

Response to issues raised in the request for a Statement tabled by
the Hon. Neisula Lesuuda, M. P., Samburu West

f - per law by the
Hon. Kamiru Kegera.

Thursday 5.07.2018

1.0 Introduction

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The Joint committee on Trade, Industry & Cooperatives and that of Agriculture and Livestock inquired into the alleged importation of contraband sugar into the Country following the directive by the Hon. Speaker of the National Assembly in his ruling dated Wednesday, 20th June 2018.

Most importantly, the Committee was guided by the issues raised in the request for statement by Hon. Naisula Lesuuda, MP and subsequently other matters that arose during debate on the alleged presence of contaminated sugar in the country.

To address this critical aspect and pursuant to the provisions of Article 95(2) of the Constitution which mandates that the National Assembly shall deliberate on and resolve issues of concern to the people.

Further, the Speaker directed that the joint committee to ***‘investigate, inquire into, and report within ten (10) days on the alleged importation of contraband sugar into the country’***.

The Committee commenced its inquiry on 22nd June 2018 by understanding the operations in the sugar industry while appreciating the role of each stakeholder in the sugar production and ecosystem.

The Committee noted that there was complicity on the part of government agencies including KEBS, KRA, ACA, AFA and Ministry of Agriculture and Livestock, Ministry of Trade, Industry and Cooperatives, the National Treasury and Planning in performance of their respective duties and responsibilities as provided in the law and regulations governing sugar importation and handling and storage of

food items pursuant to the Food, Drugs and chemical substance Act, Cap.254.

To specifically respond to concerns raised by Hon. Naisula Lesuuda, MP the Committee purposed to develop operational terms of reference and guidelines to be followed in the investigation. These terms include the following:-

To determine;

- 1) Whether the imported sugar is unfit for human consumption as it contains mercury and copper that are believed to have adverse effects on the human health.
- 2) The origins of the contraband sugar.
- 3) Whether the laid down procedures were followed in the importation of sugar and how it was cleared at the points of entry into the Country.
- 4) Whether there are disposal plans of contraband sugar and measures in place to ensure the disposal mechanism is not hazardous to the environment and human health.
- 5) If there are measures in place to ensure that the sugar in the market is safe for human consumption and is there any arrest that has been made to those behind this illicit trade.

During the inquiry, the Joint Committee held twelve (12) sittings and received submissions from both government Ministries and Agencies and other stakeholders.

Further, to appraise itself with the activities of the Multi-Agency team and understand the gravity of the matter the Committee undertook targeted inspection visits to warehouses where the seized sugar were stored as well as the port of entry in Mombasa. The inspection visit

reports to Mombasa, Nakuru, Nairobi and Kakamega/Webuye identified major concerns on storage and handling of imported sugar.

The Committee received oral and written submissions from the following:-

Cabinet Secretaries for Ministry of Agriculture, Livestock, Fisheries and Irrigation, National Treasury and Planning, Trade, Industry and Co-operatives, Interior and Coordination of National Government, Kenya Bureau of Standards, Kenya Revenue Authority, Hyder (P) LTD, Diamond Wholesalers LTD, West Kenya Sugar Company LTD, SGS Kenya LTD, South Nyanza Sugar/Sony Sugar Company.

So far from the preliminary laboratory test and ongoing analysis no traces of mercury has been found. However, investigations on the same are ongoing.

The Committee was informed by the Cabinet Secretary, Trade, Industry and Cooperatives on the analysis of copper and lead indicate that the samples seized from Eastleigh and Paleah Stores Ruiru failed with lead at 0.35ml/kg against a requirement of 0.05ml/kg whereas copper was 20.7ml/kg against 0.2ml/kg.

The Committee noted the Ministry of Health submitted that laboratory analysis of samples collected from seized sugar across the country undertaken as at 23rd June, 2018 indicate that copper, lead and arsenic contaminants are within the standard specification but had a higher moisture content beyond the standards whereas the analysis of mercury contamination is ongoing.

A key finding throughout the investigations was that there was failure within the Government Agencies that were concerned with regulation and inspection of imported sugar. It was apparent that there was

unregulated importation of sugar following Gazette notice No 4536 dated 11th May 2017 on importation of sugar and milk powder duty free.

To avert similar challenges occurring in the future, it is the recommendation of the Joint Committee that Government Agencies in the sugar sector perform their duties diligently especially the Ministry of Agriculture and Livestock (AFA), the National Treasury and Planning, Kenya Revenue Authority (KRA), and Ministry of Trade, Industry and Cooperatives (KEB's , ACA). It is equally important that government agencies take the reports of Parliament serious since if recommendations in the report by Departmental Committee on Agriculture, Livestock and Co-operatives in the Eleventh Parliament on the crisis facing the sugar industry in Kenya were implemented some of the current problems could have been avoided.

2.0 Preliminary Findings, Observations and Conclusions

2.1 Sources of Contraband Sugar

In 2017, the Country was hit by drought and famine that led to lack of food and escalated food prices. As one of the initiatives to mitigate the phenomenon, the President declared drought a national disaster on 10th February 2017 through Executive Order number 1 of 2017 and directed all relevant Ministries to take immediate necessary action to ensure that there were enough supplies of essential food commodities in the country to alleviate the adverse effects of the drought.

Upon Cabinet approval, on 5th May 2017, the Cabinet Secretary, National Treasury and Planning was requested to publish a Gazette Notice to allow importation of sugar and milk duty free for purposes of stabilizing prices of the said commodities.

Subsequently, the Cabinet Secretary National Treasury and Planning issued Gazette Notice No. 4536 of 11th May, 2017 on importation of sugar and milk duty-free between 12th May, 2017 and 31st August, 2017.

The importation of the said sugar through Gazette Notice No. 4536 reduced retail prices of sugar from an average price of Kshs. 179 per kilogram to Kshs. 123 per kilogram. By the expiry of the Gazette Notice the Ministry of Agriculture in their supply/demand analysis observed that-

- a) There was a 50% deficit on domestic production leading to overall national deficit of about 50% of sugar;
- b) Sugar millers were facing underutilization of the domestic factories due to shortage of cane; and,
- c) High sugar prices persisted.

The Ministry of Agriculture therefore recommended that sugar millers be granted permission to import sugar duty free up to December 2017.

The Cabinet Secretary, National Treasury following the advice from CS Agriculture through Gazette Notice no. 9801 allowed local sugar millers to import sugar between 1st September 2017 and 31st December 2017.

On 10th October 2017, following a further analysis of the sugar situation in the country, the Ministry of Agriculture advised that the sugar was reasonably sufficient and that there was no need for more sugar importation hence the need to revoke Gazette Notice No. 9801 of 2017.

Consequently, the CS Treasury through Gazette Notice No. 10149 of 13th October 2017 moved the deadline for duty free importation from 31st December 2017 to 13th October 2017.

That 95% of the sugar importation came through the port of Mombasa and each consignment of sugar imported came with a Certificate of Conformity (CoC) proving tests and conformity to international standards. On arrival to the Kenyan port of entry the same was tested for compliance with the Kenyan standards by KEB's before clearance in the country.

The Cabinet Secretary Interior and Coordination of National Government informed the Committee that illicit trade from the port of Kismayu in Somalia was a big threat with ramifications including terrorism, money-laundering and movement of small arms.

He further stated that Kenya has approximately 700 km of porous borders and the government is investing heavily to secure it through heightened border control. Plans were underway to build infrastructure across the borders and move disciplined forces to secure the country and control illicit trade.

It is important to note that the Cabinet Secretary, Interior informed the Committee that his communication to the public on the presence of heavy metals in some products in the market was a cautionary statement. Investigations are ongoing to establish the presence and quantities if any in the various commodities seized by the Multi-Agency team across the country.

Observation

The Committee observed that 95% of imported sugar during the duty free window was brought into the country through the port of Mombasa and was cleared by the relevant agencies whereas, the remaining 5% found its way into the country through porous borders.

Recommendation

1. The Committee recommends that the Multi-Agency team should expedite their investigation into the matter and avail conclusive evidence on the same.
2. The Committee recommends that the Border Management Committees be reconstituted to provide sufficient safeguards.
3. The Committee further recommends that border surveillance teams be facilitated to enable them conduct their work effectively.

2.2 The Process of clearing Sugar at the Port

The Committee was further informed that goods imported into the country are subjected to surveillance inspection and sampling at the port of entry on a risk assessment basis.

The entry of sugar into the country is regulated by the following agencies—

- 1) Kenya Revenue Authority (Customs).
- 2) Kenya Bureau of Standards (Quality).
- 3) Port Health (Food safety).
- 4) Sugar Directorate (Licensing).
- 5) Radiation Protection Board (Safety)
- 6) Kenya Ports Authority (Logistics).

KEB's issued the following conditions to regulate the importation of bulk sugar. The conditions were that the sugar was to be—

- a) bagged at the port of entry in marked bags; and,
- b) transported to the factory for further processing before packaging for retail.

The Committee observed that certain companies failed to comply with the outlined conditions by—

- a) transporting the sugar in open trucks;
- b) storing the sugar under unhygienic conditions; and,
- c) exposing the sugar to contamination by handling it using machinery used for other industrial purposes.

The Committee also observed that some importers disposed off their sugar at the ports of entry without subjecting it to further processing.

Observation

The Committee observed that some of the importing companies did not adhere to the set conditions. This might have occasioned contamination of the sugar imported into the country during the duty free window.

The Committee observed that there was general non-compliance with the hygiene standards stipulated under KS EAS 749:2010 and the Food, Drugs and Chemical Substance Act, Cap. 254.

The Committee further observed that the necessary clearance certificates were duly issued by the responsible agencies from the country of origin and at the entry port.

Recommendation

The Committee recommends the following;-

1. The agencies mandated to regulate importation of sugar in the country should ensure strict adherence to the set conditions.
2. The multi-agency team should move expeditiously to seize and destroy unsafe sugar within our borders.
3. The multi-agency team should expedite investigations to provide conclusive evidence with a view to commencing the prosecution of persons found culpable.
4. All bulk sugar imported within the duty free window should be re-processed before being released to the market.

2.3 Who were the importers

The Committee noted that several companies were licensed by the Agricultural and Food Authority (AFA). However, following the declaration of drought as a national disaster, Gazette Notice No. 4536 allowed any person to import sugar duty free to ensure availability of sugar in the country.

Observation

However, some of the licensed companies did not import sugar during the duty free window. The Kenya Revenue Authority informed the Committee that 194 companies imported a total of 920,571 Metric Tonnes (MT) of sugar.

The Cabinet Secretary, Interior and Coordination of National Government informed the Committee that assorted contraband goods including sugar worth KES. 1.2 Billion had been seized and is due for destruction.

Conclusion

The matter is still under investigation and release of the names of companies and individuals involved might prejudice investigations.

2.4 Whether the sugar was inspected prior to consumption

The sugar imported is pre-inspected by KEB's appointed agents and issued with Certificates of Conformity (CoC) at the country of supply. A CoC is only issued for complying products which means the tested parameters are within limits allowed by the Kenya standards. The KEB's inspection agents are SGS, BV, Intertek, Cotecna and CCIC. The Committee had a summary report of ALL sugar imported from May 2017 to date and copies of the certificates of conformity (CoC).

At the retail level KEB's undertakes market surveillance to ensure that the products in the market conform to the prescribed standards. Routinely the Ministry of Health and County governments conduct inspection of food commodities at various levels of the supply chain.

Observation

The Committee observed that all sugar imported within the duty free importation window had the requisite clearances from the country of origin and KEB's.

Due to poor handling and storage conditions, sugar is likely to be contaminated due to its hygroscopic nature.

Conclusion

The Committee further received presentations from the Ministry of Health indicating that from a sample size of 174 collected across the country 60% did not meet the national standard on moisture content hence not fit for human consumption. The Ministry of Health assured the Committee that the contaminated lots are under seizure pending destruction.

However, the Committee cannot make a conclusive determination on the issue of the level of contamination of sugar in the country since analysis of samples collected by KEBS is still ongoing.

2.5 How did the contraband sugar acquire KEB's stickers

The matter is still under criminal investigation and therefore the information can be prejudicial to the ongoing investigation.

2.6 What are the disposal plans if any

The Committee was informed that the appropriate modalities for destruction of the contaminated sugar will be identified upon conclusion of the ongoing investigations.

The Committee noted that there was need to have the sugar disposed off in an environmental friendly manner.

Conclusion

Due to time exigencies, the matter is still pending before the Committee and its awaiting submissions from NEMA on disposal plans.

2.7 Measures to ensure that food stuffs in the market is safe for human consumption

So far several warehouses holding the imported sugar have been impounded and sealed and samples collected for testing. 1.4 Million bags of sugar have been seized and are awaiting destruction.

Conclusion

The investigation is still ongoing and the Committee recommends that any sugar found to be contaminated should be destroyed.

2.8 Whether any culprits have been arrested for culpability in the sugar importation

The Cabinet Secretary Interior and Coordination of National Government informed the Committee that 1.4 Million bags of sugar had been seized, 800 bags of fertilizer and 90 cartons of assorted liquor among other goods. He stated that 72 arrests regarding illegal importation or concealment had been made.

The Committee noted that further investigations are underway to establish the extent of culpability in the importation of sugar.

3.0 Preliminary Conclusions

1. So far from the preliminary laboratory test and ongoing analysis no traces of mercury has been found. However, investigations on the same are ongoing.
2. Kenya Bureau of Standards should coordinate with other relevant government agencies to ensure that raw sugar that was imported during the duty exemption window be reprocessed by the importers.
3. All sugar imported bagged or bulk should undergo fresh tests and if found unsuitable for human consumption be destroyed by the Multi-Agency team.
4. Kenya Revenue Authority should recover duty lost from importers who imported sugar outside the duty free window.
5. Kenya Revenue Authority should recover the applicable duty from any entity that imported industrial sugar during the duty free window.
6. The government should ban importation of raw and bulk sugar.
7. Millers be investigated for any misconduct in the importation of sugar during the duty exempt period as provided in the Gazette Notice No.4536. Considering that Sony sugar was adversely mentioned.

Signed..........Date.....*5/7/2018*.....

Hon. Kanini Kega, MP

**Co-Chair Joint Committee on Trade, Industry &
Cooperatives and Agriculture and Livestock**

Signed..........Date.....*5/7/2018*.....

Hon. Adan Haji Ali, MP

**Co-Chair Joint Committee on Trade, Industry &
Cooperatives and Agriculture and Livestock**

