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THE ETHICS AND ANTI-CORRUPTION COMMISSION

THE 3<sup>RD</sup> QUARTERLY REPORT COVERING THE PERIOD FROM  
1<sup>ST</sup> JULY 2022 TO 30<sup>TH</sup> SEPTEMBER 2022

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	
DAY: WEDNESDAY	
TABLED BY:	<i>Hon Owen Baya, MP Deputy leader - Majority</i>
CLERK-AT THE-TABLE:	<i>Esther Ngunjiri</i>

SEPTEMBER 2022

## 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 THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003 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 THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003. The report covers the Third Quarter and is for the period commencing 1<sup>st</sup> July 2022 to 30<sup>th</sup> September 2022.

**1. EACC/MBSA/FI/INQ/16/2017**

**INQUIRY INTO ALLEGATION OF PROCUREMENT IRREGULARITIES IN THE AWARD OF TENDER NO CGK/064/2014/2015 FOR CONSTRUCTION OF KWALE COUNTY HEADQUARTERS AWARDED TO GREEN COUNTY CONSTRUCTION CO. LTD IN THE FINANCIAL YEAR 2014/2015 AMOUNTING TO KSH 462,197,054.88.**

The Commission commenced investigation following a report relating to allegations of procurement irregularities in the construction of Kwale County Headquarters in the Financial Year 2014/2015 vide tender no: CGK/064/2014/2015 amounting to Kshs 462,197,054.88/=. It was alleged that the tender was awarded to Green County Construction Company Ltd, which is associated with the former Member of Parliament (MP) for Mandera South and a former County Executive Committee Member (CECM).

Investigations established that there existed an indirect private interest on the part of the former Member of Parliament (MP) for Mandera South and the former County Executive Committee Member (CECM) in the payments made to Green County Construction Company Ltd.

It was established that Green County Construction Com Ltd was a proxy through which the suspects indirectly and directly acquired public funds fraudulently and that there is sufficient evidence to infer that the suspects were the beneficiaries of the public funds paid to Green County Construction Co Ltd.

Further investigations established that Green County Construction Company Ltd submitted fake documents/certificates in support of their bid to Kwale County Government purporting that they were genuine and issued by various institutions.

On 30<sup>th</sup> August 2022, a report was compiled and forwarded to the DPP with recommendations to charge jointly or severally the former MP for Mandera South and the former CECM at Kwale County, the Director of Green County Construction Company Ltd, County Engineer and a Statistician in the Ministry of Finance, Planning Department at Kwale County Government and members of the

Technical Evaluation Committee be charged with the following offences: conflict of interest contrary to Section 42(3), fraudulent acquisition of public property contrary to Section 45(1) a and wilful failure to comply with the law relating to procurement contrary to Section 45 (2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003; Uttering false documents contrary to Section 353 of the Penal Code; Fraudulent practice in procurement proceedings contrary to Section 41 as read with Section 137 of the Public Procurement and Disposal Act, 2005

On 28<sup>th</sup> October 2022, the DPP returned the inquiry file for further investigations.

## **2. EACC/KIS/FI/INQ/02/2016**

### **INVESTIGATION INTO ALLEGATIONS OF IRREGULAR AWARD OF TENDER FOR RENOVATION OF MAGOMBO DISPENSARY AND ABUSE OF OFFICE BY THE OFFICIALS OF NYAMIRA COUNTY GOVERNMENT**

The Commission commenced investigations upon receiving a complaint that the County Government of Nyamira irregularly awarded tender for renovation of Magombo Dispensary to Liglas Investment Limited (Contractor) and made payment to the Contractor for works not done.

Investigations established that on 15<sup>th</sup> April 2015, Liglas Investment, a business entity owned by the Sub-County Administrator was awarded the tender for renovation of Magombo Dispensary at a contract sum of Kshs. 1,898,293.00/=. However, the Contractor did not undertake any works but was paid Kshs. 1,154,379.22/= being 60% of the contract sum.

Investigations established that the renovation works at the said Dispensary had earlier been done by another contractor following a tender award made on 11<sup>th</sup> January 2011 by the Kitutu Masaba Constituency Development Fund Committee and was paid a sum of Kshs. 2,900,000/=.

Further, it was established that the Contractor submitted fake documents in support of their bid, and that members of the Tender Evaluation Committee and other officials of the County Government of Nyamira colluded with the Contractor

in irregularly awarding the contract in contravention of the procurement laws and procedures.

On 21<sup>st</sup> July 2022, a report was compiled and forwarded to the DPP with recommendations that: The Members of the Tender Evaluation Committee and the Head of Supply Chain be charged with wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b); the Head of Supply Chain Management be charged with one count of abuse of office contrary to Section 46; Members Tender Evaluation Committee, the Head of Supply Chain Management, the Accounting Officer and the Contractor be charged with one count of conspiracy to commit a corruption offence contrary to Section 47 (A); the Proprietor of Liglas Investment be charged with failing to disclose a private interest to one's principal contrary to Section 42(1)(a) (b) , fraudulent acquisition of public property contrary to Section 45(1)(a) and fraudulent failure to pay taxes contrary to Section 45(1)(b) as read with Section 48 Section of the Anti-Corruption and Economic Crimes Act, 2003; Uttering false document contrary to Section 353 of the Penal Code; and Engaging in a fraudulent practice in procurement contrary to Section 41(1) as read with Section 41(4) of the Public Procurement and Disposal Act, 2005; the Chief Officer of Health be charged with one count of unauthorized spending of public money contrary to Section 196(1) as read with Section 196(6) of the Public Finance Management Act, 2012.

On 7<sup>th</sup> September 2022, the DPP returned the inquiry file for further investigations.

### **3. EACC/PI/INQ/11/2021**

#### **INQUIRY INTO ALLEGATIONS OF PROCUREMENT IRREGULARITIES AGAINST THE OFFICIALS OF THE GEOTHERMAL DEVELOPMENT CORPORATION (GDC) IN THE AWARD OF TENDER NO. GDC/ICT/RT/010/2014-2015 BEING TENDER FOR DESIGN, SUPPLY AND COMMISSIONING OF AN INFORMATION MANAGEMENT SYSTEM**

The Commission commenced investigation after receiving an allegation of procurement irregularities by Geothermal Development Company Officials in the award of tender number GDC/ICT/RT/010/2014-2015 for design, installation and

commissioning of an Information Management System (IMS) awarded to Tekno International Limited at a sum was at Kshs. 344,523,712/=.

Investigations established that ten (10) companies were invited to bid through restricted tendering. The Evaluation Committee recommended the award to Tekno International Ltd, which was approved by the Tender Committee. Further, it was established that Tekno International Limited was not in the list of prequalified suppliers for the financial year 2013-2015 and thus was ineligible for award of the tender. Investigations revealed that Tekno International Ltd did not supply the IMS as per the contract's specifications and that the parts of what was delivered was not functional hence the company was in breach of contractual obligations.

On 28<sup>th</sup> September 2022, a report was compiled and forwarded to the DPP with recommendations to charge jointly or severally the Managing Director, Members of the Tender and the Evaluation Committees, Directors of Tekno International Ltd with the following offences: one count of conspiracy to commit an offence of corruption contrary to section 47(A) (3); one count of engaging in procurement without prior planning contrary to section 45 (2) (c) and three counts of wilful 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;

Three counts of abuse of office contrary to section 46 and one count of fraudulent acquisition of public property contrary to section 45(1)(a); one count of dealing with suspect property contrary to section 47 as read with section 48(1) of the Anti-Corruption And Economic Crimes Act, 2003; one count of fraudulent practice in procurement proceeding contrary to section 41(4) as read with section 137 of the Public Procurement and Disposal Act no. 3 of 2005; one count of Uttering false document contrary to section 353 as read with section 349 of the Penal Code.

The Commission awaits the response from the DPP.

#### **4. EACC/GSA/FI/INQ/27/2018**

#### **INQUIRY INTO ALLEGATIONS OF IRREGULAR PAYMENT OF KSHS. 107,481,060/- FOR THE CONSTRUCTION OF MANDERA COUNTY HEADQUARTERS IN THE FY 2013/2014**