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THE ETHICS AND ANTI-CORRUPTION COMMISSION

THE 1st QUARTERLY REPORT COVERING THE PERIOD FROM
1st JANUARY 2024 TO 31st MARCH 2024

THE NATIONAL ASSEMBLY PAPERS LAID	
MARCH 2024	DATE: 05 JUN 2024
TABLED BY:	CHAIRPERSON, BAC Hon. NDINDI NYORO, MP
CLERK AT THE TABLE:	J. Lemerelle

PREAMBLE

The Ethics and Anti-Corruption Commission (the Commission) is required under section 36 of the Anti-Corruption and Economic Crimes Act, 2003 (ACECA), to prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions (DPP) under Section 35 of the ACECA, 2003 as read with Section 11(1) (d) of the Ethics and Anti-Corruption Commission Act, 2011, (EACCA). Section 36 of ACECA provides that:

1. The Commission shall prepare quarterly reports setting out the number of reports made to the DPP under section 35 and such other statistical information relating to those reports, as the Commission considers appropriate.
2. A quarterly report shall indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was accepted or not accepted.
3. The Commission shall give a copy of each quarterly report to the Attorney General.
4. The Attorney General shall lay a copy of each quarterly report before the National Assembly.
5. The Commission shall cause each quarterly report to be published in the Gazette.

This report is therefore made pursuant to section 36 of ACECA. The report covers the 1st Quarter and is for the period commencing 1st January 2024 to 31st March, 2024.

1. EACC/FI/INQ/35/2021

INVESTIGATIONS INTO CORRUPTION ALLEGATIONS IN THE TENDERING PROCESS FOR THE DESIGN, SUPPLY, TESTING, COMMISSIONING AND SUPERVISION OF SECURITY ACCESS CONTROL COMMUNICATIONS, AUDIO VISUAL AND PITCH LIGHTING SYSTEMS FOR FIVE STADIA IN PREPARATION FOR AFRICA NATIONS CHAMPIONSHIPS, 2018 AT KSHS. 1.5 BILLION BY THE STATE DEPARTMENT FOR SPORTS CULTURE AND THE ARTS

The Ethics and Anti- Corruption Commission (EACC) received a complaint of embezzlement of public funds and irregular procurement process by public officials during the intended 2018 African Nations Championships 2018. The Ministry of Sports, Culture and Arts (MoSCA) and Sports Kenya, a parastatal within MoSCA was tasked to organize the above mentioned event.

Investigations established that Auditel Kenya was awarded the tender irregularly since they attached false documents to their bid document.

Investigations established that Auditel Kenya did not render any services in the five stadia as per the contract. As such, the Permanent Secretary, the Director Administration, the Principal Accountant and the Chief Finance Officer of MoSCA who were involved in the procurement process and approving the payment, abused their office by conferring a benefit of Kshs. 330,537,997.00 to Auditel Kenya for services not rendered.

Investigations established that Auditel Kenya fraudulently received public property to wit Kshs. 330,537,997.00 for services not rendered.

Financial investigations established that after Auditel Kenya was paid, Kshs. 25,682,893.56 was transferred to Restea Enterprises (Restea). Restea transferred money to persons associated with the Football Federation Kenya (FKF) President, Leasepath Ltd and Leasetrade Ltd. The Directors of Restea, Leasepath Ltd, Leasetrade Ltd and the FKF President therefore knowingly engaged in an arrangement to receive money from Auditel Kenya with the intent to conceal the

source of the said amount yet they knew that the said monies were obtained for services not rendered.

On 8th January, 2024 a report was compiled and forwarded to the DPP with recommendations to charge the then Permanent Secretary, MoSCA, the then Chief Finance Officer MoSCA, the then Principal Accountant, MoSCA, the FKF President, the Senior Superintendent Engineer MoSCA, Mechanical Engineer at Sports Kenya, the then Director of Administration MosCA, Auditel Kenya Ltd and its Director, Restea Enterprises Ltd and its Director, Leasepride Ltd and its Director, Leasepath Ltd and its Director, Leasepride Ltd and its Director with the following offences:-

- i. Conspiracy to commit an offence of corruption contrary to Section 47A(3) as read with Section 48(1) of the Anti -Corruption and Economic Crimes Act No. 3 of 2003.
- i. Three counts of Abuse of Office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act No.3 of 2003.
- ii. Three counts of financial misconduct contrary to Section 197(1)(i) as read with Section 199 of the Public Finance Management Act, 2012.
- iii. One count of wilful failure to comply with the law relating to procurement contrary to Section 45(2) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act No.3 of 2003.
- iv. One count of Money laundering contrary to Section 3(a) as read with Section 16 of the Proceeds of Crime and Anti- Money Laundering Act 2009.
- v. Three counts of Acquisition of Proceeds of Crime contrary to Section 4 as read with Section 16 of the Proceeds of Crime and Anti-Money Laundering Act, 2009.
- vi. One count of unlawful acquisition of public property contrary to Section 45(10(a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act No.3 of 2003.

On 27th March, 2024 the DPP returned the Inquiry file with recommendations for further investigations.

2. EACC/FI/INQ/01/2023

INVESTIGATIONS INTO ALLEGATIONS OF FRAUDULENT PAYMENT OF KSHS. 250,000,000/= MADE BY THE NAIROBI CITY COUNTY GOVERNMENT IN FAVOUR OF KUZA FARM AND ALLIED LIMITED AS COMPENSATION FOR THE ACQUISITION OF LAND PARCEL NO. LR 209/11887 I.R 58301 LOCATED IN INDUSTRIAL AREA NAIROBI DURING THE FY 2019/2020

The Ethics and Anti-Corruption Commission (EACC) commenced investigation after receiving an allegation that there was conspiracy to defraud the Nairobi City County Government of Kshs. 250,000,000/= in irregular compensation to Kuza Farm and Allied Ltd for land parcel LR. No. 209/11887 I.R No. 58301 (the land) located in Industrial Area- Nairobi during the FY 2019/2020.

Investigations established that in 1993 Kuza Farm acquired the land regularly. The parcel of land is currently developed with public utilities including A. E. F Reuben Primary School, Nursery School, Health Centre, Vocational Training Centre, Maternity Centre, Congregation of Christian Brothers offices and buildings for social work. Investigations established that in the year 2014 Kuza Farm filed a civil suit seeking orders for compensation and vacation of the land by the Nairobi City County Government (NCCG) since public utilities were developed on the land by the NCCG.

Investigations established that the NCCCG entered into a consent with Kuza Farm. The consent was adopted by the Court and a decree was thereafter issued. One of the conditions of the decree was that Kuza Farm was to be paid Kshs. 250,000,000/= upon clearing all encumbrances registered against the title of the land.

Investigations have established that on 17th July, 2020 the NCCG paid Kuza Farm Kshs. 250,000,000/=. The payment to Kuza Farm was irregular since the title of the Land in question had been charged to Post Bank Credit Ltd for a sum of Kshs. 1,650,000,000=.

This meant that Kuza Farm was paid yet the land was charged.

Investigations also established that Kuza Farm and its Director who actively participated in the meeting that brought forth the compensation were culpable for unlawfully acquiring public property because they were paid Kshs. 250,000,000/= yet the title of the land had been charged to Post Bank Credit Ltd.

Investigations established that the County employees at the NCCG Legal Department who were in charge of enforcing the Court Decree together with other officers who were involved in processing the payment in favour of Kuza Farm supported the irregular payment of Kshs. 250,000,000/= and were culpable of abuse of office.

On 13th February, 2024 a report was compiled and forwarded to the DPP with recommendations to charge the Director Kuza Farm Ltd, the Company, the County Attorney NCCG, the Director Legal Affairs, NCCG and the Chief Officer NCCG with the following offences:-

- i. One count of conspiracy to commit an offense of corruption contrary to Section 47A as read with Section 48 of the Anti- Corruption and Economic Crimes Act, 2003.
- ii. One count of unlawful acquisition of public property contrary to Section 45(a) as read with Section 48 of the Anti- Corruption and Economic Crimes Act, 2003.
- iii. Two counts of abuse of office contrary to Section 46 as read with Section 48 of the Anti- Corruption and Economic Crimes Act, 2003.

Awaiting the DPP's response.

3. EACC/FI/INQ/38/2017

INQUIRY INTO ALLEGATIONS OF PROCUREMENT IRREGULARITIES IN TENDER NUMBER NITA/12/2017-2018 FOR THE SUPPLY, DELIVERY, INSTALLATION, COMMISSIONING, TRAINING, SERVICING, MAINTENANCE AND REPAIR OF SEWING AND TRAINING MACHINES BY NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA) TO M/S XPONICS LIMITED

The Ethics and Anti-Corruption Commission (EACC) commenced investigations following allegations of procurement irregularities in tender number NITA/12/2017-2018, tender for the supply, delivery, installation, commissioning, training, servicing, maintenance and repair of sewing and training machines by National Industrial Training Authority (NITA) to M/S Xponics Limited (Xponics).

Investigations established that Xponics and its Directors used false documents that were attached to their tender document and therefore fraudulently acquired public property to wit Kshs. 5,388,410/=.

Investigations established that the Tender Evaluation Committee failed to use the criteria that was set in the tender document and irregularly recommended the award of the tender to Xponics.

The former Director General, NITA improperly conferred a benefit on Xponics by authorizing a payment of Kshs. 5,388,410.69 to Xponics despite being notified of the procurement irregularities in the subject tender by the Public Procurement Regulatory Authority and without a valid contract.

On 18th January 2024, a report was compiled and forwarded to the DPP with recommendations to charge Xponics, the Directors of Xponics, the former Managing Director of NITA and the members of the Tender Evaluation Committee with the following offences:-

- i. One count of conspiracy to commit an offence of corruption contrary to section 47(a)(3) as read with sections 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.
- ii. One count of willful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003.
- iii. Two counts of abuse of office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003.
- iv. One Count of fraudulent acquisition of public property contrary to Section 45(1) a as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.
- v. One count of fraudulent procurement practice contrary to section 66(1) and (2) of the Public Procurement and Asset Disposal Act, 2015.

On 27th March 2024, the DPP returned the inquiry file with recommendations for further investigations.

4. EACC/MCKS/FI/INQ/40/2017

INQUIRY INTO ALLEGATIONS OF EMBEZZLEMENT OF FUNDS AND SHODDY WORKS IN THE CONSTRUCTION OF KATIKOMU DRIFT IN MAKUENI COUNTY.

The Ethics and Anti-Corruption Commission (EACC) commenced investigations into allegations that the works for the construction of the Katikomu Drift in Makueni County, which links Kilala and Kaiti locations across River Kaiti, were shoddy. That the said drift collapsed despite having been supervised by the Makueni County Works Engineers. There were also allegations of embezzlement of funds.

Investigations established that the Tender for the construction of the Katikomu Drift was awarded to Fortis Kenya Limited and they did the work but the slab for the drift collapsed on 17th March 2017.

Investigations established that there was no inspection and acceptance of the works as required by the law.

Financial investigations established that the Contractor had not been paid for the said works thus the allegation of embezzlement of public funds has not been established.

On 14th December 2023 a report was compiled and forwarded to the DPP with recommendations that this file be closed since no public funds were lost as the Contractor has not been paid. It was further recommended that an advisory letter be issued to Makueni County Government regarding the need to engage a qualified Engineer from KeRRA to conduct a geotechnical inspection/survey and to come up with adequate designs for the drift to prevent the drift from collapsing.

On 27th March, 2024 the DPP returned the inquiry file with recommendations for further investigations.

5. EACC/ELD/FI/INQ/21/2018

INVESTIGATIONS INTO ALLEGATIONS OF IRREGULAR ACQUISITION AND DISPOSAL OF GOVERNMENT SUBSIDIZED FERTILIZER FROM NCPB, ELDORET DEPOT BY OFFICIALS

AND SIX PERSONS PURPORTING TO BE FARMERS IN KESSES SUB COUNTY, UASIN GISHU COUNTY DURING THE 2017/2018 CROP SEASON

The Ethics and Anti-Corruption Commission (EACC) commenced investigations after receiving allegations that a Farmer with 2 acres of land in Shiyabo and also leases land in Bungoma (Shiyabo Farmer) was in the process of procuring subsidized Government fertilizer at the National Cereals and Produce Board (NCPB) Eldoret Silo, for purposes of repackaging and selling at a profit. It was further alleged that unscrupulous businesspersons were using names of persons disguising to be farmers, to access Government subsidized fertilizer thus denying legitimate farmers access to the fertilizer. In addition, it was alleged that there were irregularities in the issuance of Government subsidized fertilizer at the NCPB Eldoret Silo and that the Manager at the mentioned Silo was colluding with cartels and relying on forged documents to issue fertilizer to persons who were not farmers. It was also alleged that the Chiefs who were involved in the vetting process of farmers had been compromised to generate a list of persons who were not farmers to benefit from the Government subsidized fertilizer.

Investigations established that the Shiyabo Farmer was not involved in a business that was conducted by buying subsidized fertilizer and selling the same at a profit.

Investigations established that there were persons who were registered as farmers entitled to benefit from the subsidized fertilizer but they were not genuine farmers and they benefited by purchasing the subsidized fertilizer. The Agricultural Officer and the Senior Chief (Chair of the Farmers Vetting Committee) Tarakwa Ward did not comply with the guidelines of the registration and vetting process of the farmers. They also failed to confirm that the persons were not farmers within Tarakwa Ward and should not have issued them with the Application Forms for purchasing the fertilizer.

On 25th March, 2024, a report was compiled and forwarded to the DPP with recommendations to close the inquiry file as no criminal offence was disclosed. It was further recommended that administrative action be taken against the Chair of the Farmers Vetting Committee and the Agricultural Officer, Tarakwa Ward for not complying with the guidelines of the registration and vetting process of the farmers.

On 26th April, 2024 the DPP returned the Inquiry file with recommendations for administrative action.

6. EACC/NYR/FI/INQ/17/2021

INVESTIGATIONS INTO ALLEGATIONS OF CONFLICT OF INTEREST AND ABUSE OF OFFICE IN THE AWARD OF TENDER NO. CGK/TR&PW/OT/011/2017-2018 IN RESPECT OF THE SPOT IMPROVEMENT OF C74 KANG'URU-KAITHERI PRY-MACHERE ROAD KERUGOYA WARD IN THE FINANCIAL YEAR 2017/2018 AGAINST THE DEPUTY GOVERNOR, COUNTY GOVERNMENT OF KIRINYAGA.

The Ethics and Anti-Corruption Commission (EACC) commenced investigations following allegations that, there were probable irregularities in the award of the contract for spot improvement of C74 Kang'uru-Kaitheri Pry-Machere road Kerugoya Ward by the County Government of Kirinyaga. It was reported that the tender was awarded to Songa General Enterprises (Songa) a Company that was associated with the Deputy Governor, Kirinyaga County.

Investigations established that Songa used false documents including a Bid Bond, Purchase Orders, Audit Reports, National Construction Authority Certificate, Audited Account Statement and Proof of previous works in support of their bid document thereby influencing the award of the tender to the said company, which was non responsive.

Investigations also established that the subject tender was awarded to Songa, whose directors were the wife and children of the former Deputy Governor respectively. This amounted to conflict of interest on the part of the former Deputy Governor, Kirinyaga County.

On 26th January, 2024, a report was compiled and forwarded to the DPP with recommendations that the Proprietors of Songa and the former Deputy Governor of Kirinyaga County be charged as follows:-

- i. Two counts of fraudulent acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of the Anti-Corruption & Economic Crimes Act.

- ii. One count of knowingly holding a private interest in a contract connected with a public body Contrary to section 42(3) as read with Section 48(1) of the ACECA

On 2nd May, 2024 the DPP returned the inquiry file with recommendations with recommendation for closure.

7. EACC/PI/INQ/33/2020

INVESTIGATIONS INTO ALLEGATIONS OF IRREGULARITIES IN THE AWARD OF TENDER NO. NWSHA/ONP/007/2019-2020 FOR THE PROPOSED CONSTRUCTION OF NAKU'ETUM PEACE DAM IN TURKANA COUNTY AT A COST OF KSHS. 231 MILLION TO J&K INVESTMENTS KENYA LIMITED BY THE NATIONAL WATER & STORAGE AUTHORITY

The Ethics and Anti-Corruption Commission (EACC) commenced investigations after receiving an allegation that J&K Investment Kenya Limited had been awarded a Kshs. 231 million in tender No. NWSHA/ONP/007/2019-2020 for the proposed construction of Naku'etum Peace Dam in Turkana County by the National Water Harvesting and Storage Authority (NWHSA) when it had not met the mandatory requirements for the tender evaluation criteria.

Investigations established that the documents that were attached by J&K Investment Limited in support of their bid document were not genuine.

Investigations established that the members of the Tender Evaluation Committee failed to follow the evaluation criteria set out in the bid document and recommended award of the tender to J&K Investments Limited who had not met the stipulated requirements in the bid document.

Investigations established that the Procurement Officer prepared a Professional Opinion to the CEO, upholding the Tender Evaluation Committee recommendation of award to J&K Investment Limited. She failed to point out that the Tender Evaluation Committee failed to follow the criteria in the evaluation process. The material non-disclosure by the Procurement Officer knowingly misled the CEO who relied on the Professional Opinion to award the Tender to J&K Investment Limited.

On 26th January, 2024 a report was compiled and forwarded to the DPP with recommendations to charge the Tender Evaluation Committee Members, J&K Investments Limited and its Directors with the following offences:-