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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES

REPORT ON THE ILLEGAL AND IRREGULAR RELEASE OF CONDEMNED
SUGAR

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 JUN 2024	DAY: TUESDAY
TABLED BY:	HON. MARIANNE KITANYI MP. VICE CHAIRPERSON
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DIRECTORATE OF DEPARTMENTAL COMMITTEE SERVICES
Parliament Buildings,
NAIROBI

MAY, 2024

NATIONAL ASSEMBLY
RECEIVED
02 MAY 2024
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

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CHAIRPERSON'S FOREWORD

The Departmental Committee on Trade, Industry and Cooperatives is established pursuant to standing order 216 of the National Assembly Standing Order, and is Mandated to *inter alia*, **Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and study the programmes and the policy objectives of Ministries and Departments and effectiveness of the implementation.**

In addition, Articles 95(1) of the Constitution of Kenya calls for the **House to deliberate on and resolve issues of concern of the people.**

The disappearance of condemned sugar from Vine Pack Industries Ltd. in Thika was followed by public outcry with concerns that the sugar could be repackaged and sold to unsuspecting Kenyans. The 20,000 bags of sugar of 50kg each were shipped from Zimbabwe to Mombasa on June 30th, 2018, but mysteriously disappeared from the Vine Pack Ltd. warehouse in Thika in April, 2023.

The Departmental Committee on Trade, Industry and Cooperatives, on its own motion resolved to carry out an inquiry into the allegations of illegal and irregular release of condemned sugar into the Kenyan market. The inquiry commenced on 8th June, 2023, with a meeting with the Kenya Bureau of Standards (KEBS). The sugar was rejected by KEBS due to non-compliance with requirements of standards in regard to labelling and date of manufacture not being indicated. The sugar was released to Vine Pack Industries Ltd. to be used as a raw material for ethanol production for industrial use, and not human consumption.

The Committee held a total of 20 sittings and received oral and written submissions from various stakeholders including, KEBS, KRA, NEMA, Vine Pack Ltd, Assets and Cargo, Kings Commodities Ltd. and AFA. Further, the Committee visited KRA go-downs at Kenya Ports Authority in Mombasa.

In analysing the submissions received, the Committee sought to respond to the issues of determination arising from the Terms of Reference of the inquiry, justifying their validity, and further made findings and recommendations.

The Committee appreciates facilitation provided by the Offices of the Speaker and the Clerk of the National Assembly, that enabled it to discharge its functions during the inquiry and report writing exercises.

Finally, I also wish to thank Honourable Members of the Committee for participating in this inquiry with enthusiasm, commitment and a bipartisan approach, hence discharging their mandate.



Hon. James Mwangi Gakuya, M.P.
Chairperson, Departmental Committee on Trade, Industry and Cooperatives

EXECUTIVE SUMMARY

The report contains proceedings of the Committee on Trade, Industry and Cooperatives, on the inquiry into alleged irregular release of condemned sugar of 40x20 ft containers, which arrived in the country in June, 2018. The consignment was imported by two companies namely, Merako Investment (K) Ltd. with bill of lading MSCUB1175403, and Sirocco Investments Ltd (K) Ltd. bill of lading MSCU1175411, from Zimbabwe Sugar Sales (PVT) Ltd. Each bill of lading had 20x20 Ft containers.

The sugar had been lying at the Mitchell Cotts Container Freight Station since the year 2018, after it was condemned by Kenya Bureau of Standards (KEBS), for want of expiry date specification, hence unfit for human consumption. KEBS directed that the consignment be re-shipped and destroyed at the owner's cost. Upon being condemned, the sugar became prohibited under the control of the Commissioner Customs and Border Control in accordance with Section 217 of East Africa Community Customs Management Act, 2004.

The condemned sugar was to be converted into industrial ethanol through the process of distillation. Vinepack Ltd. was eventually granted the approval to undertake the destruction. A multi-Agency Team (MAT) was formed to deliberate and recommend how the sugar would be released and transported to Vinepack Ltd. The condemned sugar was then transported and off loaded to Kings Commodities go-down in Thika, where it later disappeared.

The Committee began its investigations on 8th June, 2023, by developing its operational guideline, and schedule of activities. The Committee held meetings with several individual from various institutions involved with the alleged condemned sugar, and received information from the following institutions; Kenya Revenue Authority (KRA), Kenya Bureau of Standards (KEBS), National Environment Management Authority (NEMA), Agriculture and Food Authority (AFA), Assets and Cargo Limited, Galgamesh Enterprises Ltd. and Vine pack Ltd. and Kings Commodities Ltd.

Committee observations and findings

From the above analysis, the Committee finds;

- a) that considering that there was no proof that the final distillation of the sugar that was released to Vinepack Ltd., and having proof from the stakeholders that the sugar went missing, it is the finding of the Committee that the condemned sugar was irregularly and unlawfully released to the market for consumption by unsuspecting and innocent Kenyans.
- b) Considering that the obligation and duties of the MAT was to the final conclusion of the process of distillation, the Committee finds that the whole team was negligent in discharging of their duties, and as a result of the negligence, the sugar was lost. The Committee finds the three institutions, i.e. KEBS, NEMA and AFA as the most responsible, as they had a major supervisory role to the final distillation process.
- c) The Committee finds that there was no proof even on the part of Vinepack Ltd., that the company was duly licensed by the Sugar Directorate. It is thus the finding of the Committee that KRA awarded the above-mentioned tender in contravention of the provisions of Section 55(1) (a) of the Public Procurement and Asset Disposal Act No. 33 of 2015.
- d) The Committee observed that KRA did not invite an open bid for conversion of condemned sugar into Ethanol, but instead sent an advert to ABAK, who never responded. The Committee further finds that the bid advert by KRA lacked timelines for submissions, which is against public procurement laws. The Committee therefore observed that the process leading to the release of condemned sugar to Vinepack Ltd. was illegal and irregular, and the due process was not followed, because the Kenya Revenue Authority did not follow the laid down procurement process, leading to awarding of tender to a company which was not licensed to deliver services procured.
- e) The Committee finds that although there exists a legal framework for the process leading to goods being condemned, the law is silent on the timelines to be observed by the relevant authority from the time when the goods are condemned, to the time when they ought to be destroyed, sold or disposed of. As a result, most of the commodities take long before they are destroyed or disposed of upon declaration by the Kenya Bureau of Standards of their nonconformity.

Committee Recommendations

Based on the Committee's findings and general observations, the Committee makes the following recommendations;

- a) That, within 60 days of adoption of this Report, the Inspector General investigates into the conduct of all Kenya Revenue Authority officials who were responsible for the whole process leading to conversion of the condemned sugar, and recommend requisite legal action.
- b) That, Faith Kiara having been adversely mentioned in the submissions by various stakeholders during the hearing, the Committee recommends that the Inspector General and the Director Criminal Investigations investigates the conduct of Ms. Faith Kiara leading to the loss of the condemned sugar and recommend requisite legal action.
- c) The Cabinet Secretary, Ministry of Investments, Trade and Industry, in consultation with the relevant stakeholders to develop a comprehensive regulatory framework and policies to govern the process of destruction of condemned commodities within six (6) months of the adoption of this Report, and submit to the National Assembly for consideration.
- d) The Cabinet Secretary, Ministry of Investments, Trade and Industry in consultation with the Commissioner General Kenya Revenue Authority and relevant stakeholders to develop a comprehensive regulatory framework and policies to govern seamless operation of various departments within Kenya Revenue Authority, within six (6) months of the adoption of this Report, and submit to the National Assembly for consideration.
- e) That within 60 days of the adoption of this Report, the Ethics and Anti-Corruption Commission to investigate the procurement process leading to the award of tender to Vinepack Industry Ltd. by Kenya Revenue Authority, and take requisite legal action.
- f) That, Parliament reviews the current legal framework to amongst other provisions;
 - i. Review and propose amendments to Section 14 of the Standards Act, Cap 496, to provide for timelines within which a commodity ought to be inspected and the time within which an order on whether the goods are condemned or not issued.
 - ii. Review of the Excise Duty Act, Cap 472, to provide for timelines within which the condemned goods should be destroyed upon directions by the Commissioner General.

- iii. Review of the Excise Duty Act, Cap, 472 to provide for a clear chain of custody of goods from the time when goods are condemned to the final point of destruction or disposal in the manner that the Commissioner General deems fit.
- iv. Review of the Standards Act, Cap 496 to clearly define the mandate of Kenya Bureau of Standards from the point of condemnation to the final destruction process of the condemned commodity.
- g) The Inspector General to investigate into the conduct of the Directors of Vinepack Industry Limited that led to the illegal and irregular release of the condemned sugar, and advise or make recommendations to the Director Public Prosecutions take requisite legal action.
- h) The Inspector General to investigate into the conduct of the Directors of Galgamesh Enterprise Limited and Asset Cargo Limited that led to the illegal and irregular release of the condemned sugar and take requisite legal action.
- i) Within 60 days of the adoption of this Report, the Ethics and Anti-Corruption Commission to conduct investigations into the procurement process leading to the award of tender to Galgamesh Enterprises Limited and take requisite legal action.

The Committee adopted its report at a sitting held at the New Wing, Parliamentary Building.

ABBREVIATIONS & DEFINITION OF TERMS

KRA	–	Kenya Revenue Authority
NEMA	–	National Environment Management Authority
AFA	–	Agriculture and Food Authority
KEBS	–	Kenya Bureau and Standards
ACA	–	Anti Counterfeit Authority
EACC	–	Ethics and Anti-Corruption Commission
KEPHIS	–	Kenya Plant Health Service
HOPS	–	Head of Public Services
MAT	–	Multi-Agency Team

PART I

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Trade, Industry and Cooperatives is one of the Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows;

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. *To study and review all legislation referred to it;*
- v. *To study, access and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*

xi. To examine any questions raised by Members on a matter within its mandate.

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Trade, including securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development, Micro, small & medium enterprise (MSMEs), and small and medium enterprise (SMEs), intellectual property, industry standards, anti-counterfeit and cooperative development.
3. In executing its mandate, the Committee oversees the Ministry of Investment, Trade and Industry and the Ministry of Cooperatives and Micro, Medium and Small Enterprises (MSMEs).

1.2 Committee Membership

1. The Departmental Committee on Trade, Industry and Cooperatives was constituted by the House on Thursday, 27th October, 2022, and comprises the following Members;

Chairperson

Hon. James Mwangi Gakuya, MP
Embakasi North Constituency

UDA Party

Vice-Chairperson

Hon. Kitany Jebet Marianne, MP
Aldai Constituency

UDA Party

Hon. Dr. Oundo Wilberforce Ojiambo, MP
Funyula Constituency

ODM Party

Hon. Oluoch Anthony, MP
Mathare Constituency

ODM Party

Hon. Adagala Beatrice Kahai, MP
Vihiga Constituency

ANC Party

Hon. Guyo Adhe Wario, MP
North Horr Constituency

KANU Party

Hon. Githinji Robert Gichimu, MP
Gichugu Constituency

UDA Party

Hon. Korir Adams Kipsanai, MP
Keiyo North Constituency

UDA Party

Hon. Kamene Joyce, MP
Machakos Constituency

WDM Party

Hon. Maina Mwago Amos, MP
Starehe

JP Party

Hon. Mwalyo Joshua Mbithi, MP
Masinga Constituency

Independent Member

Hon. SakimbaParashina Samwel, MP
Kajiado South Constituency

ODM Party

Hon. Wanaina Antony Njoroge, MP
Kieni Constituency

UDA Party

Hon. Waithaka John Machua
Kiambu Constituency

UDA Party

1.3 Committee Secretariat

1. The Committee is facilitated by the following secretariat;

Ms. Rose Mudibo, OGW
Senior Clerk Assistant/Head of Secretariat

Mr. Ellam Osabwa Omuhinda
Clerk Assistant III

Ms. Everlyn Kerubo
Clerk Assistant III

Ms. Loice Olesia
Fiscal Analyst III

Mr. Daniel Psirmoi
Media Relations Officer

Ms. Peris Kaburi
Serjeant At Arms

Mr. Barasa Peter
Legal Counsel II

Mr. Arkan Ali Mumin
Research Officer III

Ms. Pricillah Saidi
Research Officer III

Mr. George Benjamin
Hansard Reporter III

Mr. Cosmas Akhonya
Audio Recording Officer

PART II

2.0 INTRODUCTION

1. The Departmental Committee on Trade, Industry and Cooperatives commenced the inquiry on 17th June, 2023, into allegations of illegal release of condemned sugar, that had been condemned as unfit for human consumption. The inquiry was initiated by the Committee on its own motion, following extensive media coverage on the loss of the condemned sugar.
2. The condemned sugar was in 40x20 ft containers, which arrived in the country in June 2018, imported by two companies namely Merako Investment (K) Ltd. with bill of lading MSCUB1175403 and Sirocco investments Ltd. (K) bill of lading MSCU1175411 from Zimbabwe Sugar Sales (PVT) Ltd. Each bill of lading had 20x20 Ft containers (20,000 bags of 50kg each) with the shipping agent being Ocean Freight (EA) Ltd.
3. The sugar had been lying at the Mitchell Cotts Container Freight station since 2018, after it was condemned by Kenya Bureau of Standards (KEBS) for want of expiry date specification, hence unfit for human consumption, and directed that the consignment be re-shipped and destroyed at owner's cost. Upon condemnation by KEBS, the sugar became prohibited goods under the control of the Commissioner Customs & Border Control in accordance with Section 217 of East Africa Community Customs Management Act, 2004. On diverse dates between June, 2022 and December, 2022, Kenya Revenue Authority received correspondence from KEBS indicating their approval of the conversion of sugar into industrial ethanol which informed their decision to seek legal advisory from the Attorney General, who concurred with the proposed method of destruction.
4. The process of destroying the condemned sugar began and Vinepack Ltd. expressed interest in undertaking the destruction process. The company engaged both Kenya Revenue Authority (KRA) and KEBS, seeking to be allowed to destroy the consignment at its facility based in Thika. The company proposed to destroy the sugar through a down grading process, where the condemned sugar was to be converted into industrial ethanol through the process of distillation. Vinepack Ltd. was eventually granted the approval to undertake the destruction.

5. A Multi-Agency Team (MAT) was formed to deliberate and recommend how the sugar would be released and transported to Vinepack Ltd. The Multi-Agency Team comprised of the following state agencies;
 - i. Kenya Revenue Authority (KRA)
 - ii. Kenya Bureau of Standards (KEBS)
 - iii. National Environment Management Authority (NEMA)
 - iv. Anti-Counterfeit Authority (ACA)
 - v. Ethics and Anti-Corruption Commission (EACC)
 - vi. Agriculture and Food Authority (AFA)
 - vii. Kenya Plant Health Services (KEPHIS)
 - viii. Kenya Ports Authority (KPA)
 - ix. Kenya Police Service

6. The Committee began its investigations on 18th June, 2023, by developing its operational guidelines, and schedule of activities. The Committee held a total of 20 sittings during which it received presentations from the following institutions;
 - i. Kenya Revenue Authority (KRA)
 - ii. Kenya Bureau of Standards (KEBS)
 - iii. National Environment Management Authority (NEMA)
 - iv. Agriculture and Food Authority (AFA)
 - v. Assets and Cargo Limited
 - vi. Galgamesh Enterprises Ltd.
 - vii. Vinepack Ltd.
 - viii. Kings Commodities Ltd.

2.1 TERMS OF REFERENCE

7. The Committee was guided by the following terms of reference in conducting the inquiry;
 - i. To establish whether the condemned sugar was irregularly and unlawfully released;
 - ii. To ascertain the role of the multi-agency team in the destruction process, and establish whether there was negligence on the part of any institution within the multi-agency team, that led to the loss of the aforementioned sugar;
 - iii. To establish whether the distiller was licensed and was sourced through an open and competitive tendering process; and
 - iv. To review the legal framework governing procedure, timelines for condemnation and destruction of imported goods.

PART III

3.0 SUBMISSIONS FROM WITNESSES REGARDING THE ILLEGAL AND IRREGULAR RELEASE OF CONDEMNED SUGAR

8. In the course of the inquiry the Committee heard evidence from the following witnesses as follows;

3.1 SUBMISSION BY KENYA BUREAU OF STANDARDS (KEBS)

The Committee on Trade, Industry and Cooperatives held several meetings with KEBS who submitted that;

9. The quantity of sugar imported was 40 containers of 20ft each, totaling to 20,000 bags of 50kgs each, which arrived in 2018. The shipping line was Ocean freight (EA) Limited, and the consignee was Merako Investments Ltd. The sugar was stored at Mitchell Cotts Shimanzi.
10. The consignment was rejected due to non-compliance with the requirements of the standards in regards to labeling, where the date of manufacture and the expiry date were not indicated. KEBS instructed that the consignment be re-shipped or destroyed at owner's cost and notified NEMA to supervise the destruction.
11. The consignee approved for Ocean freight (EA) Limited, to coordinate the destruction at owners' cost. Ocean freight (EA) Limited appointed Galgalmesh Enterprises to undertake this destruction on their behalf in 2020 (Letter reference OFEA/UAC/MISC dated 15th January 2022). Galgalmesh submitted a request to destroy the sugar by allowing it to be used for alternative use/conversion into ethanol for industrial use (Letter dated 5th February 2022 to the Cabinet Secretary Ministry of Industrialization). The request was submitted to the National Standards Council, and an approval was granted to release the consignment for use in distillation.
12. The above approvals were given based on the precedence/guidance that KEBS received from the Head of Public Service (HOPS) by then, who instructed KEBS together with the Multi-Agency Team (MAT) to release edible oil that had been condemned by KEBS, because of not meeting the requirements of the standard in regards to Vitamin A. The Head of Public Service approved that to ameliorate on economic loss to the importer, the consignment of the edible oil to be released for alternative use other than human

consumption. This edible oil was released for the manufacture of soaps under the supervision of KEBS.

13. KEBS received a request dated 5th December, 2022, from Assets and Cargo Ltd. requesting for alternative use of the same sugar consignment quoting authorization from the shipper.
14. On 9th December, 2022, KEBS wrote a letter to KRA indicating that it had no objection for the release of the sugar consignment for use as a raw material for ethanol production for industrial use and not for human consumption upon verification of ownership.
15. In response to the KEBS letter, KRA first sought the opinion of the Attorney General on the new proposal of destruction submitted by KEBS (alternative use). The AG called for a physical meeting between KEBS and KRA on the subject, and thereafter advised that the proposed method of destruction was consistent with the law, as long as it worked under the Multi-Agency Team framework in ensuring that all concerned regulatory agencies agree with the proposed alternative use and KRA recovers all the taxes (Letter Referenced AG/CONF/2/C/61 vol. XI dated 23rd January 2023).
16. Based on the opinion of the Attorney General, KEBS had no objection to the release of the sugar consignment as requested by the approved handlers Galgamesh Enterprises and Asset & Cargo. KEBS released the consignment under the Multi-Agency framework with clear instructions to Galgamesh on the conditions to be met for release.
17. On 16th Feb, 2023, KRA wrote a letter to Vinepack Ltd. on the use of the condemned sugar as a raw material for manufacture of industrial ethanol. The said letter clearly indicated ***“That the release and removal of the condemned sugar shall be under the supervision of MAT agencies operating at the port of Mombasa. That MAT and customs enforcement officials at the port of Mombasa shall keep the proper records of all the condemned sugar released and removed, tracks used and drivers details and date and time of the release.”***
18. On 12th April, 2023, KRA wrote to MAT an invitation to destruction of the condemned brown sugar. The invitation indicated that the cargo to be released to Vinepack Ltd. and Asset & Cargo Ltd. for onward transmission to the premises of Vinepack Ltd. in Thika for distillation.
19. The team inspected the consignment, armed/sealed the consignment and it was dispatched to Thika for distillation at Vinepack Ltd. through Asset and Cargo Ltd. The consignment was escorted by the National Police Service and the KRA Regional Electronic Cargo

Tracking System (RECTS) team. The consignment was received in Thika by the Nairobi MAT, where they witnessed the disarming/removal of the seals and offloading into go-downs contracted by Vine pack Ltd. on 20th April, 2023.

20. The consignment in the go-down, was sealed off again by the enforcement arms of KRA-ISO (Intelligence & Strategic Operations). The consignment was under the custody of ISO and Vinepack Ltd.
21. As per KEBS letter, Galgamesh was to be cleared by all the other regulatory agencies, and the conversion operation into ethanol was to be fully supervised by KEBS for two main purposes;
 - i. Ensuring that all the sugar is used for the purpose of distillation into ethanol; and
 - ii. To pick samples of the final product (ethanol), for analysis to ensure that it complied with the standards.
23. In a further meeting with the Committee held on Tuesday 20th June,2023, the Ag. Managing Director, KEBS submitted that she was not aware of any linkage between Galgamesh and Metro Distillers in terms of Directorship or any other association, she stated that she was only aware that Galgamesh had appointed Metro Distillers in Machakos to do the conversion of condemned sugar into Industrial Ethanol.
24. That KEBS was part of the Multi Agency Team that witnessed the offloading of the sugar sealed the Vinepack Ltd. go-downs upon delivery of the sugar (Memo reference no. KEBS/QAI/ICDE/IMP/15/8/42).
25. That the MAT was composed of Government agencies whose mandate touched on various aspects of trade facilitation, and that MAT was established through Gazette Notice Number 7270 of 20th July, 2018.
26. That the role of KEBS in the MAT was to provide inspection and testing services against Kenya Standards, as well as, enforcement measures as outlined in the Standards Act.
27. That KEBS sits at the Port Destruction Committee whose mandate is to schedule destruction and agree on the mode of destruction of condemned goods, if the importer is not compliant. She stated that KEBS participates in the actual destruction of condemned goods in the manner agreed by the Committee.

28. That 52 tones seized from the market are stored in various KEBS offices countrywide, and the Committee was at liberty to do an inspection.
29. That KEBS had no clue on the whereabouts of missing condemned sugar, and that the matter was subject to an ongoing investigation by various Government agencies.

3.2 SUBMISSIONS BY KENYA REVENUE AUTHORITY (KRA)

On behalf of KRA, the Ag. Commissioner for Customs and Border Control, Ms. Pamela Ahago informed the Committee as follows;

30. That on 3rd July, 2018, two companies, Merako Investments Ltd. and Sirocco Investments (K) Ltd. imported brown sugar from Zimbabwe through two bills of landing, each having 20 containers of 20 feet through Ocean Freight (EA) Ltd.
31. That on diverse dates between June 2022, and December 2022, KRA received correspondences from KEBS indicating their approval of the conversion of sugar to industrial ethanol, which informed their decision to seek legal advisory from the Attorney General. The Committee heard that the AG concurred with the proposed method of destruction.
32. That KRA invited interested bidders from members of the Alcoholic Beverages Association of Kenya (ABAK), to express interest on the procurement of the condemned sugar for the production of industrial ethanol. Vinepack Ltd. wrote six days later expressing interest.
33. That KRA was not in a position to state the relationship between Galgamesh Enterprises Ltd. and Assets and Cargo Limited, since both companies were appointed by the shipping line and not KRA.
34. That the consignment was valued at KES 1,000 per 50 kg, and that taxes totaling to KES 4.3 million were collected from VinePack Ltd. based on that valuation.
35. That on delivery of consignment to Thika, Custom seals were placed on the go-down to prevent any interference with the goods, and that on realizing that Vinepack Ltd. warehouses were not able to accommodate the entire consignment, some of the bags were placed at Kings Commodities stores.

36. That seals were also put under Kings Commodities warehouses (*Committee was not furnished with a copy of the seals*).
37. That the remaining 49 x 20 feet containers of contaminated sugar was set for destruction on 21st July, 2023. However, the Committee directed the destruction process to be put on hold to allow the Committee a chance to inspect the consignment.
38. That under the East African Community Customs Management Act, KEBS is responsible for inspection of quality and KRA only gets involved when goods are condemned for destruction.
39. That once goods are condemned for destruction, the procedure involves a multi-agency team with diverse mandates in the destruction process.
40. The Ag. Commissioner informed the Committee that KRA usually seeks advisory from NEMA on the best destruction method for condemned cargo.

3.3 SUBMISSIONS BY DERRICK KAGO

Mr. Derrick Kago, an employee of KRA who was suspended after the disappearance of the alleged condemned sugar informed the Committee as follows;

41. That he worked as an Investigations Officer in the department Intelligence, Strategic Operations, Investigations and Enforcement.
42. That on 20th April, 2023, KRA received intelligence alert from officers in Nairobi of a consignment coming from Mombasa to Thika.
43. That the intelligent brief suspected diversion of a sugar consignment from Vinepack Ltd. to Kings Commodities Ltd. necessitating the Department to launch investigations.
44. That investigations were ordered by his Senior Ms. Faith Kiara and together with Mr. Alex Mutuku they conducted the investigations.
45. That after investigations, they were satisfied with Vinepack Ltd.'s explanation that the company sought alternative storage space as it lacked enough storage space and that the decision to lease from Kings commodities had been endorsed and supported by the multi-agency team supervising the consignment.
46. That Vinepack Ltd. was not licensed to convert sugar into ethanol through the process of distillation.

47. That only four companies had valid licenses in Kenya i.e Kibos sugar Company, London Distillers Limited, Agro-chemicals and Mumias Sugar Company.
48. That the consignment was un-procedurally released to VinePack Ltd., despite preliminary investigations showing that the company lacked a valid license to convert sugar into ethanol.
49. That a release letter was issued without following proper procedure as per KRA manual and that the release was not scanned to the recipient, or sent physically via the department dispatch team as per procedure.
50. That a copy of the letter was not served to the MAT team, which was in charge of the consignment.
51. That no memo was written to the Commissioner of Domestic Taxes to secure payment of taxes arising out of conversion of sugar into industrial ethanol accusing his superior Ms. Faith Kiara of rushing the process without following due process.
52. That he was sent with the release letter by Ms. Faith Kiara, Chief Manager Investigations, with instruction to remove the seals in liaison with the KRA factory Resident Officer.
53. That he met the Director of Assets and Cargo Limited waiting for the release letter, but the KRA resident officer did not pick his calls despite several attempts.
54. That he broke the seals only to reseal them since the KRA resident officer could not be traced.
55. That although the letter was addressed to Vinepack Ltd., verbal instructions issued by Ms. Faith Kiara was that he was supposed to deliver the letter to Mr. Waithaka, the Director of Assets and Cargo Ltd.
56. That on 2nd May, 2023, he received a call from Ms. Faith Kiara to meet her at DCI Headquarters where he met the Commissioner of Investigations and the Deputy Commissioner.
57. That it is at this meeting that they were informed that the sugar had disappeared, and that he was to take the DCI officers to Kings Commodities Ltd.
58. That no exhibit of the missing consignment was shown.
59. That ten bags were found at a supermarket belonging to Mr. Abdi Hirsi Yusuf, who alleged to have bought them from a Mr. Mohammed.

3.4 SUBMISSION BY FAITH KIARA

Ms. Faith Kiara an employee of Kenya Revenue Authority (KRA), submitted to the Committee as follows;

60. That she reports to the Deputy Commissioner in charge of investigations.
61. That on 20th April, 2023, she received intelligence reports that the subject consignment was moved from Vinepack Ltd. to Kings' commodities, that triggered the Department to conduct investigations.
62. That during the investigation her team was informed that Vinepack Ltd. had leased Kings' Commodities premises due to lack of storage space, and the decision was supported by the multi-agency team.
63. That all investigations at KRA are usually very consultative and trickle down from the Commissioner to the junior level.
64. That it was normal to call officers on the ground directly in circumstances where the supervisors are unreachable.
65. That she issued the release letter after confirming all taxes had been paid to enable Vine pack Ltd. to start the distilling process. *(She was however not able to tell the Committee why she issued a release letter to a company that did not possess a valid license to convert sugar into ethanol through distillation process).*
66. That she was not aware whether any DCI officers were attached to her Department, and that Derrick did not inform her that Ms. Catherine Nyangechi, the KRA resident officer was not picking calls, and as such she could not take any action against the officer.
67. That Mr. Waithaka was a logistics person and the release letter was addressed to Vine Pack Ltd., and that she did not issue any instructions to a junior officer to deliver the letter to Mr. Waithaka.
68. That she opted not to dispatch the letters via email or through the department dispatch mechanism, since Mr. Kago was handling the matter, and was the most suitable person to deliver the letter.
69. That when they visited the go-downs together with the DCI officers, all seals were intact and there was no sign of breakage.

3.5 SUBMISSION BY MS. CAROLINE NYAGECHI

Ms. Caroline Nyagechi, Customs Manager at Kenya Revenue Authority (KRA) stationed in Thika informed the Committee as follows;

70. That from the Minutes of the destruction Committee meeting held on 12th April, 2023, at 10:30 a.m., she was assigned to disarm RECTS of electronic seals.
71. That KEBS, AFA and NEMA were thereafter supposed to supervise the distillation as per the Attorney General Advisory.
72. That on 20th April, 2023, she witnessed the arrival of the consignment at VinePack Ltd. and disarmed the RECTS electronic seals and handed over the consignment of forty trucks to AFA and KEBS.
73. That her work was to confirm the arrival of the forty trucks and verify their contents and that she broke all the seals and confirmed the consignment was intact.
74. That upon removal of seals and verification she left the consignment at VinePack Ltd. premises in the hands of Vine Pack Ltd. AFA and KEBS.
75. That all this process was being done through instructions from Mr. Mwanja Masinde (KRA), who was the head of the multi-agency team.
76. That the consignment was later handed over to VinePack Ltd. by the Kenya Revenue Authority Surveillance Office without the involvement of AFA and KEBS, contrary to the multiagency team resolutions under minutes of 12th April, 2023.

3.6 SUBMISSIONS BY NEMA

The Committee held a meeting with NEMA officials concerning the condemned sugar on 14th November, 2023, and received the following submissions;

77. That on 3rd August, 2021, Kenya Revenue Authority (KRA) sought guidance from NEMA on the mode and site for destruction of the condemned brown sugar.
78. That NEMA recommended that the sugar could either be re-exported back to its country of origin or it could be destroyed through high temperature incineration or consider biological decomposition at facilities licensed by NEMA.

79. That NEMA issued a revised advisory on 27th October, 2022, recommending biological decomposition of the condemned sugar, and gave a list of six licensed facilities.
80. That from the attached bills of lading, it was noted that the sugar was shipped into the country in 2018; and thus, the consignment was supposed to be processed by KRA within timelines stipulated in Section 34 & 42 of the East Africa Community Customs Management Act, 2004. This gave a maximum of 90 days to either auction, condemn, re-export or destroy the consignment. In this case re-exportation back to the country of origin would have been the best option within the set timelines.
81. That the subject shipment was condemned on the basis of missing/lacking product labeling/marketing (which are the standard requirements for the product shipping). This should have been noted immediately the consignment arrived and the decision made then to reject and send them back to be port of origin.
82. That the condemned sugar had been gazetted for destruction by the KRA on 2nd July, 2021, without NEMA being asked to guide on the mode and site for the destruction (Gazette notice no. 6542). A scrutiny of the said Gazette Notice no. 6542 indicated that KRA intended to destroy the sugar by crushing at the customs warehouse in Kilindini. It was not clear what the end product of the crushing was to be and the fate of the same.
83. That on 7th January, 2022, KRA wrote to NEMA seeking "re-advertisement of the allocation of the Gazette Notice 6542". The term "allocation " as used was vague and NEMA did not understand what to allocate with respect to the subject condemned brown sugar.
84. That on 15th December, 2022, NEMA received a copy of communication from KRA to the AG seeking guidance on the sale of the condemned sugar, for use as raw material for ethanol production, and to recover the applicable taxes.
85. That NEMA is yet to receive any communication on the guidance given to KRA by the AG. It must be noted that the matter had since transformed from destruction of the condemned sugar, to sale of the same as a raw material, an undertaking which no longer required NEMA's involvement.
86. That the 40x20 Ft containers were released from the storage in Mombasa and transported to Thika using vehicles that were armed with both customs and RECTS seals. The 40 containers were received in Thika by Mr. Peter N. Mwangi of Vinepack Ltd. The receipt

was witnessed by officers from AFA, KEBS, NPS, DCI and clearing agents. EMA was notified on this activity and therefore did not participate in the exercise.

87. That a report on the receipts of all the 40 containers of sugar and the deactivation of the customs RECTS seals was compiled by KRA Custom Station Manager, Thika Branch, and duly endorsed by those present during the receipt of the sugar.
88. That a letter dated 28th April, 2023, from KRA to Vinepack Ltd., confirms that the sugar was indeed received by Vinepack Ltd. and KRA was demanding payment from Vinepack Ltd. as per the terms of the private treaty.
89. That;
 - i. NEMA did not in any way initiate, facilitate or authorize the release of the sugar. This was wholly initiated and coordinated by KRA as per their institutional and legal mandate.
 - ii. NEMA was not aware of any requirement to be involved in the witnessing of the receipt of sugar in Thika.
 - iii. NEMA was not aware of any requirement to supervise the distillation of the sugar in to ethanol, an industrial undertaking for which the Authority has no direct role anyway
 - iv. NEMA did not advise KRA to have sugar distilled into ethanol as a mode of destruction
 - v. NEMA does not participate in the disposal of condemned goods that are usually offered for auctioning or sale via public or private treaties.
 - vi. NEMA officers are based in Mombasa only participated in multi-agency exercise that witnessed: the verification of the sugar at their storage in Mombasa and the loading and arming of the trucks with customs and RECTS seals.
 - vii. NEMA did not escort the sugar from Mombasa to Thika as this was a Customs and RECTS function.
 - viii. NEMA later saw a copy of communication from AG's office to KRA authorizing the sale of the sugar through public auction. The letter required NEMA and KEBS to supervise the distillation of the sugar, but the said communication was not even copied to NEMA (copy of letter seen with DCI).

90. The release of the imported goods under customs custody (including condemned ones) is the sole mandate of KRA, pursuant to the provisions of Section 217(2) of the East Africa Community Customs Management Act, 2004. The other Government agencies only play advisory roles based on their institutional legal mandate.
91. That the Authority therefore cannot be held responsible in any way for the release and loss of the sugar. Documents exist indicating the safe receipt of the sugar to the parties for which it was intended, and in which NEMA was not aware of, and was not required to be aware of based on the Authority's legal mandate.

3.7 SUBMISSIONS BY AGRICULTURAL AND FOOD AUTHORITY (AFA)

The Acting managing director Mr. Willis Audi appeared before the Committee and submitted as follows;

92. That the sugar was imported from Zimbabwe under Bill of Lading number MSCUB1175411 and MSCUB117503. The sugar had been lying at the Mitchell Cotts Container Freight station since 2018, after it was condemned by Kenya Bureau of Standards (KEBS) for want of expiry date specification, hence unfit for human consumption and directed that the consignment be re-shipped and destroyed at the owner's cost.
93. That in early 2023, the process of destroying the condemned sugar began and Vinepack Ltd. expressed interest in undertaking the destruction process. The company engaged both Kenya Revenue Authority (KRA) and KEBS, seeking to be allowed to destroy the consignment at its facility based in Thika. The company proposed to destroy the sugar through a down grading process, where the condemned sugar was to be converted into industrial ethanol through the process of distillation. Vinepack Ltd. was eventually granted the approval to undertake the destruction.
94. That a Multi-Agency Team (MAT) was formed to deliberate and recommend how the sugar would be released and transported to Vinepack Ltd. The MAT met several times and on 12th April, 2023, had its final meeting and resolved that;
- i. All the 40 containers to be opened to confirm the cargo and be released on 13th April, 2023, under the supervision of the MAT.

- ii. The condemned sugar be released to Vinepack Ltd. and Asset & Cargo Ltd. for onward transportation to Thika for distillation.
 - iii. In addition, the cargo be fitted with KRA Regional Electronic Cargo Tracking System (RECTS) and physical customs cargo seals.
 - iv. Any Agency that felt the need to physically escort the cargo was to make its own arrangements.
 - v. It was agreed that disarming of RECTS electronic seals be done by the KRA team in Thika upon arrival at the mapped site.
 - vi. That KEBS and NEMA to supervise the actual distillation of the industrial ethanol as per the Attorney General Advisory.
 - vii. It was agreed that Agency that may have any concerns to write to KRA Chief Manager, Port Operations before close of business 12th April, 2023.
95. That the role of AFA was to witness the release of the condemned sugar to Vinepack Ltd. for onward transportation to Thika for down grading to make industrial ethanol through the process of distillation.

3.8 SUBMISSIONS BY GALGAMESH ENTERPRISES LTD

Galgamesh Enterprise Ltd. briefed the Committee as follows;

96. That they received an invitation by the Enforcement Dept-Customs & Border control – KRA for submissions raising concerns that about the distillation of the condemned sugar via an email dated 20th Sep, 2022. After the meeting they were told to wait for the outcome of the KRA deliberations.
97. That while waiting for the KRA letter to continue with the process, they were notified that the Chief Manager, Kilindini Customs and Border Control had issued a letter to another party to destroy the sugar by biological degradation. As a result, they proceeded to court and stopped them on 18th November, 2022. While the matter was in court, they were again informed that there was consent between the parties, and that the case had been withdrawn. The Chief Manager again issued another letter authorizing the other party to continue with the destruction. They wrote a letter to the Chief Manager Port Operations, KRA Legal Department, and copied it to the under listed;

- i. OCPD- Port Police
- ii. DCIO- Port Police
- iii. OCS- Port Police
- iv. KACC- Mombasa
- v. HVO Mitchellcotts- Shimanzi
- vi. Mitchellcotts CFC Management

98. That Galgamesh Enterprises went to court for reason that they had not entered into any consent with anyone concerning the condemned sugar. They learnt that a letter had been issued by KRA Nairobi for the sugar to be sold to Vinepack Ltd. Thika by a private Treaty Ref. C&BC/HQ/1 dated 10th Feb, 2023. That, Vinepack Ltd. paid the custom levies and was issued with a letter at customs warehouse Kilindini Mombasa, together with Asset and Cargo to transport the condemned sugar to Thika.

3.9 SUBMISSION BY VINEPACK INDUSTRIES LTD

The Director of Vinepack Ltd. appeared before the Committee on 6th July, 2023, and informed the Committee as follows;

99. That VinePack Ltd. applied to the Commissioner of Customs KRA to distill the condemned sugar into industrial ethanol, after receiving an email from Alcohol Beverages Association of Kenya (ABAK), requesting for expression of interest.

100. That the Agriculture and Food Authority (AFA) gave their no objection, and that KRA approved the request from Vinepack Ltd. with conditions. One of the conditions was payment of taxes being VAT at 16%, Railway Development Levy (RDL) at 2% and import declaration fee (IDF) at 3.5%. VinePack Ltd. paid all the taxes totaling to approximately Kshs.403 million.

101. That Vinepack Ltd. received the condemned sugar in their go-down in Thika and wrote a letter to KEBS acknowledging the receipt, and also informing KEBS on the intentions of VinePack Ltd. to start distillation process.

102. That after VinePack Ltd. wrote a letter of acknowledgement to KEBS, they received a visitation of six people, who introduced themselves as officers from KRA. The

officers proceeded to seal the go-down and sought to know whether VinePack Ltd. had complied with the conditions set out by KRA before distilling the sugar.

103. After one-week Vinepack Ltd. received a call from a Ms. Faith Kiara who introduced herself as an officer of KRA. VinePack Ltd. further submitted that the officer instructed the Director of Vinepack Ltd. to go to the go-down for inspection of the condemned sugar. On arriving at the go-down the Director of VinePack Ltd. met a contingent of police officers waiting for him and on breaking the padlock, no sugar was in the go-down. The Director lost his consciousness as a result of the shock of an empty go-down. Later the Director was arrested and charged for stealing the sugar.

3.10 SUBMISSIONS BY KINGS COMMODITIES LTD

The General Manager of Kings Commodities Ltd. submitted to the Committee as follows;

104. That Kings Commodities Ltd. operates twelve go-downs in Thika on a two-acre piece of land. On 17th April, 2023, they leased go-down no 10 to Vine Pack Ltd. and was paid a deposit of Kshs.100,000 for the three-month lease but defaulted on the balance of Kshs.200,000.
105. That whenever they give out a go-down to a tenant they have no control over their businesses. The tenant is supposed to install CCTV cameras and ensure security for his goods inside the warehouse. The lessor only offers security at the main gate and CCTV cameras outside the warehouses.
106. That a ledger book is kept at the main gate where security officers record details of visitors and goods coming in and out of the warehouses. VinePack Ltd. had made his own security arrangements, and therefore requested to conduct his affairs privately. He stated that his company was not involved in securing cargo for Vine Pack Ltd.
107. That the General Manager noticed increased activity when the forty trucks arrived, but could not confirm whether the consignment was offloaded. According to him the trucks were never offloaded at the premises. That records for people visiting VinePack Ltd. were not taken as he had made a special request.
108. That he became aware of the missing consignment when he was called by Ms. Faith Kiara of Kenya Revenue Authority (KRA) and a Mr. Mburu of the Directorate of Criminal

Investigations (DCI) to the warehouse. He stated that he furnished the DCI with CCTV footages and lease agreement and that he did not notice any interference with walls, doors or roof of the warehouse.

3.11 COMMITTEE FIELD INSPECTION VISITS

109. The Committee visited the port of Mombasa and had several submissions from the various institutions working at the port including KRA, Kenya Ports Authority, Kenya Ship Agents Association, Container Freights Stations (CFS) and NEMA.

3.11.1 Kenya Revenue Authority

110. The Ag. Commissioner, Customs and Border control. Ms. Pamela Ahago briefed Committee on the laws governing destruction of condemned products at the port. She opined that under the East African Community Customs Management Act, KEBS is responsible for inspection of quality and KRA only gets involved when goods are condemned for destruction. The Acting Commissioner further told the Committee, that once goods are condemned for destruction, the procedure involves a multi-agency team whose mandate is to ensure that the products are destroyed with no linkages to unsuspecting consumers and without any damage to the environment.

111. The Ag. Commissioner further told the Committee that part of the 49 containers, one contained rice imported by the Ministry of Devolution, and that it was part of a donation from China, which the Ministry did not pick, ending up being condemned due to expiry.

112. The Ag. Commissioner said that KRA always seeks advisory from NEMA on the best destruction method for condemned cargo, but that delayed responses by NEMA can lead to frustration of the destruction process.

3.11.2 Kenya Ports Authority

113. The Managing Director stated that the organization mandate is to inspect all imported goods, offer cargo handling and storage services, ensure safety and security.

3.11.3 Kenya Ship Agents Association

114. The Committee was informed that the shipping lines incur a lot of expenses when cargo is earmarked for destruction. KSAA members are sometimes unable to proceed with destruction of cargo due to exorbitant prices levied by CFS, leading to congestion at the port. Charges levied by CFS operators are higher than what is normally agreed upon, and that sometimes they revise rates and implement them without consulting other stake holders, thus making it impossible for the agents to proceed with the destruction process. That under EACCMA Act, the owner of the terminal is also responsible for destruction costs, and as such, the shipping lines should not be left to bear the burden alone.
115. The Committee was informed that they experience unexplained delays in getting approval of re-shipment cargo from KRA. That lack of guidance from KRA and haggling about costs between the CFS's and shipping lines frustrate the destruction process leading to losses and congestion at the port.

3.11.4 National Environment Management Authority (NEMA)

116. The Director General NEMA informed the Committee that NEMA only advises KRA on the mode of destruction and has no interest with goods destined for conversion. He told Members that licenses issued to waste treatment plants/sites don't constitute registration or appointments to destroy condemned goods. He said NEMA provides a list of registered entities and also a list of the incineration facilities to KRA.
117. The Director informed Members that NEMA promptly responds to KRA, and that there was no pending request for guidance on destruction methodology as at the time of the meeting.

3.12 VERIFICATION EXERCISE

118. The Committee randomly opened and verified the below containers.

FOCUS ON CONTAINERS

3.12.1 Container number TEMU2847664

The Committee witnessed breakage of KRA seal number 325048 and sealing with new seal number 0325019. The contents of the container were verified to be bags of condemned sugar imported into the country in 2018.

3.12.2 Container number LMCU1255504

The Committee witnessed the breakage of KRA seal number 325047 and sealing with new seal number 0325047. The contents of the container were verified to be bags of condemned sugar imported into the country in 2018.

3.12.3 Container number LMCU1101915

The Committee witnessed the breakage of KRA seal number 325030 and sealing with new seal number 0325029, the container was stripped and counted, it contained five hundred (500) bags of condemned of sugar, which was consistent with the information provided by KRA.

Under Focus station the Committee verified three other containers and witnessed its sealing, no inconsistencies were noted from the information KRA had provided to the Committee.

3.12.4 AUTOPORT CFS-13 CONTAINERS

The Committee verified four containers ESPU2029949, BMOU2205402, TRHU2263582 and TEMU2269205, and sealing with new seals, 0205345, 0205335, 0205342 and 0205340 respectively. No inconsistencies were noted from the information provided by KRA.

3.12.5 G SECTION CFS-9 CONTAINERS

The Committee verified 5 containers and noted one container TCLU2486116 was half empty, and only the front side was filled brown sugar.

3.12.6 PORT SIDE CFS- 6 CONTAINERS

The Committee noted 5 containers had dates and brown sugar with container number TGHU1603541 containing only dates. The Committee further observed in all the containers that some bags of sugar were missing.

119. The Committee noted KRA seals were compulsory, whereas CFS seals were optional, and therefore were missing in some containers. The verification was witnessed by KRA, KPA, CFS, KSAA and DCI officers from Kilindini Police Station.

PART IV

ISSUES FOR DETERMINATION AND COMMITTEE OBSERVATIONS

4.1 ISSUES FOR DETERMINATION

A. Whether the condemned sugar was irregularly and unlawfully released leading to its loss.

120. During the inquiry, the Committee was informed by various stakeholders as below;

- i. That the sugar was imported from Zimbabwe under Bill of Lading number MSCUB1175411 and MSCUB117503. Upon arrival the sugar was condemned by KEBS for want of compliance, and as such, the same did not meet the set Kenyan standards. It is on this basis that the sugar was to be destroyed, sold or disposed of in the manner that the Commissioner General Kenya Revenue so directs.
- ii. That on diverse dates between June 2022, and December 2022, Kenya Revenue Authority received correspondences from KEBS indicating their approval of the conversion of sugar to industrial ethanol which informed their decision to seek legal advisory from the Attorney General, who concurred with the proposed method of destruction.
- iii. That upon Vinepack Ltd. expressing interest, the sugar was released to them under the supervision of a Multi-Agency Team.
- iv. It is not in dispute that the sugar that was released to Vinepack Ltd. for purposes of conversion to industrial was never converted to its final intended purpose.
- v. It was the submission of all the stakeholders who appeared before the Committee, that the sugar that was released to Vinepack Ltd. for conversion went missing under unclear circumstances, and the same was not disposed of in the manner that was approved by the Commissioner General Kenya Revenue Authority.

B. The role of Multi-Agency Team in the destruction process and establish whether there was negligence on the part of any institution within the Multi-Agency Team, leading to the loss of the condemned sugar.

121. It was the submission of KRA that they sought opinion of the office of the Attorney General on the suggested method of disposal of the condemned sugar, by way of conversion into ethanol. The proposal was approved by the Attorney General with a condition that the process be conducted under the supervision of a multi-Agency team. The multi-Agency team was composed of Government agencies, whose mandate touched on various aspects of trade facilitation and established through Gazette Notice 7270, dated 20th July, 2018, made pursuant to the resolutions of the Inter- Agency Anti-Illicit Trade Committee. From the Gazzette Notice the Anti-Illicit Trade Technical Working Group was established.

The Multi-Agency Team comprised of the following agencies;

- i. Kenya Revenue Authority (KRA)
- ii. Kenya Bureau of Standards (KEBS)
- iii. National Environment Management Authority (NEMA)
- iv. Ant Counterfeit Authority (ACA)
- v. Ethics and Ant-Corruption Commission (EACC)
- vi. Agriculture and Food Authority (AFA)
- vii. Kenya Plant Health Services (KEPHIS)
- viii. Kenya Ports Authority (KPA)
- ix. Kenya Police Service.

122. One of the terms of reference for the Multi-Agency Team was to co-ordinate with Kenya Revenue Authority on the importation and exportation of merchandise that are of illicit nature. From the above, the team was to deliberate and recommend how the said sugar would be released and transported to Vinepack Ltd. In addition, the same the team was to exercise a supervisory role on the process of conversion up to the final distillation of the condemned sugar. However, it is important to note that during the meeting held 12th April 2023, there was a resolution that KEBS, NEMA and AFA were to supervise the actual distillation of the industrial ethanol as per the Attorney-General's advisory

C. Whether the distiller was licensed and was sourced through an open and competitive tendering process.

123. In its submissions, KRA informed Members that they invited interested bidders from members of the Alcoholic Beverages Association of Kenya (ABAK), to express interest on the procurement of the condemned sugar for the production of industrial ethanol. That Vinepack Ltd. wrote six days later expressing interest in undertaking the distillation process.

124. One of the requirements for the bidder to conduct distillation of the sugar was that the bidder should be licensed by the Sugar Directorate (the regulator of the sugar industry in Kenya). The Committee observed that KRA inquired from AFA whether Vinepack Ltd. was duly licensed as per the recommendations of the Attorney-General (Letter reference No. C&BC/HQ/1 dated 30th January, 2023). The response from AFA did not ascertain whether Vinepack Ltd. was a licensed distiller. It only indicated that AFA had no objection to the release of sugar to Vinepack Ltd. (Letter reference no. AFA/SD/FIN/19/(59) dated 17th February, 2023, from the Ag. Director AFA.

D. Whether there is need for review of the legal framework governing timelines, condemnation and destruction of imported goods.

129. Kenya as a country has over long period of time developed various laws in the management and administration of customs. The following are some of the various laws governing customs;

- (a) Standards Act, CAP 496.
- (b) Customs and Excise Act, Cap 472.
- (c) East African Community Customs Management, Act, 2004

Standards Act, CAP 496

This is an Act of Parliament that provides for standardization of the specification of commodities. The same establishes Kenya Bureau of Standards, defines its functions and further provides for its management and control.

Section 14A of the Act provides that an inspector appointed under Section 13 may order for the destruction of goods detained under Section 14 of the Act, if the following conditions are satisfied;

- a. Testing indicates that the goods do not meet the Kenyan standards; and

- b. it is reasonably necessary to destroy the goods because the goods are in a dangerous state or injurious to the health of human beings, animals or plants.

The Act only provides that a notice of at least 14 days should be issued to the owner of the goods in writing or in circumstances where the owner is not known, by publishing a written notice in the Gazette. Upon the lapse of the 14 days' notice, and failure by the owner to claim the goods or appealing against the order by the inspector, the goods shall be destroyed.

However, it is important to note that Section 14 A (5) provides that an order under Section (1) shall not be carried out until the time for appealing to the tribunal has expired, and if the order is appealed, the order shall not be carried out until the tribunal has dealt with the appeal.

From the above, it is clear that the Act is not specific on the period between the time of condemnation and destruction as in the absence of an appeal the goods can be destroyed anytime therefrom.

Customs and Excise Act, Cap 472

The Customs and Excise Act provides for the management and administration of customs, assessment, charging and collection of customs and excise duties.

Section 200(3) (b) of the Act provides that where anything liable to forfeiture under this Act has been seized, then in any other case, the thing shall be detained until one month after the date of the seizure, or the date of a notice given under Sub-Section (1), as the case may be, and if no claim is made therefore as provided in Sub-Section (4) within the period of one month, the thing shall thereupon be deemed to be condemned.

That upon the goods being condemned, Section 203(2) (a) of the Act provides that subject to Section 214, the commodity shall be forfeited and may be sold, destroyed or otherwise disposed of as the Commissioner may think fit. The Act further provides that condemnation shall have effect as from the date when the liability to forfeiture arose.

Although the Act provides for condemnation and destruction of goods, the same is silent in terms of the period within which the condemned goods are to be destroyed, sold or otherwise disposed

of. As such once the goods have been condemned and in the absence of any claim the said goods can be sold or destroyed or otherwise disposed of as the commission may think fit.

East African Community Customs Management Act, 2004

This is an Act of the Community that provides for the management and administration of Customs within the member states.

Section 214 of the Act provides that where anything has been seized under this Act, then unless such thing was seized in the presence of the owner of the thing, or, in the case of any aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons to the owner or, in the case of any aircraft or vessel, to the master.

Section 215 of the Act provides that where any person is prosecuted for an offence under this Act, and anything is liable to forfeiture by reason of the commission of the offence, then the conviction of the person of the offence shall, without further order, have effect as the condemnation of the thing.

Where anything has been seized under this Act, as being liable to forfeiture, then the condemnation of the thing shall in no way be affected by the fact that any owner of the thing was in no way concerned with the act which rendered the thing liable to forfeiture.

4.2. COMMITTEE OBSERVATIONS

130 From the above analysis, the Committee finds that considering that there was no proof that the final distillation of the sugar that was released to Vinepack Ltd., and having proof from the stakeholders that the sugar went missing, it is the finding of the Committee that the condemned sugar was irregularly and unlawfully released to the market for consumption by unsuspecting and innocent Kenyans.

131. Considering that the obligation and duties of the MAT was to the final conclusion of the process of distillation, the Committee finds that the whole team was negligent in discharging of their duties, and as a result of the negligence, the sugar was lost. The Committee finds the three institutions, i.e. KEBS, NEMA and AFA as the most responsible, as they had a major supervisory role to the final distillation process.

132. The Committee finds that there was no proof even on the part of Vinepack Ltd., that the company was duly licensed by the Sugar Directorate. It is thus the finding of the Committee that KRA awarded the above-mentioned tender in contravention of the provisions of Section 55(1) (a) of the Public Procurement and Asset Disposal Act No. 33 of 2015.

133. The Committee observed that KRA did not invite an open bid for conversion of condemned sugar into Ethanol, but instead sent an advert to ABAK, who never responded. The Committee further finds that the bid advert by KRA lacked timelines for submissions, which is against public procurement laws. The Committee therefore observed that the process leading to the release of condemned sugar to Vinepack Ltd. was illegal and irregular, and the due process was not followed, because the Kenya Revenue Authority did not follow the laid down procurement process, leading to awarding of tender to a company which was not licensed to deliver services procured.

134. The Committee finds that although there exists a legal framework for the process leading to goods being condemned, the law is silent on the timelines to be observed by the relevant authority from the time when the goods are condemned, to the time when they ought to be destroyed, sold or disposed of. As a result, most of the commodities take long before they are destroyed or disposed of upon declaration by the Kenya Bureau of Standards of their nonconformity.

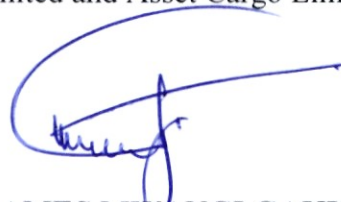
PART V

5.0 COMMITTEE RECOMMENDATIONS

135. Based on the Committee's findings and general observations, the Committee makes the following recommendations;

- a) That, within 60 days of adoption of this Report, the Inspector General investigates into the conduct of all Kenya Revenue Authority officials who were responsible for the whole process leading to conversion of the condemned sugar, and recommend requisite legal action.
- b) That, Faith Kiara having been adversely mentioned in the submissions by various stakeholders during the hearing, the Committee recommends that the Inspector General and the Director Criminal Investigations investigates the conduct of Ms. Faith Kiara leading to the loss of the condemned sugar and recommend requisite legal action.
- c) The Cabinet Secretary, Ministry of Investments, Trade and Industry, in consultation with the relevant stakeholders to develop a comprehensive regulatory framework and policies to govern the process of destruction of condemned commodities within six (6) months of the adoption of this Report, and submit to the National Assembly for consideration.
- d) The Cabinet Secretary, Ministry of Investments, Trade and Industry in consultation with the Commissioner General Kenya Revenue Authority and relevant stakeholders to develop a comprehensive regulatory framework and policies to govern seamless operation of various departments within Kenya Revenue Authority, within six (6) months of the adoption of this Report, and submit to the National Assembly for consideration.
- e) That within 60 days of the adoption of this Report, the Ethics and Anti-Corruption Commission to investigate the procurement process leading to the award of tender to Vinepack Industry Ltd. by Kenya Revenue Authority, and take requisite legal action.
- f) That, Parliament reviews the current legal framework to amongst other provisions;
 - i. Review and propose amendments to Section 14 of the Standards Act, Cap 496, to provide for timelines within which a commodity ought to be inspected and the time within which an order on whether the goods are condemned or not issued.


- ii. Review of the Excise Duty Act, Cap 472, to provide for timelines within which the condemned goods should be destroyed upon directions by the Commissioner General.
 - iii. Review of the Excise Duty Act, Cap, 472 to provide for a clear chain of custody of goods from the time when goods are condemned to the final point of destruction or disposal in the manner that the Commissioner General deems fit.
 - iv. Review of the Standards Act, Cap 496 to clearly define the mandate of Kenya Bureau of Standards from the point of condemnation to the final destruction process of the condemned commodity.
- g) The Inspector General to investigate into the conduct of the Directors of Vinepack Industry Limited that led to the illegal and irregular release of the condemned sugar, and advise or make recommendations to the Director Public Prosecutions take requisite legal action.
- h) The Inspector General to investigate into the conduct of the Directors of Galgamesh Enterprise Limited and Asset Cargo Limited that led to the illegal and irregular release of the condemned sugar and take requisite legal action.
- i) Within 60 days of the adoption of this Report, the Ethics and Anti-Corruption Commission to conduct investigations into the procurement process leading to the award of tender to Galgamesh Enterprises Limited and Asset Cargo Limited, and take requisite legal action.

 21/5/24

HON. JAMES MWANGI GAKUYA, M.P.

(CHAIRPERSON)

COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 JUN 2024	
TABLED BY:	DAY:
CLERK AT THE TABLE	



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION - 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

ADOPTION LIST

AGENDA: Consideration and Adoption of the Report on ~~examined~~ ^{regarding} the Irregular Release of Condensed Sugar

DATE: 30/4/2024

TIME: From: 13:00n To: 01:50 PM

VENUE: Small Dining, Parliament Buildings

NO.	NAME	SIGNATURE
1.	Hon. Gakuya James Mwangi, MP- Chairperson	
2.	Hon. Kitany Marianne Jebet, MP - Vice Chairperson	
3.	Hon. Dr. Oundo Wilberforce Ojiambo, MP	
4.	Hon. Dr. Beatrice Adagala, MP	
5.	Hon. Githinji Robert Gichimu, MP	
6.	Hon. Kamene Joyce, MP	
7.	Hon. Mwalyo Joshua Mbithi Mutua, MP	
8.	Hon. Oluoch Anthony Tom, MP	
9.	Hon. Guyo Adhe Wario, MP	
10.	Hon. Korir Adams Kipsanai, MP	
11.	Hon. Maina Mwago Amos, MP	
12.	Hon. Sakimba Parashina Samuel, MP	
13.	Hon. Wainaina Antony Njoroge, MP	
14.	Hon. Waithaka John Machua, MP	

MINUTES OF THE 63rd SITTING OF THE THIRD SESSION OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY, AND COOPERATIVES, HELD IN THE SMALL DINING AT THE NEW WING, PARLIAMENTARY BUILDINGS, ON TUESDAY 30TH APRIL, 2024, AT NOON

PRESENT

1. Hon. Gakuya, James Mwangi, M.P. - **Chairperson**
2. Hon. Kitany, Marianne Jebet, M.P. - **Vice-Chairperson**
3. Hon. Dr. Oundo, Wilberforce Ojiambo, M.P.
4. Hon. Mwalyo, Joshua Mbithi Mutua, M.P.
5. Hon. Githinji, Robert Gichimu, MP.
6. Hon. Guyo, Adhe Wario, M.P.
7. Hon. Waithaka, John Machua, M.P.
8. Hon. Korir, Adams Kipsanai, M.P.
9. Hon. Maina, Mwago Amos, M.P.

APOLOGIES

1. Hon. Kamene Joyce, M.P.
2. Hon. Oluoch, Anthony Tom, MP.
3. Hon. Adagala, Beatrice Kahai, M.P.
4. Hon. Sakimba, Parashina Samuel, M.P.
5. Hon. Wainaina, Antony Njoroge, M.P.

COMMITTEE SECRETARIAT

1. Ms. Rose Mudibo, OGW - Senior Clerk Assistant
2. Mr. Ellam Omuhinda - Clerk Assistant III
3. Ms. Everlyn Orina - Clerk Assistant III
4. Ms. Florence Wanja - Public Communication Officer
5. Mr. Daniel Psirmoi - Media Relations Officer
6. Mr. Peter Barasa - Legal Officer
7. Ms. Loice Olesia - Fiscal Analyst

AGENDA

1. Preliminaries/Introduction
 - i) Prayer
 - ii) Adoption of the Agenda
 - iii) Remarks of the Chairman
2. Confirmation of Previous minutes
3. **Consideration of and adoption of the Report on the inquiry into the irregular release of condemned sugar**
4. Pending Business (enclosed)
5. Any Other Business/ Adjournment and Date of the next meeting

MIN.NO. NA/TRADE/2024/311:

PRELIMINARIES

The Chairperson called the meeting to order at Ten minutes past Noon, and the meeting began with a word of prayer by the Vice Chairperson. Thereafter, the agenda was adopted having been proposed by Hon. Joshua Mwalyo, and seconded by Hon. Adhe Guyo.

MIN.NO. NA/TRADE/2024/312:

CONFIRMATION OF PREVIOUS MINUTES

The adoption of pending Committee Minutes was postponed to a future sitting, due to time constraints.

MIN.NO. NA/TRADE/2024/313:

**CONSIDERATION OF AND ADOPTION OF
THE REPORT ON THE INQUIRY INTO THE
IRREGULAR RELEASE OF CONDEMNED
SUGAR**

Reiterating the need to table the report, the Chairman invited the Members to consider it.

Upon deliberations of the report, the Members unanimously agreed to the following observations and recommendations;

Observations

- a) Considering that there was no proof that the final distillation of the sugar that was released to Vinepack Ltd., and having proof from the stakeholders that the sugar went missing, it is the finding of the Committee that the condemned sugar was irregularly and unlawfully released to the market for consumption by unsuspecting and innocent Kenyans.
- b) Considering that the obligation and duties of the MAT was to the final conclusion of the process of distillation, the Committee finds that the whole team was negligent in discharging of their duties, and as a result of the negligence, the sugar was lost. The Committee finds the three institutions, i.e. KEBS, NEMA and AFA as the most responsible, as they had a major supervisory role to the final distillation process.
- c) The Committee finds that there was no proof even on the part of Vinepack Ltd., that the company was duly licensed by the Sugar Directorate. It is thus the finding of the Committee that KRA awarded the above-mentioned tender in contravention of the provisions of Section 55(1) (a) of the Public Procurement and Asset Disposal Act No. 33 of 2015.
- d) The Committee observed that KRA did not invite an open bid for conversion of condemned sugar into Ethanol, but instead sent an advert to ABAK, who never responded. The Committee further finds that the bid advert by KRA lacked timelines for submissions, which is against public procurement laws. The Committee therefore observed that the process leading to the release of condemned sugar to Vinepack Ltd. was illegal and irregular, and the due process was not followed, because the Kenya Revenue Authority did not follow the laid down procurement process, leading to awarding of tender to a company which was not licensed to deliver services procured.
- e) The Committee finds that although there exists a legal framework for the process leading to goods being condemned, the law is silent on the timelines to be observed by the relevant

authority from the time when the goods are condemned, to the time when they ought to be destroyed, sold or disposed of. As a result, most of the commodities take long before they are destroyed or disposed of upon declaration by the Kenya Bureau of Standards of their nonconformity.

Recommendations

Based on the Committee's findings and general observations, the Committee agreed on the following recommendations;

- a) That, within 60 days of adoption of this Report, the Inspector General investigates into the conduct of all Kenya Revenue Authority officials who were responsible for the whole process leading to conversion of the condemned sugar, and recommend requisite legal action.
- b) That, Faith Kiara having been adversely mentioned in the submissions by various stakeholders during the hearing, the Committee recommends that the Inspector General and the Director of Criminal Investigations investigate the conduct of Ms. Faith Kiara leading to the loss of the condemned sugar and recommend requisite legal action.
- c) The Cabinet Secretary, Ministry of Investments, Trade and Industry, in consultation with the relevant stakeholders to develop a comprehensive regulatory framework and policies to govern the process of destruction of condemned commodities within six (6) months of the adoption of this Report and submit to the National Assembly for consideration.
- d) The Cabinet Secretary, Ministry of Investments, Trade and Industry in consultation with the Commissioner General Kenya Revenue Authority and relevant stakeholders to develop a comprehensive regulatory framework and policies to govern seamless operation of various departments within Kenya Revenue Authority, within six (6) months of the adoption of this Report, and submit to the National Assembly for consideration.
- e) That within 60 days of the adoption of this Report, the Ethics and Anti-Corruption Commission to investigate the procurement process leading to the award of tender to Vinepack Industry Ltd. by Kenya Revenue Authority, and take requisite legal action.
- f) That, Parliament reviews the current legal framework to amongst other provisions;
 - i. Review and propose amendments to Section 14 of the Standards Act, Cap 496, to provide for timelines within which a commodity ought to be inspected and the time within which an order on whether the goods are condemned or not issued.
 - ii. Review of the Excise Duty Act, Cap 472, to provide for timelines within which the condemned goods should be destroyed upon directions by the Commissioner General.

- iii. Review of the Excise Duty Act, Cap, 472 to provide for a clear chain of custody of goods from the time when goods are condemned to the final point of destruction or disposal in the manner that the Commissioner General deems fit.
- iv. Review of the Standards Act, Cap 496 to clearly define the mandate of the Kenya Bureau of Standards from the point of condemnation to the final destruction process of the condemned commodity.
- g) The Inspector General to investigate the conduct of the Directors of Vinepack Industry Limited that led to the illegal and irregular release of the condemned sugar, and advise or make recommendations to the Director of Public Prosecutions to take requisite legal action.
- h) The Inspector General to investigate into the conduct of the Directors of Galgamesh Enterprise Limited and Asset Cargo Limited that led to the illegal and irregular release of the condemned sugar and take requisite legal action.
- i) Within 60 days of the adoption of this Report, the Ethics and Anti-Corruption Commission to conduct investigations into the procurement process leading to the award of tender to Galgamesh Enterprises Limited and Asset Cargo Limited, and take requisite legal action.

MIN.NO. NA/TRADE/2024/314:

**PENDING COMMITTEE BUSINESS
AND ANY OTHER BUSINESS**

The Committee was informed of a planned public hearing activity scheduled to take place between the 7th and 11th of May, 2024 on the Cooperatives Bill that is before the House. It was agreed upon that the Committee was to be divided into two sub-committees and to cover 8 counties, i.e. Siaya, Vihiga, Kericho, Mombasa, Machakos, Kirinyaga, Isiolo and Garissa Counties. The secretariat was tasked to confirm the state of the road to Garissa due to the rains in the country and consider the option of the Members having to fly as opposed to driving to Garissaa County.

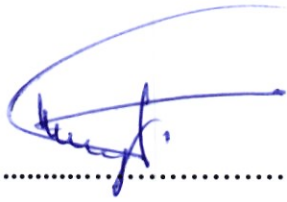
Considering the fact that Parliament was scheduled to have two sittings on Thursday 2nd May, 2024, the Secretariat was tasked to seek permission from the Speaker for the Committee to hold a meeting on Thursday 2nd May, 2024 at Noon.

MIN.NO. NA/TRADE/2024/315:

**ADJOURNMENT AND DATE OF THE NEXT
MEETING**

The meeting was adjourned at half past One O'clock and the next meeting scheduled to take place on Thursday 2nd May, 2024 upon the approval by the Speaker of the National Assembly.

Sign.....



Date.....

2/5/24

HON. GAKUYA, JAMES MWANGI, MP

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES**