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**SPECIAL AUDIT REPORT  
OF THE  
CONTROLLER AND AUDITOR-GENERAL  
ON  
THE SALE OF PROPERTIES  
OF  
KENYA NATIONAL ASSURANCE  
COMPANY LTD (IN LIQUIDATION)  
AND  
KENYA NATIONAL ASSURANCE  
COMPANY (2001) LIMITED**

SEPTEMBER 2009

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## **1.0 INTRODUCTION**

### **1.1 BACKGROUND**

Kenya National Assurance Company Ltd was put under the management of Statutory Managers in June 1996 in accordance with Section 67(3) of the Insurance Act, Cap 487, following successive periods of weak management and inadequate performance. The Statutory Managers had been appointed by the Commissioner of Insurance to amongst other aspects, prepare a detailed handing over report of the assets and liabilities of the Company.

The Statutory Managers completed the handing over report in July 1996 and passed over to the Official Receiver at the Registrar General's Office, Nairobi all the assets and liabilities of the Kenya National Assurance Company Ltd (In Liquidation), on 25 July 1996. The Official Receiver subsequently managed both the General Business and the Closed Life Fund of the Company until November 2002 when he handed over the Closed Life Fund together with its assets and liabilities to the Treasury, to be managed by the newly established Kenya National Assurance Company (2001) Ltd. The Official Receiver however continued to control and manage the General Business.

Due to organizational and other logistical challenges, the Kenya National Assurance Company (2001) Ltd did not take over full management of the Closed Life Fund until January 2003. According to further information available, the new Company was mandated by the Government to, amongst other responsibilities;

- (a) Accurately determine benefits payable to policyholders of the Kenya National Assurance Company Ltd (In Liquidation) and to pay out such benefits in accordance with the Court Order of 2001.

- (b) Develop the new Company into a viable operation for sale as a going concern, by putting in place an efficient management structure, operating systems and an environment suitable for modern business practices.

## 1.2 AUDIT OBJECTIVES

The audit of disposal of properties belonging to the Kenya National Assurance Company Ltd (In Liquidation) and the Kenya National Assurance Company (2001) Ltd was carried out with a view to establishing that:-

- (a) Financial, Procurement and Disposal Regulations were adhered to;
- (b) Value for money was obtained from the disposal, and;
- (c) Applicable laws and court order were complied with during the process.

The audit was carried out within the following Terms of Reference:-

- i Review of compliance with applicable laws and court order, relevant to the disposal of the Companies' properties;
- ii Review of compliance with the Government Financial Regulations and Procedures;
- iii Examination and analysis of the disposal process from commencement to conclusion (where applicable);
- iv Review of valuation and pricing of the properties disposed of, as well as gain or loss on such disposal;
- v Confirmation as to whether full payments for properties disposed of were received and properly accounted for;

- vi Consideration for any other matter relevant or incidental to the disposal of the properties.

### **1.3 AUDIT SCOPE AND COVERAGE**

The scope of audit covered the entire period of the properties' disposal process i.e. from June 1996 when the Kenya National Assurance Company Ltd was put under liquidation, through to January 2003 when the Kenya National Assurance Company (2001) Ltd took over the assets and liabilities of the Closed Life Fund, and up to 30 June 2009.

#### **1.3.1 Arrangement of the Audit Findings**

The Audit Findings are arranged in two parts as follows:

##### **Part A**

**Properties disposed of by the management of the Kenya National Assurance Company Ltd or the Official Receiver of the Kenya National Assurance Company Ltd (In Liquidation) between June 1996 and 30 June 2009**

##### **Part B**

**Properties disposed of by the Kenya National Assurance Company (2001) Ltd between January 2003 and 30 June 2009.**

#### **1.3.2 Audit Methodology**

In order to gather the necessary information and evidence for the purpose of the audit, the following procedures were adopted;

- i Examination of available records in respect of the Kenya National Assurance Company Ltd and the Kenya National Assurance Company Ltd (In-Liquidation).
- ii Examination of available documents in respect of assets and liabilities handed over to the Official Receiver by the Kenya National Assurance Company Ltd (In- Liquidation) through the Statutory Managers.
- iii Examination of available records in respect of assets and liabilities under the Closed Life Fund, handed over to the Kenya National Assurance Company (2001) Ltd.
- iv Review of various key documents including Company's Act, Insurance Act, Public Procurement and Disposal Act, 2005, relevant Court order, Board minutes and the Government Financial Regulations and Procedures.
- v Analysis and assessment of data collected on disposal of properties of the Kenya National Assurance Company Ltd, the Kenya National Assurance Company Ltd (In Liquidation) and the Kenya National Assurance Company (2001) Ltd.
- vi Actual physical verification of the properties.

## **1.4 LIMITATION OF SCOPE**

The audit was limited to examination of available records and documentation, interviews with key personnel at the Office of the Official Receiver and the Kenya National Assurance Company (2001) Ltd, as well as actual field visits to the properties' sites.

Reference was also made to the current public procurement and disposal experiences and best practices.



## 2.0 AUDIT FINDINGS

### PART A

#### 2A.1 PROPERTIES DISPOSED OF BY THE MANAGEMENT OF THE KENYA NATIONAL ASSURANCE COMPANY LTD OR THE OFFICIAL RECEIVER OF THE KENYA NATIONAL ASSURANCE COMPANY LTD (IN LIQUIDATION)

As indicated above, the Official Receiver at the Office of the Registrar General took over the management of the Kenya National Assurance Company Ltd (In Liquidation) in July 1996, upon receipt of the assets and liabilities of the Company from the Statutory Managers.

The Table below summarizes details of twelve (12) properties managed and sold by the management of the Kenya National Assurance Company Ltd or the Official Receiver between June 1996 and 30 June 2009:

	PROPERTY	LOCATION	REF.NO.	SIZE
1	Karen Plot	Karen, Nairobi	LR.14656	3.6 Ha
2	Kibagare Way House	Loresho, Nairobi	LR.No.7752/96	0.012 Ha
3	Muthaiga House	Muthaiga, Nairobi	LR.No.214/366	1.068 Acres
4	South C Sports Complex	Nairobi South C, Nairobi	LR. No.209/12175	-
5	Kasarani Plot	Kasarani, Nairobi	LR.No.8480/2	40.48 Ha.
6	Githurai (269 plots)	Githurai, Nairobi	LR. No.13673	-

7	Nyali Manager's House	Nyali Mombasa	LR.NO.1324/1M N	1.1011Acres
8	Mavoko Municipality	Athi River, Machakos	LR.No.12610/4	231.4 Ha.
9	Eldoret Manager's House	Eldoret Municipality	Eldoret Block 13/177	2.4 Ha
10	Mua Plot	Mombasa Road, Nairobi	No.209/11241	5.694 Ha.
11	Kitale Housing Scheme	Kitale		
12	Malindi Plots	Malindi	Nos.2032-2035	

### 2A.1.1 Karen Plot - LR No.14656

Karen Plot LR No.14656 measuring 3.6 hectares is situated at Karen area in Nairobi. Records available indicated that the Kenya National Assurance Company Ltd had purchased the property for Kshs.10 million from an individual, pursuant to a sale agreement between the Company and the individual, signed on 22 April 1990. According to additional records available, a sum of Kshs.5,101,080 had subsequently been paid by the Company to the individual, leaving a balance of Kshs.4,898,920 as at 11 August 1997.

The Company however failed to pay the balance of Kshs.4,898,920 as agreed, consequent upon which the Advocates of the seller indicated their client's wish to refund the sum of Kshs.5,101,080 earlier paid towards the purchase and regain ownership of the property. The Official Receiver agreed to the proposal, provided interest at a rate of 22% p.a on the refund was considered. Further information showed that the Advocates of the Official Receiver received a refund of Kshs.5,231,120, following which the property reverted to the original owner in January 1999.

The Advocates of the Official Receiver did not however remit the amount of Kshs.5,231,120 so received to the Official Receiver as expected, but instead wrote to him indicating that the entire sum had been applied as follows:

	<b>Kshs.</b>	<b>Kshs.</b>
Amount received (on behalf of the Official Receiver)		5,231,120
Less: Expenditure		
Legal fees on defense of a claim for Kshs.38,521,544.30 by a bank	3,460,000	
Legal fees on claim against the Karen Plot L.R. No. 14656	1,692,000	
Out of pocket	59,000	
Office disbursements	10,000	
Bank cheques	<u>10,120</u>	
<b>Total Expenditure</b>		<u><b>5,231,120</b></u>
<b>Amount received by the Official Receiver</b>		<u><b>Nil</b></u>

Apart from the fact that no details or records were seen in respect of the two cases against which legal fees totalling Kshs.5,231,120 were paid, no explanation was provided for failure by the Advocates to remit the amount of Kshs.5,231,120 to the Official Receiver. Further, no action appears to have been taken by the Official Receiver against the Advocates.

### **2A.1.2 Kibagare Way House - LR.No.7752/96**

The property is represented by a residential building situated along Kibagare Way in Loresho area in Nairobi. The property stands on a plot measuring 0.012 hectares and comprises of a four bedrooms double storey house, an attached garage, domestic staff quarters and a detached guest house.

The property was sold for Kshs.13 million in September 1996 to a Holding company on a single sourcing basis. A Government valuation report for the property was not however availed for audit review, with the result that it was not possible to determine the basis on which the value of Kshs.13 million was arrived at and accepted as reasonable and competitive. Further, it was also not indicated how the Holding company was identified.

Although records available showed that a deposit of Kshs.1.3 million for the property had been paid on 25 June 1996, no evidence was seen to confirm that the balance of Kshs.11.7 million was subsequently received by the Official Receiver. In addition, the sale agreement for the property outlining the terms and conditions of the transaction was similarly not made available for audit review.

In the circumstances therefore, it was not possible to confirm that any meaningful value was received by the Official Receiver from the disposal of the Kibagare Way House.

### **2A.1.3 Muthaiga House - LR.No.214/366**

Muthaiga House is located along Limuru Road next to Muthaiga Market. The house is a residential property standing on a plot measuring 1.068 acres, consisting of a four bedrooms double storey building, with an attached garage and a detached servant's quarter.

The property was sold to a local company on a single sourcing basis in June 1996 for Kshs.25 million. It was not however clarified as to how the company was identified. Further, no Government valuation report was availed in order to ascertain the fairness and competitiveness of the price of Kshs.25 million for the property. In addition, and although the amount of Kshs.25 million was indicated as having been received in June 1996, no cashbook or bank statement was seen to confirm receipt of the amount by the Official Receiver.

Consequently, it was not possible to confirm that the sale proceeds of Kshs.25 million were received, recorded and properly accounted for.

#### **2A.1.4 South C Sports Complex - LR. No.209/12175**

The Sports Complex is situated at South C area in Nairobi. The property was sold through a sale agreement dated 11 January 2002 for Kshs.33,660,000 to an Estates company. No valuation report from the Government Valuer was however seen, consequent upon which it was not possible to ascertain how the price of Kshs.33,660,000 was arrived at. It was also not indicated how the Estates company was identified.

Further information available showed that out of the total sale proceeds of Kshs.33,660,000 paid by the buyer, an amount of Kshs.3,916,600 was irregularly retained by the Advocates acting on behalf of the Official Receiver. Although it had been indicated through various correspondence that the Official Receiver had complained over the conduct of the Advocates to the Secretary of the Advocates Complaints Commission, no further action appears to have been taken to recover the balance of Kshs.3,916,600.

### **2A.1.5 Kasarani - LR.No.8480/2**

Kasarani Plot LR No.8480/2 measuring 40.48 hectares lies in Kasarani area, North of Nairobi. The plot was originally owned by a local Building Society and had in 1992 a value of Kshs.83 million assigned to it by the Government Valuer. The Agricultural Finance Corporation however had a first charge on the title deed of the plot, for a principal debt of Kshs.15 million owed to the Corporation by the Society. Records further showed that at about the same time, the Society also owed the Kenya National Assurance Company Ltd an amount of Kshs.48 million.

Following a hearing and determination of High Court suit No. 5613 of 1989 filed by the Kenya National Assurance Company Ltd over the matter, the property was immediately vested in the Company. With the case concluded as indicated above, the next process necessary and required was for the Company to have the vesting order registered with the relevant authorities, in order to regularize ownership of the property. No evidence was however seen to confirm that this was done.

Additional information available indicated that the title deed of the property was and under unclear circumstances later returned by the Official Receiver, to the Agricultural Finance Corporation, apparently after several attempts to sell the property failed. Although and as mentioned above the property was valued at Kshs.83 million in 1992 by the Government Valuer, a correspondence seen appeared to show that the property was in 2003 sold by the Corporation through public auction for Kshs70.5 million, which price clearly was far below the value set by the Valuer some eleven (11) years earlier. Further and as at the time of audit, there was no evidence to confirm that the Official Receiver had received any part of sale proceeds from the Corporation, despite the fact that the property had already been disposed of.

### **2A.1.6 Githurai - LR. No.13673**

Githurai plots located approximately 5 km off and east of Thika Road relate to a larger parcel of land previously owned by a Finance Building Society (In Receivership), in which the Kenya National Assurance Company Ltd had invested an amount of Kshs.18 million.

Following collapse of the Building Society, the Kenya National Assurance Company Ltd was compensated for the investment with an allotment of five hundred and forty three (543) plots in Githurai LR No.13673, out of which two hundred and seventy four (274) were vested in the Kenya National Assurance Company (2001) Ltd against the Closed Life Fund. The remaining two hundred and sixty nine (269) were, as discussed in the ensuing paragraphs, left in the General Business under the Official Receiver.

According to records available, a private valuer placed the value of the two hundred and sixty nine (269) plots between Kshs.120,000 and Kshs.180,000 each in February 2006, depending on size and location. It was not however explained as to why the Government Valuer was not involved in the valuation process. It was also not clear how the private valuer had been identified and his fee determined. Nevertheless, further records available showed that in March 2006, an auctioneer was appointed to sell the two hundred and sixty nine (269) plots on behalf of the Official Receiver. Apart from the fact that it was not clarified how the auctioneer was identified, no formal agreement also appears to have been drawn for the engagement between the two parties.

Additional information elsewhere indicated that although the auctioneer had as of January 2009 disposed of one hundred and thirty one (131) plots at an estimated sum of Kshs.9,209,038, he could only account for ninety seven (97), against which an amount of Kshs.6,819,000 had been realized. Further and notwithstanding the fact that the average price of approximately Kshs.70,298 per plot does not appear to have been fair and competitive, it was also not explained as to why the auctioneer

had not remitted to the Official Receiver the balance of Kshs.2,390,038 for thirty four (34) plots which as indicated above had already been sold.

#### **2A.1.7 Nyali Manager's House - LR.No.1324/1MN**

The Nyali Manager's House is located in Nyali Estate in Mombasa mainland, at the corner of Maweni Road and another unnamed road extending from Impala Road. It stands on a plot measuring 1.1011 acres. Documents availed for audit review indicated that the property was sold to an Investment company in June 1996 for Kshs.4.5 million, but without a valuation report from the Government Valuer. The basis of the sale price of Kshs.4.5 million for the property was not therefore clear. It was also not indicated how the Investment company had been identified.

A further review of other records showed that the same property was contained in the vesting orders transferring various properties to the Kenya National Assurance Company (2001) Ltd in 2002, and that it was later sold for Kshs.7.5 million to an individual in June 2006. No satisfactory explanation was provided to indicate why a property which had been sold in 1996 to an Investment company was transferred under vesting orders to the Kenya National Assurance Company (2001) Ltd in 2002 and subsequently sold again in 2006 to an individual.

However, separate information appeared to suggest that the reversion of the Manager's House to the Kenya National Assurance Company Ltd coincided with a withdrawal from the Company's Property Register of the Nyali Guest House LR 8505/1MN, also owned by the Company. Although no documents or other evidence were availed to show how the Guest House was disposed of or whether any sale proceeds in respect thereof were received by the Official Receiver, it would appear from the sequence of events that the buyer of the Manager's House may have instead been irregularly allocated the Guest House.



A search conducted on 5 September 2009 at the Mombasa Lands Office indicated that the Guest House is presently owned by a third party who has since sub-divided the plot.

#### **2A.1.8 Mavoko Municipality - LR.No.12610/4**

LR 12610/4 measuring 231.4 hectares and situated at Mavoko Municipality, Machakos District was originally owned and registered in the name of an Estate firm. The title deed of the property was charged to a local financial institution against an unspecified obligation. In 1993, the charge was transferred and duly registered in favour of the Kenya National Assurance Company Ltd as security for a loan of Kshs.25 million, presumably after settling with the financial institution the unspecified obligation. Although according to a valuation report dated 15 December 2005 by a private valuer contracted by the Official Receiver the open market value of the property stood at Kshs.60 Million, efforts by the Official Receiver to sell it in 2005 did not apparently succeed.

A further examination of the records available however revealed that in July 2006 the original owner, the Estate firm, made an unsolicited offer for redemption and ownership of the property at Kshs.35 million. Although according to information seen the Official Receiver accepted the offer of Kshs.35 million for the property, though unsolicited, the transaction does not appear to have been concluded as no information in this regard was made available for audit review. Further, and for similar reason, it was not possible as at the time of audit to establish whether or not the ownership of the property had changed.

#### **2A.1.9 Eldoret Manager's House - Eldoret Block 13/177**

Situated at Eldoret Municipality and measuring 2.4 hectares, the Eldoret Manager's bungalow with detached staff quarters had been assigned a value of Kshs.4 million in June 1996 by a private valuer. There was however no Government valuation report on the property.

Records available indicated that the property was on a single sourcing basis sold to a Ventures firm at a price of Kshs.3.5 million in the month of June 1996, with a deposit of Kshs.350,000, representing 10% of the sale price being remitted to the Official Receiver on 25 June 1996.

Apart from the fact that the sale agreement between the Official Receiver and the buyer for the property was not seen, no evidence was also made available to confirm that the balance of Kshs.3,150,000 in respect of the sale price was received. It was similarly not possible to ascertain in the absence of a Government valuation report that the price of Kshs.3.5 million for the property was fair and competitive.

A search conducted at the Eldoret Lands Registry in August 2009 revealed that the property was in March 1997 transferred to another company and has since been subdivided into five plots, each with its own title deed. Records and other relevant information relating to the basis of the transfer and other consideration were however not made available for audit review.

#### **2A.1.10 Mua Plot - No.209/11241**

The Mua Plot No .209/11241 measuring 5.694 hectares is situated along Mombasa Road and bordering Imara Daima Estate in Nairobi. This property had been valued at Kshs.70 million in December 2002 by the Government Valuer. Other records indicated that the property which was originally owned by Mua Park Investments Limited had in November 1989 been charged to Middle Africa Finance Company Ltd against a loan for Kshs.10 million, and for which the charge was later in October 1992 transferred to the Kenya National Assurance Company Ltd.

Additional information showed that in March 2005, the Official Receiver decided to sell the property, following which various bids were received. A bid for Kshs.38 million by a properties firm was subsequently considered and accepted by the Official

Receiver, and the firm, pursuant to an offer made by the Official Receiver, proceeded to pay a deposit of Kshs.3.8 million, representing 10% of the sale price. It was not however explained why a property in respect of which the Government Valuer had placed a value of Kshs70 million in 2002 was sold for Kshs.38 million in 2005.

Further records revealed that an amount of Kshs.16,570,474 representing City Council Rates and Land Rates was netted off from the sum of Kshs.38 million, leaving a balance of Kshs.21,429,526 as the actual receipts from the sale of the property. No supporting documents in respect of the expenditure of Kshs.16,570,474 were however made available for audit review and as a result, its validity and accuracy could not be ascertained. In addition, records seen did not show how the proceeds of Kshs.21,429,526 were receipted, recorded and eventually accounted for.

#### **2A.1.11 Kitale Housing Scheme**

The handing over report of July 1996 by the Statutory Managers indicated that the proposed Kitale Housing Tenant Purchase Scheme was taken over by the Official Receiver as part of the assets of the Kenya National Assurance Company Ltd (In Liquidation). The report further indicated that the exercise of extracting sub-divisional title deeds for the Scheme had progressed on as planned and reached the deed plan stage. However and on the basis of the records seen, the Scheme was not part of the properties handed over to the Kenya National Assurance Company (2001) Ltd in January 2003 by the Official Receiver and details on the current status of the Scheme with respect to its ownership and valuation were not availed for audit review.

#### **2A.1.12 Malindi Plots - Nos. 2032-2035**

Malindi plots Nos. 2032, 2033, 2034 and 2035 all valued at Kshs.1,500,000 as at 30 June 1996 were in the same year handed over to the Official Receiver by the Statutory Managers. However, the status of the plots with regard to their existence

and ownership was not clarified or supported with any documentary evidence. In the circumstances, it was not possible to ascertain whether or not these plots had been disposed of and if so, whether the proceeds from such disposal were properly recorded and accounted for.

A further search conducted on 4 September 2009 at the Mombasa Lands Office appeared to show that all the four (4) plots may already have been sold and registered in the name of a third party.

### **2A.1.13 Cash Balance**

Although records made available for audit verification showed that between 1996 and 2002 the Official Receiver received a total of Kshs.84,891,120 from sale of various properties in respect of the Life Fund (excluding monthly premiums), only a sum of Kshs.7,329,444 was confirmed as available at various banks in January 2003, the period during which the Kenya National Assurance Company (2001) Ltd took over the bank accounts of the Fund. The difference of Kshs.77,561,676 was not reconciled or explained.

## **PART B**

### **2B.1 PROPERTIES DISPOSED OF BY THE KENYA NATIONAL ASSURANCE COMPANY (2001) LTD**

As indicated elsewhere in this Report, the Kenya National Assurance Company (2001) Ltd took over the assets and liabilities of the Closed Life Fund of the Kenya National Assurance Company Ltd (In Liquidation) in January 2003. A total of eighteen (18) properties were sold by the Kenya National Assurance Company (2001) Ltd between January 2003 and June 2009 as summarized in the Table below:

	<b>ASSET</b>	<b>LOCATION</b>	<b>REF.NO.</b>	<b>SIZE</b>
1	Bima House	Nairobi City	LR.No.209/6517	0.4295 Acres
2	Corner House	Nairobi City	LR.NO.209/1846	0.37128 Acres
3	Salama House	Nairobi City	LR.NO.209/4874	0.1515 Acres
4	Town House	Nairobi City	LR. 209/2362	0.1808 Acres
5	Protection House	Nairobi City	LR. No. 209/4313 & 4314	0.1722 Acres
6	Githurai plots	Githurai Kimbo, Nairobi	Block No. 13673	274 Plots
7	Bima House	Mombasa	Block No XXIV/87/M1	0.352 Acres
8	Bamburi Plot	Bamburi Mombasa	Block LR. No.397/1	86.84 Acres
9	Tiwi Beach	Kwale	LR. No. MS/36	8.86 Ha.
10	Kisumu Municipality	Kisumu	Block 12/230	0.2987 Ha.
11	Kisumu Municipality	Kisumu	Block 7/385	0.4240 Ha.
12	Ex-Ohawa Plot	Kisumu	No.18057	5 Acres
13	Nakuru Manager's Hse	Nakuru	Block 12/72	0.1436 Ha
14	Eldoret Municipality	Edoret	Block 4/75	1.087 Ha.
15	Eldoret Municipality	Eldoret	Block 9/1927	3.059 Ha.
16	Manager's Hse Nyeri	Nyeri	LR. No.1/386	0.1328 Ha.
17	Malindi Plot	Malindi	L.R. No. 7545	0.1012 Ha
18	Nanyuki Housing	Nanyuki		

### **2.B.1.1 Bima House - Nairobi R.No.209/6517**

Bima House is located along Harambee Avenue in Nairobi. Standing on a 0.4295 acre plot, the building houses twelve (12) floors and a parking area. Available information showed that the property as of August 2002 generated quarterly and annual rent income of Kshs.7,548,795 and Kshs.30,195,180 respectively. The property was in August 2004 sold to the Ministry of Finance at the Government's Valuer price of Kshs.560 million.

### **2B.1.2 Corner House - LR.NO.209/1846**

Corner House LR 209/1846 is located at the corner of Kimathi and Mama Ngina Streets in Nairobi and stands on a 0.37128 acre plot. It comprises of fifteen (15) floors, three (3) mezzanine levels and three (3) basement floors. As of August 2002, the property was fetching quarterly and annual rent income of Kshs.11,589,141 and 46,356,564 respectively. The property was valued by the Government Valuer on 30 July 2007 at Kshs.620 million.

On the basis of competitive bidding the property was sold in September 2008 to an Estates company for a sum of Kshs.700,786,786.

### **2B.1.3 Salama House - LR.NO.209/4874.**

Salama House is located at the corner of Wabera and Mama Ngina Streets in Nairobi. The building stands on a plot measuring 0.1515 acres and comprises of five (5) floors. As of August 2002, the house was generating quarterly and annual rent income of Kshs.2,215,947 and Kshs.8,863,788 respectively. Records available showed that the property was valued by the Government Valuer on 25 March 2004 at Kshs.115 million.

The property was sold competitively in October 2007 to an Investment company for a sum of Kshs.127,786,000. However, no satisfactory reason was provided for using a

value assessed in 2004 to sell the property in 2007. Further, the rationale behind disclosing the reserve price of the property in the advertisement for sale was not clear.

#### **2B.1.4 Town House - LR.NO.209/4874**

The property is located at the junction of Kaunda and Wabera Streets in Nairobi. As of August 2002, the house generated quarterly and annual rent income of Kshs.3,938,520 and Kshs.15,754,080 respectively. The property was valued by the Government Valuer on 25 March 2004 at Kshs.210 million.

According to information available, the property was advertised for sale in August 2006 and sold in June 2007 to a Holding company, through an individual. However and without clear reason, records seen showed that the reserve price of the property had been revealed in the advertisement for sale. This apart, it was also not satisfactorily explained as to why the property was not revalued in 2007, the year in which it was sold, instead of using the valuation for 2004 as the basis of the sale.

#### **2B.1.5 Protection House - LR. No. 209/4313 & 4314**

Protection House is located along Haile Sellassie Avenue at the junction of Parliament Road in Nairobi. The building stands on a 0.1722 acre plot and comprises of twelve (12) floors, two (2) basement parking levels, and a pent house at the top. The property as of August 2002 fetched quarterly and annual rent income of Kshs.3,592,458 and Kshs.14,369,832 respectively.

The property was valued by the Government Valuer in March 2004 and placed at a price of Kshs.220 million. It was subsequently and severally advertised for sale before the Ministry of Housing purchased it in August 2008 at the reserve price.

### **2B.1.6 Githurai plots - Block No. 13673**

As observed elsewhere in this Report, two hundred and seventy four (274) plots under Githurai L.R No.13673 were vested in the Kenya National Assurance Company (2001) Ltd against the Closed Life Fund.

According to records seen, the 274 plots were assigned by the Government Valuer an average price of Kshs.140,000 each, in March 2004, depending on size and location. Further, information available indicated that all the 274 plots were sold for a total amount of Kshs.50, 048,771 i.e an average of Kshs.182,000 per plot, with a sum of Kshs.23,107,667 having been realized as at 9 September 2009.

A further enquiry on the matter revealed that the balance of Kshs.26,941,104 from the sale was being pursued by the management.

### **2B.1.7 Bima House - Block No XXIV/87/M1**

The property is situated at the junction of Meru and Digo Roads in Mombasa Island. The fifteen (15) floor building including a basement and an annex stands on a plot measuring 0.352 acres. The property generated as of August 2002 quarterly and annual rent income of Kshs.4,309,066 and Kshs.17,236,264 respectively. The property was procedurally sold to the Ministry of Housing in February 2008 at an agreed valuation price of Kshs.256 million.

### **2B.1.8 Bamburi Plot - Block LR. MN/1/ 397/Mombasa**

Block LR MN/397 measuring 86.84 acres is situated at Utange area in the Mainland North in Mombasa District. Information available indicated that the plot is a freehold property and had been purchased by the Kenya National Assurance Company Ltd in the 1980s, with a plan to put up a housing estate in support of the Life Fund. The project apparently never took off, at least on the ground.



According to information available, the Government Valuer had in March 2004 assigned a value of Kshs.26 million to the property and it was on this basis that the same had been advertised for sale in October 2004.

Following various reviews and evaluations of the bids received, a Holding company was in June 2005 given an offer to purchase the property at a price of Kshs.43,945,000 with an upfront payment of 20% of the sale price, as deposit i.e. Kshs.8,789,000. The balance of Kshs.35,516,000 was, according to information available, to be paid upon confirmation by the management of the Kenya National Assurance Company (2001) Ltd that the property was free from any encumbrances and encroachment by unauthorized parties.

However and as confirmed by an audit verification carried out on the property in the month of August 2009, the property had been invaded by squatters who had settled and constructed on the plot both semi-permanent and permanent structures. For this reason, and as a part of the conditions for the sale, the purchaser had, without further reference to the management, declined and withheld release of the balance of Kshs.35,516,000 in respect of the property.

Although according to the management, all the squatters had in May 2005 been evicted from the property, apparently with the help of the local Provincial Administration, they had somehow re-grouped and re-invaded the plot, this time around forcing the Company to go to Court to seek orders for eviction as appropriate.

In the circumstances therefore, and with the eviction orders apparently still pending in court, it is doubtful that the Company will in the near term receive the balance of Kshs.35,516,000 from the buyer as earlier envisaged.

### **2B.1.9 Tiwi Beach plot - LR No. MS/36 Kwale**

Tiwi Beach Plot LR. No. MS/36 is approximately 8.86 hectares of open land and lies in Ukunda area in the South Coast.

According to records available the property was valued by the Government Valuer on 23 June 2003 at Kshs.11 million. After two attempts to sell the plot through open advertisement apparently failed, the Kenya National Assurance Company (2001) Ltd contracted an Estate Agent in March 2006 to carry out the marketing job. In October 2007, a local company identified by the Agent offered and purchased the plot at Kshs.16,100,000.

However and although the sale price of Kshs.16,100,000 was higher than the value of Kshs.11 million given by the Government Valuer in 2003, no satisfactory reason was provided as to why the property was not revalued in early 2007, before sale later in the same year. Further, other records seen indicated that while calculating stamp duty for the property, the Government Valuer had assessed the value at Kshs.70 million.

Clearly therefore and in absence of any other clarification to the contrary, the Kenya National Assurance Company (2001) Ltd did not obtain full value for money from the sale of the property.

### **2B.1.10 Kisumu Municipality - Block 12/230**

Block 12/230 comprising of a three bedroom storey house with a servant quarter stood on a 0.2987 hectares plot, situated at Milimani area along Tom Mboya Drive in Kisumu Municipality. Although as of August 2002, the Block fetched a monthly rent of Kshs.20,000, a visit to the site in August 2009 revealed that the house had been demolished and construction of a new building was in progress.

According to information available, the Government Valuer had in June 2003 placed the value of the property at Kshs.5.2 million. A review of other records showed that a bid for Kshs.5,450,000 for the property offered in November 2004 by an individual had not been concluded but the bidder later in August 2005 offered a revised price of Kshs.5.2 million for the same property. The latter offer was declined by the management, with an explanation that procurement regulations would have been breached had the offer been accepted.

However and without further advertisement for sale, the property was in March 2006 sold for an amount Kshs.4.8 million to another individual. It was not clarified as to why the management decided to sell the property at Kshs.4.8 million while an earlier offer at Kshs.5.2 million would, had it not been declined, have earned the Company an additional Kshs.400,000. This apart, it was also not explained why the property was not revalued in 2006 before considering the offer for 4.8 million.

#### **2B.1.11 Kisumu Municipality - Block 7/835**

Block 7/385 is situated off Jomo Kenyatta Avenue in Kisumu Municipality, fronting Achieng Oneko Road. It stands on a plot measuring 0.4240 hectares and houses twelve (12) floors and a basement. Annexed to the main building are fifteen (15) two and three bed roomed flats. As of August 2002, the Block generated quarterly and annual rent income of Kshs.3,898,904 and Kshs.15,595,616 respectively.

Records available showed that the property was sold to Maseno University at a reserve price of Kshs.224 million in October 2005.

#### **2B.1.12 Ex-Ohawa Plot - No.18057-Kisumu**

The Kisumu ex-Ohawa plot measuring 5 acres lies along the Kisumu–Kakamega Road, at approximately 5 km from Kisumu Municipality. Although it was indicated that the property was valued at Kshs.1,350,000 in 2005 by the Government Valuer, no valuation report was however availed for audit review. Consequently, and in the

absence of such report, it was not possible to confirm the validity and accuracy of the figure of Kshs.1,350,000. This notwithstanding, the property was sold to a Holding company at an amount equal to the reserve price, which appeared to suggest that the transaction may have been negotiated, thus contravening the requirement for competitive bidding. The price may also have been influenced by the fact that the reserve price of the property had been disclosed in an earlier advertisement for sale.

Further and although the Holding company paid on 17 June 2005 a deposit of Kshs.270,000 for the property, information gathered during the audit indicated that the balance of Kshs.1,080,000 had not been received as at 30 June 2009 and no plausible reason was provided for the inordinately long delay in the conclusion of the transaction. It was also not clear as to whether the property had been transferred to the purchaser.

#### **2B.1.13 Nakuru Manager's House - Block 12/72**

The Nakuru manager's House stands on a 0.1436 hectares plot situated along Tiriki Avenue, Milimani area in Nakuru Municipality. The house has three bedrooms and a detached servant's quarter. The property was valued by the Government Valuer on 24 June 2004 at Kshs.2,550,000.

Records available indicated that the property was competitively sold for a sum of Kshs.2,650,000 in July 2005 to an individual.

#### **2B.1.14 Eldoret Municipality - Block 4/75**

Eldoret Municipal Block 4/75 stands on a 1.087 hectare plot situated at the junction of Uganda Road and Ronald Ngala Street in Eldoret Municipality. The property comprises of an incomplete building constructed up to first floor, including a basement.

Valued at Kshs.22.5 million by the Government Valuer, the property was in June 2004 sold at Kshs.50 million through open tender, to a religious organization.

#### **2B.1.15 Eldoret Municipality/Block 9/1927 - Ex simphi**

The above property is located 3 km to the east of Eldoret Municipality. It is an open parcel of land measuring approximately 3.059 hectares and against which in May 2006 the Government Valuer assigned a value of Kshs.6.5 million.

According to records available, the management made some efforts to dispose of the property in 2006 but without success, apparently because another title deed for the same property had been issued to another party by the Ministry of Lands. At the same time and in what appeared to be an unusual coincidence, the titled deed held by the Kenya National Assurance Company (2001) Ltd for the property was reported and confirmed as missing or stolen at the Lands Office, Eldoret. Consequently and as a result of the anomaly, a restriction order had been placed on the property by the Ministry of Lands, while the management simultaneously liaised with the Director of Survey to have the plot resurveyed with a view to having the original title deed reinstated.

The sale of the property had not been concluded as at the date of the audit.

#### **2B.1.16 Manager's House Nyeri - LR. No.1/386**

Situated off Mumbi Road in Nyeri Municipality, and standing on a 0.1328 hectares plot, the Nyeri manager's house, a bungalow with a detached servant's quarter was in 2006 valued at Kshs.3.2 million by the Government Valuer. As of August 2002, the property was fetching quarterly and annual income of Kshs.26,500 and Kshs.106,000 respectively.

Records available indicated that following several attempts to dispose of the property which apparently failed, the management disclosed the reserve price in an advertisement for sale. Further information revealed that shortly after the advertisement, an individual submitted a bid for Kshs.3.1 million, which he later enhanced to Kshs.3.2 million, to match the reserve price.

The bid for Kshs.3.2 million was accepted by the management and the purchase of the house was concluded in August 2006.

As observed elsewhere in this Report however, the rationale and urgency behind disclosing the reserve price of a property in an advertisement was not clear, considering the fact that such action clearly denied the Company the advantage of competitive bidding.

#### **2B.1.17 Malindi Plot - L.R. NO. 7545**

Plot L.R 7545 in Malindi is situated along Mombasa - Malindi Road. According to records available, the plot measuring 0.1012 hectares was purchased and transferred to the Kenya National Assurance Company Ltd in December 1992. A visit to the site in August 2009 however revealed that the property is an open land which presently is being used as a stadium by the public.

In a letter from the Commissioner of Lands dated 25 September, 2006 to Kenya National Assurance Company (2001) Ltd, the latter was advised that the allocation of the plot to Majaoni Traders Company who later transferred the same to the Kenya National Assurance Company Ltd was irregular. The Commissioner further advised the Company to surrender the title deed of the plot to the Government and to liaise with the District Physical Planning Officer, Malindi for identification of an alternative plot which could be allocated as compensation. The compensation process does not, as far as I have been able to establish, appear to have been concluded as at 31

August 2009, as no ownership documents in respect of the alternative plot were made available for audit review.

### **2B.1.18 Nanyuki Housing**

In March 1980, Nanyuki County Council arranged for a loan facility of Kshs.4,840,000 with the Kenya National Assurance Company Ltd to develop an estate comprising of eighty eight (88) units of two bed roomed houses. The facility was later enhanced to Kshs.11,140,000 while at the same time the County Council offered as security the land on which the estate was to be built. The land was therefore charged accordingly by the Kenya National Assurance Company Ltd.

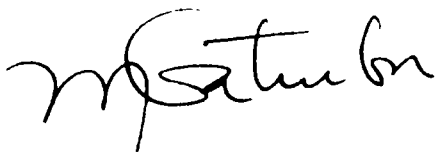
The Council however defaulted in servicing the loan and as a result and pursuant to the charge, the Company took over the estate. An advertisement for sale of the estate was put up by the Company in February 2008 and bids were opened in March the same year. However and before the bids could be evaluated in accordance with the procurement procedures, a Court order disallowing completion of the process until hearing and determination of an application filed in Court by the Council was concluded, was issued. The Court further released in October 2008 a permanent injunction prohibiting the Company from selling the property.

Additional information collected during the audit indicated that the estate has since been encroached into on one part with an empty space, and a private developer appears to be putting up some form of a structure, notwithstanding the on-going legal proceedings.

### **3.0 CONCLUSION**

In view of the issues and observations discussed in the preceding paragraphs, there is clearly a need to review the assets disposal procedures currently in use at both the Registrar General's Office (Official Receiver) and Kenya National Assurance Company (2001) Ltd, so as to realign and strengthen such procedures with a view to ensuring full compliance with the Public Procurement and Disposal Act, 2005, related Regulations and other Government guidelines.

Further, the outstanding balances from sale of various properties should be pursued without much delay.



**A.S.M. Gatumbu**

**CONTROLLER AND AUDITOR GENERAL**

**Nairobi**

**24 September 2009**