopoly to operate all duty free shops in all airports in Kenya. World Duty Free was then operating as House of Perfume. The Government agreed to lease out 3,000 square

metres of duty free space at JKIA and 2,000 square metres of duty free premises at Moi International Airport for a term of 10 years which was renewable upon expiry.

4. The notable features of the 1989 Lease Agreement were as follows;

- a) The House of Perfume would have the exclusive right to operate duty free facilities at the demised premises and at any other premises that in future could be designated as an airport.
 - b) No other person or firm would perform operate a duty free facility in any airport unless the House of Perfume gave its consent.
 - c) House of perfume was entitled to import, without any restrictions or payment of duty or sales tax, all products which it intended to sell at its duty free facilities.
-

5. After 2 months of intensive research and perusal of numerous cases which had been filed by World Duty Free against KAA, the legal team strategized a way of evicting the Company from the Airport Lounges. Detailed presentations were made to KAA and after thorough evaluation, KAA granted for the eviction to take place.

6. As the team leader, Mr. Ngatia prepared an eviction strategy which took place between 1 am to 9 am on the night of 1st August and 2nd August, 2013. KAA was able to recover its premises for the first time after 25years. The exercise of evicting WDF/DDF from the Airport lounges was to the advantage of the Government and KAA. Substantial gains were made which require to be protected.

7. After the eviction, World Duty Free made a request to KAA to be allowed to operate a few duty free shops but without any of the contentious terms contained in the original lease signed in 1989. Mr. Ngatia prepared an offer to World Duty Free which had the following demands;

- a) That World Duty Free would abandon and renounce their claim to exclusive use of duty free premises.
- b) That World Duty Free would abandon and relinquish an award of approximately Kshs. 5 billion that had been made in its favour.
- c) That World Duty Free would not file any suit against the Government or KAA seeking compensation for alleged losses of 7 billion incurred during the eviction.
- d) That First Class airport lounges hitherto occupied by World Duty Free be relinquished and taken over by Kenya Airways.
- e) That World Duty Free withdraws the numerous court cases it had filed against KAA.

8. In consideration, World Duty Free accepted the terms and KAA agreed to meet the following;

- a) Allocate 4 shops to World Duty Free at Jomo Kenyatta International Airport and 1 shop at Moi International Airport.
 - b) KAA offered to allocate a small space to World Duty Free at Terminal 4. This space was marked out by KAA's engineer (Eng. Ngige) who was in-charge of that project.
 - c) World Duty Free was to attend a public media briefing, in the presence of senior government officials where the company was to publicly declare acceptance of the terms that had been outlined.
9. Mr. Ngatia alleged that KAA did not implement the terms that had been agreed. It had not allocated a shop to World Duty Free at Moi International Airport although the space remained unoccupied and unused. In addition, KAA has not allocated any space to World Duty Free at Terminal 4 (now 1A) to date despite the fact that the space had been identified and pointed out to World Duty Free.
10. As a direct consequence to the omissions by KAA, World Duty Free has not withdrawn the cases in court though not much action has taken place. Since an offer was made and which was accepted, a valid agreement exists in law.
11. In consultation with KAA, media briefing was arranged at the office of the Cabinet Secretary, Ministry of Transport and Infrastructure. This was held on 16th September, 2013. At the briefing, the Directors of World Duty Free publicly accepted all the terms as earlier agreed.
12. Among others, the following persons attended the Press Release: the Attorney General Mr. Githu Muigai; Secretary, Ministry of Transport and Infrastructure; Eng. Michael Kamau; Chief of Staff and Head of Public Service Mr. Joseph Kinyua, KAA Board Chairman; Prof. Mutuma Mugambi, KAA Acting Managing Director; Ms Lucy Mbugua, External KAA Legal Counsel, Mr. Fred Ngatia, Mr. Kamlesh Pattni (WDF Limited), External Legal Counsel for WDF Limited, External Legal Counsel for WDF Limited and Suzan General Trading Mr. Ahmed Adan.

Additional Oral Evidence from Mr Ngatia

13. Mr. Ngatia further brought to the attention of the Committee that Mr. Pattni's ownership of World Duty Free had been contested by Mr. Nassir Ibrahim in the International Centre for Settlement of Investments Disputes, based in Washington, DC, USA, Case No ARB/00/7 in 2006. According to Mr. Ngatia, the court invalidated the 1989 Agreement between the GoK and the House of Perfume because Mr. Ibrahim was found to have bribed government officials in order to be awarded the tender. In his opinion therefore, the Government of Kenya/KAA should have implemented this International Arbitral Award in dealing with the claims by WDF/DDF.

14. Regarding his legal fees, Mr. Ngatia informed the Committee that he presented fee notes worth Kshs. 290 million (out of which 40 million is VAT). Kshs 250 is to be divided amongst him and the team of lawyers handling the cases. Payment of the bill is still pending because KAA felt that the fee was too high which Mr. Ngatia maintains that its commensurate with the Advocates Remuneration Order.
15. Asked whether he succeeded in the objective to revert duty free space to KAA, Mr. Ngatia responded that yes, he succeeded in stopping the arbitral award payment to WDF but that the Agreement has not been fully implemented in terms of compensation to WDF. Without implementing the Agreement, WDF is not bound to withdraw cases against KAA.
16. Mr. Ngatia also reported that so far, his lawfirm in liaison with WDF lawyers had successfully prepared four (4) leases towards compensation of WDF/DDF.
17. Mr. Ngatia also added that WDF/DDF was eventually allocated space at Mombasa International Airport;
18. Mr. Fred Ngatia had earlier represented Mr. Kamlesh Pattni, the Director of World Duty Free Company in a murder case in which he (Mr Pattni) was acquitted at the High Court and this may be construed as conflict of interest.
19. On whether Mr. Pattni could still claim Kshs. 7 billion for loss and damage incurred during eviction in 2013, Mr. Ngatia stated that according to the Law of Tort, he should have filed the case within one year of the eviction, failure to which he lost legitimacy to do so.

Committee Observations

The Committee observed that;

1. The Cabinet Secretary, Ministry of Transport and Infrastructure interfered with operations of KAA by involving himself in the procurement of Mr. Fred Ngatia as KAA lawyer;
2. No consent has been filed in court by World Duty Free Company Ltd and Diplomatic Duty Free Company Ltd to withdraw the claims now or in future of sole and exclusive rights to operate duty free shops at all airports by and demand for compensation of losses estimated at Kshs. 7 billion allegedly incurred during eviction of WDF and DDF from the Airport Lounges on 1st August, 2013.
3. The authenticity of Kshs. 7 billion claimed by WDF/DDF for loss incurred during forceful eviction from its premises could not be ascertained and may have been inflated.

Way Forward

The Committee instructed Mr. Fred Ngatia to furnish the Committee with the following:

1. Raw video footage of the of the press release by the Cabinet Secretary Ministry of Transport & Infrastructure Eng. Michael Kamau and Mr. Kamlesh Pattni on 16th September, 2013 in which Mr. Kamlesh on behalf of WDF/DDF Pattni agreed to withdraw all cases against KAA, renounce the Kshs 4.2 arbitral award and agreed to surrender all the premises WDF/DDF had been occupying at JKIA since 1989.
2. Copy of application filed by Mr. Kamlesh Pattni renouncing and relinquishing the Kshs. 5 billion arbitral award.
3. Copy of press release signed by Mr. Kamlesh Pattni.
4. Copy of the letter from KAA appointing Mr. Fred Ngatia to act for the Authority.
5. Copy of the Arbitral Award to pay WDF.
6. Copy of letter of offer by Ngatia & Associates on behalf of KAA to allocate space at JKIA Terminal 4 to WWF/WDF and Acceptance by Wetangula & Co. Associates on behalf of WWF/WDF.
7. Copy of formal deed settlement of the dispute between KAA and WWF/WDF.
8. Copies of leases agreement between WDF/DDF by KAA.
9. Evidence of receipt of all correspondences to the client (KAA).

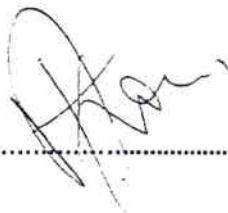
MIN. NO./PIC/251/2015: ANY OTHER BUSINESS

No other business arose.

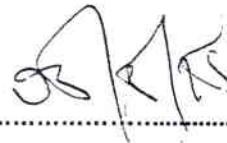
MIN. NO./PIC/252/2015: ADJOURNMENT

There being no other business, the meeting adjourned at Five O'clock.

Signed



Date:.....



 (Chairman)

MINUTES OF THE 29TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 7TH APRIL, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11:30 AM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairman
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairman
3. Hon. Francis Mwanzia Nyenze, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. Elias Bare Shill, MP
6. Hon. Sammy Silas Komen Mwaita, MP
7. Hon. Beatrice Nkatha Nyaga, HSC, MP
8. Hon. Bernard Munywoki Kitungi, MP
9. Hon. Ejidius Njogu Barua, MP
10. Hon. John Ogutu Omondi, MP

ABSENT WITH APOLOGY

11. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
12. Hon. John Olago Aluoch, MP
13. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
14. Hon. (Eng.) John Kiragu, MP
15. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
16. Hon. Cornelly Serem, MP
17. Hon. Johana Kipyegon Ngeno, MP
18. Hon. Korei Ole Lemein MP
19. Hon. Mary Sally Keraa, MP

ABSENT WITHOUT APOLOGY

20. Hon. Adan Mohammed Nooru, MP
21. Hon. Franklin Mithika Linturi, MP
22. Hon. Wafula Wamunyinyi, MP
23. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
24. Hon. Abdullswamad Sheriff Nassir, MP
25. Hon. Irungu Kang'ata, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------|---|--------------------|
| Ms. Susan Maritim | - | Clerk Assistant I |
| Ms. Rose Wanjohi | - | Clerk Assistant II |

Mr. Philip Lekarkar - Clerk Assistant III
Mr. Charles Atamba - Research Officer III
Mr. Peter Mwaura - Legal Counsel I

KENYA NATIONAL AUDIT OFFICE

Mr. Obed K. Chweya - Senior Manager
Mr. Boniface K. Muli - Senior Manager

KENYA AIRPORTS AUTHORITY

Ms. Lucy Mbugua - Managing Director, KAA (stepped aside)

MIN.NO. /PIC/241/2015: PRELIMINARIES

The Chair called the meeting to order at five minutes past twelve o'clock. Hon. Elias Bare Shill, MP said the Prayer.

MIN.NO. /PIC/242/2015: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN.NO./PIC/243/2015: EVIDENCE BY MS. LUCY MBUGUA: BRIEF ON WORLD DUTY FREE LIMITED/DIPLOMATIC DUTY FREE LIMITED VS KENYA AIRPORTS AUTHORITY

Background of WDF/DDF Contracts with KAA

Ms. Mbugua informed the Committee that from April 1989 up to the year 2013, the major operators of the duty free shops at both Jomo Kenyatta International Airport (JKIA) and Moi International Airport (MIA) were Diplomatic Duty Free Limited (DDF) and its closely related entity World Duty Free Company Limited (WDF) which trades as Kenya Duty Free Complex Limited (KDF).

The foundation of their operation was created by an Agreement made on 27th April 1989 between the Government of Kenya and the House of Perfume. The Agreement was heavily in favor of the House of Perfume by giving it exclusive rights to operate duty shops at JKIA and MIA, and in which the Government agreed to enter into a lease agreement with the House of Perfume in respect of 3,000 sq. metres of Duty free space at JKIA and 2,000 sq. mtrs of duty free premises at MIA for a term of 10 years which was renewable upon expiry.

The features of the Agreement included the following:-

- (i) The House of Perfume would have the exclusive right to operate duty free facilities at the premises and at any other premises which in future could be designated as an airport;
- (ii) No other person or firm would operate a duty free facility in an airport unless the House of Perfume gave its consent.
- (iii) The House of Perfume was entitled to import without restriction or payment of duty or sales tax, all products, which it, or any of its sub-tenants, would sell at the duty free facilities.

Even though **no lease agreement** was ever entered into between the Government of Kenya and House of Perfume, WDF and DDF used provisions outlined in the subsequent leases signed when KAA was established as a statutory body for managing aerodromes. The consequences of these leases (which include the ones that expired on 31st March 2013 and 31st July 2013) was that the Authority was continually subjected to litigious claims by the said operators. The effects of the claims were:

- (i) The operators always obtained ex parte orders restraining KAA from proceeding with the tender process regarding the duty free shops.
- (ii) Their claim to exclusive rights to run all Duty Free Shops contravenes the Public Procurement and Disposal Act and Regulations on accountable and transparent competition in public procurement.
- (iii) DDF had a small bonded warehouse next to Terminal 1A, which was to be relocated to the Cargo Village so that construction at Terminal 1A could be completed. DDF declined to relocate and caused an extremely obstructed completion of the construction of Terminal 1A, which made KAA suffer massive losses.
- (iv) Despite being requested by the Authority, DDF/WDF never relinquished space required by airlines to operate passenger lounges.

Attempts at negotiations for WDF/DDF to pave way for completion of T1A construction were not fruitful since DDF/WDF remained non-committal. By relying on the exclusive right, DDF/WDF's sole intention was to forever retain all the space, obstruct the completion of the then Terminal 1A and retain ex-parte court injunctions against the tendering process.

Repossessing Duty Free shops from WDF/DDF

In repossessing duty free shops space from WDF/DDF, the Authority has done the following:

1. Pursuant to a Board Resolution of the Board of Directors passed on 28th January 2013, the Board directed management to identify a team of external legal counsels to defend the interests and file an appeal against the final award issued on 5th December 2012 requiring the Authority to pay the claimant USD 49,000,000. Thereafter, the management instructed the firm of M/s Ngatia and Associates to protect the Authority's interests.
2. Upon expiry of leases on 31st March 2013 and 31st July 2013 respectively, the Authority repossessed the spaces on 31st July 2013.
 - (i) JKIA area covered in a 5th March, 2007 Lease for DDF, total area repossessed was 988.3m²
 - (ii) JKIA area covered in a 14th September, 2007 Lease for DDF, total area repossessed was 997.66m²
 - (iii) MIA total area repossessed was 418.524m²

KAA Management duly instructed the law firm of Ngatia & Associates to defend the Authority in HCCC 327 of 2013 filed by DDF upon which ex-parte court orders were issued in favour of DDF on 30th July 2013, and served on the Authority towards midday on 1st August 2013 well after repossession had been completed.

Settlement

Ms. Mbugua informed the Committee that with the Cabinet Secretary, Ministry of Transport & Infrastructure's guidance, the Authority's external lawyer facilitated amicable settlement process which caused WDF/DDF's principal to publicly declare withdrawal of all claims against the Authority in all Airports. Eventually, the Authority and WDF/DDF amicably agreed upon the withdrawal/setting aside of cases pending in court on duty free shops and related matters.

Engagement of Mr. Fred Ngatia & Legal Team

The Committee heard that the Board of Directors in its 180th Special Sitting held on 4th September 2013, the Board approved negotiations with DDF/WDF. The Board empowered the Authority's external lawyer, Mr. Fred Ngatia to defend the Authority's interests' and negotiate with DDF/WDF's lawyer Mr. Ahmed Adan in regard to claims pertaining to Duty Free shops at all airports in Kenya.

The Board resolved that the following conditions precedent ought to be fulfilled by WDF and DDF and be expressly captured in the negotiation settlement: -

- a) Withdrawal of all cases.

- b) Setting aside of the award made by Hon. Justice Torgbor dated 5th December 2012 and delivered to the parties by a letter dated 21st January 2013.
- c) They shall not have any further claims for damages for the recent and previous evictions.
- d) Publicly and formally stating that they shall not have any further claims whatsoever against the Authority or the Kenyan Government in all airports.

The Authority on its part was to allocate Suzan General Trading JTL several spaces to carry out its operations. The Authority has already allocated the following space to Suzan General Trading JTL (trading as Suzan Duty Free and which was brought on board by Mr. Pattni):-

1. *At JKIA, the Authority has leased with duly signed lease Agreements with Suzan, space at Cargo Village Block B, Gates 6, Gates 7A & 7B and Gates 12.*
2. *At MIA, the Authority has leased Terminal 1, Shops A, B & C bonded warehouse.*

The import of the above Board resolutions once duly implemented was to ensure that Authority ultimately succeeds in closing the long chapter of historical challenges experienced over the years.

Management action on payment of Legal Fees to M/s Ngatia & Associates

The Committee heard that M/s Ngatia & Associates presented three (3) fee notes to the Authority. The Authority wrote to the PS-MOTI requesting that the fee notes be submitted to the Attorney General to advise the amounts paid in cases like these.

In compliance with the Tender Committee's recommendations, the subject of the legal fees was presented to the Board which deliberated on the same in the 195th (Special) meeting held on 13th May 2014. The Board discussed the following itemized fee notes:-

- (i) **HCMA No.67 of 2013:** KAA vs WDFL on setting aside Arbitral Award of USD 49, 096,557 issued on 5th December 2012 against the Authority, Kshs 76,262,029/- less rebate of Kshs. 10 million= Kshs. 66,262,069/-
- (ii) **HCCC No. 327 of 2013:** DDF vs KAA on seeking injunction orders to stop eviction and force renewal of lease, Kshs. 17,400,000/- less rebate of Kshs. 10 million= Kshs.7,400,000.
- (iii) **Repossession of Duty Free Shops & Lounges** from world Duty Free Ltd(WDF/Kenya Duty Free(KDF) and Diplomatic Duty Free(DDF), Kshs 290,850,000/- less rebate of Kshs. 40 Million= Kshs. 250, 850,000/-

Upon consideration of the matter, the Board recommended that the subject of payments be handled in the following way:

- (a) In the items above, payment to item (i) is Kshs. 58,000,000/- because a deposit of Kshs. 20,000,000 had been paid. On item (ii) the payment to be Kshs. 7,400,000/- since the total recommended amounts fall within the applicable scales of The Advocates (Remuneration) Order, 2013 & 2014.
- (b) The Board resolved that on item (iii), the Authority to negotiate with the law firm and apportion the fees in terms of services and each achievement. A Board paper on such observations on reasonableness of the fees was to be submitted to the Board for consideration and direction.

On informing the Parent Ministry of the Board's resolutions, the Ministry vide letter Ref. MOT/C/ADM/5/I Vol. III (75), noted that the authority for payments for professional services can only be granted by the Authority's Tender Committee on the basis of its budget and not the Board or the Ministry.

The matter was subsequently submitted to the Tender Committee with the following requests.

- (a) To approve payment of professional legal fees to M/s Ngatia & Associates items (i) and (ii) as recommended by the Board.
- (b) To recommend appointment of three officers to negotiate with M/s Ngatia & Associates in respect of payment for item (iii) above.

The Tender Committee approved the above requests upon which payments were made.

The Management made the following recommendations to the Board at its 208th (Special) meeting held on 29th October 2014, that the Authority should make an offer to M/s Ngatia & Associates on payment of item (iii) in respect to repossession of the subject shops, lounges and bonded warehouses.

- (a) According to the Advocates Remuneration (Amendment) Orders, for fees otherwise not prescribed, an advocate may charge his fees at such an hourly rate(s) as may be agreed with the client.
- (b) The Authority pays an all-inclusive balance of Kshs. 120,000,000 in full and final settlement of the fees charged under item(iii) on condition that M/s Ngatia & Associates avails duly filed Court Consents marking all the cases as settled and /or withdrawn.

The closure on the pending cases can only be achieved upon filling of duly filed Consents in Court, marking the said cases as settled and/or withdrawn.

The Board's resolution on the same was communicated to Mr. Ngatia vide letter dated 10th November 2014.

MIN. NO./PIC/244/2015: CURRENT STATUS OF DUTY FREE CONTRACTS

The Committee heard that following the re-tender process in which Dufry International Ag, won but the 1st signed Agreement nullified because it had contentious clauses and a 2nd Agreement signed without the contentious clauses, the Authority was served court papers on 4th December 2014 by WDF Co. Ltd trading as Kenya Duty Free. WDF is seeking: -

- (i) A declaration that the October 2014 Agreement is Null and Void;
- (ii) To prevent Dufry International Ag from dealing with duty free retail services under a single master license.
- (iii) To restrain KAA and Dufry International Ag from interfering with WDF rights to all duty free shops in the Airports.

The Authority instructed Mr. Mohammed Nyaoga of Mohammed Muigai Advocates to represent it in the matter.

The CS-MoTI was requested to prevail upon WDF/DDF/KDF to honor the undertaking he made in public and to direct Mr. Ngatia to complete his assignment to obtain and submit signed and duly filed Consents marking all cases between WDF/DDF and /or withdrawn.

Ms. Mbugua further informed the Committee that she wrote a letter dated 11th February 2015 to the CS MoTI in which she gave him an update on World Duty Free/Diplomatic Duty Free Limited. In the letter she informed the CS as follows:

- (i) That the settlement between KAA and DDF pronounced in public had not been formalized to date. As per the terms of the settlement, DDF/WDF were to withdraw all the 9 court cases and there would be no further claims on KAA. In return KAA would give WDF/DDF space in JKIA and MIA on standard leases.
- (ii) Mr. Ngatia's fee of Kshs. 290,850,000 had not been paid since the Authority wanted to negotiate them downwards and only pay once Mr. Ngatia had submitted duly filed Consents.
- (iii) Mr. Ngatia was yet to avail the filed consents. Meanwhile, WDF/DDF lawyers had written letters claiming space at TIA was part of the settlement.
- (iv) She reminded the CS that, the he (the CS) had advised WDF/DDF that the space at TIA would be advertised and that they would be free to participate in the competitive tender process. Therefore the space at TIA was not part of the settlement as approved by the CS-MoTI and the KAA Board.

Ms. Mbugua added that she is not aware of the CS's response to the letter and that she was sent on compulsory leave, seven days after signing the above letter.

Committee observations

The Committee observed that KAA went ahead to rent space out to Suzan General Trading JTL without the duly filed consent.

The Committee observed that no Consents in relation to the cases by WDF/DDF/KDF had been filed in court.

Ms. Mbugua's Response to Committee's Observations

- 1) Ms. Mbugua's informed the Committee that her letter dated 8th October 2013 confirming appointment of Mr. Ngatia as KAA lawyer was done in good faith following instructions from CS MoTI;
- 2) That she was not privy to the events leading to the Press Release of Sept 2013 by CS MoTI and Mr. Pattni, having assumed office just three weeks earlier. She claimed to have been invited to the Press Conference together with Board Chairman and did not participate in the preparation of the Press Release;
- 3) Ms. Mbugua denied having received any copies of letters and Deed Settlements from the Advocates (Ngatia and Wetangula, Aden & Makokha) and claimed that the letters could have been backdated to sanitise the process;
- 4) For the negotiated settlement, Mr. Ngatia's law firm demanded Kshs. 290 million (for eviction of Mr Pattni from KAA premises and out of court settlement) which the KAA Board contested was too high and requested the figure to be revised downwards;
- 5) Ms. Mbugua accused the Legal Counsel Mr. Fred Ngatia of not cooperating with his client KAA on the matter of settlement with WDF/DDF.

Way Forward

The Committee resolved that the MD (suspended), KAA provides the Committee with

- (i) The raw footage of the press release at the MoTI's boardroom.
- (ii) The letter from KAA appointing Mr. Fred Ngatia as the external lawyer to act on behalf of the Authority on the cases with WDF/DDF.
- (iii) The names of all the players in the process of negotiating settlement, the lawyers involved and how the lawyers were sourced.
- (iv) The Board Minutes giving the CEO instructions to write to the CS-MOTI on the status of the settlement.

The Committee further resolved to invite the following persons to adduce evidence

- (i) The former MD Mr. Gichuki
- (ii) The former Chairperson
- (iii) The former Board members

The Committee requested to have the submissions by 16th April 2015.

MIN. NO./PIC/245/2015: THE MATTER OF DUTY FREE MASTER CONCESSIONAIRE AND THE CONTENTIOUS CLAUSES

Tendering Process

The MD (suspended), KAA, informed the Committee that

1. The Authority advertised in the print media as from 4 October 2013 and closing on 25th October 2013, the Tender for the Development and Management of a Duty Free Master Concessionaire Facility for the current Terminal I (then Terminal 4) at the JKIA.
2. After evaluation of the bids, M/s Nuance Group Ag was declared the successful bidder and subsequently awarded the contract.
3. The award of the contract to M/s Nuance Group Ag was subsequently challenged at the Public Procurement Review Administrative Tribunal by four unsuccessful bidders namely: Unifree Duty Free, Suzan Trading JTL, Flemingo International Ltd and Dufry International Ag.
4. In its Decision dated 20th December 2013, the Board nullified the award of the contract to M/s Nuance Group Ltd and ordered the Authority to re-tender afresh and ensure that in doing so, it makes use of the standard Tender Document as prepared by the Public Procurement Oversight Authority (PPOA) and enlarge the specifications to make them more inclusive.
5. The Authority re-tendered afresh and advertised in print media as from 26th March 2014 and closing 8 July 2014, the same tender for the Development and Operation of Duty Free Shops under a single Master Concessionaire at the Airport.
6. Before Tendering, the Authority sought advice from the PPOA on various aspects of this particular tendering process including its compliance with the Public Procurement requirements. In its letter dated 18th June 2014, PPOA gave KAA the go-ahead to proceed with the process.
7. In the fresh tendering process, 28 bid documents were purchased out of which five bids were submitted by the closing date, which included Dufry International Ag., ATU Turizim Isletmeciligi, AerRianta International, Paragon Holdings and Flemingo

international (BVI) Limited. It worth noting that Dufry International Ag. is the leading Duty Free Facility Provider in the world.

8. Following the award of the fresh tender to Dufry International Ag., Flemingo International Ltd and Atu Turizim isletmeciligi challenged the award of the tender before the Public Procurement Review Board, who dismissed the challenges on 17th December 2014. It directed that the procurement entity was at liberty to proceed with the procurement process in respect to the tender.
9. After the award of the contract to Dufry International, Suzan General Trading JTL which had participated in the initial Tender for the contract which was later nullified went to court seeking to quash the award of the tender to Dufry International Ag. On 4th October 2014, the High Court dismissed the case and ruled that Suzan had not established any arguable case to warrant the quashing of the contract to Dufry International Ag.

Kenya Airport's Authority's Contract with Dufry International Ag:

Ms. Mbugua informed the Committee that

1. On 15th October 2014, the Authority signed a contract with Dufry International Ag. Having been given the go ahead by all relevant entities i.e. PPOA, PPARB and the High Court.
2. A month or so after the contract was signed, it was noted that a number of the clauses in the contract were not favorable and did not comply strictly with the Tender Document.
3. Upon realization of the mistakes, KAA immediately brought the same to the attention of Dufry International Ag who agreed to discuss the relevant clauses with a bid to amending, modifying or altogether deleting them.
4. As a result of the discussions between KAA and its lawyers and Dufry International Ag and its lawyers, a second and final document was signed by both parties on 22 January 2015, which fully addressed all mistakes noted in the first contract signed 19th September 2014.
5. Upon signing the 2nd Contract on 22nd January 2015, the 1st Contract was rendered redundant by virtue of Article XII Clause 4(a) of the new contract which states that the Agreement constitutes the entire agreement between the parties and supersedes any previous agreements between the parties.

The Concept of Master Concessionaire:

The MD (suspended), KAA informed the Committee that

1. The concept of Master Concessionaire is well established in the business world. It refers to an agreement between the owner of a facility and the concession owner that grants the latter exclusive rights to operate a specified business in the facility under specific conditions. Exclusivity is the hallmark of a Master Concessionaire arrangement.
2. From the onset, it was clear that KAA was granting a master concessionaire to run a Duty free facility at Terminal 1 unit at JKIA.
3. It was also clear that the exclusivity would relate only to this particular Terminal and not the entire airport.

Contract Document of 15th October 2014: The contentious clauses

Ms. Mbugua informed the Committee that:-

1. The contentious clauses for the contract, which were picked out and led to abandonment of the said contract document and the adoption of a new one were found at Article V, entitled "other covenants".
2. Clause 4(d) was a contentious clause which provided that " in the event that the Authority further develops terminal facilities other than the terminal, the concessionaire shall be granted a priority over the concession within such facility, upon terms and conditions substantially to this Agreement with due adjustments of the rates."
3. Clause 4(b) was considered for amendment because it required the Authority to provide adequate and appropriate offices and warehouses storage spaces for use by the Concessionaire as agreed by both parties.
4. Clause 4(c) was also considered for amendment because it stated that " in the event that temporary facilities are created for the handling of international departing or arriving passengers, the Concessionaire shall have the right to develop and operate retail areas as such temporary facilities on a priority basis.

The 2nd Contract Document of 22 January 2015:

The Committee heard that

1. This contract sought to address the concerns raised in respect to the 1st contract document. The amendments are to be found at Part V Clause 4 (other covenants).
2. Clause 4(a) of the contract document provided that the Concessionaire would be the Single Master Licencee at the Terminal (this is what the Tender Document provided for). This is the practice all over the world.

3. Clause 4(b) provided that during the term of the contract, KAA would not contract any other entity to operate Duty Free Shops at the Terminal. This was in compliance with the tender document. Another Duty free provider would be a violation of the Tender Document.
4. Clause 4(c) states that the Authority would endeavor to provide office and warehouse storage space to the Concessionaire upon payment of appropriate fees, rates and charges. This is normal.
5. It was very significant to note that although Dufry International Ag was entitled to exclusivity over the whole terminal, KAA managed to negotiate this and to exclude other businesses not related to Duty Free from this exclusivity.
6. KAA could not legally allow another Duty Free Facility at this terminal. This was what the Tender Document provided and KAA could therefore not alter this position.
7. Under this tender, Dufry International is supposed to pay a yearly guaranteed minimum concession fee of USD 3.5 million to KAA.

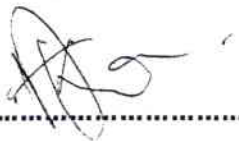
MIN. NO./PIC/246/2015: ANY OTHER BUSINESS

There was no other business before the Committee.

MIN. NO./PIC/247/2015: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at twenty minutes to one o'clock

Signed.....



Date.....



MC (Chairman)

MINUTES OF THE 28TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 7TH APRIL, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairman
 2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairman
 3. Hon. Francis Mwanzia Nyenze, MP
 4. Hon. Dr. Oburu Oginga, MGH, MP
 5. Hon. Elias Bare Shill, MP
 6. Hon. Sammy Silas Komen Mwaita, MP
 7. Hon. Beatrice Nkatha Nyaga, HSC, MP
 8. Hon. Bernard Munywoki Kitungi, MP
 9. Hon. Ejidius Njogu Barua, MP
 10. Hon. John Ogutu Omondi, MP
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ABSENT WITH APOLOGY

11. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
12. Hon. John Olago Aluoch, MP
13. Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP
14. Hon. (Eng). John Kiragu, MP
15. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
16. Hon. Cornelly Serem, MP
17. Hon. Johana Kipyegon Ngeno, MP
18. Hon. Korei Ole Lemein MP
19. Hon. Mary Sally Keraa, MP

ABSENT WITHOUT APOLOGY

20. Hon. Adan Mohammed Nooru, MP
21. Hon. Franklin Mithika Linturi, MP
22. Hon. Wafula Wamunyinyi, MP
23. Hon. (Maj.) (Rtd) John Waluke Koyi, MP
24. Hon. Abdullswamad Sheriff Nassir, MP
25. Hon. Irungu Kang'ata, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Ms. Susan Maritim	-	Clerk Assistant I
Ms. Rose Wanjohi	-	Clerk Assistant II
Mr. Philip Lekarkar	-	Clerk Assistant III
Mr. Charles Atamba	-	Research Officer III
Mr. Peter Mwaura	-	Legal Counsel I

KENYA NATIONAL AUDIT OFFICE

Mr. Obed K. Chweya	-	Senior Manager
Mr. Boniface K. Muli	-	Senior Manager

KENYA AIRPORTS AUTHORITY

- | | | |
|-------------------------|---|--------------------------|
| 1. Mr. Yatich Kangugo | - | Ag. Managing Director |
| 2. Mr. John Thumbi | - | General Manager, Finance |
| 3. Ms. Catherine Kisilu | - | Corporation Secretary |
| 4. Mr. Victor Arika | - | Legal Counsel |

MIN.NO. /PIC/227/2015: PRELIMINARIES

The Chair called the meeting to order at five minutes ten o'clock. Hon. Elias Bare Shill, MP said the Prayer.

MIN.NO. /PIC/228/2015: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN.NO./PIC/229/2015: PROCEDURAL MATTER: DECLARATION OF INTEREST

Pursuant to Standing order 90, Hon. Oburu Oginga declared that Legal Counsel Victor Arika is well known to him and is a close family friend.

MIN.NO./PIC/230/2015: APPEARANCE BY MR. YATICH KANGUGO, ACTING MANAGING DIRECTOR, KENYA AIRPORTS AUTHORITY

Mr. Yatich Kangugo, Ag. Managing Director, Kenya Airports Authority sought the Committee's indulgence for not submitting the information requested from him owing to changes in administration that saw him handover to Ms. Lucy Mbugua and then shortly after, took over office again following the stepping aside of Ms Mbugua to allow for EACC investigations into corruption allegations during her tenure in office.

The Ag. MD was accompanied by the previously suspended senior officers: Mr. John Thumbi, General Manager, Finance, Ms. Catherine Kisilu, Corporation Secretary and Mr. Victor Arika, Legal Counsel.

MIN.NO./PIC/231/2015: THE MATTER OF MASTER CONCESSIONAIRE OF DUTY FREE SHOPS (TENDER NO. KAA/193/2013-2014)

The Ag. MD, KAA informed that World Duty Free/Diplomatic Duty Free operated Duty Free Shops at JKIA and MIA from 1989 until 2013 when a decision to terminate and contract and evict them from KAA premises.

Thereafter KAA tendered for Master Concessionaire of Duty Free Shops, Tender No. **Tender No. KAA/193/2013-2014.**

The objectives of the tender were:-

- (i) To create a new retail experience for the passengers at JKIA to show case new brands, products and better services;
- (ii) To have a competitive advantage with competitive retail prices;
- (iii) Boost its non-aeronautical portfolio by generating additional revenue;
- (iv) Boosting the economy as the development is likely to inject over USD 2 million into the national economy.

First Tender

The Ag. MD, KAA further informed the Committee that the first tender for the development and management of a duty free retail master concessionaire at JKIA was advertised in the local dailies on 4th Oct. 2013 and opened on 25th Oct. 2013. Thirty-six bidders bought the tender, but only the following ten bidders returned their bids:

1. World Duty Free
2. Silver Duty Free
3. Maritime & Merchantile International LLC
4. Flemingo International (BVI) Ltd
5. SIA Kenya Holdings Ltd
6. Belgian Sky Shops Ltd
7. Tiger Eye Retail
8. Dufry International AG
9. Nuance Group
10. Unifree Duty Free

The tender was awarded to M/S Nuance Duty free.

Four firms, however lodged appeals before the Public Procurement Administrative Review Board (PPARB) against the Authority. The PPARB ordered that the award to M/S Nuance be annulled and directed the Authority to tender afresh. The tender was an Open International Tender.

Second Tender

The re-tender for development and operation of Duty Free Shops under a Single Master License at the new JKIA, Terminal Unit 4 was advertised in the local dailies in March 2014. A pre-bid meeting/site visit was held on 11th April 2014.

The tender was opened on the 8th July 2014 out of the twenty bidders who bought the tender document, the following five returned their bids:-

1. Dufry International Ag.
2. Atu Turizim Isletmeciligi
3. AerRianta International
4. Paragon Holdings

5. Flemingo International(BVI) Limited

The Tender was evaluated as per the criteria set out in the bidding documents after which Evaluation Committee recommended award to Dufry International Ag.

The Tender Committee subsequently met on 14th August 2014 and approved award to M/S Dufry International Ag. As recommended by the evaluation committee.

Notification of the award to M/S Dufry International Ag. was made on 15th August 2014, while all unsuccessful bidders were informed on the same date.

Two unsuccessful bidders filed for review with PPARB against the Authority, but both cases were dismissed.

Suzan Trading JLT filed before the High Court for the tender award to be set aside and re-tendered, but the High Court ruled that the case failed to meet the threshold for grant of leave to bring judicial review proceedings against the Authority.

Suzan Trading JLT filed a civil appeal on the ruling and it's still pending in the Court of Appeal.

MIN. NO./PIC/232/2015: THE MATTER OF THE CONTENTIOUS CLAUSES IN THE FIRST CONTRACT DATED 15TH OCTOBER 2014 AWARDED TO DUFRY INTERNATIONAL AG.

The Ag. MD. KAA informed the Committee that the first Concession agreement signed by the parties dated 15th October 2014 was prepared by the law firm of M/s Ogetto, Otachi & Company Advocates, external Counsel for the Authority.

The Committee was informed that by a letter dated 19th December, 2014 Ref. MOT&I/AT/028/238 Vol. VII/14 from the Principal Secretary, Ministry of Transport & Infrastructure, the Authority's attention was drawn to certain clauses referred to as "contentious clauses" in the Agreement that required to be expunged lest the concessionaire would enjoy contractual privileges not envisaged in the tender documents and were not the intent of the Authority. The Authority was advised to do the following:

- (a) To formally explain how it entered into an Agreement that was prejudicial to its interests;*
- (b) To cancel and review the Agreement to ensure its in line with the tender documents and Government policy and regulations; and*
- (c) To bring the matter to the Board's attention to enable them investigate and come up with recommendations.*

The Authority did a comprehensive review in liaison with external Counsel and Dufry International Ag. After which an amended copy of the Concession Agreement was sent to the Ministry of Transport & Infrastructure for perusal and approval prior to execution.

The Ministry sought clarity on why the Agreement talked of maintenance of "tariff rates" while the tender documents talked of "competitive prices".

In a letter dated 6th February, 2015, the Ministry noted that the amendment to the contentious clauses did not exhaustively address the exposure of the Authority. Clause 4(b) under Article of the 2nd Concession Agreement was not in the Authority's best interest and might have implications on the existing tenants for the reason that the clause stops the Authority from contracting with any other person or entities from operation of Duty Free Retails Shops at Terminal 1A.

The contentious clauses were in the first Agreement under Article V Clause 4, sub clauses (a), (b), (c), (d) and (e). The changes effected were as follows

(i) Clauses (a) and (b) were amended

(ii) Clauses (c), (d) and (e) were deleted

Article I

Clause 7: It was agreed that Dufry International Ag. would commence services 4 months after it obtains all necessary approvals from KAA.

Clause 12: Definition of "Duty Free retails Shops" has been introduced to expressly exclude other current and future commercial undertakings in the Terminal.

Article II

Clause 4(a): Rent of Kshs. 2,000 per square feet shall be adjusted to reflect inflationary rates, though the tender documents did not provide for escalation of rent.

Article V

Clause 4(a): It provides that this 2nd Agreement constitutes the entire agreement between the parties and supersedes all others, so the 1st was nullified.

Clause 4(d): it was introduced that in good faith both parties can make necessary adjustments resulting from operational or commercial imperatives or necessary design changes.

Committee Observation

The Committee observed that the 1st Agreement should not have had the contentious clauses and that it should not have taken the intervention of the parent ministry to point them out. KAA should have a competent lawyer(s).

Way Forward

The Committee requested KAA for information on what exact work Ogetto, Otachi and Company did and what were their fee notes on the same.

MIN. NO./PIC/233/2015: BOARD RESOLUTIONS APPROVING SIGNING OF THE 1ST AND THE 2ND AGREEMENTS

The Ag. MD, KAA informed the Committee that there was no Board resolutions approving signing of the Agreements; the reason being that once the Board approves the annual corporate budget and procurement plan, it is the Management's responsibility by law to implement the two and give periodic updates to the Board.

The Ag. MD, KA further informed the Committee that there was no written authority authorizing signing of the first and second contracts respectively. During a meeting attended by PS and CS-MoTI held at the Ministry on 18th December 2014, after pointing out the contentious clause to the KAA management (MD, Corporation Secretary, Legal Officer and Ag. General Manager- Procurement & Logistics) the MD and Corporation Secretary gave the Cabinet Secretary their undertaking that the Agreement would be entirely reviewed and a new one signed.

On 8th January 2015, KAA Corporation Secretary held a meeting with the PS-MoTI in his (PS)office and took him through the amended contract. It is during the said meeting that, the Corporation Secretary was given the go ahead to sign the amended Agreement and forward a signed copy to the Ministry.

MIN. NO/PIC/234/2015: PROCUREMENT PROCESS OF THE AUTHORITY'S LAWYERS, NGATIA & ASSOCIATES AND OGETTO, OTACHI & COMPANY TO REPRESENT THE BOARD AND THE ADVOCATES' FEE NOTES FOR SERVICES RENDERED

The Ag. MD, KAA informed the Committee that the law firms of M/S Ngatia & Associates and M/s Ogetto, Otachi & Company Advocates respectively are within the panel of lawyers procured procedurally under the Public Procurement and Disposal Act, 2005.

The Committee was further informed that the M/s Ogetto, Otachi & Company Advocates received written instructions for KAA in respect of PPARB appeals and High Court matters.

M/s Ngatia & Associates received written instructions in respect of Duty Free Shops matters- Arbitration appeal, legal opinion on amicable settlement and High Court claims.

The fee notes submitted by M/s Ngatia and Associates are:-

1. **Appeal on Arbitration Award of approximately USD 49 Million (Kshs 5 Billion) against KAA, High Court case No. 67 of 2015 KAA vs WDF:** On 12th September 2008, World Duty Free filed suit seeking an injunction to restrain the Authority from awarding tenders it had earlier advertised in respect of Duty Free shops at the Moi International Airport. M/s Ngatia & Associates filed a suit against WDF being an appeal for the arbitral award by Justice E Togbor. They obtained orders to ensure that the award cannot be effected until the Appeal is heard. The fee note is Kshs 56, 262,069/= inclusive of VAT.
2. **Pre-eviction suit by DDF-HCCC No. 327 of 2013: DDF vs KAA:** On 30th July 2013, DDF obtained ~~ex-parte~~ court orders to pre-empt repossession of the shops by KAA, but the ~~court orders~~ were served on the Authority on 1st August 2013 after the eviction action. The fee note is Kshs 17,400,000 inclusive of VAT.
3. **Eviction & Repossession of Duty Free Shops & Lounges for JKIA and Moi International Airport:** The Authority attempted to engage the DDF/WDF to consider vacating the areas, which the Authority required for expansion purposes. This was not fruitful and since the leases with WDF/DDF were expiring on midnight 31st July 2013, repossession was done after midnight, which was successful. The fee note is Kshs. 290,850,000/= inclusive of VAT.

After the eviction, KAA with external Counsel initiated negotiations and discussion with WDF & DDF. Thereafter on 16th September 2013, the Cabinet Secretary, MoTI issued a press release where he stated that all cases against KAA by World Duty Free; Diplomatic Duty Free and Kenya Duty Free would be withdrawn.

The Authority as part of the settlement, allocated space to WDF/DDF and 4 lease agreements signed with Suzan General Trading JTL trading as Suzan Duty Free, having taken over from WDF/DDF both in JKIA and Moi International Airport. This is because Suzan General Trading JTL has 15% shareholding in World Duty Free Limited. Suzan General Trading JTL's registered address is Austen Place, School Lane Westlands the same address as World Duty Free Limited of Kamlesh Pattni.

Mr. Arika, KAA Legal Counsel informed the Committee that Mr. Ngatia was procured through open tender process from a list of 68 law firms following approval by the Tender Committee and award by the KAA MD Ms. Lucy Mbugua.

The external lawyers who worked closely with Mr. Fred Ngatia were Mr. Mohamed Muigai, Mr. Kennedy Ogetto, Mr. Ahmednassir and Mr. Eric Mutua.

Committee Observation

The Committee observed as follows:

- (i) That there appeared to be a relationship between WDF Ltd, DDF Ltd and Suzan General Trading Ltd;
- (ii) That Suzan General Trading JTL and World Duty Free Limited share registered premises in Kenya.
- (iii) That M/s Ngatia Advocates represented KAA whereas they had earlier presented Mr. Kamlesh Pattni on a different matter;
- (iv) That a letter allegedly showing the 15 % shareholding by Suzan in WDF Ltd was used to allocate the shop spaces in JKIA and MIA to Suzan General Trading JTL without due diligence to confirm its authenticity.
- (v) That no consent had been entered into in court concerning Mr. Kamlesh Pattni dropping all cases against KAA.
- (vi) That KAA did not undertake full due diligence on the companies on the companies it was dealing with on the matter of duty free contracts.

Way Forward

The Committee instructed KAA management to avail the following documents:-

- (i) Comprehensive information on the chronology of events from the 1989 Agreement with House of Perfume to date, including liabilities and the tender agreements.
- (ii) Information on the registered premises of World Duty Free.
- (iii) Information on the relationship between World Duty Free Limited, Diplomatic Duty Free and Suzan General Trading JTL.
- (iv) Confirmation from KAA and the status of the consent that Mr. Kamlesh Pattni would drop all cases against KAA had been filed in court.
- (v) Procurement process that led to identification of Mr Ngatia to represent KAA on the matter of duty free matter.
- (vi) Exact services rendered by the external lawyers attached to Mr. Fred Ngatia and what their fee notes.
- (vii) Up to date status of court cases against or by KAA; to include the list of lawyers in the last five years KAA has used, the cases involved in and their fee notes. The list is to include the names of the Managing Director(s) who authorized the same.

The information is to be submitted by Friday, 16th April, 2015.

MIN. NO./PIC/235/2015: VIDEO FOOTAGE OF THE PRESS CONFERENCE IN WHICH THE CABINET SECRETARY, MINISTRY OF TRANSPORT AND INFRASTRUCTURE AND MR. KAMLESH PATTNI DECLARED THAT MR. PATTNI HAD WITHDRAWN ALL COURT CASES AGAINST KAA

The Ag. MD, KAA informed the Committee that the press conference was held at the Boardroom of the Ministry's headquarters on 18th September 2013 Some of the people who attended include:

1. Hon. (Prof.) Githu Muigai - Attorney General;
2. Eng. Michael Kamau, CBS - Cabinet Secretary, MoTI
3. Mr. Joseph Kinyua- Chief of Staff and Head of Public Service;
4. Prof. Mutuma Mugambi, MBS - Board Chairman, KAA
5. Ms. Lucy Mbugua- Ag. Managing Director, KAA
6. Mr. Fred Ngatia- External Legal Counsel for KAA
7. Mr. Kamlesh Pattni- World Duty Free Limited
8. Mr. Arif Hafiz- Suzan General Trading JTL
9. Mr. Ahmed Adan- External Legal Counsel for WDFL and Suzan General Trading JTL.

The Ag. MD, KAA sought the Committee's indulgence that it was not able to get raw footage of the press conference.

Committee Observation

The Committee observed that although KAA was an independent Authority, the Parent Ministry was negotiating on pertinent legal issues and releasing press conferences on its behalf.

Way Forward

The Committee resolved that KAA should use all available avenues to provide the raw footage since it participated in the press release.

MIN.NO./PIC/236/2015: PROCESS OF HOW KAA ARRIVED AT THE FIGURE OF KSHS. 2,000/= RENT PER SQUARE FOOT AND THE INFLATIONARY RATE:

The Ag. MD, KAA informed the Committee that at the time of preparing the tender documents, JKIA Terminal 4(TIA) was still under construction and Duty Free operations were only at the JKIA 1 & 2. These Duty Free operations were ONLY charged at a single rate

of USD 345 per Meter Square per annum approximately Kshs. 2,885 per sq. ft. per annum. No consideration was made for concession fee based on turnover.

The proposed commercial operations at JKIA T4 (later JKIA TIA) were to be based on both rental for the space occupied and secondly on concession fee based on business turnover. To incorporate the two components, the rent was fixed at Kshs 2,000 per sq. ft. per annum and the concession fee at 20% on business turnover.

MIN. NO./PIC/237/2015: AUDITED FINANCIAL STATEMENT SHOWING WHETHER THE PROSPECTIVE LEGAL FEE CHARGES WERE INCLUDED OR EXCLUDED IN THE FINANCIAL STATEMENT FROM THE TIME THE ARBITRATION COMMENCED

The Ag. MD, KAA informed the Committee that the Authority has always disclosed exposure on litigation and legal fees for instance disclosure note no. 22 in the FY 2012/2013 financial statements and disclosure note 50 in the FY 2013/2014 financial statements.

MIN. NO./PIC/238/2015: NAMES OF THE OFFICERS WHO WERE INVOLVED IN DRAFTING THE FIRST AND SECOND CONTRACT AGREEMENT ON THE DUTY FREE SHOPS:

The Ag. MD, KAA informed the Committee that the persons involved in drafting the Agreements were Mr. George Kamau (KAA Legal Officer) who resigned 26th March 2015, Ms. Katherine Kisila, KAA Corporation Secretary, Mr. Kennedy Ogetto of M/s Ogetto, Otachi Company Advocates in consultation with Dufry International Ag. Principals and Lawyers.

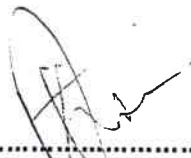
MIN. NO./PIC/239/2015: ANY OTHER BUSINESS

No other business arose.

MIN. NO./PIC/240/2015: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at thirty minutes past eleven o'clock.

Signed.....


MC (Chairman)

Date.....



MINUTES OF THE 16TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON MONDAY 9TH MARCH, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 PM.

PRESENT

1. Hon. Adan Wehliye Keynan, CBS, MP - Chairperson
2. Hon. Anthony Ichung'wah Kimani, MP - Vice Chairperson
3. Hon. Francis Mwanzia Nyenze, MP
4. Hon. Dr. Oburu Oginga, MGH, MP
5. Hon. Franklin Mithika Linturi, MP
6. Hon. Elias Bare Shill, MP
7. Hon. Sammy Silas Komen Mwaita, MP
8. Hon. (Eng). John Kiragu, MP
9. Hon. Bernard Munywoki Kitungi, MP
10. Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
11. Hon. Cornelly Serem, MP
12. Hon. Ejidius Njogu Barua, MP
13. Hon. Johana Kipyegon Ngeno, MP
14. Hon. John Ogutu Omondi, MP
15. Hon. Korei Ole Lemein MP
16. Hon. Mary Sally Keraa, MP

ABSENT WITH APOLOGY

17. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
18. Hon. Abdullswamad Sheriff Nassir, MP
19. Hon. Wafula Wamunyinyi, MP
20. Hon. Adan Mohammed Nooru, MP
21. Hon. John Olago Aluoch, MP
22. Hon. (Dr.) Paul Nyongesa, Otuoma, EGH, MP
23. Hon. Beatrice Nkatha Nyaga, HSC, MP

ABSENT WITHOUT APOLOGY

24. Hon. (Maj.)(Rtd) John Waluke Koyi, MP
25. Hon. Irungu Kang'ata, MP
26. Hon. John Muchiri Nyaga, HSC, MP
27. Hon. Onesmus Muthomi Njuki, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY - SECRETARIAT

Ms. Susan Maritim	-	Clerk Assistant I
Ms. Rose Wanjohi	-	Clerk Assistant II
Mr. Philip Lekarkar	-	Clerk Assistant III
Mr. Josiah Kosiba	-	Fiscal Analyst
Mr. Charles Atamba	-	Research Officer III
Mr. Peter Mwaura	-	Legal Counsel I

KENYA NATIONAL AUDIT OFFICE

Mr. Obed K. Chweya - Senior Manager
Mr. Boniface Muli - Manager

NATIONAL TREASURY

Mr. John Munge - Accountant 1

INSPECTORATE OF STATE CORPORATIONS

Mr. Peter K. Waweru - Assistant Inspector General

KENYA AIRPORTS AUTHORITY

1. Mr. Yatich Kangugo - Ag. Managing Director
2. Ms. Margaret Muraya - Ag. GM- Procurement & Logistics
3. Mr. Patrick Chonde - Ag. GM- Finance
4. Mr. Bernard Mogambi - Ag. GM- Marketing
5. Eng. Philemon Chamwada - GM - Projects & Engineering Services

MINUTE NO./PIC/120/2015: PRELIMINARIES

The Chair called the meeting to order at three o'clock. The Prayer was said by Hon. Elias Bare Shill, MP and thereafter followed by self-introduction of all those present.

MINUTE NO./PIC/121 /2015: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next meeting.

**MINUTE NO./PIC/ 122/2015: EVIDENCE BY KENYA AIRPORTS AUTHORITY
ON THE DUTY FREE CONTRACTS AND TERMINAL 4
CONTRACT VARIATIONS**

The Ag. Managing Director, Kenya Airports Authority, Mr. Yatich Kangugo accompanied by Ms. Margaret Muraya, Ag. General Manager Procurement & Logistics; Mr Patrick Chonde, Ag. General Manager Finance; Eng. Philemon Chamwada, General Manager, Projects & Engineering Services and Mr. Bernard Mogambi, Ag. General Manager Marketing appeared before the Committee to adduce evidence on the duty free contracts and the Terminal 4 contract variations.

The Ag. Managing Director, Kenya Airports Authority informed the Committee that the reasons why he and those who were accompanying him were in an acting capacity, was because the substantive office holders had been sent on compulsory leave. They are

- (i) The Managing Director, Ms. Lucy Mbugua
- (ii) General Manager (Finance) – Mr. John Thumbi
- (iii) Ag. General Manager (Procurement and Logistics) - Mr Hobadiah Orora

(iv) Corporation Secretary – Ms. Katherine Kisila

Committee Resolution

The Committee directed the KAA management to submit copies of suspension letters to the senior managers, Board Minutes and any other relevant correspondence on the matter.

MINUTE NO. /PIC /123/2015: DECLARATION OF INTEREST

Pursuant to Standing Order 90, Hon. John Omondi Ogutu MP declared that he transacts business with Kenya Airports Authority and is a personal friend of Mr. Yatich Kangugo, the Ag. M.D.

MINUTE NO./PIC/124/2015: EVIDENCE: KENYA AIRPORTS AUTHORITY ON THE STATUS REPORT ON THE TENDERING PROCESS OF DUTY FREE SHOPS:

The Ag. Managing Director, Kenya Airports Authority informed the Committee as follows;

1. That Jomo Kenyatta International opened in 1978 is the largest airport in East and Central Africa with a design capacity of 2.5 million passengers annually. Due to growth in traffic, Kenya Airports Authority embarked on a facility expansion and improvement program geared to expanding and improving the airport infrastructure with the aim of positioning it as a major aviation hub in the continent.
2. At the new Terminal Unit (Terminal 1A), the Authority wished to engage a reputable duty free operator to manage its duty free opportunity as a single master concessionaire with the objectives of new retail experience, competitive advantage, revenue generation and boost to the economy.

TENDER 1

3. The first tender for the development and management of a Duty Free Retail Master Concessionaire at JKIA was advertised in the local dailies on 4th October 2013 and opened on 25th October 2013. The tender was bought by 36 bidders, but only ten bidders returned their bid:-

- (i) *World Duty Free*
- (ii) *Silver Duty Free*
- (iii) *Maritime & Merchantile International LLC*
- (iv) *Flemingo International (BV10 Ltd)*
- (v) *SIA Kenya Holdings Ltd*
- (vi) *Belgian Sky Shops Ltd*
- (vii) *Tiger Eye Retail*

- (viii) *Dufry international AG*
- (ix) *Nuance Group*
- (x) *Unifree Duty Free*

4. The tender was awarded to M/s Nuance Duty Free. Four firms (M/s Flemingo International, Unifree Duty Free, Dufry International AG and Suzan General Trading JLT) lodged an appeal before Public Procurement Administrative Review Broad (PPARB) in 2013. The PPARB ordered the award to M/s Nuance Group AG annulled and directed the Authority to tender afresh.

RE-ADVERTISEMENT

5. The tender was classified as an Open International Tender. The Tender for Development and Operation of Duty Free Shops under a Single Master License at the new LKIA, Terminal Unit 4 was advertised in the Daily Nation and Standard on 26th and 28th March 2014 respectively.
6. The pre-bid meeting/ site visit was held on 11th April 2014. The tender was opened on the 8th July 2014. Out of the twenty bidders who bought the tender document, five returned their bids as follows:-
- i. *Dufry International AG*
 - ii. *Atu Turizm Isletmeciligi*
 - iii. *AerRianta International*
 - iv. *Paragon Holdings*
 - v. *Flemingo International (BVI) Limited.*
7. After evaluating the tender as per the criteria set out in the bid document, the Evaluation Committee recommended award to M/s Dufry International AG.
8. The Tender Committee met on 14th August 2014 and approved award to M/s Dufry International AG as recommended by the Evaluation Committee. M/s Dufry International AG was notified of the award as were the unsuccessful bidders.
9. Two of the unsuccessful bidders (Flemingo International BVI Limited and Atu Turizm Isletmeciligi) filed review before the PPARB on 21st and 22nd August 2014 respectively. The two matters were handled together and both dismissed on 17th September 2014.
10. Suzan General Trading filed before the High Court, JR Case No. 339 of 2014 on 9th September 2014 against the Authority seeking for the award to Dufry International AG be annulled and the Authority to re-tender for the Tender as per the directions of the PPARB of

20th December 2013. The court dismissed the application. Suzan Trading appealed against this judgement and the matter is pending in the Court of Appeal.

11. The first contract signed between the Authority and Dufry International AG on 15th October, 2014 was prepared by M/s Ogetto, Otachi & Company Advocates in conjunction with the Authority and Dufry International's representative.

12. The Cabinet Secretary, Ministry of Transport via letter dated 18th December 2014, called the Authority's attention to several "contentious clauses" in the contract that the C.S advised should be expunged lest Dufry International Ag enjoys contractual privileges that were not envisaged by the Tender Document not intended by the Authority.

13. After review, by the Authority, M/s Ogetto, Otachi & Advocates and Dufry's International AG's representative, the "contentious clauses" were removed. 2 clauses were amended and 3 clauses were deleted.

(i) **The amended clauses were those giving exclusive concessionaire rights in the Terminal (like World duty free) and the Authority to provide adequate office and warehouse storage space.**

(ii) **The deleted clauses were those that gave Dufry International first priority in temporary facilities created by the Authority; Dufry International to get first Priority for other Terminals that the Authority may develop and the Authority to regularly consult with Dufry International on arrangements of new space.**

14. Changes made to the first signed Agreement include: -

ARTICLE 1

- (i) **Clause 7 - Commencement of Services:** Dufry International to discharge its financial obligations 4 months after obtaining necessary approvals from KAA;
- (ii) **Clause 12- Definition of "Duty free retail shops"** introduced to expressly exclude other current and future undertakings e.g. restaurants, forex, lounges, internet etc.

ARTICLE II

- (iii) **Clause 4(a)-Rent of Kshs. 2,000 per square feet** shall be adjusted to reflect inflationary rates. The initial price was Kshs. 1,760 per square foot in a similar area. Also the tender documents had not provided for escalation of rent.

ARTICLE V

- (iv) **Clause 4(a)** which read that "the Concessionaire shall be the single master licensee for the development and management of duty free retail services in the

Terminal and can sub-let any space under the contract with the Authority's consent;

ARTICLE XII

(v) **Clause 4(a) Supersession-** the Clause provides that "this agreement constitutes the entire agreement between the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. This nullifies the Agreement executed by the parties on 15th October, 2014. All amendments will not take effect unless in writing and signed."

(vi) **Clause 4(d)** allows that in good faith, both parties can make necessary adjustments resulting from operational or commercial imperatives.

15. The Concession is to pay a minimum annual guarantee and a fixed license fee as well as other applicable rates in the manner and period provided. Based on the annual Gross sales a licence fee at 20%, if at 20% its less than Kshs. 3.5 million, KAA takes Kshs. 3.5million. If more than Kshs. 3.5 Million, KAA takes the standard fee and a rate of the difference.

16. A Contract Agreement was subsequently signed and dated 22nd January 2015.

MINUTE NO./PIC/125/2015: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Committee Observations/Queries

The Committee observed as follows:-

1. That the Authority signed a contract with contentious issues and it took the intervention of the Cabinet Secretary, Ministry of Transport & Infrastructure development to step in to correct the situation. The Committee further observed that the Cabinet Secretary's intervention though prudent, mounted to interference in the procurement process of KAA.

Management was instructed to submit to the Committee copy of the letter from the Cabinet Secretary dated 18th December, 2014, seeking to have the contentious clauses relooked at.

2. The Committee sought to know why Suzan Trading JLT filed a civil suit challenging the awarding of the tender even though it had participated in the first tendering process as part of a consortium with World Duty free but did not participate in the second round.

KAA Management responded that Suzan Trading Ltd appealed as a bidder in the consortium with World Duty Free in the first tender.

3. The Committee sought to know who drafted the first Agreement signed with Dufry International AG.

KAA responded that M/s Ogetto, Otachi & Advocates, KAA and the concessionaire's lawyers drafted the Agreement. The Ag. MD further informed the Committee that investigations are on going in the Authority on involvement of its officers in the drafting of the contentious clauses. Already the Company Secretary, Ms. Katherine Kisila has been sent on compulsory leave for her involvement in the matter.

4. The Committee observed that KAA failed to seek the Attorney General's input on the matter.

5. The Committee observed that Clause 4(a) in Article II concerning the rent per sq. ft., the tender document did not provide for escalation of rent and is likely to be abused.

6. The Committee further requested KAA to submit the following additional information:-

- (i) Copies of the exact wording and clauses in the 1st Contract that were contentious and were either amended or deleted.
- (ii) Copies of Board Minutes of the resolution to sign the first and second contracts;
- (iii) Authority used to withdraw the 1st contract and sign a 2nd contract with Dufry International AG;
- (iv) Procurement process that resulted in M/s Ogetto, Otachi & Company Advocates being recruited to represent the Board, what Advocate's fee notes for the first and second drafts of contracts.
- (v) Directors of Suzan Trading JTL and its relationship with World Duty Free and Mr Kamlesh Pattni;
- (vi) Process on how KAA arrived at the figure of Kshs. 2,000 rent per square foot and the inflationary rate.

MINUTE NO. /PIC/126/2015:

PAST DUTY FREE COURT CASES

1. **World Duty Free (trading as Kenya Duty Free Limited) Complex vs KAA: HCCC No. 413 of 2008:** This dispute was regarding the operation of Duty Free shops at Moi International Airport and Jomo Kenyatta International Airport. World Duty Free alleged that as per its Agreement with the Authority of 27th April 1989 and amended on 11th May 1990, it was granted sole and exclusive rights to run Duty free shops and carry out advertising concessions in JKIA, MIA and all other Airports run by the Authority. The matter was referred to arbitration that lasted until the conclusion in October 2012.

On 5th December 2012, the award was delivered which says the Authority is required to pay World Duty Free approximately \$ 49,000,000. In addition to this, the Authority has been ordered to cancel other contracts with third parties in relation to advertising concessions and comply with the provisions of the leases dated 29th January 2003 and 10th January 2002 which allegedly gave exclusivity to the Applicant.

2. **KAA VS World Duty Free Appeal no. 67 of 2013:** The matter was challenging the award issued under case HCCC No. 413 of 2008. Orders were issued that ensured that the award cannot be effected until the appeal is heard and finally determined.
3. **World Duty Free VS KAA HCCC No. 331 of 2012(formerly HCCC No. 413 of 2008):** World Duty free sought conservatory orders restraining the Authority from proceeding with advertised tenders for the development of an African Artefacts & Bookshop (Lot 1) and a Confectionary & Jewellery Shop (Lot 2) at Moi International Airport. The tender had been advertised as per the Public Procurement & Disposal Act of 2005. The Court issued consent orders restraining the Authority from awarding concessions with regard to the suit for 14 days from date of issuance of order. The Managing Director and Corporation Secretary were found in contempt for publishing the tender notices. The Authority was ordered to publish a notice of cancelling the said tenders within 14 days. The authority filed an appeal and obtained a stay pending hearing of the appeal.
4. **KAA VS World Duty Free Civil application NAI 285 of 2012:** This is an appeal against the orders of HCCC No. 331 of 2012, finding the MD and Corporation Secretary in contempt. The Court of appeal granted stay of execution of orders pending hearing and determination of appeal. The matter is awaiting substantive hearing.
5. **Africa Duty Free Limited & Diplomatic Duty Free Limited Vs Public Procurement Administration Review Board (PPARB) & KAA: Civil Suit No. 32 of 2012:** The applicants had appealed against the declining of PPARB to issue orders against the Authority's decision to award management of duty free shops to Silver Duty Free Limited for management of Duty Free Shops at Kisumu Airport. The applicants were seeking annulment and repeat of the tendering process. On January 2012, the court made a n ex-parte ruling and issued an order granting leave to the Applicants to institute proceedings to quash the decision of PPARB dismissing the applications filed by the Applicants and prohibiting the Authority from proceeding with the tender and granting stay of the aforesaid decisions.
6. **World Duty Free Ltd T/A Kenya Duty Free Complex VS KAA: HCCC No. 196 of 2012:** The Applicant sought injunction restraining the Authority from awarding tenders for operation of Duty Free shops at JKIA or any other Airport. This was after the Authority advertised for concessionaires to manage duty free shops in the upcoming Terminal 4 at JKIA. The matter is still in court. The media questioned the Judge's conduct and so the judge asked both parties if they were comfortable with him continuing with the case. KAA want a different judge while the Applicant is comfortable with the same judge.
7. **World Duty Free Ltd VS KAA: HCCC No. 253 of 2012:** World Duty Free filed a suit requesting for a mandatory injunction to compel KAA to renew the leases of 29th January 2003. Upon inter-parties hearing, a ruling was delivered on 17th October 2012 and

subsequent orders issued restraining the Authority from repossessing premises under the 2003 lease until the suit is finally heard and determined.

8. **Diplomatic Duty Free Limited VS KAA: BPRT No. 284 of 2010:** The case was filed at the Business Premises Rent Tribunal on 12th June 2008 to have the Authority restrained from recovering some space at JKIA for passenger use. The parties entered a consent order issued on 26th April 2010 to the effect that the Authority being followed. Matter pending a hearing date.
9. **World Duty Free Limited VS KAA: BPRT No. 84 of 2008:** World Duty Free went to the Business Premises Rent Tribunal to have the court compel the Authority not to deny them access to the leased premises at Moi International Airport Terminal II. The Tribunal granted the application but the Authority raised a preliminary objection that was allowed and the matter was struck out 30th July 2008. The suit was reinstated since Applicant counsel was not served with hearing notice and hearing on the matter is awaiting a hearing date.
10. **Diplomatic Duty Free Ltd VS The Hon AG and KAA: High Court petition No. 101 of 2010:** This matter arose after the Authority carried out an exercise for recovery of space occupied by various duty free shops for passenger use- among them was Diplomatic Duty Free Ltd. Conservatory orders were issued on 17th December 2010 and the matter is awaiting setting down for full hearing.
11. **World Duty Free Ltd T/A Kenya Duty Free Complex VS KAA and Dufry International AG.** The matter was filed by Diplomatic Duty Free based upon claim for "sole and exclusive" rights to construct, furnish and commercially operate Duty Free Shops at the Airport and disputing the contract between the Authority and Dufry International AG.

MINUTE NO./PIC/127/2015:

**CONTINGENT LIABILITIES ARISING OUT OF
CURRENT DUTY FREE CONCESSION**

KAA informed the Committee that:-

1. World Duty Free arbitral award of Kshs. 4.3 Billion based on the Arbitral Award in HCCC 413 of 2008.
2. Court finding in favour of World Duty Free thereby granting sole and exclusive rights to operate duty free at JKIA and MIA amounts to Kshs 5.5 billion based on High Court Case No. 45 of 2015 by World Duty Free.
3. Cumulative contingent costs of Kshs. 350 million in respect of external professional legal fees in duty free related matters, out of which Ngatia and Associates Advocates is owed Kshs. 290 million.
4. KAA has not paid any monies arising out of the contingent liabilities.
5. KAA has appealed on all arbitral awards. KAA was instructed to submit documentary evidence of the Appeal.

Committee Observations/Queries

The Committee observed that: -

1. There were no consents filed in court in all the cases by World Duty Free Complex; Africa Duty Free Limited and Diplomatic Duty Free, therefore the Contract with World duty free appears to be still valid and so Authority's contract with Dufry could be deemed invalid.
2. The September 2013 press conference that the Cabinet Secretary, Ministry of Transport & Infrastructure held with Kamlesh Pattni stating that all court cases against KAA by Mr. Kamlesh Pattni have been withdrawn was inaccurate and misleading.
3. KAA signed the first contract with Dufry International AG yet it appeared to have the same contentious clause which World Duty Free Limited are using to claim sole and exclusive rights.
4. KAA did not have contingent provision for the Kshs. 4.3 billion and Kshs. 5.5 billion awards which World duty Free is claiming.
5. All KAA contingent liabilities are not captured in the Authority's financial statements yet they ought to be captured in the audited accounts;

Committee Recommendations/Way Forward

The Committee instructed KAA management to submit the following information by Thursday, 12th March 2015;

1. Details of all other pending court cases pending in court, liabilities and the lawyers handling the cases.
2. Procurement process leading to identification of Ngatia & Associates Advocates as KAA panel of lawyers and all other KAA court cases, legal fees paid to them and the cases being handled;
3. Video footage on the press conference showing CS Transport and Infrastructure and Mr Kamlesh Pattni claiming that Mr Pattni has withdrawn the court cases against KAA;

MINUTE NO./PIC/128/2015:

ANY OTHER BUSINESS:

No other business arose.

MINUTE NO./PIC/129/2015:

ADJOURNMENT.

There being no other business, the Chairperson adjourned the meeting at eighteen minutes past five o'clock.

Signed.....



Date.....

