



THE ETHICS AND ANTI-CORRUPTION COMMISSION

THE 2ND QUARTERLY REPORT COVERING THE PERIOD FROM
1ST APRIL 2021 TO 30TH JUNE 2021

JUNE 2021

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 Second Quarter and is for the period commencing 1st April 2021 to 30th June, 2021.

1. EACC.NKR/FI/INQ/15/2019

INQUIRY INTO ALLEGATIONS OF CONFLICT OF INTEREST, EMBEZZLEMENT OF FUNDS, MONEY LAUNDERING AND ACQUISITION OF PUBLIC PROPERTY AMOUNTING TO KSHS.2.3 BILLION AGAINST A FORMER REGIONAL MANAGER FOR KENYA RURAL ROADS AUTHORITY(KeRRA).

The Commission commenced investigations following a report that a former regional manager for KeRRA had received payments amounting to Kshs. 2.3 Billion from several public entities through companies associated with him.

Investigations established that during his tenure as the regional manager of KeRRA he awarded 40 contracts worth Kshs. 147,539,489.60 to his companies and those associated with his relatives.

On 25th May 2021 a report was compiled and forwarded to the DPP with recommendations to charge the said former regional manager, his relatives and related companies with the following offences; abuse of office contrary to Section 46 as read with Section 48 (1) of ACECA, conflict of interest contrary to Section 42(3) as read with Section 48 of ACECA, 7 counts of fraudulent practice in procurement proceedings contrary to Section 66(1) as read with section 177 of the Public Procurement and Asset Disposal Act , 2015 , 7 counts of fraudulent acquisition of public property contrary to section 45(1)(a) as read with section 48 (1)(a) of the ACECA, wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with section 48(1) of the ACECA.

The Commission is awaiting the DPP'S response.

2. EACC/FI/INQ/10/2021

INQUIRY INTO ALLEGATIONS OF IRREGULAR PROCUREMENT OF AN ULTRA MODERN FISH HUB AT LIWATONI FISHERIES COMPLEX IN MOMBASA COUNTY THROUGH TENDER NUMBER MOALF&C/SDFA&BE/07/2020-2021.

The Commission commenced investigations following reports of irregular procurement of an ultra-modern fish hub at Liwatoni Fisheries Complex in Mombasa County through Tender Number MOALF&C/SDFA&BE/07/2020-2021.

Investigations revealed that the Principal Secretary of the State Department of Fisheries, Aquaculture & the Blue Economy (PS SDFA&BE) commenced the tendering process of Phase II of the project without the approved budget and procurement plan.

Investigations further revealed that the State Department of Fisheries Aquaculture & the Blue Economy (SDFA&BE) used the International Federation of Consulting Engineers (FIDIC) (acronym for its French name *Fédération Internationale Des Ingénieurs-Conseils*) tender documents instead of the standard tender documents prepared by the Public Procurement Regulatory Authority thereby contravening the provisions of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015).

Further investigations revealed that the evaluation committee failed to carry out the evaluation in accordance with PPADA, 2015 and recommended the award of the tender to an unresponsive bidder, who also submitted false documents in its bid.

On 4th May 2021, a report was compiled and forwarded to the DPP with recommendations to charge the PS SDFA&BE, the Evaluation Committee, Head of Procurement, the winning bidder and its proxies with the following offences; 1 count of engaging in a project without prior planning contrary to section 45(2)(c) as read with Section 48 of ACECA; 2 counts of wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of ACECA, 1 count of abuse of office contrary to Section 42 as read with Section 48 of ACECA, 1 count of neglect of official duty by a public officer contrary to Section 128 of the Penal Code, 1 count of fraudulent practice in procurement proceedings contrary to Section 176(1)(i) as read with section 176(2) of the PPADA, 2015, 1 count of making documents without authority contrary to section 357(a) of the Penal Code, 1 count of uttering false documents contrary to section 353(a) of

the Penal Code and 1 count of conspiracy to commit an offence of corruption contrary to Section 47A (3) of ACECA.

The Commission is awaiting the DPP'S response.

3. EACC/NKR/FI/INQ/24/2018

INQUIRY INTO ALLEGATIONS OF PROCUREMENT IRREGULARITIES IN THE AWARD OF TENDER FOR THE REHABILITATION/UPGRADING OF KERENGA AIRSTRIP IN KERICHO WHICH WAS ALLOCATED KSHS.100 MILLION BY THE COUNTY GOVERNMENT OF KERICHO

The Commission commenced investigations following allegations that the requirements for the tender for the rehabilitation of Kerenga Airstrip were altered to include a condition that bidders were to have National Construction Authority 2 and National Construction Authority 3 (NCA 2&3) registration certificates, which was a ploy to favor a particular bidder and lock out the rest.

Investigations established that it was a requirement that bidders were to include NCA 3 certificate only and not NCA 2 certificate. Investigations revealed that the winning bidder submitted fake documents in its bid thereby breaching the procurement law and that all the Evaluation Committee members failed to undertake a proper due diligence and therefore providing misleading information to the procuring entity.

On 29th April, 2021 a report was compiled and forwarded to the DPP with recommendations to charge the Directors of the Company and the Company, as well as the members of the Tender Evaluation Committee with the following offences: 1 count of fraudulent practice in procurement proceedings contrary to Section 66(1) as read with section 177 of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015), 4 counts of forgery contrary to section 345 as read with Section 349 of the Penal Code, 1 count of deceiving the principal contrary to Section 41(2) of ACECA and 1 count of collusive practices on evaluation contrary to Section 66(1) and (2) as read with section 177(a) of the PPADA, 2015.

On 21st June 2021, the DPP returned the inquiry file for further investigations.

4. EACC/GSA/FI/INQ/11/2014

INQUIRY INTO ALLEGATIONS OF IRREGULAR PROCUREMENT AND AWARD OF TENDER FOR DRILLING OF GUNANA AND BURMAYO BOREHOLES IN WAJIR COUNTY IN THE FINANCIAL 2013/2014

The Commission commenced this investigation pursuant to a complaint that certain Public Officers working in Wajir County Government were involved in irregular procurement of services and fraudulent payment for the drilling of boreholes in Wajir County.

Investigations established that during the FY 2012/2014, the procuring entity did not have a Procurement Plan as required under the Public Procurement and Disposal Act, 2005 and the Public Procurement and Asset Disposal Regulations; That the Procuring Entity did not constitute a Tender Processing Committee to undertake evaluations, negotiations, inspection and acceptance which is contrary to Public Procurement & Disposal Act and that the Director of Water Services of Wajir County therefore abused his office by deceitful conduct of overseeing the project whereas the user department did not provide evidence of the prior planning of the project as provided in section 45 (2) (c) of ACECA.

On 20th April, 2021 a report was compiled and forwarded to the DPP with recommendations to charge the Director of Water Services of Wajir County, with the following offences: 1 Count of Abuse of Office contrary to section 46 and 1 Count of Engaging in a project without prior planning contrary to section 45 (2) (c), as read with section 48 of ACECA and the Director of the Engineering Company with 1 Count of Fraudulent acquisition of public property contrary to section 45 (1) (a) as read together with section 48 of the ACECA

The Commission is awaiting DPP's response.

5. EACC/ISL/FI/INQ/67/2015

INQUIRY INTO ALLEGATIONS OF MISAPPROPRIATION OF PUBLIC FUNDS OF KSHS. 4,800,000 MILLION ALLOCATED FOR PROCUCUREMENT OF SIX TRANSFORMERS BY I GEMBE NORTH CONSTITUENCY IN MERU COUNTY.

The Commission commenced investigations upon receipt of a report that the Constituency Development Fund Committee (CDFC) for Igembe North Constituency misappropriated funds allocated for the purchase of six transformers.

Investigations established that there were no contracts or any procurement documents indicating that the aforesaid constituency were involved in the procurement of any transformer with REA and KPLC and that there were no funds that were received by either KPLC or REA.

Further investigation established that Igembe North Constituency did not procure any transformers and that despite this the CDF Fund Manager authorised the Igembe North Project Management Committee(PMC) to withdraw the funds allocated for the procurement of the six transformers.

A report was prepared and forwarded to the DPP on 25th May 2021 with recommendation that the Igembe North CDF officers that were involved in the embezzlement of the money allocated for the procurement of the transformers be charged with the following offences; 7 counts of unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48 of ACECA and 1 count of misappropriation of Constituency Development Fund contrary to section 48 of the Constituency Development Fund Act ,2013.

On 28th June 2021, the DPP returned the inquiry file for further investigations.

6. EACC /FI/INQ/40/2018

INQUIRY INTO ALLEGATIONS OF EMBEZZLEMENT OF FUNDS TO A TUNE OF KSHS. 24,124,688 PAID TO TWO COMPANIES BY THE NANDI COUNTY GOVERNMENT BETWEEN APRIL 2013 AND AUGUST 2017.

The Commission commenced investigations following a report that two Public Officers employed by the County Government of Nandi as a Speech writer and a Public Communication Officer were also Directors of two Private Limited Companies trading with the County Government of Nandi.

Investigations at the Company Registry established that the names of the two Public Officers appeared in the list of Directors of the Company which was awarded the tender and that the two Public Officers are signatories to the Company Bank Account and signed cheques for withdrawal of money which was paid by County Government of Nandi.

On 24th May 2021 a report was compiled and forwarded to the DPP with recommendation that the two county officers be charged with the following offences: 1 count of conflict of interest contrary to Section 42(3) as read with Section 48 ACECA and 2 counts of unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48 of the ACECA.

The Commission is awaiting the DPP's response.

7. EACC/MLD/FI/INQ/06/2016

INQUIRY INTO ALLEGATIONS OF IRREGULAR AWARD OF TENDER LMU/MOPW/GP/191/24 FOR CONSTRUCTION OF NAGELE AUCTION YARD BY OFFICERS OF THE COUNTY GOVERNMENT OF LAMU

The Commission commenced investigations pursuant to a report pertaining to irregularities of award of tender number LMU/MOPW/LCG/GP/191/24 for construction of Nagele Auction Yard by officers of the County Government of Lamu.

Investigations established that during the financial year of 2015/2016, the Fisheries, Livestock and Co-operative Development Department of the County Government of Lamu had planned to construct the Nagele Auction Yard at a budget of Kshs. 15,000,000.00.

However, investigations revealed that the tender was awarded at Kshs.18 Million to a bidder who did not qualify.

Investigation further disclosed that two payment certificates were forged so as to facilitate payment of Kshs. 7,862,820.95 to the Company which was awarded the contract irregularly.

On 29th April, 2021 a report was compiled and forwarded to the DPP with recommendations to charge all the Lamu County Government officers who participated in the irregular procurement process that resulted in loss of Kshs. 7,862,820.95; and the Company and its directors with the following offences: 2 counts of willful failure to comply with laws relating to procurement contrary to section 45 (2) (b) of the ACECA; 1 count of Abuse of Office contrary to section 46, 3 counts of fraudulent practice in procurement proceeding contrary to section 41 as read together with section 137 of the PPADA, 2015; 2 Count of Fraudulent acquisition of public property contrary to section 45 (i) (a) of the ACECA; 3 counts of uttering false documents contrary to section 353 of the Penal Code; 1 count of failure to disclose a private interest to one's Principal contrary to section 42 (1) (b) of the ACECA and 1 count of conspiracy to commit an economic crime contrary to section 47A (3) of the ACECA.

The Commission is awaiting the DPP's response.

8. EACC/ELD/FI/INQ/38/2017

INQUIRY INTO ALLEGATIONS THAT A PLOT FOR CONSTRUCTING NANDI COUNTY ASSEMBLY SPEAKER'S RESIDENCE WHICH TITLE HAS NEVER BEEN TRANSFERRED TO THE ASSEMBLY WAS BOUGHT AT AN EXAGGERATED PRICE

The Commission commenced this investigation following a complaint that the County Assembly of Nandi had bought the plot for constructing the Speaker's residence at an exaggerated price.

Investigations established that the Nandi County Assembly proposed to purchase a prime land to build their Speaker's Residence in the 2014/2015 financial year.

The procurement process was conducted with diligent observance of the provisions of the Public Procurement & Asset Disposal Act, 2015(PPADA).

Investigations established that the Commission on Revenue Allocation advised Counties that major capital projects were not a priority in the first five years of devolution and that where there was justification, such projects should be funded using long term finance of between five to ten years.

This communication therefore brought the remittance of the funds to the vendor's account to a halt and the Nandi County Assembly did not acquire any land during the period of 1/7/2013 to 1/11/2017.

On 29th April, 2021 a report was compiled and forwarded to the DPP with recommendations that the file be closed since no offences were committed by the Officials of the Nandi County Assembly.

On 7th June 2021, the DPP returned the inquiry file for further investigations.

9. EACC/FI/INQ/13/2017

INQUIRY INTO ALLEGATIONS OF EMBEZZLEMENT OF FUNDS FOR CO-CURRICULAR ACTIVITIES FOR PRIMARY SCHOOLS BY THE DISTRICT EDUCATION OFFICER, SAMBURU EAST.

The Commission commenced investigations following a report that the District Education Officer (DEO) Samburu East Sub County was involved in the embezzlement of funds for the co-curricular activities for primary schools in Samburu East Sub-county.

Investigations revealed that the DEO received an imprest amounting to Kshs. 500,000 through use of fake documents and that the imprest was not used for the co-curricular activities as intended.

Investigations further revealed that DEO also received additional imprest of kshs. 80,000 and 45,000 on 3rd March,2016 and 1st April 2016 respectively and that the money was not used for the co-curricular activities as intended.

On 25th May 2021, a report was compiled and forwarded to the DPP with recommendations that the DEO be charged with the following offences: 3 counts of deceiving principal contrary to section 41(2) as read with Section 48 of ACECA; 2 counts of wilful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of ACECA; 3 counts of abuse of office contrary to Section 42(3) as read with Section 48 ACECA and 3 counts of unlawful