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**AUDITOR-GENERAL'S  
SPECIAL AUDIT REPORT ON  
EDIBLE OILS  
AT KENYA NATIONAL TRADING  
CORPORATION LTD**

JULY 2024

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## List of Abbreviations

The following abbreviations have been used in the report.

**Table 1: List of Abbreviations**

<b>Abbreviation</b>	<b>Full Description</b>
AG	Auditor-General
BL	Bill of Lading
BRS	Business Registration Service
CBK	Central Bank of Kenya
CIF	Cost, Insurance and Freight
CFR	Cost and Freight
CFSs	Container Freight Stations
CS	Cabinet Secretary
EACC	Ethics and Anti-Corruption Commission
EOI	Expression of Interest
GOK	Government of Kenya
HQs	Headquarters
ICC, Incoterms® 2020	International Chamber of Commerce, Incoterms® 2020
KCB	Kenya Commercial Bank Ltd
KEBS	Kenya Bureau of Standards
KEPHIS	Kenya Plant Health Inspectorate Service
KIPI	Kenya Industrial Property Institute
KNBS	Kenya National Bureau of Statistics
KNTC	Kenya National Trading Corporation Ltd
KPA	Kenya Ports Authority
KRA	Kenya Revenue Authority
Kshs	Kenya Shillings
KTDA	Kenya Tea Development Agency
LC	Letter of Credit
MD	Managing Director
MITI	Ministry of Investments, Trade, and Industry
MSME	Micro, Small and Medium Enterprises
MT	Metric Tonne
OAG	Office of the Auditor-General
PAC	Public Accounts Committee
PC	Project Committee
PIU	Project Implementation Unit
PFM Act, 2012	Public Finance Management Act, 2012
PPAD Act, 2015	Public Procurement and Asset Disposal Act, 2015
PPAD Regulations, 2020	Public Procurement and Asset Disposal Regulations, 2020
PS	Principal Secretary
RFQ	Request for Quotation
SPPP	Specially Permitted Procurement Procedure
SMEs	Small and Medium Enterprises
TORs	Terms of Reference
TNT	The National Treasury
USD	United States Dollar
Board	Board of Directors

## Exchange Rates Between Kenya Shillings (Kshs) and United States Dollar (USD)

Kenya shillings (Kshs) equivalents for one United States Dollar (USD) were extracted for various dates from the Central Bank of Kenya Website, as follows:

**Table 2: Currency Equivalents**

Date	Exchange Rate for Kshs to 1 USD
24-01-2023	124.17
03-02-2023	124.59
10-02-2023	125.08
30-06-2023	140.52
31-07-2023	142.36
22-08-2023	144.41
31-08-2023	145.41
30-09-2023	148.10
31-10-2023	150.56
30-11-2023	153.15
08-12-2023	153.34
31-12-2023	156.46
01-02-2024	160.62

### Unit of Measure

The conversion rate applied was 1 metric tonne = approximately 1,000 litres (approximately 50 of 20-litre jerrycans).

### Words Used Interchangeably

The request from the National Assembly's Public Accounts Committee referred to the commodity as edible oils, while documents reviewed such as the agreements referred to the commodity as cooking oil. The two terms have therefore, been used interchangeably in this report.

## **1.0 EXECUTIVE SUMMARY**

### **1.1 Background and Introduction**

- 1.1.1 The Auditor-General received a letter Ref: NA/DAASC/PAC/2023/236 dated 16 November, 2023 from the National Assembly's Public Accounts Committee requesting for a Special Audit on importation of edible oils by Kenya National Trading Corporation Ltd (KNTC).
- 1.1.2 The Auditor-General carried out the Special Audit in accordance with Section 37 of the Public Audit Act, 2015.
- 1.1.3 The Kenya National Trading Corporation (KNTC) was incorporated in 1965 under the Companies Act, Cap 486 and founded based on the Sessional Paper No. 10 of 1965 on African socialism and its application to planning in Kenya, which recognized the importance of trade and industry in economic development.
- 1.1.4 In November 2010, the Cabinet enhanced the mandate of KNTC in recognition of the latent potential in anchoring wholesale and retail trade; and promoting market access by SMEs in line with Vision 2030.
- 1.1.5 The Corporation in the Concept Note dated 05 October, 2022 on Importation and Distribution of Essential Commodities as an Intervention to Bring Down Cost of Living in the Country, indicated that the year-on-year food inflation in Kenya had increased to 12.4% in May, 2022 from 7% in May, 2021. The Concept Note further highlighted that the prices for the staple commodities in the food basket, cooking oil being one of them, had risen by an average of 20% in September, 2022 compared to the same period in 2021.
- 1.1.6 Consequently, the Cabinet on 10 November, 2022, approved a framework to position KNTC as the anchor of state initiatives to create a price stabilizer for essential household items, thereby supplementing other state initiatives by creating strategic reserves for staple and essential food items.

### **1.2 Audit Objectives**

- 1.2.1 The primary objectives of the audit were to establish: the compliance with the law by KNTC in the importation, expenditure, and sales of the cooking oil; whether there was value for money achieved from the Programme; and the edibility of the cooking oil.

### **1.3 Terms of Reference**

- 1.3.1 The Terms of Reference (TORs) for the audit included: Conceptualization of the Programme; Governance Issues; Budget and Budgetary Control; Procurement Process in the Programme; Expenditure and Related Issues; Revenue Management; Value for Money; Physical Verification and Current Status; and Other Matters Deemed Relevant.

### **1.4 Audit Scope and Limitations**

- 1.4.1 The scope of the audit was limited to the audit of importation, clearance, distribution, warehousing, and subsequent sale of the edible cooking oil. The audit was carried out at KNTC Headquarters, Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA), Kenya Bureau of Standards (KEBS), KNTC owned and hired warehouses, and Container Freight Stations (CFSs).
- 1.4.2 The Audit Team covered a period of 15 months from October, 2022 (inception of the Programme) to February, 2024.
- 1.4.3 Some of the challenges encountered by the Audit Team included: key KNTC personnel proceeded on annual leave thereby making it difficult to engage with the staff; initial difficulties in understanding the processes of the Corporation due to operations' complexities; concurrent investigations by other government investigative agencies which created challenges in verification of some of the original documents; difficulties in conversion of currencies; slow retrieval/non provision of documents of records; one of the suppliers having a foreign company as a Director, among others.
- 1.4.4 The Audit Team employed mitigating measures which included: recalling KNTC staff from leave; constantly engaging with the staff within the Corporation; engaging the investigative agencies to assist with records in their possession; applying approximated exchange rates; constantly reminding the Corporation on documents not provided as part of follow up.

### **1.5 Audit Approach and Methodology**

- 1.5.1 The Audit Team held meetings with the KNTC Management Team, collected evidence through document reviews, analytical review, interviews, circularization, physical verification, use of experts, among others.

## 1.6 Report Summary

### Preamble and summary of claims

- 1.6.1 At the time of audit in February, 2024, the quantities procured, delivered, sold and balance under the cooking oil Programme were as detailed below:

**Table 3: Quantities Procured, Delivered, Sold and Balances**

Description	Quantity (20-litre jerrycans)
Quantities Procured	2,807,806 of 20-litre jerrycans
Quantities Delivered	2,518,434 of 20-litre jerrycans
Actual Quantities Received	1,710,269 of 20-litre jerrycans
Short Landing	301 of 20-litre jerrycans
Quantities Uncleared (603 Containers)	807,864 of 20-litre jerrycans
Physical Count (February 2024)	833,742 of 20-litre jerrycans

- 1.6.2 The total expenditure for the Programme amounted to Kshs.14,448,397,642.62, out of which, Kshs.12,050,242,044.12 was paid. The total sales in the Programme amounted to Kshs.2,408,193,393 for 653,174 20-litre jerrycans.
- 1.6.3 The Audit Team reviewed and analyzed the procurement, expenditure and sales in the Programme. The following are the summarized audit findings as detailed in the main report:

#### **Conceptualization of the Programme**

- 1.6.4 A Concept Note on Importation and Distribution of Essential Commodities as an intervention to bring down cost of living in the Country was approved by the Board of Directors on 05 October, 2022. However, no documentary evidence was provided indicating the Committee appointed to develop the Concept Note and the Terms of Reference for the team. The Audit Team could, therefore, not ascertain whether the Concept Note was prepared in line with the requirements of the appointing authority.
- 1.6.5 Further, documentary evidence to confirm that a market survey or feasibility study was conducted to inform the preparation of the Concept Note was not provided for audit.

## **Governance Issues**

### ***Non-Provision of Governance Documents***

- 1.6.6 The Board of Directors' minutes approving the bulk commodities Programme's budget in the financial year 2022/2023 was not provided for audit, contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015.
- 1.6.7 Further, the Corporation's approved Finance Policy and Manual was not provided for audit. It was therefore, not possible for the Audit Team to confirm if the Management complied with the provisions of Section 15(1) of the State Corporations Act, CAP 446 and Section 4.4(b)(i) of the KNTC Organization Structure, Functions and Staff Establishment.
- 1.6.8 Section 5.2 of the Concept Note stated that the implementation of the Programme would be done at two levels namely the Project Implementation Unit (PIU) and the Project Committee (PC). The PIU was tasked to oversee implementation of the Programme and tasked to develop the Terms of Reference for operations of the PC.
- 1.6.9 However, the minutes of the Project Implementation Unit (PIU), Project Committee's (PC) Terms of Reference, PC members' appointment letters and the reports for the PC, were not provided for audit. It was therefore, not possible to determine whether the PC was well constituted and whether the Programme was implemented as per Section 5.2 of the Concept Note.

### ***Non-Adherence with Concept Note on Monitoring at Board of Directors Level***

- 1.6.10 According to Section 5.6 of the Concept Note on Monitoring and Evaluation, the overall oversight of the Programme and its implementation was a critical role for the Board of Directors. However, the minutes of the Board of Directors on the overall monitoring and evaluation of the Programme indicating evidence of Board of Directors' involvement in providing oversight were not provided for audit.

### ***Use of Specially Permitted Procurement Procedure before Approval***

- 1.6.11 The Cabinet Secretary-The National Treasury and Economic Planning approved the use of Specially Permitted Procurement Procedure (SPPP) on 01 December, 2022 as requested by the Managing Director-KNTC in line with the Corporation's Commercial (procurement) policy.

- 1.6.12 The Audit Team however, noted that on 08 November, 2022 (approximately 22 days before the Cabinet Secretary's approval) the Managing Director approved floating of the Request for Quotations (RFQs) for purchase of bulk commodities and use of the SPPP method. Further, bidders for an Expression of Interest (EOI) for the supply of bulk commodities, were required to submit their quotations by 11 November, 2022 (approximately 19 days before the Cabinet Secretary approval).
- 1.6.13 The sequence of the dates indicates that the Management commenced the procurement process and the use of the SPPP method prior to the approval by the Cabinet Secretary-The National Treasury, granted on 01 December, 2022.
- 1.6.14 It was further noted that the Cabinet Secretary-The National Treasury and Economic Planning on 20 January, 2023, approved the duty-free importation of specific imports by KNTC. The exemptions were issued through a Departmental Circular no. 7 of 14 February, 2023, by KRA.
- 1.6.15 Amongst the imports exempted, was 125,000MT (approximately 6.25 million 20-litre jerrycans), out of which seventy-five (75) tax exemptions were issued for 2,909,346 of 20-litre jerrycans of cooking oil delivered by suppliers.

***Non-Compliance with Approvals on the Use of SPPP Method***

- 1.6.16 According to a letter dated 01 December, 2022, the Cabinet Secretary-The National Treasury and Economic Planning noted that the Corporation had two policies governing the procurement processes- administrative activities (transactions) that have no profit and Commercial activities that involve trading for profit which enabled the institution to raise funds to run its activities.
- 1.6.17 The Corporation documented its procurement procedures and processes in the Trading Procurement Policy and Manual. However, the policy and manual had not been approved by the Board of Directors at the time of the audit, contrary to Section 15(1) of the State Corporations Act, CAP 446, Section 3.5(a) of the Mwongozo Guidelines, 2015 and the letter approving the use of the SPPP method from the Cabinet Secretary-The National Treasury.

**Budget and Budgetary Control**

- 1.6.18 The projected working capital for the bulk commodities Programme was approximately Kshs.100 Billion, for one year. However, a breakdown (itemized) of the projected working capital of Kshs.100 Billion was not provided for audit.

It was therefore, not possible to ascertain the amount allocated for the importation of cooking oil out of the Kshs.100 Billion.

- 1.6.19 However, it was noted that the Corporation was granted approval by The National Treasury for a Kshs. 24 Billion Line of Credit in compliance with Section 5.9 of the Concept Note.

***Variance between Concept Note Projections and Final Budget***

- 1.6.20 The total projected sales as per the Concept Note for the Programme within the financial year 2022/2023 was Kshs.57,907,552,716. However, according to the statement of comparison of budget and actual amounts for the period ended 30 June, 2023, the budgeted sales amount in the final budget was Kshs.8,736,250,088, resulting in a variance of Kshs.49,171,302,62. This indicates that the projections as per the Concept Note were not applied in the preparation of the budget.

**Procurement Process in the Programme**

- 1.6.21 Documents provided for audit revealed that the quantities approved under the edible oil Programme was 7.5 million of 20-litre jerrycans. However, only 2,807,806 of 20-litre jerrycans delivered were procured out of which 2,518,434 of 20-litre jerrycans were delivered to both the Port of Mombasa and Internal Container Depot (ICD) Nairobi by the various suppliers contracted. Further, out of the 2,518,434 of 20-litre jerrycans delivered, 1,710,269 of 20-litre jerrycans were the actual received quantities, leaving a balance of 807,864 of 20-litre jerrycans that were uncleared at the time of audit.
- 1.6.22 The procurement process in the public sector is governed by the Public Procurement and Asset Disposal Act, 2015 (PPAD Act, 2015) and the Public Procurement and Asset Disposal Regulations, 2020 (PPAD Regulations, 2020) and was applicable in the period under review.
- 1.6.23 It was noted that Management requested and was granted approval on the use of Specially Permitted Procurement Procedure (SPPP) method, in line with Section 114A(1) of the PPAD Act, 2015 which states that “A *procuring entity may use a procurement procedure specially permitted by the National Treasury*”.
- 1.6.24 The items that were procured by the Management included:
- i) Line of Credit Facility- Initial (Kshs.15 Billion) and Enhanced (Kshs.9 Billion);

- ii) Collateral Management Services;
- iii) Suppliers of Cooking Fat/Oil;
- iv) Insurance Services;
- v) Clearing and Forwarding Services;
- vi) Warehousing Services;
- vii) Legal Services;
- viii) Distributors Under 2-Year Framework Agreements

1.6.25 The following anomalies were however, noted on procurement.

***Non-Inclusion of Services in the Procurement Plan***

1.6.26 The Corporation's revised procurement plan approved on 28 October, 2022 did not include items which were procured in the Programme, contrary to Regulation 107(2)(b) of the PPAD Regulations, 2020.

***Lack of Approved List of Registered Suppliers***

1.6.27 The lists of registered/prequalified suppliers provided for audit review were neither dated nor approved, contrary to the Regulation 31(3)(f) of the PPAD Regulations, 2020.

- i) **Line of Credit Facility- Initial (Kshs.15 Billion) and Enhanced (Kshs.9 Billion)**

***Irregularities in the Procurement Process of Line of Credit from a Bank***

1.6.28 The Board of Directors on 05 October, 2022, granted the Management authority to seek for approval from The National Treasury to procure a Line of Credit of Kshs.15 Billion from KCB. However, the Cabinet Secretary-The National Treasury's approval dated 04 November, 2022 allowed the Corporation to open a Line of Credit of Kshs.15 Billion with any government approved bank. Documentary evidence on how KCB was identified from the government approved banks, and the process of evaluation was not provided for audit.

1.6.29 The KCB and the Corporation signed an initial Letter of Offer dated 07 December, 2022 of Kshs.10.77 Billion, instead of the approved Kshs.15 Billion. Thereafter, a Loan Enhancement letter was signed on 10 January, 2023, with a total facility of Kshs.24 Billion. However, it was not clear why on 07 December, 2022, KCB could not initially offer to the Corporation Kshs.15 Billion as approved by The National Treasury and instead, offered only Kshs.10.77 Billion, and on 10 January, 2023, a month later, agreed to increase the amount to Kshs.24 Billion.

**ii) Collateral Management Services**

***Irregular Procurement for Collateral Management Services***

1.6.30 The need for collateral management services was provided for in Clause 1 of the "Collateral Monitoring Conditions" in the initial Letter of Offer dated 07 December, 2022. The role of collateral management services provider was to oversee both the clearing process and release of the stocks (stock control).

1.6.31 However, the Manager-Supply Chain and Logistics through an internal memo dated 01 November, 2022, requested the Managing Director-KNTC to approve the use of restricted tendering method for sourcing collateral management services. The request was approved on the same day.

1.6.32 The procurement process for the collateral management services therefore, commenced on 01 November, 2022, more than one month prior to the Corporation accepting and signing the Letter of Offer, on 07 December, 2022. In addition, KCB provided a list of five (5) collateral management agents as requested by KNTC on 10 November, 2022 approximately 26 days prior to the Corporation accepting and signing the Letter of Offer, on 07 December, 2022. The Management therefore, commenced the procurement of collateral management service prior to the Corporation accepting and signing the Letter of Offer, which triggered the need for the service, in unclear circumstances.

***Irregularities in the Appointment of Committees***

1.6.33 The Management did not appoint a Tender Opening Committee to open the collateral management service providers' bids, thereby contravening Section 78(1) of the PPAD Act, 2015. Further, minutes of the Tender Opening Committee were not provided for audit, contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015.

1.6.34 Further, documentary evidence showing the appointment of seven (7) members who were in the Evaluation Committee for the provision of collateral management services was not provided for audit, contrary to Regulation 28(2) of the PPAD Regulations, 2020 and Section 9(1)(e)(i) of the Public Audit Act, 2015.

**iii) Procurement of Suppliers for Importation of Cooking Fat/Oil-  
150,000 MT**

***Inconsistencies in Procurement Method Applied***

1.6.35 Inconsistencies in the method applied during the procurement of suppliers for importation of cooking fat/oil were noted as follows;

- i) The revised Procurement Plan approved on 28 October, 2022 and the Professional Opinion dated 21 November, 2022 indicated Request for Quotation (RFQ);
- ii) The bidders' evaluation report dated 18 November, 2022 indicated Direct Procurement;
- iii) Tender document dated 21 November, 2022 indicated Expression of Interest (EOI)

1.6.36 Based on the differing methods mentioned in the various documents, the Audit Team could not ascertain the method applied in the procurement of suppliers for importation of cooking fat/oil.

***Irregular Commencement of Procurement Process***

1.6.37 The Managing Director through an internal memo dated 07 October, 2022, allowed the prequalification process for suppliers of bulk commodities to proceed before approvals by the Cabinet and The National Treasury without justification.

1.6.38 The Cabinet Despatch was released on 10 November, 2022 and The National Treasury approval for use of SPPP was granted on 01 December, 2022 both approvals coming more than one month after commencement of the prequalification process.

***Irregularities in the Quotations and Identification of Firms***

1.6.39 The Audit Team was provided with an undated, unreferenced, and unsigned list of twenty-two (22) bidders said to have expressed interest in supplying various food commodities to the Corporation. Further, eighteen (18) quotations were provided for audit review comprising of fifteen (15) quotations in the list of twenty-two (22) bidders and three (3) quotations which were not in the list of twenty-two 22 bidders.

1.6.40 However, documents including signed and dated list of twenty-two (22) bidders, request for quotation indicating the specifications of the bulk commodities; communication to the firms to whom the quotations/proforma invoices requests

were sent to and; documents indicating how twenty-two firms were identified by the Corporation, were not provided for audit.

1.6.41 In addition, the eighteen (18) quotations reviewed were dated between October and November, 2022, which was prior to the approval by The National Treasury on the use of the SPPP, granted on 01 December, 2022.

1.6.42 According to minutes dated 07 November, 2022, the Corporation held a pre-bid meeting with nine (9) suppliers of essential food commodities. However, documentary evidence on how the nine (9) bidders were identified and how they were informed to attend the pre-bid meeting was not provided for audit. Further, the pre-bid meeting with the nine (9) bidders was held on 07 November, 2022, three (3) days prior to the Cabinet approval released on 10 November, 2022.

***Contradiction in the Number of Bidders Prequalified and Evaluated***

1.6.43 The bidders' evaluation report dated 18 November, 2022 indicated a list of thirty-one (31) bidders for the supply of bulk commodities was received and bids subjected to the evaluation process. However, documentary evidence on how the thirty-one (31) bidders were selected were not provided for audit. In addition, it was not clear why the Corporation did not use the prequalified list of twenty-two (22) bidders or the eighteen (18) quotations, and instead subjected a different list of thirty-one (31) bids through the evaluation process.

***Irregularities in the Appointment of Committees***

1.6.44 Documentary evidence of appointment of all the five (5) members of the Opening and Ad-Hoc Evaluation Committees for the procurement of suppliers for bulk commodities were not provided for audit, contrary to Section 78(1) of the PPAD Act, 2015 and Regulation 28(2) of the PPAD Regulations, 2020 respectively. This also contravened Section 9(1)(e)(i) of the Public Audit Act, 2015. Further, the members of both Committees were the same, contravening Section 78(1)(b) of the PPAD Act, 2015.

***Irregular Recommendation by the Evaluation Committee***

1.6.45 Analysis by the Audit Team of the eighteen (18) quotations provided for audit revealed that twelve (12) bids were found not responsive while the remaining six (6) were responsive, namely; Dewag Enterprises Ltd, Tradewise Agencies Limited, Bitterguard Ltd, Enterprise Supplies Limited, Purma Holdings and Standard Petroleum.

- 1.6.46 The Evaluation Committee recommended a total of fourteen (14) firms for award of the supply of bulk commodities, out of which only three (3) (Dewag Enterprise Limited; Purma Holdings; and Standard Petroleum) appeared in the six (6) responsive bidders as per the Audit Team's analysis. The remaining eleven (11) recommended firms therefore, were not responsive in accordance with Section 79(1) of the PPAD Act, 2015, and were therefore, irregularly recommended.
- 1.6.47 The Corporation entered into ten (10) agreements with seven (7) firms for the supply of approximately 182,227 metric tonnes (MT) of cooking oil/fat, which was 32,227MT in excess of the 150,000MT approved by the Cabinet Secretary- The National Treasury and Economic Planning, on 01 December, 2022.
- 1.6.48 The seven (7) firms were Multi Commerce FZC, Charma Holdings Ltd, Shehena Commodity Trading Ltd, Enterprise Supplies Ltd, Evertec General Trading Co, Purma Holdings Ltd and Standard Petroleum LLC.
- 1.6.49 It was noted that four out of seven firms- Multi Commerce FZC, Charma Holdings Ltd; Shehena Commodity Trading Ltd; and Evertec General Trading Co were part of the eleven (11) irregularly recommended bidders.
- 1.6.50 In addition, information from Business Registration Bureau (BRS) revealed that Multi Commerce FZC is a foreign Company which was incorporated in Kenya on 21 June, 2023, approximately four (4) months after signing of the agreements on 10 February, 2023.

***Splitting of Contracts Resulting to Non-Clearance with the Attorney General***

- 1.6.51 The Corporation entered into four (4) agreements with Multi Commerce FZC, for the supply of 1,972,390 of 20-litre jerrycans cooking oil, all signed on 10 February, 2023 for a total contract sum of USD 59,171,700, approximately Kshs.7,401,196,236 (exchange rate of Kshs.125.08 on 10 February, 2023). The total sum was split in unclear circumstances into four (4) contracts comprising of Kshs.1,746,742,200 each for three and Kshs.2,160,969,636 for one contract respectively. The splitting resulted to the values in each of the four agreements being lower than the Kshs.5 Billion threshold, beyond which clearance with the Attorney General prior to signing of the agreements is required in compliance with Section 134(2) of the PPAD Act, 2015.

### ***Unfavorable Terms in the Agreement***

- 1.6.52 The Audit Team noted that five (5) agreements with quantities totaling to 139,447.80 MT (approximately 77% of total quantity contracted of 182,227 MT), comprising of four (4) agreements with Multi Commerce FZC and one (1) with Standard Petroleum LLC, were on Cost and Freight (CFR) terms. CFR is one of the eleven (11) rules as per the Incoterms® 2020, issued by the International Chamber of Commerce (ICC) which define the responsibilities of sellers and buyers in the sale of goods in international transactions. These agreements did not include insurance and were therefore unfavorable, exposing the Corporation to risk of loss during carriage/shipment.

### ***Inconsistencies Between Information in Agreement and Letters of Credit***

- 1.6.53 Comparison between the Letters of Credit and agreements revealed that five (5) out of the six (6) letters of credit provided for audit were issued prior to signing of the agreements, without justification. Further, inconsistencies in the quantities contracted and unit prices were noted, and documentary evidence justifying the inconsistencies was not provided for audit.

### ***Anomalies in the Agreements***

- 1.6.54 Review of the agreements signed by Multi Commerce FZC, Charma Holdings and Shehena Commodity, revealed irregularities which included: absence of Schedule A that was to indicate the specifications; prices quoted per 20-litre jerrycan instead of per MT; absence of supplier's information such as bank name, account number and account type. Consequently, the Audit Team could not ascertain whether the cooking oil delivered by the suppliers met the specifications and whether the payments to the suppliers were made to the agreed bank accounts.

### ***Use of Wrong Clause in Contract Termination***

- 1.6.55 The agreement between the Corporation and Standard Petroleum LLC dated 15 November, 2022 on importation of cooking fat was terminated on 04 April, 2023 due to non-delivery of the cooking fat. However, the termination letter applied Clause 17 of the agreement titled "Default by Buyer" instead of Clause 16(a) which was on termination due to non-delivery. Consequently, the Corporation may be at the risk of litigation by the supplier, for terminating the contract under the wrong clause.

### ***Unaccounted for Quantities and Possible Loss in Tax***

- 1.6.56 Three suppliers- Multi Commerce FZC, Charma Holdings, and Shehena Commodity Trading were issued with Letters of Credit for the supply of 2,807,806 of 20-litre jerrycans, out of which 2,518,434 jerrycans were delivered while the balance of 289,372 not delivered by the three suppliers.
- 1.6.57 However, information from KRA revealed that 424,462 of 20-litre jerrycans were imported on behalf of the Corporation, received tax exemptions, and cleared, but were not included in the 2,518,434 of 20-litre jerrycans reflected in the Corporation's records. Out of the 424,462 of 20-litre jerrycans, 276,842 of 20-litre jerrycans were imported by Multi Commerce FZC while details of the suppliers of the remaining 147,620 of 20-litre jerrycans were not provided for audit. Further, documentary evidence on where the 424,462 of 20-litre jerrycans were delivered were not provided for audit review and were therefore, unaccounted for by the Corporation.
- 1.6.58 In addition, the tax payable for the 424,462 of 20-litre jerrycans amounted to Kshs.432,793,604.90, out of which Kshs.306,879,959.92 were tax exempted. It is therefore, possible that the Kshs.306,879,959.92 may have been exempted for cooking oil that was not for the Programme leading to possible loss of revenue/public funds.

#### **iv) Insurance Services**

##### ***Irregularities in the Procurement Process of Insurance Services***

- 1.6.59 Review of the four (4) agreements between the Corporation and Multi Commerce FZC revealed conflicting information on insurance, where Clause 10(b) cited Cost and Freight (CFR) which did not require the seller- Multi Commerce FZC to procure insurance, and Clause 10(d) that required the seller to arrange for suitable insurance.
- 1.6.60 Mayfair Insurance was the firm engaged to provide insurance services for quantities delivered by Multi Commerce FZC. However, documentary evidence on how Mayfair Insurance was identified, the process of evaluation and the agreement was not provided for audit making it difficult to determine the quantities of cooking oil insured and the contract sum.
- 1.6.61 Further, KCB made insurance premium payments of Kshs.29,731,800 to the firm without authority from the Corporation posing a possible risk of taking up

insurance policies on cooking oil quantities for Charma Holding and Shehena Commodity that had Cost, Insurance and Freight (CIF) as their trade terms thereby incurring additional costs.

- 1.6.62 Documents and information on the insurance cover for 532,774 of 20-litre jerrycans delivered by Charma Holdings were not provided for audit. It was therefore, not possible to confirm if the 532,774 of 20-litre jerrycans were insured or not in compliance with the trade terms.
- 1.6.63 At the time of audit, 1,886 containers with 2,518,434 of 20-litre jerrycans had been delivered by the three (3) suppliers, out of which 1,283 containers with 1,710,570 of 20-litre jerrycans were stripped and cleared, and the remaining 603 containers said to comprise 807,864 of 20-litre jerrycans being uncleared quantities.
- 1.6.64 Documents reviewed including the Corporation's records revealed that, the cleared quantities of 1,710,570 of 20-litre jerrycans had total short landings of 301, comprising of 251 jerrycans and 50 jerrycans in respect of Multi Commerce FZC and Charma Holdings' quantities, respectively. Further, there were 6,891 damaged jerrycans comprising of 6,062 jerrycans and 829 jerrycans from Multi Commerce FZC and Charma Holdings' quantities, respectively. However, documentary evidence of the Corporation lodging a claim in respect of Charma Holdings' damages of 829 jerrycans and short landings of 50 jerrycans, were not provided for audit.
- 1.6.65 The Corporation lodged an insurance claim amounting to Kshs.28,281,600, being damages of 5,892 jerrycans for quantities delivered by Multi Commerce FZC, which remained unpaid at the time of audit. The Management explained that the difference between the damages as per the Corporation's records of 6,062 jerrycans and insurance claim lodged of 5,892 jerrycans, was that the Corporation's records was for quantities delivered as at February, 2024, while the lodged claim were based on quantities delivered before December 2023. Further, information provided for audit on the insurance claim lodged including emails indicated that damages and short landings for Multi Commerce FZC quantities were 5,892 jerrycans and 320 jerrycans, respectively, resulting to a claim for the short landed 320 jerrycans, amounting to Kshs.1,536,000 (at Kshs.4,800 per jerry can as per insurance claim) that had not been lodged at the time of audit.

**v) Clearing and Forwarding Services**

***Lack of Criteria in Identifying Clearing and Forwarding Firms***

1.6.66 The Audit Team noted that the Corporation did not have a prequalified list of clearing and forwarding services but retrieved a list of nine hundred and seventy-one (971) customs agents for year 2022 from the Kenya Revenue Authority's website. However, the criteria used in selecting fifteen (15) out of the 971 firms which the Managing Director approved to be used in the restricted tendering process for clearing and forwarding services, was not provided for audit.

***Non-Provision of Appointment Letters and Minutes of Committees***

1.6.67 The appointment letters and minutes of the tender opening and appointment letters of the ad-hoc Evaluation Committees were not provided for audit, contravening Section 9(1)(e)(i) of the Public Audit Act, 2015.

***Irregularities in the Notification to Bidders***

1.6.68 Three (3) bidders namely: Adshef Investments Ltd, Ufanisi Freighters (K) Ltd, and Seacon (K) Ltd were successful, after the evaluation process, for provision of clearing and forwarding services. Notification and signing of the agreements were both done on 05 December, 2022, thereby contravening Section 87(1) and 87(2) of the PPAD Act, 2015 and Section 167(1) of the PPAD Act, 2015, which requires a window to be provided for review. Notification to the unsuccessful bidders were not provided for audit.

**vi) Warehousing Services**

***Irregular Procurement of Warehouse Service Providers***

1.6.69 The actual quantities received of 1,710,269 of 20-litre jerrycans (net of the short landings of 301 jerrycans) of cooking oil were stored in ten (10) warehouses, out of which nine (9) were leased and one (1) owned by KNTC. Appointment letters for the team that undertook the identification of the leased warehouses, identification reports for three (3) warehouses, documentation on the evaluation process and criteria for selecting the nine (9) leased warehouses, notifications to both successful and unsuccessful bidders, and agreements for two (2) warehouse service providers were not provided for audit.

**vii) Legal Services**

***Irregular Procurement of Legal Services***

- 1.6.70 The Corporation engaged MMA Advocates in a case under judicial review Miscellaneous (Nairobi JR MISC) Application No. E040 of 2023.
- 1.6.71 Review of documents provided for audit however, revealed that the Corporation issued a letter of instruction to MMA Advocates, without following laid down procurement procedures therefore, contravening Article 227 of the Constitution of Kenya, 2010 which requires that public procurement be carried out in a system that is fair, equitable, transparent, competitive, and cost-effective. Further, the agreement and/or Local Service Orders (LSOs) between the Corporation and MMA Advocates that related to three (3) fee notes issued by MMA Advocates, were not provided for audit.
- 1.6.72 The three (3) fee notes totaled Kshs.730,754,996, which exceeded five hundred thousand shillings. However, documentary evidence of the Corporation notifying the award of the contract to the Public Procurement Regulatory Authority was not provided for audit, contrary to Regulation 90(1)(b) of the PPAD Regulations, 2020.

**viii) Distributors Under 2-Year Framework Agreements**

***Non-Provision of Appointment Letters and Minutes of Committees***

- 1.6.73 The appointment letters and minutes of the Tender Opening Committee were not provided for audit, contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015 and Regulation 28(2) of the PPAD Regulations, 2020.

***Inconsistencies in the Procurement Method Applied***

- 1.6.74 The minutes of the Evaluation Committee on distribution services dated 25 November, 2022, referred to a competitive bidding process in which an advert was placed in the dailies and six (6) distribution agents and stockists were prequalified. However, documents supporting the bidding process and the advert were not provided for audit. Further, the minutes contradicted an internal memo dated 01 November, 2022 by the Manager-Supply Chain and Logistics, which had recommended the use of restricted tendering method.

***Irregular Notification to Bidders***

- 1.6.75 Unsuccessful bidders for the provision of distribution services were notified on 18 November, 2022, which was seven (7) days prior to the evaluation of the

bids carried out on 25 November, 2022 therefore, contravening Sections 85 and 87(1) to 87(4) of the PPAD Act, 2015 and Regulation 28(2) of PPAD Regulations, 2020. Further, the notification of award to the successful bidder, MarketForce Technologies Limited, was not provided for audit.

***Irregular Procurement of Twiga Foods as a Distributor***

- 1.6.76 The Corporation also appointment Twiga Foods Limited as a distributor, without subjecting the firm through a procurement process, thereby contravening Article 227 of the Constitution of Kenya, 2010. Further, the agreement between the Corporation and Twiga Foods was not provided for audit.

**Expenditure and Related Issues**

- 1.6.77 It was noted that the Corporation incurred expenditure on all the eight items procured for the Programme; Line of Credit, Collateral Management, Cooking Oil Suppliers, Insurance services, Clearing and Forwarding Agents, Warehousing services, Legal services and Distributors services.
- 1.6.78 The total expenditure amounted to approximately Kshs.14,448,397,642.62 out of which, Kshs.12,050,242,044.12 was paid. However, the cumulative outstanding balance for the Programme could not be ascertained, due to lack of expenditure schedules for the Line of Credit, insurance, collateral management and distribution services.

***Unaccounted-for Line of Credit Payments***

- 1.6.79 Documents to support how the fees, interests and commissions for the Line of Credit facility amounting to Kshs.309,042,469 were accounted-for, were not provided for audit.

***Irregular Short-Term Loan Amounts Kshs.559,728,896.15***

- 1.6.80 Comparison between the total loan amount advanced by KCB Bank to the Corporation of Kshs.2,459,728,896.15 and the capped amount of the loan of Kshs.1.9 Billion, revealed a variance of Kshs.559,728,896.15, being the short-term loan amount irregularly advanced beyond the capped Kshs.1.9 Billion therefore, contravening the Letters of Offer. The National Treasury approved Kshs.2.25 Billion for the facility and therefore, the Management did not seek authority from The National Treasury on the variance of Kshs.209,728,896.15, contrary to Regulations 82(7) and 82(8) of the Public Finance Management (National Government) Regulations, 2015.

***Irregular Excess Interest on Short-Term Loan***

- 1.6.81 The interest charged on Kshs.216,252,359.05 which was the short-term loan advanced for cooking oil for the period ending 30 June, 2023, was Kshs.18,815,114.54, at an interest rate of 13.74%, instead of Kshs.17,801,782.32 at the rate of 13% in the Letter of Offer, resulting to an irregular excess interest of Kshs.1,013,332.23.

***Outstanding Interest on Short-Term Loan***

- 1.6.82 Comparison between the computed chargeable interest of Kshs.159,882,378.25 and the interest paid of Kshs.73,714,555.75, resulted to an outstanding interest amount of Kshs.86,167,822.50 of the short-term loan, which remained unpaid and unsupported as at the time of the audit.

***Unsupported Payments for Short-Term Loan Facility***

- 1.6.83 A total of Kshs.2,745,280,732.08 comprised of various payments for the short-term loan facility which included: payments to various service providers; costs and penalties related to the loan; and repayments for the loan. Supporting documents for the Kshs.2,745,280,732.08 were not provided for audit.

***Irregular Overdrawn USD Bank Account and an Un-approved Loan***

- 1.6.84 The dollar account was overdrawn by USD43,238,799.16 (approximately Kshs.6,630,237,463) beyond the Letters of Offer overdraft limit of Kshs.100 Million. The Corporation converted the overdrawn amount of USD43,238,799 (approximately Kshs.6,630,237,438) into a loan secured from KCB, without authority, contrary to Regulations 82(7) and 82(8) of the Public Finance Management (National Government) Regulations, 2015 which state that “(7) *No official government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit, authorized by the National Treasury in line with Section 28(4) of the Act. (8) The authority in paragraph (7) shall be conveyed in writing to the responsible Accounting Officer and copied to the Auditor-General*”. The loan agreement was not provided for audit therefore, the Audit Team could not ascertain the terms of the loan. As at 11 January, 2024, the account had been overdrawn by USD14,828,183.87 (approximately Kshs.2,370,285,192), which was again beyond the Letters of Offer overdraft limit of Kshs.100 Million.

### ***Unsupported Interest Payments for the Overdraft Facility***

- 1.6.85 A total of USD1,093,652.67 (approximately Kshs.164,603,288.12) comprised amounts debited on various dates from the dollar account, being payment of the interest on the overdrawn amounts, whose supporting documents were not provided for audit.

### ***Lack of Supporting Documents for Collateral Management Fees***

- 1.6.86 The Inspectorate E.A. Ltd invoices and the resultant payment vouchers amounting to Kshs.47,444,000 were not provided for audit.

### ***Non-Provision of Supporting Documents for Payments to Suppliers***

- 1.6.87 Comparison between the total letters of credit amount and payments of USD84,234,200 and USD74,548,620 respectively, revealed a difference of USD9,685,580, approximately Kshs.1,206,269,376.60, being unutilized amounts in the letters of credit, which remained unaccounted for at the time of audit. Further, supporting documents for the payments of USD74,548,620, were not provided for audit.

### ***Foreign Exchange Loss Due to Signing of contracts in Foreign Currency (US Dollar)***

- 1.6.88 Analysis of the amounts paid of USD74,548,620 based on the letters of credit issuance dates of approximately Kshs.9,256,871,237 and dates of paying the suppliers of approximately Kshs.11,399,309,014.20 revealed foreign exchange losses due to the fluctuating rates of approximately Kshs.2,142,437,776, which should have been avoided if the contracts had been in Kenya shillings.

### ***Irregular Payments to Suppliers***

- 1.6.89 The Managing Director in a special Board meeting held on 24 October, 2023 informed the Board that cooking oil suppliers had agreed to reduce prices from USD30 to USD23 per 20-litre jerrycan. However, it was noted that payments made after the meeting were at the rate of USD30, amounting to USD49,165,140 (approximately Kshs.7,656,409,804) instead of the negotiated price of USD23 amounting to USD37,693,274 (approximately Kshs.5,869,914,183), resulting to an irregular payment to suppliers of USD11,471,866 approximately Kshs.1,786,495,621.

### ***Unsupported Payments Made Directly by KCB***

- 1.6.90 The Audit Team reviewed the Corporation's bank statements provided for audit and noted that KCB paid Mayfair Insurance Company Kshs.29,731,800 directly

from the bank account, without the Corporation's approval. Further, documents supporting the payments were not provided for audit.

***Unsupported Payments to Clearing Agents and Outstanding Balance***

1.6.91 The total clearing and forwarding costs for the Programme which included demurrage, customs clearance costs and other local charges amounted to Kshs.2,254,465,192, out of which, Kshs.1,514,784,184 was paid, resulting to an outstanding balance of Kshs.739,681,008. However, supporting documents for the Kshs.1,514,784,184 paid were not provided for audit review.

1.6.92 Out of the Kshs.2,254,465,192, demurrage costs amounted to Kshs.448,652,186, which the Management would have avoided if proper planning of the Programme was done. The public will therefore, not get value for money on the incurred demurrage cost of Kshs.448,652,186.

***Unsupported Payments to Warehousing Service Providers***

1.6.93 The total warehousing costs at the time of audit amounted to Kshs.165,192,543.96. However, documents supporting costs for Wallstreet warehouse from October 2023 to February 2024 were not provided for audit.

***Irregular Payment of Handling Charges***

1.6.94 Review of payment records revealed cash withdrawals amounting to Kshs.10,723,345 which were paid to staff as handling charges for cooking oil, contrary to the agreements for provision of warehousing services that listed handling charges as one of the costs incurred by the service providers.

***Withheld Stock Due to Rent Arrears***

1.6.95 Cooking oil stock totaling 360,110 of 20-litre jerrycans was withheld in four (4) warehouses due to outstanding balances of Kshs.45,913,577. The computed purchase cost of the withheld 360,110 of 20-litre jerrycans based on the average cost of the imported cooking oil of Kshs.5,298.37, was approximately Kshs.1,907,996,020.70.

***Irregularities in Legal Costs***

1.6.96 Out of legal costs of three (3) fee notes amounting to Kshs.730,754,996, one fee note had an initial amount of Kshs.597,354,996 which was discounted to Kshs.150 Million (approximately 75%), under unclear circumstances, thereby contravening Regulation 90(3) of the PPAD Regulations, 2020 which requires that negotiations for direct procurements be conducted by the ad hoc Evaluation Committee appointed in accordance with Section 104(b) of the Act.

The total legal cost after the discount amounted to Kshs.283,400,000 out of which Kshs.60 Million was paid. However, documents supporting the payment were not provided for audit. The remaining two (2) fee notes totaling Kshs.133.4 Million related to one case-Republic Vs Cabinet Secretary-Ministry of Trade, Investment, and Industry and 3 Others. However, evidence on how the case related to the Programme was not provided for audit.

#### ***Irregularities in the Distribution Costs***

- 1.6.97 Documents supporting the costs payable, actual amounts paid, and outstanding amounts for the distribution services and the agreement between the Corporation and Twiga Foods were not provided for audit.
- 1.6.98 The Corporation incurred a total of Kshs.90,040,000 for the purchase of cooking oil, on behalf of two distributors, MarketForce and Twiga Foods. The funds were withdrawn from the Corporation's ABSA bank account meant for internal operations and not the cooking oil Programme. Supporting documents indicating the approval and payment of Kshs.90,040,000 from the ABSA bank account were not provided for audit.

#### **Revenue Management**

##### ***Unexplained Excess Sales Deposits***

- 1.6.99 As at 31 December, 2023, the quantity of cooking oil sold by the Corporation was 653,174 of 20-litre jerrycans, amounting to Kshs.2,408,193,393. However, the total sales banked amounted to Kshs.2,640,908,942.91, resulting to unexplained excess sales deposits of Kshs.232,715,549.91.

##### ***Non-Refunded Sales by Distributors to the Corporation***

- 1.6.100 Out of the sales banked of Kshs.2,640,908,942.91, Kshs.90,040,000 was received from KNTC (ABSA bank account) for 24,335 of 20-litre jerrycans of cooking oil, dispatched to the two distributors, MarketForce and Twiga Foods.
- 1.6.101 However, documentary evidence of corresponding bankings by the distributors after selling the cooking oil was not provided as required in Clause 5.4 and 5.5 of the agreement between the Corporation and MarketForce. This indicates loss of public funds amounting to Kshs.90,040,000, being the amount incurred by the Corporation in purchasing the cooking oil.

### ***Lack of a Unique Identifier for the Sales Amounts***

1.6.102 Review of the cashbook revealed that individual sales by customers were recorded in the cashbook. However, the sales invoice numbers were not included in the cash book. It was therefore, not possible to trace the sales invoices to the sales amounts in the cashbook.

### ***Variations in Release Orders and Sales Invoices***

1.6.103 Out of the sales amount in the release schedule of Kshs.2,408,193,393, sales invoices totaling Kshs.1,248,988,802 were provided for audit. Comparison between the Kshs.1,248,988,802 and release schedule of Kshs.1,240,743,178.88 revealed a cumulative variance of Kshs.8,245,623.52, due to inconsistencies in prices and quantities.

### ***Sales made at Lower Selling Prices than the Target and Market Price***

1.6.104 According to a letter dated 25 April, 2023, the Corporation informed KCB that the prevailing selling price for cooking oil was Kshs.3,700 per 20-litre jerrycan. However, sales of 209,554 of 20-litre jerrycans amounting to Kshs.706,853,550 made after 25 April, 2023, had been made with prices ranging from Kshs.3,300 and Kshs.3,650, which were lower than the set price of Kshs.3,700, resulting to a loss on sales of Kshs.68,496,250.

### ***Lack of Approval to Use Brand Details***

1.6.105 The cooking oil was delivered by the three (3) suppliers under five (5) different brand names namely: Oki; Wangsa; Viking; Mr. Mac; Maxwill. However, documentary evidence indicating the Corporation's approval on the use of the brand names was not provided for audit. The Audit Team could therefore, not ascertain whether the suppliers complied with Clause 7 of the agreements between the Corporation and each of the three suppliers which required the seller to pack consignment in 20-litre jerrycans, branded with the buyer's approved brand details.

### ***Use of Registered Brand Names for Unknown Entities***

1.6.106 Information from Kenya Industrial Property Institute (KIPI) revealed that the Corporation as a trading company, did not have any trademarks registered or owned under its name; the Corporation used three (3) brand names (Oki, Viking, and Mr. Mac) registered in Kenya by other entities, out of which Mr. Mac had threatened opposition; the Corporation also used two (2) brand names (Maxwill and Wangsa) that had not been registered.

## **Value for Money**

### ***Non-Realization of Programme Goals on Reduction of Cooking Oil Prices***

1.6.107 As of November, 2022, when the Corporation's mandate was expanded to allow the importation of bulk commodities, cooking oil in the Country retailed at Kshs.344.51 per litre. Sales of the cooking oil began in May, 2023 and by December, 2023, the sales made were 653,174 out of the 1,710,570 of 20-litre jerrycans stripped and cleared. During the period between May and December, 2023, the Audit Team noted price fluctuations. For instance, the price in May 2023 was Kshs.321.60, decreased to Kshs.315.01 in August 2023, then increased to Kshs.316.94, Kshs.326.54 and Kshs.328.37 in September, November and December 2023, respectively. From the analysis, the sale of the cooking oil by the Corporation might not have significantly achieved the intended goal of price reduction of the cooking oil in the market. In addition, consignments of 603 containers said to comprise 807,864 of 20-litre jerrycans were still uncleared at Focus Container Freight Station in Mombasa and Auto Port Container Freight Station in Nairobi.

### ***Non-Executed Consignment Agreements***

1.6.108 The Audit Team noted that the Corporation entered into consignment agreements with three (3) entities namely, Enterprise Supplies Ltd; Evertec General Trading Co.; and Purma Holdings Ltd, to deliver a total of 25,000 MT of cooking oil. However, documentary evidence indicating that the agreements were executed or cancelled was not provided. Further, the goal of the Programme as per Section 4.1 of the Concept Note may not have been achieved, since the quantities that were to be supplied by the three (3) suppliers, were not delivered.

### ***Non-Delivery of Contracted Quantity of Cooking Oil by Suppliers***

1.6.109 Multi Commerce FZC, Charma Holdings and Shehena Trading were the three (3) suppliers issued with Letters of Credit for delivery of a total of 2,807,806 of 20-litre jerrycans out of which, 2,518,434 of 20-litre jerrycans had been delivered, leaving an undelivered balance of 289,372 of 20-litre jerrycans at the time of audit. Out of 289,372 of 20-litre jerrycans, it was noted that two entities Charma Holdings and Shehena Trading, did not supply 289,222 of 20-litre jerrycans (approximately 99.95%), despite KNTC issuing Letters of Credit to them for the delivery of the cooking oil. The non-delivery by the companies

might have been as a result of lack of capacity and/or inexperience in the supply and delivery of cooking oil, a risk envisaged in Section 5.7 of the Concept Note which was not mitigated.

***Delays in Delivery of Cooking oil by the Suppliers***

- 1.6.110 Out of the 2,518,434 of 20-litre jerrycans delivered by the three (3) suppliers, 912,244 of 20-litre jerrycans arrived in the Country after the stipulated timeline, contrary to Clause 12 of the agreements and Section 5.7 of the Concept Note.

***Losses on the Cooking Oil Sold by December 2023***

- 1.6.111 Comparison between the average cost and average selling price of a 20-litre jerrycan of Kshs.5,298.37 and Kshs.3,687 respectively, revealed an average loss of Kshs.1,611.37 per 20-litre jerrycan approximately Kshs.1,052,504,988.38 for the 653,174 of 20-litre jerrycans sold. In determining the average cost, the Line of Credit costs, collateral management and insurance costs were not included, since they could not be apportioned to cooking oil. Therefore, there is a possibility of the loss being higher.

**Physical Verification and Current Status**

***Stripping of Containers Prior to Clearance***

- 1.6.112 Review and analysis of records provided for audit revealed that, 150 containers that contained 200,100 of 20-litre jerrycans and stored in NFT Autoport warehouse (open space), were irregularly stripped before clearance.

***Delay in Clearing Cooking Oil Consignments***

- 1.6.113 Uncleared consignments totaling 603 containers (said to comprise 807,864 of 20-litre jerrycans of cooking oil) were stored in two Container Freight Stations (CFS), NFT Autoport CFS Nairobi and Focus CFS Mombasa. There is a possibility of increased costs of the uncleared quantities and thereby the Corporation not achieving the goal as per Section 4.1 of the Concept Note.

***Unexplained Variance Between Quantities in Clearing Agents Records and Quantities as Per Stock Book***

- 1.6.114 Comparison between the quantities of cooking oil dispatched to the warehouses and the quantities received as per warehouse stock books in eight (8) warehouses, revealed an unexplained cumulative variance of 26,616 of 20-litre jerrycans of cooking oil, amounting to Kshs.141,021,415.92 being the cost of the unexplained quantities (at Kshs.5,298.37, the approximate cost per 20-

litre jerrycan). The stock book records for Hallogen and Bepak warehouses were not provided for audit.

- 1.6.115 Comparison between the stock balance as per the records and the physical stock count of cooking oil revealed a cumulative unexplained variance of 15,811 of 20-litre jerrycans in four (4) of the warehouses, without justification, amounting to Kshs.83,772,528.07 (at Kshs.5,298.37, the approximate cost per 20-litre jerrycan). Further, a variance of 3,925 damaged jerrycans amounting to Kshs.18,840,000 (at Kshs.4,800 per jerrycan as per insurance claim), being the difference between 6,891 damaged jerrycans as per the clearing agents records and the 2,966 physically counted damaged jerrycans, could not be accounted for by the Management.

***Commodities Kept Against Required Storage Conditions***

- 1.6.116 The Audit Team observed during the physical stock count at Autoport NFT (open space) that 547,628 of 20-litre jerrycans was stored in an open yard, contravening the conditions on the jerrycan labels indicating that the cooking oil was to be stored in a cool and dry place, away from direct sunlight. Further, the 603 uncleared containers (said to comprise 807,864 of 20-litre jerrycans of cooking oil), had stayed in the Autoport NFT CFS and Focus CFS from July, 2023 to February, 2024. In addition, the Audit Team observed that some of the containers in the CFSs were leaking.

***Non-Compliant Consignments***

- 1.6.117 According to an expert report dated 26 February, 2024, out of eight (8) consignments targeted by KEBS for testing, seven (7) consignments failed in vitamin A while one (1) failed in both Insoluble Impurities and Vitamin A. It was noted that tests done at the port of loading indicated that all the eight (8) consignments fully complied with the requirements of the Kenyan Standard. However, action taken against the eight (8) non-compliant consignments was not indicated in the report. Further, field visits and analysis of warehouses records revealed that two (2) consignments had been sold, two (2) had been stripped (opened) while the remaining four (4) could not be traced.

## **Other Matters Deemed Relevant**

### ***Lack of Documentation for Donated Items***

1.6.118 Review of documents provided for audit revealed that Indonesia donated five (5) oil dispensers/pumps and 5 MT (5,000 litres) of palm oil to Kenya, out of which four (4) pumps and four (4) MT of palm oil was to be shipped and the remaining transported via air. However, documentary evidence indicating how the donations were to be utilized within the Country and records where the donated items were stored, were not provided for audit.

1.6.119 During verification exercise at the Corporation's depot in Nairobi, the Audit Team observed one (1) pumping machine branded "*Mama Pima and KNTC*" and one (1) tank said to contain one (1) MT (1,000 litres) of cooking oil. The Audit Team also observed eight (8) wooden boxes out of which four (4) boxes were said to contain the donated pumps each and the remaining four (4) boxes said to contain the tanks with the donated cooking oil. However, the Audit Team could not verify the content to confirm whether the items were part of the donations, since stores records for the donated cooking oil quantities and pumps were not maintained.

### ***Delay in Clearance of Donated Cooking Oil***

1.6.120 It was noted that on 17 August, 2023, the Managing Director allowed a team of six (6) members to receive four (4) pumps and four (4) MT of cooking oil in Mombasa, donated by the Government of Indonesia. The donation of four (4) pumps and four (4) MT of cooking oil arrived at the Port of Mombasa on 27 August, 2023 and was cleared on 14 September, 2023, incurring demurrage charges of Kshs.41,616. The remaining one (1) pump and one (1) MT of palm oil was cleared and paid for by Ufanisi Freighters (K) Ltd.

## **1.7 Recommendations**

1.7.1 The recommendations on the issues raised are as summarized below and detailed in Section 4.0 of the Report;

1.7.2 The Kenya National Trading Corporation Ltd should adhere to all the Laws and Regulations including the Constitution of Kenya (2010), the Public Audit Act, 2015, the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Asset Disposal Regulations, 2020, the Public Finance Management Act (2012), the Public Finance Management (National

Government) Regulations, 2015, State Corporations Act, Cap 446, Mwongozo Guidelines (2015), approvals granted by The National Treasury and Economic Planning.

- 1.7.3 The Management should provide for audit all missing documents indicated as not provided in the report.
- 1.7.4 The Management should always use approved policies and procedure manuals in trading operations.
- 1.7.5 The Board should Management should strengthen oversight mechanisms at the Board level to prevent future non-adherence. In addition, the Management should document the lessons learnt from the bulk commodities Programme and integrate them into the Corporation's procedure manuals and operations, to prevent similar gaps and weaknesses in future Programmes.
- 1.7.6 The Management should terminate all non-executed agreements in line with the relevant termination clauses within the agreements and seek legal advice from the Attorney General prior to terminating the contracts among other legal guidance.
- 1.7.7 The Kenya National Trading Corporation Ltd should reconcile, record and account for all invoices, payments and outstanding balances.
- 1.7.8 The Management should evaluate all payments made, follow up and recover all irregularly made payments.
- 1.7.9 The Kenya National Trading Corporation Ltd should follow-up on outstanding amounts to resolve the issues of delay in provision of services and clearing of the cooking oil.
- 1.7.10 The Management should resolve all outstanding matters that are preventing/delaying the clearance of the 603 containers said to comprise cooking oil, stored in Container Freight Stations (CFS). The consignment should also be tested for quality by Kenya Bureau of Standards.
- 1.7.11 The Management should desist from further overdrawn of the Corporation's bank account. In addition, the respective Accounting Officer should be held liable for the interest charged on the overdrawn amount of Kshs.164,603,288.12 in line with Section 28(5) of the Public Finance Management Act, 2012.

- 1.7.12 The Management should undertake due diligence on suppliers of commodities, to mitigate the risk of delays or non-delivery of the contracted commodities due to incapacity and/or inexperience.
- 1.7.13 The Management should undertake a stock count, recover lost stock estimated at Kshs.243,633,944 and initiate disciplinary measures on the culpable Collateral Management Agents and KNTC officers in line with relevant Laws and Regulations.
- 1.7.14 The Kenya National Trading Corporation Limited should trade with its own brand name(s). It is recommended that the Management register a trademark(s), to avoid packaging KNTC products using other brand names.
- 1.7.15 It is recommended that all the cooking oil stored in various depots/warehouses and uncleared in the CFSs be re-tested to confirm suitability for human consumption before they are released to the public.
- 1.7.16 It is further recommended that the whole procurement process of the edible oil from conceptualization to distribution under the Programme be a subject of investigation by Government investigative agencies for criminal activities, necessary action on the unaccounted-for funds, irregular payments, missing stock and breach of the law.
- 1.7.17 The Management should take responsibility for the approximately Kshs.15,718,217,520 which the Audit Team computed as having not been accounted for. The amount may however, be higher given the challenges and limitations experienced during the audit.

## **1.8 Conclusion**

- 1.8.1 The Kenya National Trading Company Ltd through the Concept Note dated 05 October, 2022, indicated that the year-on-year food inflation in Kenya had increased to 12.4% in May, 2022 from 7% in May, 2021. The Concept Note further highlighted that the prices for the staple commodities in the food basket, cooking oil being one of them, had risen by an average of 20% in September, 2022 compared to the same period in 2021. The approval of the framework through the Cabinet Despatch was therefore, one part of the Government's proposed intervention to bring down the cost of living. By strengthening the supply chain for essential products such as cooking oil through KNTC, it was

envisaged that affordable prices would be achieved, and thereby creating price stabilization for household items.

- 1.8.2 The bulk commodities Programme which included cooking oil, amongst other commodities, was mainly financed through a Line of Credit facility of Kshs.24Billion, offered by Kenya Commercial Bank Ltd.
- 1.8.3 The major irregularities noted included, use of unapproved policies and manuals, non-compliance with approvals, procurement irregularities, foreign exchange losses due to signing of contracts in foreign currency, unexplained variances, irregular overdrawing of bank account, irregular and unsupported payments, loss of public funds/revenues (taxes) due to unaccounted-for quantities, unexplained excess sales deposits, non-realization of Programme goals, delays and non-delivery of quantities, cooking oil stored against required conditions, failure to provide some critical documents for audit review, among others.
- 1.8.4 The procured cooking oil amounted to 2,807,806 of 20-litre jerrycans, out of which 2,518,434 of 20-litre jerrycans were delivered by three (3) suppliers and the remaining 289,372 of 20-litre jerrycans was not delivered. Included in the delivered 2,518,434 of 20-litre jerrycans quantities, were actual received quantities of 1,710,269, short landings of 301 jerrycans, and the balance of 603 containers said to comprise 807,864 of 20-litre jerrycans, being uncleared cooking oil.
- 1.8.5 The total expenditure for the cooking oil Programme was approximately Kshs.14,448,397,642.62, out of which, Kshs.12,050,242,044.12 was paid. Included in the paid amount, was foreign exchange losses of Kshs.2,142,437,776 which were incurred due to fluctuating foreign exchange rates.
- 1.8.6 The total sales made as at December, 2023 was Kshs.2,408,193,393 of 653,174 of 20-litre jerrycans. The total sales banked amounted to Kshs.2,640,908,942.91, resulting to unexplained excess sales deposits of Kshs.232,715,549.91, which were due to cumulative variances between amounts banked and amounts in the release order schedule. It is not clear where the excess sales of the cooking oil were derived from.
- 1.8.7 The amount of Kshs.15,718,217,520 was computed as being the unaccounted-for funds indicated as having been spent on the cooking oil Programme.

1.8.8 In view of the findings in this report, we recommend that the investigating agencies conclude their investigations and persons and entities found culpable for the loss of public funds be prosecuted.

## **2.0 INTRODUCTION AND BACKGROUND INFORMATION**

### **2.1 Introduction**

- 2.1.1 The Auditor-General received a letter Ref: NA/DAASC/PAC/2023/236 dated 16 November, 2023 from the National Assembly's Public Accounts Committee requesting for a Special Audit on importation of edible oils by Kenya National Trading Corporation Ltd (KNTC), under the following Terms of Reference:
- i. Legality of the waiver of duty and resultant amount of tax revenue foregone
  - ii. Source of the oils, names of the actual importers, quantities already imported and their eventual sale (branding/packaging and points of sale)
  - iii. Amounts used by the government in the Programme vis a vis value for money (comparable effect on purchase price by consumers, and effect to local manufacturing industry of the same).
  - iv. Edibility of the oils and their health implications.
  - v. Any other matter that the Auditor-General deemed relevant.
- 2.1.2 The Auditor-General carried out the Special Audit in accordance with Articles 229, 252(1)(a) and 254(2) of the Constitution of Kenya, 2010 and Section 37 of the Public Audit Act, 2015 which stipulates that the Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

### **2.2 Background Information**

- 2.2.1 The Kenya National Trading Corporation (KNTC) is a State Corporation in the Ministry of Investment, Trade and Industry, mandated to act as a procurement agent for the Government and participate in the promotion of wholesale and retail trade in order to strengthen the supply chain of essential products within the Country. The Corporation is also mandated with the responsibility of supporting the Micro, Small and Medium Enterprises (MSME) sector through supply of raw materials, provision of consultancy services and identification of markets for their products.
- 2.2.2 The Kenya National Trading Corporation (KNTC) was incorporated in 1965 under the Companies Act, Cap 486. The incorporation was based on Sessional Paper No. 10 of 1965 on African socialism and its application to planning in Kenya which recognized the importance of trade and industry in economic development.

2.2.3 According to Section 1.2 of the Concept Paper, the Cabinet, in recognition of the latent potential in anchoring wholesale and retail trade; and promoting market access by SMEs in line with Vision 2030, enhanced the mandate of KNTC in November, 2010 to include the following:

- i. Promoting of wholesale/retail business and e-trade in line with Vision 2030, the medium-term plan (2008-2012) and the Parent Ministry's strategic plan.
- ii. Improve and strengthen supply chain and distribution systems for both formal and informal sector.
- iii. To become the procurement agent for strategic bulk commodities for the government and general public at reasonable commercial prices.
- iv. In partnership with other key players, avail relevant products/input for agricultural sector.
- v. Promote the development of small and medium enterprises' markets, expansion and diversification of trade in line with the government policy.
- vi. To set up trading houses in niche export markets in the East African region and beyond.

2.2.4 The Cabinet through a Cabinet Despatch dated 10 November, 2022 approved a framework to position KNTC as the anchor of state initiative to create a price stabilizer for essential household items. As such, KNTC as a trading company would supplement other state initiatives by creating strategic reserves for staple and essential food items, vital farm inputs including fertilizer and any other commodities necessary for ensuring stability in the prices of core commodities consumed by Kenyans. To realize this mandate KNTC was required to partner with National Cereals and Produce Board (NCPB) and local and regional financial intermediaries specializing in trade and commodity financing.

2.2.5 The Corporation through the Concept Note dated 05 October, 2022 on importation and distribution of essential commodities as an intervention to bring down cost of living in the Country, indicated that the year-on-year food inflation in Kenya had increased to 12.4% in May, 2022 from 7% in May, 2021. The Concept Note further highlighted that the prices for the staple commodities in the food basket, cooking oil being one of them, had risen by an average of 20% in September, 2022 compared to the same period in 2021. The approval of the framework through the Cabinet Despatch was therefore, one part of Government's proposed intervention to bring down the cost of living. By

strengthening supply chain of essential products such as cooking oil through the Corporation, it was envisaged that affordable prices for the basic food commodities would be achieved thereby creating price stabilization for household items, that included cooking oil.

### 2.3 Audit Objectives

- 2.3.1 The objectives of the audit were to establish: the compliance with the law by KNTC in the importation, expenditure, and sales of the edible oil; whether there was value for money achieved from the Programme; and the edibility of the cooking oil.

### 2.4 Terms of Reference

- 2.4.1 The Audit Team analyzed the TORs received from PAC and developed the following Terms of Reference (TORs) to guide the audit. (See **Appendix I**)

#### a) **Conceptualization of the Programme**

- i) Establish how the Programme was conceptualized and identify the need for the Programme.
- ii) Establish if a preliminary study was undertaken and a concept paper developed and approved prior to implementation of the Programme.

#### b) **Governance Issues**

- i) To establish the role of the Parent Ministry, KNTC Board of Directors and Management in the Programme and confirm whether these roles were undertaken according to the Law/guidelines in the Programme.
- ii) Confirm whether approvals for the Programme from all relevant entities were sought and granted and if the approvals were in line with relevant Laws and Regulations.
- iii) Confirm whether the process of waiver of duty/tax was in line with relevant Laws and Regulations.

#### c) **Budget and Budgetary Control**

- i) Review the budget for the financial year 2022/2023 to confirm whether the budget process for the Programme complied with relevant laws, regulations, and approvals.
- ii) Establish the total budgetary allocation and sources of funds earmarked to finance the Programme.
- iii) Review the budget for the financial year 2022/2023 to confirm whether the budget process for revenue collection on the sale of the imported finished edible oil complied with relevant Laws, Regulations, and approvals.
- iv) Establish the budgetary allocation for the revenue the Corporation expected to generate from the sale of the finished edible oil.

**d) Procurement Process in the Programme**

- i) Confirm whether procurements undertaken within the Programme were in line with relevant Laws, Regulations, approvals, bid/tender specifications, and contractual agreements.
- ii) Establish whether there were any variations in the Programme, and if the variations complied with relevant Laws, Regulations, approvals, and contractual agreements.
- iii) Identify the names and location of the suppliers involved in the importation of the finished edible oil and whether their identification and award were in line with relevant Laws, Regulations, and approvals.
- iv) Establish whether inspection and acceptance by KNTC and other relevant bodies on the procured items (i.e., finished edible oil and jerrycans) was carried out and if it complied with relevant Laws, Regulations, and inspection reports.
- v) Establish whether KNTC adhered to the inspection and acceptance reports undertaken, approvals issued and/or correspondence written by relevant bodies.
- vi) Establish the type and quantities of the procured items (E.g., finished edible oil, jerrycans, etc.) imported, inspected/tested, cleared, and uncleared.

**e) Expenditure and Related Issues**

- i) Determine the total and itemized expenditure amount for the importation of edible oil Programme.
- ii) Establish whether all expenditure paid and outstanding in relation to the Programme, complied with relevant legislations, policies, guidelines, and approvals.
- iii) Establish whether there were expenditures unbudgeted for, irregularly paid, misclassified, unsupported and unrecorded within the Programme.
- iv) Determine whether there was any waiver of tax/duty in the importation of the finished edible oil and the total tax/duty waived.

**f) Revenue Management**

- i) Establish the revenue collection process for the sale of the finished edible oil and ascertain whether the process was in line with relevant Laws, Regulations, policies, and procedures.
- ii) Identify the brand names and packaging under which the finished edible oil was sold.
- iii) Establish the quantity of finished edible oil sold and the total revenue collected from the sale, whether the revenue was fully recorded, banked, and disclosed in accordance with the relevant Laws, Regulations, policies, and circulars, and note any variance.
- iv) Compare the revenue collected against the projected revenue as per the budgeted amount agreements and note any variances.

**g) Value for Money**

- i) Compare the importation cost of the finished edible oil with the market cost, at the time of signing the contract agreement.
- ii) Compare the estimated arrival time for the finished edible oil and the actual arrival time to establish whether there were delays in receipt and the effects of these delays on the cost.
- iii) Compare the specifications of the finished edible oil in the bid documents with the actual finished edible oil imported, cleared and in stock.
- iv) Compare the quantities of the finished edible oil procured with actual quantities cleared and received.
- v) Compare the price that the Corporation anticipated to sell the finished edible oil at, with the market price, at the time of importing.
- vi) Compare the Corporation's actual selling price for the finished edible oil with the market prices of edible oil, to determine the effect of the finished edible oil in the market.
- vii) Conduct physical verification to confirm the status of the finished edible oil.

**h) Physical Verification and Current Status**

- i) Conduct physical verification to confirm the existence and status of the finished edible oil.
- ii) Compare the inventory/stock recorded with the actual quantities in KNTC's depots/warehouses and note any variance.
- iii) Undertake suitability tests on the inventory.
- iv) Ascertain whether the actual state of the warehouses in which the finished edible oil is being stored complies with the relevant Laws, Regulations and specifications on food storage and handling.

**i) Other Matters Deemed Relevant**

- i) Ascertain whether there was any other edible oil procured other than the finished edible oil, whether a preliminary study was undertaken before its procurement and whether necessary approvals were sought and granted.
- ii) Determine whether the budgeting, procurement, expenditure, revenue/sales processes of this edible oil complied with relevant Laws, Regulations, approvals, bid specifications, and contractual agreements.
- iii) Undertake suitability tests on the inventory.
- iv) Conduct physical verification to confirm the existence and status of this edible oil.

**2.5 Scope of Work and Limitations**

**Scope**

2.5.1 The scope of audit was limited to the audit of importation, clearance, distribution, warehousing, and subsequent sale of edible cooking oil. The audit was carried out at KNTC Headquarters, Kenya Revenue Authority (KRA),

Kenya Ports Authority (KPA) and Kenya Bureau of Standards (KEBS). Physical verification was further conducted at one (1) KNTC owned and nine (9) hired warehouses and two (2) Container Freight Stations (CFSs).

2.5.2 The audit covered a period of 15 months from October, 2022 (inception of the Programme) to February, 2024.

#### **Limitations and Mitigation**

2.5.3 The Audit Team experienced challenges and limitations which were mitigated in several ways in order not to negatively affect the quality and result of the findings. Some challenges and mitigation measures taken included;

- i) Key KNTC personnel proceeded on their annual leave during the period of the audit exercise therefore, making it difficult to engage with the staff. The challenge was mitigated by writing to KNTC to recall the staff, to effectively coordinate the audit exercise.
- ii) Due to KNTC's operations complexity, there were some initial difficulties in understanding the processes of the Corporation. The Audit Team mitigated this challenge by constantly engaging the staff.
- iii) During the period of the audit exercise, other government investigative agencies were engaging with the KNTC staff and had taken custody of documents, thereby causing difficulties in the engagement with the staff and review of documents by the Audit Team. The challenge was mitigated by engaging with the oversight agencies to assist with records within their possession.
- iv) Retrieval of necessary records took longer than expected. The challenge was mitigated by communicating to the client the list of required documents before the audit exercise commenced. Further, during audit execution, the Audit Team constantly reminded the client on the documents not provided as part of follow up. However, despite numerous efforts, documents as detailed in **Appendix II** were not provided for audit.
- v) There were difficulties in conversion of currencies between the reporting currency of Kenya Shillings (Kshs) used for payments to suppliers, and US Dollars (USD) which was the currency used in the signed agreements. To mitigate this challenge, the Audit Team applied approximated exchange rates, based on the prevailing exchange rates as per Central Bank website,

at the time of signing of the agreements, issue dates of Letters of Credit and payment dates, as shown in **Table 2** of the Report.

- vi) The cooking oil Programme was part of the bulk commodities Programme which included subsidy fertilizer, imported rice and beans. The Audit Team could not separate the expenditure for the Line of Credit, collateral management services and insurance services for cooking oil because expenditure schedules were not provided for audit.
- vii) Information from the Business Registration Service (BRS) received on 3 July, 2024 revealed that Shehena Commodity Trading Ltd, one of the companies that supplied cooking oil, has a foreign company, Investafrica - Fzco as a Director. However, the Audit Team could not confirm the directorship of the foreign company due to time limitation.

## **2.6 Audit Approach and Methodology**

- 2.6.1 The Audit Team conducted inception meetings with the KNTC Management Team between 28 November and 05 December, 2023. After the audit execution, an exit meeting was held on 08 March, 2024.
- 2.6.2 The main evidence gathering methods applied during the audit execution were as follows;

### **Document Review**

- 2.6.3 To effectively plan for the audit and as a source of audit evidence, the Audit Team reviewed various documents including but not limited to: Concept Note on Importation and Distribution of Essential Commodities, 2022/2023 Financial Statements, Cabinet Despatch, Importation Approval Correspondences, Agreements and Contracts, KNTC's Organization Structure and Staff Establishment dated July, 2023, Public Procurement and Asset Disposal Act, 2015, Public Procurement and Asset Disposal Regulations, 2020, Public Finance Management Act, 2012, Public Finance Management (National Government) Regulations, 2015, State Corporations Act, 2010 (CAP 446), East African Community Customs Management Act, 2004, State Corporations Act, Cap 446, Mwongozo Guidelines, 2015, Standard Operating Procedures (SOPs), Relevant Policies and Circulars, Financing Correspondences, Approved Budgets, Cash Books, Bank Statements, Ledgers, Receipts and

Payment Schedules, Payment Vouchers, Invoices, Internal Audit Reports, amongst other documents.

#### **Analytical Review**

- 2.6.4 The Audit Team undertook computations, comparisons and other necessary analysis to obtain relevant audit evidence.

#### **Use of an Expert**

- 2.6.5 Due to the technical nature of the assignment, the Audit Team engaged the services of a qualified food inspector from KEBS, to offer professional guidance in the assessment of imported cooking oil, on whether they met Kenyan set standards. The inspector was nominated vide an email dated 09 February, 2024, followed up with a letter referenced KEBS/DIR/CONF./Vol. 4/ dated 14 February, 2024 by the Managing Director-KEBS.

- 2.6.6 The inspector prepared a report dated 26 February, 2024 titled "*Report to the Office of the Auditor-General on Edible Oil Imported by the Kenya National Trading Corporation (KNTC)*" The report was received by the Office on 07 March, 2024 and the findings of the expert incorporated in this Special Audit Report.

#### **Physical Verification**

- 2.6.7 The Audit Team carried out physical verifications at ten (10) warehouses that stored cleared cooking oil and two (2) Container Freight Stations (CFSs) that held uncleared cooking oil containers, in Nairobi and Mombasa.

#### **Circularization**

- 2.6.8 The Audit Team obtained corroborative evidence and requested written confirmation to be sent to the Auditor-General regarding;
- i) Bank balance confirmation for all KNTC bank accounts held in any commercial bank. This was done by requesting KNTC Management vide letter Ref: OAG/SA/CONF/31/(15) dated 11 January, 2024, to write to all its commercial banks to provide the confirmation.
  - ii) Amount owed by KNTC to all the service providers in relation to the importation Programme. This was done by requesting KNTC Management vide letter Ref: OAG/SA/CONF/31/(16) dated 11 January, 2024, and emails sent on various dates, to write to all its clearing agents, warehousing service

providers and any other service providers, to provide the information on amounts owed.

iii) Government agencies confirmations. This was done by writing to Kenya Ports Authority (KPA), Kenya Revenue Authority (KRA), Kenya Industrial Property Institute (KIPI), Business Registration Service (BRS), and Ethics and Anti-Corruption Commission (EACC), to confirm various issues to assist in the audit exercise. Information from KPA (via portable device) and KRA (via email) was received on 12 February and 03 April, 2024, respectively. Response from KIPI was received vide letter Ref: KIPI/TS/TM/GEN/2024/001 dated 27 February, 2024 and information from BRS was received vide letter Ref: BRS/CR/GC/2/VOL.10/51 dated 03 July, 2024. Further, the response from EACC was received through a letter Ref: EACC.6/1/2 VOL. VIII (3) dated 24 July, 2024 when the audit exercise was at the reporting stage.

2.6.9 The information obtained through the above-mentioned methodologies was analyzed, authenticated, and corroborated before using it as evidence in the report.

### Interviews

2.6.10 The Audit Team interviewed various officers to clarify on issues that assisted in making an informed report as detailed in the table below;

**Table 4: List of Interviewees**

	Name	Designation	Date Interviewed
1	Kevin Micheni	Head of Internal Audit-KNTC	28 Nov 2023
2	Peter Njoroge	Ag. Managing Director-KNTC	04 Dec 2023
3	Peter Wachira	Finance and Accounts Manager-KNTC	04 Dec 2023
4	Lucy M. Anangwe	Head of Strategy, Risk and Compliance-KNTC	04 Dec 2023
5	Evelyn Kimemia	Deputy Head of Supply Chain & Logistics-KNTC	04 Dec 2023
6	Bernard Lucheli	Principal Accounts Officer-KNTC	05 Dec 2023
7	Antony Nalianya	Ag. Manager, Sales-KNTC	05 Dec 2023
8	Lawrence Bengat	Head of ICT-KNTC	12 Dec 2023
9	Jeremiah Opata	Ag. Head of Human Resource & Administration-KNTC	12 Dec 2023
10	Benjamin Mwandawiro	KPA- Importation Department	12 Feb 2024
11	Erastus Kitolo	Accountant, Seacon (K) Ltd	13 Feb 2024
12	Various KEBS Staff	KEBS- Various Sections	13 Feb 2024
13	Various KRA Staff	KRA- Customs Department	14 Feb 2024
14	Various KNTC Staff	Various Warehouse Officers-KNTC	13-17 Feb 2024
15	Geoffrey Korir	Operations Manager-Adshef Investment Ltd	05 Mar 2024
16	Lilian Nzola	Declaration Officer-Adshef Investment Ltd	05 Mar 2024
17	Ronoh Birgen	Chief Manager-ICDN, KEBS	25 Mar 2024

2.6.11 The Audit Team intended to interview the former Managing Director on 25 March, 2024. However, she declined to attend the interview on the grounds that her contract had lapsed on the 19 January, 2024 and that the current office holder should handle any questions raised by the auditor.

## 2.7 Reporting Structure

2.7.1 This report is presented in the following format:

- I. Executive Summary
- II. Introduction and Background
- III. Detailed Findings
- IV. Irregularities and Recommendations
- V. Conclusion
- VI. Appendices

2.7.2 The report should be read in its entirety in order to comprehend fully the approach to and the findings of our work. The report has covered analysis and facts as understood with the aim of informing the Public Accounts Committee on the matters relating to importation of edible oils by the KNTC, bearing in mind the challenges and limitations experienced.

## 3.0 DETAILED FINDINGS

### 3.1 Conceptualization of the Programme

#### Concept Note for the Programme

- 3.1.1 The Corporation's Management developed a Concept Note titled "*Importation and Distribution of Essential Commodities as an intervention to bring down cost of living in the Country*". According to Section 2.1 of the Concept Note, the prices for the staple commodities in the food basket which included cooking oil, had risen by an average of 20% in September 2022, compared to the same period in 2021. Further, in May, 2022, the year-on-year food inflation in Kenya had increased to 12.4% compared to May 2021, where the food inflation rate was measured at 7%. As a result, the Corporation was to participate in the reduction of the cost of living, by supplying the essential commodities.
- 3.1.2 The Concept Note was prepared and signed by the Managing Director on 04 October, 2022 and approved by the Board of Directors on 05 October, 2022. However, documentary evidence indicating the Team/Committee appointed to develop the Concept Note and the Terms of Reference for the team were not provided for audit. The Audit Team could therefore, not ascertain whether the Concept Note was prepared in line with the requirements of the appointing authority.
- 3.1.3 Further, documentary evidence to confirm that a market survey or feasibility study was conducted to inform the preparation of the Concept Note was not provided for audit.

### 3.2 Governance Issues

#### KNTC Board of Directors

- 3.2.1 According to the Corporation's Organization Structure and Staff Establishment dated July, 2023, the Board of Directors are at the top of the structure and one of the key roles and functions according to Mwongozo, governance parameter 1.2(g), is to approve the annual budgets of the Corporation.

#### ***Non-Provision of Board Approvals of the Programme's Budget***

- 3.2.2 The Audit Team reviewed the original and supplementary budgets with a view of establishing whether the Programme was budgeted for. However, documentary evidence including the Board of Directors' minutes approving the Programme's budget in the financial year 2022/2023 were not provided for

audit, contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015, which states that, “*Without prejudice to the powers given under the Constitution and this Act and for the purposes of carrying out her duties effectively, the Auditor-General, or an officer authorized for the purpose of this Act, shall have powers- of unrestricted access to- all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution*”. It was therefore, not possible to establish the budget allocation for the Programme approved by the Board, for the period under review.

***Non-Adherence with Concept Note on Monitoring at Board of Directors Level***

3.2.3 According to Section 5.6 of the Concept Note on Monitoring and Evaluation, the overall oversight of the Programme and its implementation was a critical role for the Board of Directors. The Section highlighted that progress reporting would be an agenda item in all quarterly meetings of the Board of Directors, and the Board would receive and review reports by the Project Implementation Unit (PIU) indicating the overall progress.

3.2.4 However, the minutes of the Board of Directors on the overall monitoring and evaluation of the Programme were not provided. Therefore, evidence of Board of Directors’ involvement in providing oversight was not provided, contrary to the monitoring and evaluation arrangements set in the Concept Note.

***Lack of Minutes for the Programme Implementation Unit and Programme Committee Reports on Programme Implementation***

3.2.5 Section 5.2 of the Concept Note stated that the implementation of the Programme would be done at two levels namely the Project Implementation Unit (PIU) and the Project Committee (PC). The PIU was tasked to oversee implementation of the Programme and was to consist of the Corporation’s Management Committee under the leadership of the Managing Director. Further, the PIU was tasked to develop the Terms of Reference for operations of the PC.

3.2.6 The Audit Team requested for minutes of the PIU, PC’s Terms of Reference, PC members’ appointment letters and the reports for the PC, which were not provided. It was therefore, not possible to determine whether the PC was well constituted as per the requirements in the Concept Note. Further, the Audit

Team could not ascertain whether the Programme was implemented as per the Concept Note due to the absence of the PIU minutes and PC Reports.

### **Approvals for the Programme**

3.2.7 The Concept Note by KNTC Management was prepared by the Managing Director on 04 October, 2022. In the paper, the Management requested the Board of Directors to approve:

- a) KNTC to import and distribute the essential commodities, namely rice, sugar, cooking oil, powdered milk among others;
- b) That KNTC procures a Line of Credit of Kshs.15 Billion from Kenya Commercial Bank (KCB) through the Specially Permitted Procurement Procedure for the importation of the essential food commodities
- c) The opening of a bank account with KCB for the operationalization of the Programme
- d) The appointment of three (3) stockists in every City County, and one stockist in each of remaining Counties to distribute Corporation's commodities for a period of twelve months, renewable subject to evaluated performance and any amendment of the Stockist Policy.
- e) The opening of four (4) new depots in Mombasa, Kisii, Garissa and Narok as distributors to customers and stockists in the respective regions.
- f) The immediate appointment of six (6) large distributors through the Specially Permitted Procurement Procedure to distribute the essential commodities at regional levels.

3.2.8 The Audit Team noted that the Board, during a Special Board of Directors' meeting held on 05 October, 2022, were presented with the Concept Note and after deliberation, the Board:

- a) Approved, confirmed, and ratified the importation and distribution of essential food commodities by KNTC.
- b) Authorized Management to open a bank account with Kenya Commercial Bank Ltd for the operationalization of the Programme and gave the signing mandates.
- c) Authorized Management to seek approval for the use of the Specially Permitted Procurement Procedure (SPPP) from The National Treasury through the Parent Ministry to: import and distribute essential food

commodities, appoint 6 large distributors, and procure a Line of Credit of Kshs.15 Billion from KCB.

3.2.9 To address the rise in the cost of living, the Cabinet, through its Despatch released on 10 November, 2022, approved a framework to position the Corporation as the anchor of State initiatives, to create a price stabilizer for essential household food items, and allowed it to supplement other State initiatives by creating strategic reserves for staple and essential food items. The Corporation was therefore, granted approval by the Cabinet to implement the Programme.

3.2.10 The Managing Director-KNTC vide a letter Ref: KNTC/01/CORSP/99 dated 17 November, 2022 sought approval for use of Specially Permitted Procurement Procedure (SPPP) from the Cabinet Secretary-The National Treasury and Economic Planning. In response, the Cabinet Secretary-The National Treasury vide a letter Ref: NT/PPD/CONF/5/5/007 dated 1 December, 2022 stated that the business model in respect to the Corporation's transactions and its procurement policy for administrative and commercial activities had been reviewed and based on this, the Cabinet Secretary guided that the transactions could be progressed in line with the Corporation's commercial (procurement) policy, while ensuring that proper financing and accounting procedures were in place.

***Use of Specially Permitted Procurement Procedure before Approval was Granted***

3.2.11 In an internal memo dated 08 November, 2022, the Manager-Supply Chain and Logistics requested the Managing Director for approval to float Request for Quotations (RFQs) for purchase of bulk commodities and approval for the use of the SPPP procurement method, while quoting the Cabinet Despatch that had been released on 10 November, 2022, two (2) days after the date of the memo.

3.2.12 Further, the Corporation provided an undated tender document for Expression of Interest (EOI) for the supply of bulk commodities- tender number: EOI/KNTC/TRADE/2022/2023. The tender document indicated that bidders were required to submit their quotations by 11 November, 2022.

3.2.13 The sequence of the dates indicates that the Corporation had begun the procurement process and the use of SPPP prior to the Cabinet's approval

through its Despatch released on 10 November, 2022 and the approval by The National Treasury on the use of SPPP, granted on 01 December, 2022.

### **Compliance with Relevant Legislation on Tax Exemptions**

- 3.2.14 Review of documents revealed that the Corporation through the Cabinet Secretary-The National Treasury and Economic Planning vide Ref: TNT/ZZ/GP/30/2023(4) dated 20 January, 2023, approved the duty-free importation of specific imports by KNTC.
- 3.2.15 The Kenya Revenue Authority's Departmental Circular no. 7 of 14 February, 2023 stated that the approval for the exemption of duty on specific imports and quantities by KNTC was in line with Section 114(2) of the East African Community Customs Management Act, 2004 and the provisions of paragraph 20 of Part B of the Fifth Schedule to the Act. Amongst the imports exempted, was 125,000MT of cooking oil/fat out of the total approved quantity of 150,000MT.
- 3.2.16 The purpose of the circular was to inform KRA's Customs and Boarder Control Department on the exemptions granted to KNTC, and that the Department was to facilitate the duty-free importations.
- 3.2.17 The Kenya Revenue Authority issued duty free importation of bulk commodities under the Programme effective from 20 January, 2023, for a period of one year, consequently the import window was to lapse on 19 January, 2024. It was established that once the window lapsed, any further importation by KNTC of the listed products would revert to the payment of duty at the East African Community Common External Tariff (EAC CET) rates, unless otherwise approved by The National Treasury.
- 3.2.18 The Circular further outlined seven (7) guidelines that were to be applied by the Department in facilitating the duty-free importations for the Corporation, as detailed below;
  - i. The approval was effective from 20 January, 2023 for a period of one year.
  - ii. The importer/clearing agent acting for KNTC was to make an application on Integrated Customs Management System (ICMS) requesting for issuance of an exemption code. The applicant was to attach the importation documents and the letter of exemption from The National Treasury and Economic Planning.

- iii. The Remission and Exemptions Office (KRA) was to facilitate the issuance of an exemption code to exempt 100% import duty. The other taxes, fees and levies were payable as per applicable Laws.
- iv. The Customs Release Station was to verify and confirm that the actual goods conformed to the set conditions including quota allocations per product before physical release.
- v. Only five listed products (which included cooking oil/fat) and the donation were to qualify for the duty-free importation.
- vi. Remissions and Exemptions Office (KRA) through the Deputy Commissioner, Trade Facilitation Division, was to maintain appropriate records for such importations, submit monthly returns to the PS, The National Treasury, and copy such returns to the Commissioner and the Deputy Commissioner – Revenue & Regional Coordination.
- vii. The quantities approved in the referred letter of 20 January, 2023 relating to the importations by KNTC were not to affect in any way, the exemptions previously granted under other legal notice and they were to continue to be processed under the tenor of the approved exemption.

3.2.19 The Audit Team sought to obtain corroborative evidence from Kenya Revenue Authority (KRA) and requested for information regarding the taxes exempted for bulk commodities imported under the Programme, to be sent to the Auditor-General. This was done vide letter Ref No: OAG/SA/CONF/31/ (20) dated 07 February, 2024 and a follow-up email dated 12 March, 2024.

3.2.20 According to the information obtained from KRA and analyzed by the Audit Team, it was established that the Corporation received a total of seventy-five (75) exemption reference numbers as tax exemptions of 2,909,346 of 20-litre jerrycans of cooking oil that had been delivered by suppliers, as detailed in **Appendix III**.

3.2.21 Based on the above information, it was established that the exemptions were in line with legislations, circulars, and approvals.

### **3.3 Budget and Budgetary Control**

#### **Budget Process at Kenya National Trading Corporation (KNTC)**

- 3.3.1 The budget process for the Programme should have been guided by the Public Finance Management Act, 2012, the Public Finance Management (National Government) Regulations, 2015 and the approved Concept Note.
- 3.3.2 Page 5 of the Concept Note indicated that the projected working capital for the Programme was over Kshs.100 Billion, for a period of one year of the Programme.
- 3.3.3 However, a breakdown (itemized) of the projected working capital of Kshs.100 Billion was not provided for audit. It was therefore, not possible to ascertain the amount projected for the importation of cooking oil out of the Kshs.100 Billion working capital, and whether the projections as per the Concept Paper were applied in preparing the budget.

#### ***Inconsistencies between Concept Note Projections and Final Budget***

- 3.3.4 Page 16 of the Concept Note on financial sustainability indicates that the total sales for the Programme in Quarters 1, 2 and 3 that were within the financial year 2022/2023, had been projected at Kshs.57,907,552,716. However, according to the statement of comparison of budget and actual amounts for the period ended 30 June, 2023, the budgeted sales amount in the final budget was Kshs.8,736,250,088.
- 3.3.5 Comparison between the two amounts revealed a variance of Kshs.49,171,302,628. This indicates that the projections as per the Concept Note were not applied in the preparation of the budget.

#### ***Non-Provision of Approved Supplementary Budget***

- 3.3.6 The approvals for the Programme by the Cabinet and The National Treasury were granted after the original budget had been prepared and approved. The Corporation was therefore, required to revise the original budget, to incorporate the Programme activities. However, the supplementary budget approved by the Board was not provided for audit.

#### **Sources of Financing**

- 3.3.7 Section 5.9 of the Concept Note indicates that the Corporation was required to seek approval from The National Treasury to access the Line of Credit. The Corporation through letter Ref: TNT/CONF 110/01(F) 12 dated 04 November,

2022 and letter Ref: MITI/CS.5/KNTC/Vol.1/ (15) dated 18 November, 2022, was granted approval of Kshs.15 Billion and Kshs.9 Billion Line of Credit respectively by The National Treasury. Therefore, the Audit Team established that the projected working capital for the Programme of Kshs.100 Billion would be financed through rolling over of the Line of Credit totaling Kshs.24 Billion, which was approved by The National Treasury.

### 3.4 Procurement Process in the Programme

#### Preamble and Summary of Procured Items

- 3.4.1 Documents provided for audit revealed that the quantities approved under the edible oil Programme was 7.5 million of 20-litre jerrycans. However, only 2,807,806 of 20-litre jerrycans were procured out of which 2,518,434 of 20-litre jerrycans were delivered to the Port of Mombasa and the Inland Container Depot-Nairobi, by the various contracted suppliers. From the quantities delivered, KNTC received actual quantities of 1,710,269 of 20-litre jerrycans, leaving a balance of 807,864 of 20-litre jerrycans that were uncleared at the time of audit. A summary of the cooking oil quantities is as shown in the table below:

**Table 5: Summary of Cooking Oil Quantities**

Description	20-litre Jerrycans
<b>COOKING OIL QUANTITIES</b>	
Quantities Approved (150,000MT)	<b>7,500,000</b>
Quantities Procured	<b>2,807,806</b>
Quantities Delivered	<b>2,518,434</b>
Quantities Received (Sound and damaged)	1,710,269
Short Landing	301
Quantities Uncleared	807,864

- 3.4.2 The Audit Team reviewed and analysed the procurement process of the various commodities and services, and noted the following audit findings:

#### **Approval of Procured Commodities and Services in the Programme**

- 3.4.3 According to the Joint Cabinet memo dated 10 November, 2022, Cabinet approved a framework (i.e. the Concept Note) and allowed KNTC to supplement other state initiatives by creating strategic reserves for staple and essential food items, and any other commodities necessary for ensuring stability in the prices of core commodities consumed by Kenyans. Further, the Cabinet Secretary-The National Treasury and Economic Planning in a letter

vide Ref: NT/PPD/CONF/5/5/007 dated 01 December 2022, noted that KNTC had a mandate to act as a procurement agent for the Government.

3.4.4 Consequently, the Cabinet approved the proposed institutional mandate under Section 5.1 of the Concept Note, to have KNTC act as the Procurement Agent for strategic bulk commodities for the government and general public at reasonable commercial prices by buying essential food commodities at affordable prices for onward selling to the market.

3.4.5 Sections 5.3(i to iii) and 5.5 of the Concept Note together with the letter from KNTC vide Ref: KNTC/01/CORSP/99 dated 17 November, 2022 to the Cabinet Secretary-The National Treasury and Economic Planning, listed the commodities and services proposed to be procured in the Programme, and their expected quantities, as detailed below;

**a) Commodities**

- (i) Rice 150,000MT
- (ii) Sugar 200,000MT
- (iii) Beans 80,000MT
- (iv) Cooking Oil/Fat 150,000MT
- (v) Maize 300,000MT
- (vi) Wheat 150,000MT
- (vii) Powdered milk (Quantity not indicated)
- (viii) Soya 100,000MT
- (ix) DAP Fertilizer 300,000MT
- (x) NPK 23:23 45,000MT
- (xi) NPK 17:17 45,000MT
- (xii) Urea 50,000MT

**b) Services and Other Procurements**

- (i) Appointment of 3-6 major distributors under 2-year framework agreements renewable subject to performance
- (ii) Obtain a Line of Credit from Kenya Commercial bank
- (iii) The Corporation shall sell products to the consumers through its 9 depots and sales force
- (iv) Purchase an additional fleet of 5, 7.5, 10, 15 and 28 tonne trucks
- (v) Lease through operating lease arrangements- trucks, pickups and canters to haul the commodities to KNTC depots and to selected distribution points
- (vi) Use outsourced transport services; additional outsources transporters will be enlisted to complement the Corporation's existing fleet
- (vii) The Corporation will hire additional drivers on contract terms or lease the trucks with their drivers

- (viii) Stockists to be retailers/intermediaries appointed by the Corporation through a competitive bidding process guided by the PPAD Act, 2015 and PPAD Regulations, 2020 to trade with its name by buying the stocks from the Corporation for resale

3.4.6 During a special Board meeting held on 05 October 2022, the Board resolved under minute no. 5/10/SBDM/2022 to approve, confirm and ratify the importation and distribution of essential food commodities by KNTC, as presented in the Concept Note. In the Joint Cabinet Despatch released on 10 November, 2022, the Cabinet approved the framework, positioning the Corporation as the anchor of State initiatives to create a price stabilizer for essential household food items. Further, the Cabinet Secretary-The National Treasury and Economic Planning vide letter Ref: NT/PPD/CONF/5/5/007 dated 01 December, 2022 guided that the transactions as per the request letter be progressed in line with KNTC's procurement (commercial) policy.

3.4.7 Based on the above-mentioned documents, the Corporation therefore, received approvals to procure commodities and services for the Programme as detailed below:

**a) Commodities**

- (i) Rice 150,000MT
- (ii) Sugar 200,000MT
- (iii) Beans 80,000MT
- (iv) Cooking Oil/Fat 150,000MT
- (v) Maize 300,000MT
- (vi) Wheat 150,000MT
- (vii) Powdered milk (Quantity not indicated)
- (viii) Soya 100,000MT
- (ix) DAP Fertilizer 300,000MT
- (x) NPK 23:23 45,000MT
- (xi) NPK 17:17 45,000MT
- (xii) Urea 50,000MT

**b) Services and Other Procurements**

- (i) Appointment of 3-6 major distributors under 2-year framework agreements renewable subject to performance
- (ii) Obtain a Line of Credit from Kenya Commercial bank
- (iii) Allocation of warehouses to the essential commodities Programme
- (iv) Purchase of additional fleet of 5, 7.5, 10, 15 and 28 tonne trucks
- (v) For the direct distribution option:
  - ✓ Lease trucks, pickups, and canters, through operating lease arrangements.

- ✓ Hiring of additional drivers on contract terms or lease the trucks with their drivers.
- (vi) For the indirect distribution option:
  - ✓ Appointment of stockists (retailers/intermediaries) through a competitive bidding process guided by the PPAD Act, 2015 and PPAD Regulations, 2020

### **Procurement Process for the Programme**

- 3.4.8 For the financial year 2022/2023, the procurement process in the public sector was governed by the Public Procurement and Asset Disposal Act, 2015 (PPAD Act, 2015) and the Public Procurement and Asset Disposal Regulations, 2020 (PPAD Regulations, 2020).
- 3.4.9 The Corporation through the Concept Note, Board resolutions and various correspondence, requested for approval to use the Specially Permitted Procurement Procedure (SPPP) Method, in line with Section 114A of the PPAD Act, 2015, to procure commodities and services listed above (i to xviii).
- 3.4.10 According to Section 5.3 of the Concept Note, this was due to the fact that the Corporation had a new mandate to actively participate in reduction of cost of living by supplying the essential commodities, and in light of the urgency, compliance by the Corporation with the procurement guidelines set out in the PPAD Act, 2015 would not have been workable in the circumstances.
- 3.4.11 Section 5.3 of the Concept Note further mentioned that the procurement methods set out in the PPAD Act, 2015 were likely to take several months to implement due to, amongst other things, the time likely to be taken in the various processes and that the Corporation did not have the benefit of such time at its disposal.
- 3.4.12 Based on this, the Cabinet Secretary-The National Treasury and Economic Planning vide letter Ref: NT/PPD/CONF/5/5007 dated 1 December, 2022 gave guidance that the subject transactions be progressed in line with the Corporation's procurement policy for commercial activities, while ensuring proper financing and accounting procedures were in place.
- 3.4.13 Based on the above-mentioned documents and correspondence, KNTC therefore, requested and was granted approval on the use of SPPP method, in line with Section 114A (1) of the PPAD Act, 2015 which states that "*A procuring*

*entity may use a procurement procedure specially permitted by the National Treasury”.*

***Non-Compliance with Approvals on the Use of SPPP Method***

- 3.4.14 According to Section 15(1) of the State Corporation Act, CAP 446, “*a Board shall be responsible for the proper management of the affairs of a State Corporation and shall be accountable for the moneys, the financial business and the management of a State Corporation*”.
- 3.4.15 Further, Section 1.2(c) of the Mwongozo Guidelines, 2015 mandates the Board to set and oversee the overall strategy and approve significant policies of the organization and Section 3.5(a) of the Guidelines mandates the Board of Directors to establish a procurement policy that promotes sustainability, high ethical standards, and best practices.
- 3.4.16 According to the letter from the Cabinet Secretary-The National Treasury and Economic Planning vide Ref: NT/PPD/CONF/5/5/007 dated 01 December, 2022 approving the use of Specially Permitted Procurement Procedure (SPPP) method, the Cabinet Secretary-The National Treasury and Economic Planning noted that the Corporation had two policies governing the procurement processes:
- (i) The administrative activities (transactions) that had no profit implications were governed by the PPAD Act, 2015.
  - (ii) Commercial activities that involved trading for profit, were governed by a commercial policy for the institution to be able to raise enough funds to run its activities and to make profits.
- 3.4.17 The Audit Team reviewed documents provided for audit including the Corporation’s Trading Procurement Policy and Manual, and it was noted that the Corporation documented its procurement procedures and processes in the manual. However, the policy and manual had not been approved by the Board of Directors at the time of the audit and therefore, the Management engaged in the importation of bulk commodities using an unapproved policy contrary to Section 15(1) of the State Corporations Act, CAP 446, 3.5(a) of the Mwongozo Guidelines, 2015 and the letter approving the use of the SPPP method from the Cabinet Secretary-The National Treasury.
- 3.4.18 Based on the above irregularity and contravention to The National Treasury approval, the Audit Team relied on the Public Procurement and Asset Disposal,

Act, 2015 and the Public Procurement and Asset Disposal Regulations, 2020 when reviewing the procurements undertaken within the Programme.

### Procurement Process for the Cooking Oil Programme

3.4.19 Review of documents provided for audit revealed that out of the approved commodities and services listed in **section 3.4.7** of this report, the Corporation procured eight (8) commodities and services as follows;

i. Three (3) undertaken through direct procurement:

- Line of Credit facility- Initial (15 Billion) and Enhanced (9 Billion)
- Insurance services
- Legal services

ii. One (1) through restricted tendering:

- Clearing and Forwarding services

iii. Three (3) through Expression of Interest (EOI):

- Collateral management services
- Procurement for suppliers for importation of cooking fat/oil
- Distributors under 2-year framework agreements

iv. One (1) through other procurements:

- Warehousing services

3.4.20 A summary of the procurements is as shown in the table below:

**Table 6: Summary of Procurements under the Cooking Oil Programme**

Tender/Quotation Number	Method of Procurement	Name of Supplier Awarded	Contract Date	Contract Amount	Remarks
<b>i. Line of Credit- Initial (15 Billion) &amp; Enhanced (9 Billion)</b>					
None	Direct	Kenya Commercial Bank	07 December 2022	Kshs.15 Billion	Not in procurement plan
None	Direct	Kenya Commercial Bank	10 January 2023	Kshs.9 Billion	Not in procurement plan
<b>ii. Collateral Management Services</b>					
None	EOI	Inspectorate East Africa Ltd	21 December 2022	Various	Not in procurement plan
<b>iii. Procurement for Suppliers for Importation of Cooking Fat/Oil- 150,000 MT</b>					
EOI/KNTC/TRADE/2022/2023	EOI/RFQ	Multi Commerce FZC	10 February 2023	USD 30 per Unit	Not in procurement plan
EOI/KNTC/TRADE/2022/2023	EOI/RFQ	Charma Holdings	23 March 2023	USD 30 per Unit	Not in procurement plan
EOI/KNTC/TRADE/2022/2023	EOI/RFQ	Shehena Commodity Trading	27 January 2023	USD 30 per Unit	Not in procurement plan
<b>iv. Insurance Services</b>					
None	Direct (by KCB)	Mayfair	Contract Not Provided	N/A	Not in procurement plan
<b>v. Clearing and Forwarding Services</b>					
None	Restricted	Adshef Investment Ltd	05 December 2022	Various	Not in procurement plan
None	Restricted	Ufanisi Freighter (K) Ltd	05 December 2022	Various	Not in procurement plan
None	Restricted	Seacon Kenya Ltd	05 December 2022	Various	Not in procurement plan
<b>vi. Warehousing Services</b>					

Tender/Quotation Number	Method of Procurement	Name of Supplier Awarded	Contract Date	Contract Amount	Remarks
None	Others (Scoping & Negotiations)	Mtwapa Business Park	Contract Not Provided	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	NFT Autoport Ltd (Wallstreet)	09 August 2023	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	Lenjoh Enterprises (KTDA)	20 June 2023	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	Triple Front Line Ltd (Hallogen)	25 April 2023	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	Triple Front Line Ltd (Atlantis)	25 April 2023	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	NFT Autoport Ltd-Open Space	Contract Not Provided	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	Bepak Logistics Ltd	01 June 2023	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	Stanster	14 September 2023	Various	Not in procurement plan
None	Others (Scoping & Negotiations)	Benvic	23 August 2023	Various	Not in procurement plan
<b>vii. Legal Services</b>					
None	Direct	MMA Advocates	Contract Not Provided	N/A	Not in procurement plan
<b>viii. Distributors Under 2-Year Framework Agreements</b>					
EOI/KNTC/019/2022/2023	EOI	MarketForce Technologies Ltd	15 December 2022	16.5% of Total Cost of Sales	Not in procurement plan
EOI/KNTC/019/2022/2023	EOI	Twiga Foods Ltd	Contract Not Provided	N/A	Not in procurement plan

3.4.21 Further review of documents provided for audit revealed various procurement anomalies, as detailed in the ensuing paragraphs:

***Non-Inclusion of Services in the Procurement Plan***

3.4.22 The Audit Team reviewed the revised procurement plan approved on 28 October, 2022 and noted that the Corporation did not include the following items which were procured for the Programme;

- i. Line of Credit Facility- Initial (Kshs.15 Billion) and Enhanced (Kshs.9 Billion)
- ii. Collateral Management Services
- iii. Procurement for Suppliers for Importation of Cooking Fat/Oil- 150,000 MT
- iv. Insurance Services
- v. Clearing and Forwarding Services
- vi. Warehousing Services
- vii. Legal Services
- viii. Distributors Under 2-Year Framework Agreements

3.4.23 Non-inclusion of the items in the revised plan contravened Regulation 107(2)(b) of the PPAD Regulations, 2020, which states that, *“Pursuant to Section 114A(3) of the Act and in applying the Specially Permitted Procurement Procedure referred to under paragraph (1), an accounting officer shall plan the subject procurement and set it forth in its approved annual procurement plan, where applicable”*.

### ***Lack of Approved List of Registered Suppliers***

3.4.24 According to Section 71(4) of the PPAD Act, 2015, the lists of registered suppliers, contractors and consultants are to be applied on the alternative procurement methods as specified and appropriately. Further, Regulation 31(3)(f) of the PPAD Regulations, 2020, states that “*the role of the procurement function shall be to submit a list of registered or prequalified suppliers or contractors or consultants to the accounting officer for approval*”. However, the lists provided for audit review were neither dated nor approved.

#### **i. Line of Credit-Initial (Kshs.15 Billion) and Enhanced (Kshs.9 Billion)**

### ***Lack of Selection and Evaluation Process in Procuring a Line of Credit From a Bank***

- 3.4.25 The Board of Directors, in a Special Board meeting held on 05 October, 2022, granted the Management authority to seek approval for the Specially Permitted Procurement Procedure (SPPP) from The National Treasury through the Parent Ministry, to procure a Line of Credit for Kshs.15 Billion from Kenya Commercial Bank (KCB).
- 3.4.26 According to a letter Ref: TNT/CONF 110/01(F) 12 dated 04 November, 2022, the Cabinet Secretary-The National Treasury wrote to the CS-Ministry of Investments, Trade and Industry (MITI), approving KNTC to open a Line of Credit of up to Kshs.15 Billion with any government approved bank. A second request to the CS-The National Treasury vide Ref: MITI/CS.5/KNTC/Vol.1/(15) dated 18 November, 2022 for Kshs.9 Billion Line of Credit by Ministry of Investments, Trade and Industry, was granted by the Cabinet Secretary-The National Treasury on 19 November, 2022.
- 3.4.27 However, the Concept Note indicated Kenya Commercial Bank (KCB) as the bank from which the Corporation was to procure the Line of Credit, contrary to the Cabinet Secretary-The National Treasury’s approval dated 04 November, 2022, which did not specify a particular bank but only allowed the Corporation to open a Line of Credit with any government approved bank.
- 3.4.28 Documentary evidence on how KCB was identified from the government approved banks, and the process of evaluation was not provided for audit.

### **Contract/Signed Letters of Offer**

- 3.4.29 KCB and the Corporation signed an initial Letter of Offer dated 07 December, 2022, with an agreed total facility of Kshs.10.77 Billion (comprised of Revolving Composite Trade of Kshs.10.5 Billion, Overdraft of Kshs.100 Million and Asset Based Finance of Kshs.170 Million), instead of the approved Kshs.15 Billion. Thereafter, a Loan Enhancement letter was signed on 10 January, 2023, with an enhanced total facility of Kshs.24 Billion, being Revolving Composite Trade of Kshs.23.73 Billion, Overdraft of Kshs.100 Million and Asset Based Finance of Kshs.170 Million.
- 3.4.30 It was not clear to the Audit Team why on 07 December, 2022, KCB could not initially offer to the Corporation Kshs.15 Billion as approved by The National Treasury and instead, offered only Kshs.10.77 Billion, and on 10 January, 2023, a month later, agreed to increase the amount to Kshs.24 Billion. In addition, it was not clear why the Corporation signed two Letters of Offer on 07 December, 2022 and 10 January, 2023 instead of one, yet the dates of both Letters of Offer were after the two approvals were granted by the CS-The National Treasury on 04 and 19 November, 2022.

#### **ii. Collateral Management Services**

##### **Procurement Planning**

##### ***Irregular Initiation of Procurement for Collateral Management Services Prior to Letter of Offer Acceptance***

- 3.4.31 Clause 1 of the “Collateral Monitoring Conditions” in the initial Letter of Offer dated 07 December, 2022 states that, “selection of a Collateral Management agent including contracting for one to include the services to be offered which include oversight of the clearing process and stock release thereafter”. Based on this clause, the Corporation was to therefore, procure collateral management services, the role for the agent being to oversee both the clearing process and release of the stocks.
- 3.4.32 However, the Audit Team established that the Manager-Supply Chain and Logistics through an internal memo dated 01 November, 2022, requested the Managing Director-KNTC to approve the use of restricted tendering method for sourcing collateral management services. The request was approved on the same day.

3.4.33 It was therefore, established that the procurement process for the collateral management services begun on 01 November, 2022, which was more than one month prior to the Corporation accepting and signing the Letter of Offer, on 07 December, 2022.

#### **Advertisement**

##### ***Irregular Procurement for Collateral Management Services Prior to Receipt of List from KCB***

3.4.34 The internal memo dated 01 November, 2022 indicated that KCB provided to the Corporation, a list of collateral management providers, since the Corporation did not have a prequalified list of collateral management services.

3.4.35 However, the need for collateral management services was triggered by the initial Letter of Offer, signed on 07 December, 2022, approximately one month after the internal memo of 01 November, 2022. Further, KCB provided a list of five (5) collateral management providers via an email dated 10 November, 2022, more than one week after the internal memo of 01 November, 2022. The Corporation therefore, begun the procurement process for the collateral management agents on 01 November, 2022, prior to signing of the Letter of Offer on 07 December, 2022 and before receiving the list of providers from KCB on 10 November, 2022.

#### **Tender Opening and Evaluation**

##### ***Failure to Appoint a Tender Opening Committee and Lack of Minutes of the Committee***

3.4.36 The Corporation invited collateral management providers to bid via an expression of interest on 09 November, 2022.

3.4.37 The Audit Team, however, established that the Management did not appoint a Tender Opening Committee to open the bids therefore, contravening Section 78(1) of the PPAD Act, 2015, which states that "*An accounting officer of a procuring entity shall appoint a Tender Opening Committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed*". Further, minutes of the Tender Opening Committee were not provided for audit, contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015.

### **Lack of Appointment Letters for Evaluation Committee Members**

- 3.4.38 Documents provided for audit including the evaluation report on provision of collateral management services dated 17 November, 2022 indicated that there were seven (7) members during the evaluation process. Documentary evidence indicating appointment of the Evaluation Committee Members was however, not provided for audit, contrary to Regulation 28(2) of the PPAD Regulations, 2020 which states that “*The accounting officer of a procuring entity shall appoint an Evaluation Committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals*”. This was also in breach of Section 9(1)(e)(i) of the Public Audit Act, 2015.
- 3.4.39 The Evaluation Committee, in its report, noted that out of five (5) firms invited to submit proposals, two firms were responsive namely, Ace Global Depository (Kenya) Ltd and Inspectorate E.A. Ltd. The Committee recommended the tender to be awarded to Inspectorate E.A. Ltd, being the firm which had the capacity and had previously worked with public entities.
- 3.4.40 A Collateral Management agreement (Tripartite agreement) was entered into between Inspectorate East Africa Ltd, KCB and the Corporation on 21 December, 2022, at the following fees;

**Table 7: Collateral Management Agreement Fees**

No	Item	Rate per warehouse, per Month or any part thereof (Kshs)
1	Collateral management services for various commodities at various locations/warehouse(s)	250,000
2	Additional warehouses in a complex	150,000
3	Risk appraisal (One off at commencement)	30,000 (For locations within Mombasa and Nairobi)
4	Independent stock take (At takeover of stocks already in a warehouse or at request)	30,000 (For locations within Mombasa and Nairobi)

- 3.4.41 According to the agreement, Inspectorate East Africa Ltd was to manage and control stock on behalf of KCB for commodities procured through a Line of Credit.

iii. **Procurement of Suppliers for Importation of Cooking Fat/Oil- 150,000 MT**

**Procurement Planning**

***Inconsistencies in Procurement Method Applied***

3.4.42 Review of documents revealed inconsistencies in the procurement methods for the procurement of suppliers for importation of cooking fat/oil, as shown below;

**Table 8: Inconsistencies in Procurement Method Applied**

No	Reviewed Document	Procurement Method Indicated
1	Revised Procurement Plan approved on 28 October, 2022	Request for Quotation (RFQ)
2	Bidders' evaluation report dated 18 November, 2022	Direct procurement
3	Professional Opinion dated 21 November, 2022	Request for Quotation (RFQ)
4	Tender document	Expression of Interest (EOI)

3.4.43 The analysis revealed that four procurement documents indicated three different procurement methods.

3.4.44 Based on the differing methods mentioned in the various documents, the Audit Team could not ascertain the procurement method applied in the procurement of suppliers for the importation of 150,000 MT of cooking fat/oil.

***Irregular Directive on Commencement of Procurement Process***

3.4.45 According to an internal memo dated 07 October, 2022, the Managing Director advised the Supply Chain and Logistics Manager to proceed with the prequalification process for supply of bulk commodities within a week from the date of the memo, since the Corporation was required to commence the importation of various food commodities.

3.4.46 It was however, noted that as at 07 October, 2022 when the memo was issued, the Corporation had neither requested nor been granted approvals for the importation of bulk commodities. The approvals included the Cabinet Despatch on the expanded mandate dated 10 November, 2022 and The National Treasury approval for use of SPPP granted on 01 December, 2022, which were granted approximately one (1) and two (2) months after the internal memo dated 07 October, 2022.

## Advertisement

### *Irregularities in the Quotations and Identification of Firms*

3.4.47 The Audit Team was provided with an undated, unreferenced, and unsigned list of twenty-two (22) prequalified bidders said to have expressed interest in supplying various food commodities to the Corporation. Eighteen (18) quotations were provided for audit review comprising of fifteen (15) quotations in the list of twenty-two (22) bidders and three (3) quotations which were not in the list of twenty-two 22 bidders, as detailed below:

**Table 9: Quoted Amounts for Supply of Cooking Oil and Cooking Fat**

No	Date of Quote	Firm	Amount Quoted	Remarks
1	27 October 2022	Dewag Enterprises Ltd	1,560 USD per Metric Tonne (MT)	Not in the list of 22 Quoted per MT
2	27 October 2022	Tradewise Agencies Limited	1,700 USD per MT	Not in the list of 22 Quoted per MT
3	26 October 2022	Bitterguard Ltd	1,490 USD per MT	In the list of 22 Quoted per MT
4	27 October 2022	Enterprise Supplies Limited	1,400 USD per MT	In the list of 22 Quoted per MT
5	26 October 2022	Purma Holdings	1,400 USD per MT	In the list of 22 Quoted per MT
6	15 November 2022	Standard Petroleum (Cooking fat)	1,420 USD per MT	In the list of 22 Quoted per MT
7	28 October 2022	Darshan Kirpa General Trading L.L.C	35 USD per 20 Ltrs	In the list of 22 Did not quote per MT
8	27 October 2022	Nile Valley (FZE)	45 USD Per Jerrycan	In the list of 22 Did not quote per MT
9	25 October 2022	Sucden Middle East	38.5 USD/20Ltr Jerrycan	In the list of 22 Did not quote per MT
10	26 October 2022	Lone Trading FZE	30 USD per Jerrycan	In the list of 22 Did not quote per MT
11	05 November 2022	Shehena Commodity Trading Ltd	30 USD per 20Ltr Jerrycan	In the list of 22 Did not quote per MT
12	27 October 2022	Multi Commerce FZC	30 USD per 20Ltr Jerrycan	In the list of 22 Did not quote per MT
13	25 October 2022	Charma Holdings Ltd	30 USD per 20Ltr Jerrycan	In the list of 22 Did not quote per MT
14	25 October 2022	Office Automation Company FZC	50 USD per Jerrycan	In the list of 22 Did not quote per MT
15	26 October 2022	Fortuna Trading DMCC	33.75 USD Unit Price	In the list of 22 Did not include unit of measure
16	27 October 2022	Prioss Limited	1,500 Unit Price in USD	Not in the list of 22 Did not include unit of measure
17	28 October 2022	Janbe Investment Ltd	1,550 Unit Price Kshs	In the list of 22 Did not include unit of measure
18	28 October 2022	Evertec General Trading Company	1,400 USD on CIF	In the list of 22 Did not include unit of measure

3.4.48 Based on the undated list of twenty-two (22) suppliers together with the eighteen (18) quotations, the following irregularities were noted:

- i. Non-provision of the following documents;

- a) The request for quotation template/request for proforma invoice indicating the specifications of the bulk commodities.
  - b) Communication to the firms to whom the quotation template/request for proforma invoice request was sent to
  - c) Documents indicating how the twenty-two firms in the undated and unsigned list were identified by the Corporation.
- ii. Out of the provided eighteen (18) quotations, three (3) firms which had quoted did not appear in the list of twenty-two (22) bidders. These were Dewag Enterprises Ltd; Tradewise Agencies Limited; and Prioss Limited.
  - iii. All the dates indicated on the eighteen (18) quotations ranging between 25 October, 2022 and 15 November, 2022 were before the approval by The National Treasury on the use of the SPPP, which was granted on 01 December, 2022.

***Lack of Documentation on Identifying Bidders to attend Pre-Bid Meeting***

3.4.49 According to minutes of a pre-bid meeting dated 07 November, 2022, the Corporation held a pre-bid meeting with various Suppliers of essential food commodities. Representatives of nine (9) suppliers were present in the meeting and were provided with the list of commodities to be supplied. In addition, the suppliers were informed that the supply of the commodities would be done through a Line of Credit or consignment basis.

3.4.50 The nine (9) bidders present in the meeting were as follows:

- i. Charma Holdings
- ii. Standard Petroleum
- iii. Larma Commodity
- iv. Markram Imports & Exports Ltd
- v. Biluka Enterprises Ltd
- vi. Shehena Commodity
- vii. Enterprise Supplies
- viii. Evertec General Trading Company
- ix. Purma Holdings

3.4.51 The Audit Team could not establish how the Corporation identified the nine (9) bidders and on which basis they were informed to attend the pre-bid meeting.

***Pre-Bid Meeting Between KNTC and Various Suppliers for Essential Food Commodities held Prior to Cabinet's Approval of the Programme***

3.4.52 The Audit Team noted that the pre-bid meeting with the nine (9) bidders was held on 07 November, 2022. However, the Cabinet Despatch that approved KNTC's framework was dated 10 November, 2022, three (3) days after the pre-bid meeting was held.

***Contradiction in the number of Bidders Prequalified and Evaluated***

3.4.53 The Evaluation Committee in its minutes signed on 18 November, 2022, indicated a list of thirty-one (31) bidders for the supply of bulk commodities was received and bids subjected to the evaluation process.

3.4.54 The Audit Team compared the list of thirty-one (31) bidders with the list of twenty-two (22) prequalified suppliers and noted that twenty (20) bidders appeared in the list of twenty-two (22). The two bidders who did not appear were Lamar Commodity Trading DMCC and Fortuna Trading DMCC. The Corporation did not provide evidence on how the thirty-one (31) bidders were selected.

3.4.55 In addition, it was not clear why the Corporation did not use the prequalified list of twenty-two (22) bidders or the eighteen (18) quotations, and instead subjected a different list of thirty-one (31) bids through the evaluation process.

3.4.56 It was therefore, not clear where the Corporation obtained the list of thirty-one (31) which was used in the bidders' evaluation report dated 18 November, 2022. Further, the bid documents indicated in the evaluation report for the thirty-one (31) bidders were not provided for audit.

**Tender Opening and Evaluation**

***Absence of Appointment Letters for Tender Opening Committee Members***

3.4.57 In an internal memo dated 21 November, 2022 from the Supply Chain and Logistics Manager (SCLM) to the Managing Director, bidders in the supply and delivery of bulk commodities for quotation no. KNTC/TRADE/2022-2023 were invited on 08 November, 2022 and the tenders opened on 11 November, 2022.

3.4.58 However, the appointment letters for the five (5) members of the Tender Opening Committee listed in the report were not provided for review. The Audit Team could therefore, not ascertain whether the Committee was appointed in line with Section 78(1) of the PPAD Act, 2015 which states that, "An accounting

*officer of a procuring entity shall appoint a Tender Opening Committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed”.*

***Non-Provision of Appointment Letters for Ad hoc Evaluation Committee Members***

3.4.59 According to an internal memo dated 15 November, 2022, the Supply Chain and Logistics Manager (SCLM) requested the Managing Director to approve the appointment of proposed five (5) members to the ad-hoc Evaluation Committee for bulk commodities. Appointment letters for the Evaluation Committee Members were not provided for audit, thereby contravening Regulation 28(2) of the PPAD Regulations, 2020 which states that “*The accounting officer of a procuring entity shall appoint an Evaluation Committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals*”. This is also in breach of Section 9(1)(e)(i) of the Public Audit Act, 2015.

3.4.60 Further, the Audit Team compared the members of the Opening Committee and the ad hoc Evaluation Committee and noted that the members in the two Committees were the same, thereby contravening Section 78(1)(b) of the PPAD Act, 2015 which states that, “*An accounting officer of a procuring entity shall appoint a Tender Opening Committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed- at least one of the members shall not be directly involved in the processing or evaluation of the tenders*”.

***Irregular Recommendation by the Evaluation Committee***

3.4.61 Review of documents including the quotations and minutes of the pre-bidding meeting provided for audit revealed that the quantity of the commodities including cooking oil/fat was indicated in metric tons. This therefore implied that the suppliers as a requirement, were to submit their quotations using metric tons as the unit of measure. An analysis by the Audit Team on the eighteen (18) quotations revealed that eight (8) were quoted per 20-litre jerrycan, while four (4) bidders did not indicate the unit of measure, contrary to the requirements in the quotations and minutes of the pre-bidding meeting. According to Section 79(1) of the PPAD Act, 2015, “*A tender is responsive if it conforms to all the*

*eligibility and other mandatory requirements in the tender documents*".

Therefore, based on the Act, the twelve (12) bids were not responsive.

3.4.62 Only six (6) quotations were therefore deemed responsive. The firms included:

- i. Dewag Enterprises Ltd
- ii. Tradewise Agencies Limited
- iii. Bitterguard Ltd
- iv. Enterprise Supplies Limited
- v. Purma Holdings
- vi. Standard Petroleum.

3.4.63 According to the evaluation report, the Evaluation Committee recommended a total of fourteen (14) firms out of the thirty-one (31) evaluated for award of the supply of bulk commodities, listed below:

- i. M/s Charma Holdings Limited
- ii. M/s Purma Holdings
- iii. M/s Enterprises Supplies
- iv. M/s Evertec General Trading Company
- v. M/s Multi Commerce FZC
- vi. M/s Full back International Limited
- vii. M/s Abicent International Ltd
- viii. M/s Shehena Commodity
- ix. M/s Lone Trading
- x. M/s Makram Imports & Exports Ltd
- xi. M/s Standard Petroleum LLC
- xii. M/s Finiscope Investment Ltd
- xiii. M/s SugarBee East Africa Ltd
- xiv. M/s Biluka Enterprises

3.4.64 Out of the fourteen (14) recommended bidders, the Audit Team noted that only three (3) out of the six (6) bidders deemed responsive from the Audit Team's analysis were recommended namely, Enterprise Supplies Limited; Purma Holdings; and Standard Petroleum. Therefore, the balance of eleven (11) recommended firms had not been considered responsive and were therefore, irregularly recommended for the award of supply of bulk commodities.

### Agreements between the Corporation and the Suppliers for Cooking Oil

3.4.65 According to the agreements provided for audit, it was established that the Corporation entered into ten (10) agreements with seven (7) suppliers for the supply of cooking oil/cooking fat. The Audit Team noted that out of the seven (7) contracted suppliers, four (4) were part of the eleven (11) irregularly recommended bidders namely; Multi Commerce FZC, Charma Holdings Ltd; Shehena Commodity Trading Ltd; and Evertec General Trading Co. Details of the ten (10) agreements entered into are shown in the table below:

**Table 10: Agreements Entered into for the Supply of Cooking Oil**

Supplier	Agreement Date	Quantity	Unit Price (USD)	Amount (USD)	Price Terms	Delivery Terms
Multi Commerce FZC	10 Feb 2023	465,500 jerrycans (approx.9,310 MT)	30 per jerrycan	13,965,000	Irrevocable LC Transferable Unconfirmed 180 days	CFR
Multi Commerce FZC	10 Feb 2023	465,500 jerrycans (approx.9,310 MT)	30 per jerrycan	13,965,000	Irrevocable LC Transferable Unconfirmed 180 days	CFR
Multi Commerce FZC	10 Feb 2023	465,500 jerrycans (approx.9,310 MT)	30 per jerrycan	13,965,000	Irrevocable LC Transferable Unconfirmed 180 days	CFR
Multi Commerce FZC	10 Feb 2023	575,890 jerrycans (approx.11,517.8 MT)	30 per jerrycan	17,276,700	Irrevocable LC Transferable Unconfirmed 180 days	CFR
Charma Holdings Ltd	23 Mar 2023	535,416 jerrycans (approx.10,708.3 MT)	30 per jerrycan	16,062,480	Irrevocable LC Transferable Unconfirmed 180 days	CIF
Shehena Commodity Trading Ltd	27 Jan 2023	353,540 jerrycans (approx.7,070.8 MT)	30 per jerrycan	10,606,200	Irrevocable LC Transferable Unconfirmed 180 days	CIF
Enterprise Supplies Ltd	06 Mar 2023	6,250 MT (approx.312,500 jerrycans)	1,400 per MT	8,750,000	On Consignment- KNTC to sell products and then pay consignor	CIF
Evertec General Trading Co	06 Mar 2023	6,250 MT (approx.312,500 jerrycans)	1,400 per MT	8,750,000	On Consignment- KNTC to sell products and then pay consignor	CIF
Purma Holdings Ltd	01 Mar 2023	12,500 MT (approx.625,000 jerrycans)	1,400 per MT	17,500,000	On Consignment- KNTC to sell products and then pay consignor	CIF
Standard Petroleum LLC	15 Nov 2022	100,000 MT (approx.5 million jerrycans)	1,420 per MT	142,000,000	Irrevocable LC Transferable Unconfirmed 360 days	CFR
<b>Totals</b>		<b>182,227 MT</b>		<b>262,840,380</b>		

3.4.66 The Corporation entered into contracts with seven (7) firms for the supply of approximately 182,227 metric tonnes (MT) of cooking oil/fat, which was 32,227 MT in excess of the 150,000 MT approved by the Cabinet Secretary-The National Treasury, on 01 December, 2022. (Conversion rate applied was 1 metric tonne= approximately 1,000 litres).

3.4.67 Out of the ten (10) agreements, the suppliers were to deliver as follows;

- i. Seven (7) agreements entered into with four (4) suppliers were for importation of cooking oil after issuance of letters of credit (LCs), as guarantees to the suppliers' banks. The four (4) suppliers were;

- Multi Commerce FZC
- Charma Holdings Ltd
- Shehena Commodity Trading Ltd
- Standard Petroleum LLC

ii. The remaining three (3) agreements entered into with three (3) suppliers were to be on consignment therefore, the Corporation was not to be involved in the importation of the cooking oil. The suppliers were to deliver the cooking oil to the Corporation's depots, who would then sell the cooking oil and pay the suppliers on a monthly basis, but not later than the fourteenth day of the following month preceding the sale. The three (3) suppliers were;

- Enterprise Supplies Ltd
- Evertec General Trading Co.
- Purma Holdings Ltd

3.4.68 Information from Business Registration Bureau (BRS) revealed that Multi Commerce FZC is a Company registered in the United Arab Emirates and was issued with a certificate of incorporation in Kenya as a foreign Company on 21 June, 2023. The Company was therefore, not incorporated in Kenya at the time of signing the agreement on 10 February, 2023.

***Splitting of Contracts Resulting to Non-Clearance with the Attorney General***

3.4.69 Section 134(2) of the PPAD Act, 2015 states that "*An accounting officer of a procuring entity shall ensure that all contracts of a value exceeding Kshs.5 Billion are cleared by the Attorney General before they are signed*".

3.4.70 Review of the agreements between the Corporation and the various suppliers for the supply of cooking oil revealed that, one of the suppliers, Multi Commerce FZC, had entered into four (4) agreements with the Corporation, for the supply of cooking oil, which were all signed on 10 February, 2023.

3.4.71 The total quantity of cooking oil in the four (4) agreements amounted to 1,972,390 of 20-litre jerrycans with a unit price of USD 30 per jerrycan translating to USD 59,171,700, approximately Kshs.7,401,196,236 based on the CBK mean exchange rate of Kshs.125.08 on 10 February, 2023. The total

sum of Kshs.7,401,196,236 comprised of three (3) contracts of Kshs.1,746,742,200 each and one (1) contract of Kshs.2,160,969,636.

3.4.72 The total value of the four (4) contracts amounting to Kshs.7,401,196,236 exceeded Kshs.5 Billion and therefore, the Corporation should have cleared with the Attorney General prior to signing of the agreements.

3.4.73 However, the Corporation split the total value into four (4) contracts in unclear circumstances, resulting to the values in each of the four agreements being lower than the Kshs.5 Billion threshold, thereby deliberately avoiding the Attorney General's clearance.

***Unfavorable Terms in the Agreement Leading to Loss of Public Funds***

3.4.74 Incoterms® are a set of eleven (11) individual rules issued by the International Chamber of Commerce (ICC), which define the responsibilities of sellers and buyers for the sale of goods in international transactions. Each Incoterms rule clarifies the tasks, costs, and risks to be borne by buyers and sellers in the transactions. Two out of the eleven (11) Incoterms® rules include CFR (Cost and Freight) and CIF (Cost, Insurance and Freight). The Audit Team noted that these two terms (CFR and CIF), were used in the ten (10) agreements entered into between the Corporation and the seven (7) of the suppliers.

3.4.75 Further, Black's Law Dictionary (8th ed. 2004) defines CFR and CIF as follows;

i. CFR (Cost and Freight): A mercantile-contract term allocating the rights and duties of the buyer and the seller of goods with respect to delivery, payment, and risk of loss, whereby the seller must clear the goods for export, arrange for transportation by water, and pay the costs of shipping to the port of destination. This term is used only when goods are transported by sea or inland waterway.

ii. CIF (Cost, Insurance and Freight): mercantile-contract term allocating the rights and duties of the buyer and the seller of goods with respect to delivery, payment, and risk of loss, whereby the seller must clear the goods for export, arrange for transportation by water, procure insurance against the buyer's risk of damage during carriage, and pay the costs of shipping to the port of destination. This term is used only when goods are transported by sea or inland waterway.

3.4.76 According to the two (2) agreements between the Corporation and Charma Holdings and Shehena Commodity Trading, the two suppliers were required to

deliver 535,416 and 353,540 of 20-litre jerrycans of cooking oil respectively, at a cost of USD 30, on CIF terms.

3.4.77 However, the four (4) agreements between Multi Commerce FZC and the Corporation required Multi Commerce FZC to deliver a total of 1,972,390 of 20-litre jerrycans (approximately 39,447.80 MT) of cooking oil at a cost of USD 30 per jerrycan on CFR terms. In addition, the agreement between Standard Petroleum LLC and the Corporation required Standard Petroleum to deliver a total of 100,000 MT of cooking oil at a cost of USD 1,420 per MT (approximately USD 28.40 per jerrycan), on CFR terms.

3.4.78 The agreements for Multi Commerce FZC and Standard Petroleum did not therefore, include insurance thereby exposing the Corporation to risk of loss during carriage/shipment. It was further noted that Multi Commerce FZC and Standard Petroleum were to deliver 22% and 55% respectively, resulting to 77% of the total quantity contracted of 182,227 MT. Review of documents including notification to the two (2) suppliers dated 21 November, 2022 revealed that the agreed rates in the notifications was CIF and not CFR as per the agreements. Documentary evidence indicating the negotiations between the Corporation and each of the two suppliers was not provided for audit.

3.4.79 No documentary evidence was provided to support why the Corporation entered into unfavorable agreements with the two firms who were contracted to cumulatively supply the highest quantity of 139,447.80 MT (approximately 77%).

#### ***Irregular Issuance of Letters of Credit***

3.4.80 Review of the agreements and information provided for audit revealed that out of the seven (7) suppliers that the Corporation entered into agreements with, four (4) suppliers were to import the cooking oil after issuance of letters of credit (LCs) as guarantees to the suppliers' banks.

3.4.81 Out of the seven (7) agreements with four (4) suppliers, six (6) copies of LCs that had been issued to the suppliers' banks were provided and are detailed in the table below:

**Table 11: Copies of Letters of Credit Provided**

Supplier	Supplier's Bank	LC Reference Number	LC Date	LC Quantity	Unit Price (USD)	LC Amount (USD)
Multi Commerce FZC	Standard Bank South Africa	Not Indicated	13 Jan 2023	536,800 jerrycans approx. 10,736 MT	26 per jerrycan	13,956,800
Multi Commerce FZC	Standard Bank South Africa	Not Indicated	13 Jan 2023	665,610 jerrycans approx. 13,312.2 MT	26 per jerrycan	17,305,860
Multi Commerce FZC	Standard Bank South Africa	Not Indicated	13 Jan 2023	536,800 jerrycans approx. 10,736 MT	26 per jerrycan	13,956,800
Charma Holdings	Equity bank	Not Indicated	13 Jan 2023	12,850 MT approx. 642,500 jerrycans	1,250 per MT	16,062,500
Shehena Commodity Trading Ltd	Equity bank	Not Indicated	25 Jan 2023	10,285 MT approx. 514,250 jerrycans	1,400 per MT	14,399,000
Standard Petroleum LLC	Emirates Islamic Bank, Dubai UAE	Not Indicated	Not Indicated	12,500 MT approx. 625,000 jerrycans	1,420 per MT	17,750,000

3.4.82 Comparison between the dates in the copies of the LCs and suppliers' agreements is as shown in the table below.

**Table 12: Comparison Between Dates in Agreements and LCs**

No	Entity	Date as per Agreement	Date as per Copies of LCs	Variance in Dates
1	Multi Commerce FZC	10 Feb 2023	13 Jan 2023	28 days
2	Multi Commerce FZC	10 Feb 2023	13 Jan 2023	28 days
3	Multi Commerce FZC	10 Feb 2023	13 Jan 2023	28 days
4	Charma Holdings	23 Mar 2023	13 Jan 2023	69 days
5	Shehena Commodity	27 Jan 2023	25 Jan 2023	2 days
6	Standard Petroleum LLC	15 Nov 2022	15 Nov 2022	0

3.4.83 As per the table above, it was established that five out of the six (6) LCs provided for audit were issued prior to signing of the agreements without justification.

***Inconsistencies Between Quantities in Agreement and LC Information***

3.4.84 Analysis of documents provided for audit including agreements between the Corporation and Multi Commerce FZC, Charma Holdings, Shehena Commodity and Standard Petroleum, copies of LCs and a schedule that indicated details of the letters of credit issued to suppliers revealed inconsistencies in the quantities contracted, as shown in the table below:

**Table 13: Inconsistencies Between Quantities in Agreement and LCs**

No	Entity	Agreement Quantity	Copies of LCs Quantity	KCB LC Schedule Quantity (Jerrycans)
1	Multi Commerce FZC	1,972,390 jerrycans	1,739,210 jerrycans	1,972,390
2	Charma Holdings	535,416 jerrycans	12,850 MT (approx.642,500 jerrycans)	535,416
3	Shehena Commodity	353,540 jerrycans	10,285 MT (approx.514,250 jerrycans)	300,000
4	Standard Petroleum	100,000 MT (approx.5 million jerrycans)	12,500 MT (approx.625,000 jerrycans)	Contract terminated
	<b>TOTAL</b>	<b>7,861,346</b>	<b>3,520,960</b>	<b>2,807,806</b>

3.4.85 No documentary evidence justifying the inconsistencies was provided for audit. (The conversion rate applied for Charma Holdings and Shehena Commodity was 1 metric tonne= approximately 1,000 litres).

***Inconsistencies in Unit Prices***

3.4.86 Comparison between the unit prices in the agreements and copies of the LCs revealed the following variances:

**Table 14: Comparison Between Unit Prices in Agreements and LCs**

No	Entity	Unit Price as per Agreement	Unit Price as per LCs	Unit Price as per LCs per Jerrycan (Approximate) (USD)	Variance (USD)
1	Multi Commerce FZC	USD 30 per jerrycan	USD 26 per jerrycan	26	4
2	Charma Holdings	USD 30 per jerrycan	USD 1,250 per MT (approx.25 per jerrycan)	25	5
3	Shehena Commodity	USD 30 per jerrycan	USD 1,400 per MT (approx.28 per jerrycan)	28	2
4	Standard Petroleum LLC	USD 1,420 per MT (approx.28.4 per jerrycan)	USD 1,420 per MT (approx.28.4 per jerrycan)	28.4	0

3.4.87 The conversion rate applied for the LC unit prices quoted in metric tonnes was 1 metric tonne= approximately 1,000 litres.

3.4.88 There was no documentary evidence to support the variances in unit prices between the LCs and the agreements. Further, due to the inconsistencies in the quantities as reported in **Table 13**, the Audit Team could therefore, not ascertain the total cost of the quantities contracted.

### ***Anomalies in the Agreements***

- 3.4.89 Review of the agreements signed by Multi Commerce FZC, Charma Holdings and Shehena Commodity, revealed the following irregularities:
- i. Clause 5 of the agreements stated “Products specification: Cooking oil as per client specifications attached hereto and *Marked Schedule A*”. However, Schedule A was not attached to the agreement.
  - ii. Clause 10 of the agreements stated “Price per Ton”, yet the prices quoted were per 20-litre jerrycan.
  - iii. Clause 11(v) of the agreements stated, “Beneficiary Bank account is as follows”, yet the required details which included the account name, bank name, account number and account type were blank.
- 3.4.90 Consequently, the Audit Team could not ascertain whether the cooking oil delivered by the suppliers met the specifications as per the agreements and whether the payments to the suppliers were made to the agreed bank accounts.

### ***Use of Wrong Article when Terminating the Contract***

- 3.4.91 Documents provided for audit revealed that the agreement between the Corporation and Standard Petroleum LLC dated 15 November, 2022 on account of importation of cooking fat was terminated on 04 April, 2023 on account of non-delivery of the cooking fat by Standard Petroleum, in line with Clause 17 of the agreement, which titled “Default by Buyer” and outlined what constituted a breach by the buyer (the Corporation) as follows;
- i. The buyer fails to provide an acceptable irrevocable letter of credit
  - ii. Payment of the purchase price for any consignment not received by the seller in the manner contemplated herein
  - iii. The buyer fails to accept delivery of the commodities as certified by KEBS
  - iv. The buyer cancels any orders already sourced and paid for by the seller, for reasons not attributable to the seller.
- 3.4.92 Clause 17 therefore, referred to what constituted a breach by the Corporation, and not termination of the contract due to non-delivery of the cooking fat.
- 3.4.93 Review of the agreements revealed that the Corporation should have terminated the contract under Clause 16(a) which states that “In a condition where the seller fails to deliver the commodities in accordance to the monthly tonnage provided in Clause 14, or other dates agreed by both parties or fails to

deliver any or part of the consignment for any reason whatsoever except due to a *Force Majeure* event, the buyer reserve right to terminate the contract”.

3.4.94 Consequently, the Corporation may be at the risk of litigation by the supplier, for terminating the contract under the wrong clause.

**Inspection and Acceptance of Imported Cooking Oil  
Quantities Delivered by Suppliers**

3.4.95 Out of the seven (7) suppliers contracted to supplier cooking oil/fat, review of documents provided for audit revealed the following:

- i. Three suppliers- Multi Commerce FZC, Charma Holdings, and Shehena Commodity Trading were issued with LCs, and delivered cooking oil to the Corporation totaling 2,518,434 of 20-litre jerrycans
- ii. Three suppliers- Enterprise Supplies Ltd, Evertec General Trading Co., and Purma Holdings Ltd who signed consignment contracts, did not deliver cooking oil to the Corporation
- iii. Standard Petroleum LLC had the contract terminated due to non-delivery

3.4.96 Audit review of the letters of credit schedule revealed that out of the 2,807,806 of 20-litre jerrycans guaranteed by the LCs, the total quantities delivered by the three suppliers amounted to 2,518,434 of 20-litre jerrycans, as detailed in the table below:

**Table 15: Quantities Delivered by Suppliers**

Supplier	Quantity as per Schedule (Jerrycans)	LC No.	Quantity Delivered as per Bills of Lading (Jerrycans)	Quantity yet to be Delivered (Jerrycans)
Multi Commerce FZC	465,500	TF2302000011	1,972,240	150
Multi Commerce FZC	465,500	TF2302000012		
Multi Commerce FZC	575,890	TF2302000013		
Multi Commerce FZC	465,500	TF2302000014		
Charma Holdings	535,416	TF2302000016	532,774	2,642
Shehena Commodity Trading	300,000	TF2303400021	13,420	286,580
<b>Totals</b>	<b>2,807,806</b>		<b>2,518,434</b>	<b>289,372</b>

3.4.97 The Audit Team established that all quantities delivered were within the contracted quantities. At the time of audit, quantities totaling 289,372 of 20-litre jerrycans had not been delivered by the suppliers.

***Unaccounted for Quantities***

3.4.98 The Office of the Auditor-General through letters referenced OAG/SA/CONF/31/ (18), OAG/SA/CONF/31/ (19) and OAG/SA/CONF/31/ (20)

both dated 07 February, 2024, requested for information from the Kenya Bureau of Standards (KEBS), Kenya Ports Authority (KPA) and Kenya Revenue Authority (KRA) respectively, to assist in the audit.

3.4.99 An analysis of the information received from Kenya Revenue Authority (KRA) revealed that quantities totaling 424,462 of 20-litre jerrycans of cooking oil were imported on behalf of the Corporation. On arrival at the Port of Mombasa, the quantities were cleared, after receiving some tax exemptions and payment of the taxes not exempted. Details of the quantities are as shown in the table below:

**Table 16: 424,462 Jerrycans not Included in Quantity Delivered**

Supplier/ Clearing Agent	Bill of Lading	As Per Corporation's Data		As per KRA Information		Unaccounted For	
		Containers (Number)	Quantities (Jerrycans)	Containers (Number)	Quantities (Jerrycans)	Containers (Number)	Quantities (Jerrycans)
Multi Commerce FZC (Supplier)	MEDUP8918245	25	33500	25	33,550	0	50
	MAEU227488342	50	66,500	150	199,500	100	133,000
	AYN1041717	12	15,850	24	31788	12	15,938
	AYN1041724	24	31,844	96	127,968	72	96,124
	MEDUP8986036	24	31,750	48	63,480	24	31,730
<b>Sub Total</b>		<b>135</b>	<b>179,444</b>	<b>343</b>	<b>456,286</b>	<b>208</b>	<b>276,842</b>
Both Unknown	MAEU230591627	Not in KNTC's Records	Not in KNTC's Records	10	13,420	10	13,420
Unknown Supplier Cleared by Ufanisi	MEDUPC075512	Not in KNTC's Records	Not in KNTC's Records	20	26,840	20	26,840
Unknown Supplier Cleared by Ufanisi	MEDUPC089901	Not in KNTC's Records	Not in KNTC's Records	20	26,840	20	26,840
Unknown Supplier Cleared by Ufanisi	MEDUPC146867	Not in KNTC's Records	Not in KNTC's Records	20	26,840	20	26,840
Unknown Supplier Cleared by Ufanisi	MEDUPC152246	Not in KNTC's Records	Not in KNTC's Records	20	26,840	20	26,840
Unknown Supplier Cleared by Ufanisi	MEDUPC152246	Not in KNTC's Records	Not in KNTC's Records	20	26,840	20	26,840
<b>Sub Total</b>		<b>-</b>	<b>-</b>	<b>110</b>	<b>147,620</b>	<b>110</b>	<b>147,620</b>
<b>Total</b>		<b>135</b>	<b>179,444</b>	<b>453</b>	<b>603,906</b>	<b>318</b>	<b>424,462</b>

3.4.100 It was however noted that the 424,462 of 20-litre jerrycans were not included in the quantity delivered of 2,518,434, as per the LC schedule. Therefore, the total quantity of cooking oil imported under the Corporation resulted in 2,942,896 of 20-litre jerrycans.

3.4.101 Further, out of the unaccounted-for quantity of 424,462 of 20-litre jerrycans, 147,620 of 20-litre jerrycans had been approved by KEBS, out of which, Ufanisi Freighters confirmed to have cleared 134,200 of 20-litre jerrycans via email

dated 29 March, 2024. The clearing agent for the balance of 13,420 of 20-litre jerrycans remained unknown at the time of audit.

3.4.102 Documentary evidence on where the quantities totaling 424,462 of 20-litre jerrycans were delivered, how they were procured and who cleared the 13,420 jerrycans was not provided therefore, the quantity being unaccounted for by the Corporation.

#### **iv. Insurance Services**

##### ***Irregular Procurement Process of Insurance Services for Quantities Delivered***

3.4.103 Clause 10(d) of the agreements between the Corporation and Multi Commerce FZC stated that “ *the seller shall at its own cost and expense arrange for suitable insurance against all risks of whatsoever nature in respect of the products including but not limited to theft, fire, water, leakage, breakage, damage or vermin infestation caused by or arising from the shipping and delivering of the products cumulative purchase price herein together with consequential costs with an insurance company acceptable to the buyer.*”

3.4.104 The agreements between the Corporation and the three (3) suppliers who were issued with letters of credit indicated the terms of delivery of the cooking oil as shown in **Table 10**. From the table, it was noted that Multi Commerce FZC agreements were on CFR terms, and Charma Holdings and Shehena Commodity agreements were on CIF terms. Consequently, the Corporation was to procure insurance services for quantities delivered by Multi Commerce FZC, which were on CFR terms.

3.4.105 The agreements between the Corporation and Multi Commerce FZC therefore, had conflicting information, where Clause 10(b) cited CFR, and Clause 10(d) requiring the seller- Multi Commerce FZC, to arrange for suitable insurance.

3.4.106 Review of documents provided for audit including the Letter of Offer dated 07 December, 2022 and signed by the Corporation and KCB, revealed that the Corporation was to obtain a comprehensive insurance cover for the cooking oil delivered, and that the company contracted to provide the insurance cover be approved by KCB.

3.4.107 It was further noted that Mayfair Insurance was the firm engaged to provide insurance services, and KCB made payments to Mayfair Insurance, from the

Corporation's KCB main bank account. Documentary evidence on how Mayfair Insurance was identified, the process of evaluation and signing of the contract was not provided for audit. Further, it was not clear why KCB made payments directly to Mayfair Insurance, without authority from KNTC.

3.4.108 Review of information including emails revealed that the insurance cover with Mayfair lapsed on 04 February, 2024 and was extended for three (3) months by KCB on 09 February 2024, despite the Corporation requesting KCB via an email dated 08 February, 2024, to be allowed to procure the insurance extension, in line with the PPAD, Act, 2015.

3.4.109 Further, the Audit Team was not provided with agreements entered into between Mayfair Insurance Limited and the Corporation. In the absence of the agreements, it was difficult to determine the requirements such as the cooking oil quantities insured, and the contract sum.

3.4.110 Insurance documents issued and signed by Mayfair Insurance Company Ltd for KNTC/KCB as the insured were provided as detailed in the table below:

**Table 17: Information on Mayfair Insurance**

Policy Date	Premium Amount	Period of Insurance	Perils Covered	Sum Insured	Commodities Insured
06 February 2023	19,833,893.00	05 February 2023 to 04 February 2024	Fire and perils as specified	27,330,000,000	Not Indicated
06 February 2023	8,009,199.76	05 February 2023 to 04 February 2024	PVT Insurance	23,730,000,000	Not Indicated
09 February 2024	5,416,479.00	05 February 2024 to 04 May 2024	Stock Floater	11,579,644,000	Not Indicated
09 February 2024	3,831,991.00	05 February 2024 to 04 May 2024	PVT Insurance	8,709,644,000	Not Indicated
<b>Total</b>	<b>37,091,562.76</b>				

3.4.111 Insurance documents reviewed did not indicate the supplier of the bulk commodities insured and the quantities thereof. The Audit Team therefore, could not ascertain the commodities and quantities that were insured and how much out of the insurance premium of Kshs.37,091,562 payable to Mayfair Insurance Co. Ltd was apportioned to cooking oil.

3.4.112 Consequently, the KCB may have taken up insurance policies on commodities that had CIF as their trade terms (such as Charma Holding and Shehena Commodity), thereby incurring additional nugatory costs on behalf of the Corporation.

**Lack of Insurance Documents for Quantities Delivered by Charma Holdings**

- 3.4.113 Documents and information on the insurance cover taken by Charma Holdings for the 532,774 of 20-litre jerrycans delivered were not provided for audit. The Audit Team could therefore, not confirm if the 532,774 of 20-litre jerrycans were insured or not.
- 3.4.114 Review of copies of insurance documents provided for audit revealed that Shehena Commodity insured the 13,420 of 20-litre jerrycans delivered.

**Insurance Claims of Short Landings and Damages**

- 3.4.115 The LC schedule indicated that 2,518,434 of 20-litre jerrycans, were delivered in 1,886 containers. Out of this, the Corporation through its clearing agents cleared and stripped a total of 1,283 containers with 1,710,570 of 20-litre jerrycans. The balance of 603 containers said to comprise 807,864 of 20-litre jerrycans had not been cleared/stripped at the time of audit. Details of the stripped and unstripped quantities is as per **Appendix IV** and summarized in the table below:

**Table 18: Stripped and Unstripped Quantities**

Supplier	Quantity Delivered as per Bill of Lading		Unstripped Quantities as per Bill of Lading		Stripped Quantities as per Corporation's Data	
	Jerrycans	Containers	Containers	Jerrycans	Containers	Jerrycans
Multi Commerce FZC	1,972,240	1,479	281	375,740	1,198	1,596,500
Charma Holdings	532,774	397	312	418,704	85	114,070
Shehena Commodity Trading	13,420	10	10	13,420	0	0
<b>Totals</b>	<b>2,518,434</b>	<b>1,886</b>	<b>603</b>	<b>807,864</b>	<b>1,283</b>	<b>1,710,570</b>

- 3.4.116 Out of the 1,283 stripped containers with 1,710,570 of 20-litre jerrycans, there were damages of 6,891 jerrycans and short landings totaling three hundred and one (301) jerrycans, as detailed in **Appendix IV** and summarized below:

**Table 19: Short Landings and Damages**

Supplier	Stripped Jerrycans	Quantities Received	Short Landings	Sound Quantities	Quantities Damaged
Multi Commerce FZC	1,596,500	1,596,249	251	1,590,187	6,062
Charma Holdings	114,070	114,020	50	113,191	829
Shehena Commodity Trading	0	-	-	-	-
<b>Totals</b>	<b>1,710,570</b>	<b>1,710,269</b>	<b>301</b>	<b>1,703,378</b>	<b>6,891</b>

3.4.117 Charma Holdings and Shehena Commodity Trading's quantities were on CIF terms, and therefore, the two suppliers were required to insure the cooking oil during shipping and compensate the Corporation for any damages and short landings, on quantities delivered.

3.4.118 However, no documentary evidence was provided indicating that the Corporation lodged a claim for 879 jerrycans, being damages of 829 jerrycans and short landings of 50 jerrycans, for quantities delivered by Charma Holdings. Further, the quantities delivered by Shehena Trading totaling 13,420 of 20-litre jerrycans, had not been cleared and stripped at the time of audit in February, 2024, thereby short landings and damages could not be determined.

***Unclaimed Quantities Due to Short Landing***

3.4.119 Information provided for audit and analyzed in **Table 19** revealed that the damages and short landings for Multi Commerce FZC quantities were 6,062 and 251 jerrycans respectively, totaling 6,313 jerrycans.

3.4.120 Further, review of information provided for audit including emails between KCB, the Corporation and Mayfair Insurance on various dates revealed that Mayfair Insurance requested for the discrepant (missing/damaged cargo) report and claim statement/loss computation. The information provided in the email dated 12 December, 2023 is as shown below:

**Table 20: Claim Statement/Loss Computation by KNTC**

Supplier	BL No. of 20-litre Jerrycans (Stripped)	No. of 20-litre Jerrycans Received (All)	Short Landings (Computed)	No. of 20-litre Jerrycans Received (Sound)	No. of 20-litre Jerrycans Received (Damaged)	Total Jerrycans expected to be Claimed
Multi Commerce FZC	1,529,994	1,529,674	320	1,523,782	5,892	6,212

3.4.121 The explanation provided by Management on the discrepancy between the damages as per clearing agents information and emails of 6,062 jerrycans and 5,892 jerrycans respectively, was that the clearing agents information was for quantities delivered as at February, 2024, while the damages as per the emails were based on quantities delivered before December 2023.

3.4.122 In respect to the damages and short landings for Multi Commerce FZC, the Audit Team was provided with a letter referenced REF: KNTC/06/ADMIN/dated 13 December, 2023 from the Corporation to Mayfair Insurance, claiming a loss amounting to Kshs.28,281,600 of 5,892 jerrycans, being the difference between

the quantities received of 1,529,674 of 20-litre jerrycans and sound quantities of 1,523,782 of 20-litre jerrycans, instead of 6,212 jerrycans being the difference between the Bill of Lading quantities of 1,529,994 of 20-litre jerrycans and received quantities of 1,529,674 of 20-litre jerrycans.

3.4.123 The variance between 6,212 and 5,892 jerrycans resulting to 320 jerrycans amounting to Kshs.1,536,000 (at Kshs.4,800 per jerry can as per insurance claim) was therefore, not included in the insurance claim.

3.4.124 At the time of the audit, the insurance claim lodged by the Corporation to Mayfair Insurance Company of Kshs.28,281,600 had not been paid. In addition, documentary evidence showing the Corporation's effort to follow up was not provided for audit.

#### **v. Clearing and Forwarding Services**

##### **Procurement Planning**

3.4.125 Section 6.2 of the Concept Note included the port charges and clearing and forwarding as part of the recurrent costs during the first year of the Programme.

3.4.126 A purchase requisition no. KNTC-PREQ 4490 was raised on 19 October, 2022 by the Supply Chain Management Department, for amongst other services, port clearing services which was approved on the same date.

##### **Advertisement**

3.4.127 According to an internal memo dated 16 November, 2022, the Manager-Supply Chain and Logistics informed the Managing Director that the Corporation did not have a prequalified list of clearing and forwarding services, but Kenya Revenue Authority (KRA) had an approved list published on their website for the year 2022. A list of nine hundred and seventy-one (971) customs agents for year 2022, that the Corporation retrieved from the Kenya Revenue Authority website, was provided.

3.4.128 Further, the internal memo requested the Managing Director to allow for a restricted tender document to be issued to fifteen (15) clearing and forwarding service providers as listed below;

- i. Seacon (K) Ltd
- ii. Ufanisi Freighters (K) Ltd
- iii. Adshef Investment Ltd
- iv. Keihin Maritime Services Ltd

- v. Calsdan Logistics (K) Ltd
- vi. Wesport Logistics Ltd
- vii. Abba Motors Ltd
- viii. Abbas Traders Ltd
- ix. Aberpaul Ltd
- x. Acceler Global Logistics Ltd
- xi. Access Africa Logistics Ltd
- xii. Acts Business Systems
- xiii. Adelfcus Agencies (K) Ltd
- xiv. Admiral Cargo Concept Ltd
- xv. Adonai Trading & Logistics Co. Ltd

3.4.129 The Managing Director approved the request on the same day (16 November, 2022). In addition, on 17 November, 2022, an email referenced '*Expression of Interest for Provision of Clearing & Forwarding Services for tender number EOII/KNTC/020/2022/2023*' was sent to the fifteen (15) entities. The deadline for submission was 21 November, 2022.

3.4.130 However, the criteria used in identifying and selecting the fifteen (15) out of the 971 firms, was not provided for audit.

#### **Tender Opening and Evaluation**

##### ***Non-Provision of Appointment Letters and Minutes of the Tender Opening Committee***

3.4.131 Minutes of the Evaluation Committee held on 25 November, 2022 reflected a list of five (5) staff members being the Opening Committee Members. The minutes indicated that an invitation to tender was done through an expression of interest to the firms registered by KRA as clearing and forwarding agents and that the tender box was opened on the tender closing day. The minutes stated that the Tender Opening Committee minutes were provided to the Evaluation Committee Members for perusal and confirmation.

3.4.132 However, the appointment letters and minutes of the Tender Opening Committee were not provided for audit therefore, contravening Section 9(1)(e)(i) of the Public Audit Act, 2015.

##### ***Non-Appointment of Ad hoc Evaluation Committee Members***

3.4.133 According to an internal memo dated 25 November, 2022, the Supply Chain and Logistics Manager (SCLM) stated that the Evaluation Committee's appointment letter was dated 18 November, 2022. Further, the minutes of the

Evaluation Committee meeting held on 25 November, 2022, reflected a total of five (5) members being present during the meeting.

3.4.134 Appointment letters for the Evaluation Committee Members were however, not provided for audit therefore, contravening Section 9(1)(e)(i) of the Public Audit Act, 2015.

***Lack of Acceptance of Award by Bidders***

3.4.135 Section 87(1) and 87(2) of the PPAD Act, 2015 states that, *“Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted. (2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award”*.

3.4.136 According to the internal memo dated 25 November, 2022, three (3) bidders were successful namely; Adshel Investments Ltd, Ufanisi Freighters (K) Ltd, and Seacon (K) Ltd.

3.4.137 Notification to the three (3) bidders and signing of the agreements were both done on 05 December, 2022. The bidders therefore, did not signify in writing, the acceptance of the offer, contrary to Section 87(1) and 87(2) of the PPAD Act, 2015 which states that, *“Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted. The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award”*.

3.4.138 Notification to the unsuccessful bidders were not provided for audit review. Further, notification of award and signing of the agreements being done on the same day did not provide the window required for review, contravening Section 167(1) of the PPAD Act, 2015 which states that, *“Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process”*.

### **Contracts between the Corporation and Clearing and Forwarding Agents**

3.4.139 The Corporation entered into agreements with Adshef Investments Ltd, Ufanisi Freighters (K) Ltd, and Seacon (K) Ltd on 05 December, 2022, for the provision of clearing and forwarding services. A total of twenty-eight (28) service fees chargeable by the clearing agents based on whether the cargo being cleared was bulk (seventeen service fees) or containerized (eleven service fees) were indicated in Schedule 2 of the agreements.

### **Quantities Handled by the Clearing Agents**

3.4.140 As reported in **Section 3.4.115** of this report, 2,518,434 of 20-litre jerrycans were delivered in 1,886 containers out of which, the clearing agents handled the stocks as follows; cleared sound quantities of 1,703,378 of 20-litre jerrycans; damages totaling 6,891 of 20-litre jerrycans; and reported short landings of 301 jerrycans detailed in **Appendix IV** and shown in **Table 19**.

#### **vi. Warehousing Services**

##### ***Irregular Procurement of Warehouse Service Providers***

3.4.141 The Audit Team reviewed the documents provided for audit and noted various irregularities in the procurement of warehouse service providers as detailed below:

##### ***a) Lack of Appointment Letters for Scouting and Identification Team for Probable Warehouse at Mombasa and Nairobi***

3.4.142 Review of documents provided for audit including reports on scouting and identification of probable warehouses in Mombasa and Nairobi revealed that teams were sent to conduct and scout for befitting companies for possible engagements on warehouse leasing agreements.

3.4.143 However, the appointment letters for the members of the scouting and identification teams were not provided. The Audit Team could therefore, not ascertain the specific tasks that the team members were to undertake. In addition, the Audit Team could not ascertain whether the members in the reports were the appointed team members by the appointing authority.

##### ***b) Lack of Evaluation for Warehouse Services***

3.4.144 Documents provided for audit revealed that the scouting and identification team identified seven (7) warehouses as listed below;

- i. NFT Autoport Ltd- Wallstreet
- ii. Lenjoh Enterprises (KTDA)
- iii. Triple Front Line Ltd (Hallogen)
- iv. Triple Front Line Ltd (Atlantis)
- v. NFT Autoport Ltd- Open Space
- vi. Bepak Logistics Ltd
- vii. Asim Pacific Ltd.

3.4.145 However, documentary evidence that the evaluation on the seven (7) warehouses was carried out was not provided for audit. It was further established that out of the seven (7) warehouses, six (6) were selected with the exception of Asim Pacific Ltd. The criteria for selecting the six (6) was however, not provided for audit.

***c) Lack of Identification Reports for Three Contracted Warehouses***

3.4.146 Review of documents revealed that the Corporation stored the cooking oil in ten (10) warehouses namely;

- i. NFT Autoport Ltd- Wallstreet
- ii. Lenjoh Enterprises (KTDA)
- iii. Triple Front Line Ltd (Hallogen)
- iv. Triple Front Line Ltd (Atlantis)
- v. NFT Autoport Ltd- Open Space
- vi. Bepak Logistics Ltd
- vii. Saku Mtwapa Projects Ltd (Mtwapa Business Park)
- viii. Awanad Enterprise Ltd (Benvic)
- ix. Stanster Enterprise Ltd; and
- x. KNTC HQ Yarrow Road.

3.4.147 Out of the ten (10) warehouses, scouting and identification reports for six (6) warehouses were provided while one (1) warehouse (KNTC HQ Yarrow Rd) belonged to the Corporation. The identification reports for the remaining three (3) listed below, were not provided for audit.

- i. Saku Mtwapa Projects Ltd (Mtwapa Business Park);
- ii. Awanad Enterprise Ltd (Benvic); and
- iii. Stanster Enterprise Ltd

***d) Lack of Notification to Warehouse Service Providers***

3.4.148 The Audit Team noted that the scouting and identification team visited the warehouses and negotiated with representatives of the warehouses. However, evidence that the Corporation issued notifications to both successful and unsuccessful warehouse service providers was not provided for audit.

### Contracts for Warehouse Service Providers

3.4.149 According to the provided reports, it was established that the Corporation stored the cooking oil in ten (10) warehouses out of which, one (1) warehouse belonged to the Corporation. Details of the seven (7) agreements provided for audit for the warehousing services are as shown in the table below:

**Table 21: Agreements between KNTC and Warehousing Agents**

No.	Entity	Warehouse Name	Agreement Date
1	Lenjoh Enterprises	KTDA	20 June, 2023
2	Awanad Enterprises Ltd	Benvic	23 August, 2023
3	Triple Front Line Ltd	Hallogen	25 April, 2023
4	Triple Front Line Ltd	(Atlantis)	25 April, 2023
5	NFT Autoport Ltd	Wallstreet	09 August, 2023
6	Bepak Logistics Ltd	Bepak	01 June, 2023
7	Stanster Enterprise Ltd	Stanster	14 September, 2023

3.4.150 Review of documents revealed that the Corporation entered into nine (9) agreements with warehousing services providers. However, agreements between the Corporation and NFT Autoport Ltd-Open Space and Saku Mtwapa Project Ltd (Mtwapa Business Park) were not provided for audit review.

### vii. Legal Services

#### Procurement Planning

3.4.151 Section 6.2 of the Concept Note included the Programme administrative costs as part of the recurrent costs for one year of the Programme, within which legal costs fall.

#### *Irregular Procurement of Legal Services*

3.4.152 The case under Judicial Review Miscellaneous (Nairobi JR MISC) Application No. E040 of 2023 was filed on 17 April, 2023. However, documents including details of the case to support this application were not provided for audit by the Corporation. Review of the ruling dated 01 September, 2023 revealed that the case under judicial review Miscellaneous (Nairobi JR MISC) Application No. E040 of 2023 between the Law Society of Kenya vs Attorney General, Principal Secretary-Ministry of Trade, Investment and Industry, Principal Secretary-The National Treasury and Economic Planning, Commissioner for Customs and Border Control and Kenya National Trading Corporation was filed on 17 April, 2023, with orders issued on 30 June, 2023.

3.4.153 Consequently, the Corporation sought legal services from MMA Advocates vide a letter of instruction dated 04, July 2023, which had been referred to in the letter referenced MMA/DBM/KNTC/816/2023, dated 11 July, 2023 from MMA Advocates to the Corporation. However, the letter of instruction from the Corporation to MMA Advocates was not provided for audit. Based on the letter referenced MMA/DBM/KNTC/816/2023 and dated 11 July, 2023, the Corporation appointed MMA Advocates to act on its behalf in the case.

3.4.154 Review of documents provided and reviewed including the internal memo dated 04 July, 2023 revealed that the Corporation did not follow the procurement process in the appointment of MMA Advocates therefore, contravening Article 227 of the Constitution of Kenya, 2010 which requires that public procurement be carried out in a system that is fair, equitable, transparent, competitive, and cost-effective.

#### **Contract for Legal Services**

##### ***Non-Provision of Agreements/Local Service Orders for Legal Services***

3.4.155 In addition to the case number-Nairobi JR MISC No. E40 of 2023, the Corporation was issued with two (2) other fee notes by MMA Advocates, which related to a different case number as shown below;

**Table 22: Fee Notes Issued by MMA Advocates for Legal Services**

<b>Entity</b>	<b>Case No.</b>	<b>Date</b>	<b>Description</b>	<b>Fee Note Details (Kshs)</b>
MMA Advocates	Nairobi Jr Misc No. E40 of 2023	April 2023	The Law Society of Kenya sought to stop the Corporation from importing and selling duty-free cooking oil	597,354,996
MMA Advocates	Nairobi JR MISC NO. E16 of 2023	07 August, 2023	Republic Vs Cabinet Secretary- Ministry of Trade, Investment and Industry and 3 Others	17,400,000 (Interim fee note)
MMA Advocates	Nairobi JR MISC NO. E16 of 2023	07 August, 2023	Republic Vs Cabinet Secretary- Ministry of Trade, Investment and Industry and 3 Others	116,000,000
<b>Total</b>				<b>730,754,996</b>

3.4.156 However, the agreement and Local Service Orders (LSOs) between the Corporation and MMA Advocates that related to the above fee notes were not provided for audit. The Audit Team was therefore, not able to determine the charges, and whether the fee notes raised were as per the contracted terms.

### ***Non-Reporting of Award to the Public Procurement Regulatory Authority***

3.4.157 Regulation 90(1)(b) of the PPAD Regulations, 2020 states that “*An accounting officer shall, within fourteen days after the notification of the award of the contract, report any direct procurement of a value exceeding five hundred thousand shillings to the Authority in a format provided by the Public Procurement Regulatory Authority*”.

3.4.158 Based on the fee notes provided, it was established that the legal costs were Kshs.730,754,996, which exceeded five hundred thousand shillings. The Corporation should therefore, have notified the Authority of the award. However, documentary evidence to ascertain whether the Corporation reported/notified the Authority of the award of the contract was not provided for audit therefore, contravening Regulation 90(1)(b) of the PPAD Regulations, 2020 and Section 9(1)(e)(i) of the Public Audit Act, 2015.

### **viii. Distributors Under 2-Year Framework Agreements Procurement Planning**

#### ***Lack of Planning for Distribution Costs***

3.4.159 Review of documents provided for audit including the Concept Note revealed that the costs related to the distributors procured under the framework agreements in the Programme were not planned for.

### **Advertisement**

3.4.160 According to an internal memo dated 01 November, 2022 the Manager-Supply Chain and Logistics informed the MD that the Corporation was in the process of importing various essential commodities into the Kenyan Market and there was need to onboard the distributor responsible for distribution of essential commodities from first to last mile. Further, the Manager recommended use of the restricted tendering method, for sourcing of distribution agents and included the following prequalified distribution agents and stockists from a previous tendering process:

- i. Milka Trading Ltd
- ii. Jumbo Commodities Ltd
- iii. Vijana Trading Ltd
- iv. Azad Agencies Ltd

v. OM Millers Ltd

vi. MarketForce Ltd

3.4.161 According to the minutes of the Evaluation Committee held on 25 November, 2022, it was revealed that the invitation to tender for provision of distribution services was advertised in the dailies. The minutes therefore, referred to a competitive bidding process contradicting the internal memo dated 01 November, 2022, which recommended the use of restricted tendering method.

3.4.162 Further, documents supporting the previous tendering process that prequalified the distribution agents and stockists and the advert placed in the dailies were not provided for audit.

3.4.163 The Audit Team could therefore, not ascertain how the six (6) distribution agents were identified.

#### **Tender Opening and Evaluation**

##### ***Non-Provision of Appointment Letters and Minutes of the Tender Opening Committee***

3.4.164 According to the minutes of the Evaluation Committee held on 25 November, 2022, the tender was advertised, the tender box opened on the tender closing day, and tender opening minutes provided to the Evaluation Committee Members for perusal and confirmation.

3.4.165 However, the appointment letters and minutes of the Tender Opening Committee were not provided for audit therefore, contravening Section 9(1)(e)(i) of the Public Audit Act, 2015.

##### ***Non-Appointment of Ad hoc Evaluation Committee Members***

3.4.166 According to an internal office communication dated 24 November, 2022, the Supply Chain and Logistics Manager (SCLM) sought approval from the Managing Director on the appointment of five (5) members proposed to the ad-hoc Evaluation Committee for the provision of commodity distribution services. Further, the minutes of the Evaluation Committee meeting held on 25 November, 2022, indicated a total of five (5) members being present during the meeting.

3.4.167 Appointment letters for the Evaluation Committee Members were however not provided for audit, contravening Regulation 28(2) of the PPAD Regulations, 2020 which states that "*The accounting officer of a procuring entity shall appoint*

*an Evaluation Committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals”.*

#### ***Irregular Notification to Bidders***

- 3.4.168 According to the tender document for the EOI, the bidders were to submit the tender documents by 21 November, 2022. Further, as per the Evaluation Committee minutes provided, the Committee undertook the evaluation of the six (6) bidders on the 25 November, 2022 and after the preliminary evaluation, five (5) bidders were determined not responsive while one bidder MarketForce Ltd, was responsive and proceeded to technical evaluation.
- 3.4.169 According to Sections 85 and 87(1) to 87(4) of the PPAD Act, 2015, notification to the bidders is undertaken once the Evaluation Committee has evaluated and made recommendations to the accounting officer through the head of procurement, informing the decision of the award of contract to the successful bidder(s). Thereafter, notification is done according to Regulation 82(1) of the PPAD Regulations, 2020 which states that *“The notification to the unsuccessful bidder under Section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified”.*
- 3.4.170 Documents provided for audit including copies of notifications to the unsuccessful bidders referenced EOI/KNTC/TENDER/008/2002-2023 dated 18 November, 2022 revealed that the unsuccessful bidders were notified prior to evaluation of the bids on 25 November, 2022 therefore, contravening the PPAD Act, 2015 and PPAD Regulations, 2020. Based on the irregularities noted in the procurement process, there was a possibility that the successful bidder had been predetermined.
- 3.4.171 Further, the notification of award to MarketForce was not provided for audit. However, the Corporation through the Evaluation Committee held a negotiation meeting with MarketForce on 30 November, 2022, where 16.5% of the cost of sales was agreed as the total contract cost.

#### ***Irregular Procurement of Twiga Foods as a Distributor***

- 3.4.172 Documents provided for audit revealed that Twiga Foods submitted an Expression of Interest referenced EOI/KNTC/020/2022/2023 dated 01 March, 2023, indicating the firm’s interest in becoming the Corporation’s super distributor. However, the Audit Team established that the Corporation did not subject the appointment of Twiga Foods through prescribed procurement

procedures therefore, contravening Article 227 of the Constitution of Kenya, 2010 which requires that public procurement be carried out in a system that is fair, equitable, transparent, competitive, and cost-effective. In addition, it was not clear how Twiga Foods' expression of interest was accepted by the Corporation, since it was not among the original six (6) firms.

### **Contract for Distribution Services**

3.4.173 An agreement was entered into between the Corporation and MarketForce Technologies Ltd and signed on 15 December, 2022. According to Clause D of the agreement provided for audit, MarketForce was granted distribution rights by the Corporation, to distribute the Products within the Republic of Kenya during the term of the agreement.

3.4.174 However, the agreement between the Corporation and Twiga Foods was not provided for audit. It was therefore, difficult to ascertain whether contractual obligations were adhered to between Twiga Foods and the Corporation.

## **3.5 Expenditure and Related Issues**

### **Preamble**

3.5.1 The total expenditure according to documents, information, and schedules provided for audit for the Line of Credit charges; collateral management costs; cooking oil suppliers; insurance costs; clearing and forwarding agents; warehousing costs; legal costs; and distribution costs, amounted to approximately Kshs.14,448,397,642.62, out of which, Kshs.12,050,242,044.12 was paid. However, the cumulative outstanding balance for the cooking oil Programme could not be ascertained, due to lack of expenditure schedules for Line of Credit, insurance, collateral management and distribution services. A summary of the cooking oil expenditure is as shown in the table below:

**Table 23: Summary of Cooking Oil Expenditure**

<b>Description</b>	<b>Total Expenditure (Kshs)</b>	<b>Amount Paid (Kshs)</b>
<b>EXPENDITURE</b>		
Line of Credit Charges	1,114,983,492.62	1,028,815,670.12
Collateral Management Costs	47,444,000.00	47,444,000.00
Cooking Oil Suppliers	10,463,140,614.00	9,256,871,237.00
Insurance Costs	29,731,800.00	29,731,800.00
Clearing and Forwarding Agents	2,254,465,192.00	1,514,784,183.00
Warehousing Costs	165,192,544.00	22,555,154.00
Legal Costs	283,400,000.00	60,000,000.00
Distributors Costs	90,040,000.00	90,040,000.00
<b>Total</b>	<b>14,448,397,642.62</b>	<b>12,050,242,044.12</b>

3.5.2 The Audit Team reviewed and analysed the expenditure process for the cooking oil Programme where the following audit findings were noted:

**Expenditure Process**

3.5.3 Sections 68(1) and 68(2)(a-e) of the Public Finance Management Act, 2012 outlines the responsibility of accounting officers as far as usage of an entity's resources are concerned. Further, Section 79(1) and 79(2) of the Public Finance Management Act, 2012 highlights the obligations of public officers, when carrying out a responsibility or exercising power under the Act.

3.5.4 According to engagement with Management, it was noted that the expenditure process for the cooking oil Programme was centrally managed from the Headquarters. Further, it was revealed that payments were made for the following expenditure items- Line of Credit facility, collateral management services, supply of the cooking oil, insurance services, clearing agent services, warehousing service providers, legal services and distribution services. The payments were made in two ways:

- i. By KCB Bank, directly through the Corporation's KCB bank accounts
- ii. By the Corporation, through its various bank accounts

***Non-Provision of Approved Finance Policy and Procedure Manual***

3.5.5 Section 15(1) of the State Corporations Act, CAP 446 states that, "*a Board shall be responsible for the proper management of the affairs of a State Corporation and shall be accountable for the moneys, the financial business and the management of a State Corporation*". Further, Section 4.4(b)(i) of the KNTC Organization Structure, Functions and Staff Establishment, requires the Corporation to establish and maintain sound financial procedures in compliance with statutory regulations. However, the Corporation's approved Finance Policy and Manual was not provided for audit. It was therefore, not possible for the Audit Team to confirm if the Management complied with the provisions of Section 15(1) of the State Corporations Act, CAP 446 and Section 4.4(b)(i) of the KNTC Organization Structure, Functions and Staff Establishment.

**Total Expenditure**

3.5.6 Review of the documents and information provided for audit revealed that at the time of audit in February, 2024, the total expenditure incurred by the

Corporation for eight (8) expenditure items amounted to approximately Kshs.14,448,397,642.62 out of which, Kshs.12,050,242,044.12 had been paid, as shown in the table below:

**Table 24: Total Expenditure Incurred by KNTC**

No	Expenditure Item	Invoiced Amount (Kshs)	Adjustments (Discount)	Computed Costs (Kshs)	Amount Paid (Kshs)	Amount Due (Kshs)
1	Line of Credit Facility	Not Provided	0	1,114,983,492.62	1,028,815,670.12	N/A
2	Collateral Management Services	Not Provided	0	47,444,000.00	47,444,000.00	N/A
3	Supply of Imported Cooking Oil	10,463,140,614.00	0	10,463,140,614.00	9,256,871,237.00	1,206,269,377.00
4	Insurance Services	Not Provided	0	29,731,800.00	29,731,800.00	N/A
5	Clearing and Forwarding Services-Ufanisi and Adshaf (Seacon pending)	2,254,465,192.00	0	2,254,465,192.00	1,514,784,183.00	739,681,008.00
6	Warehousing Services	165,192,544.00	0	165,192,544.00	22,555,154.00	142,637,390.00
7	Legal Services	730,754,996.00	447,354,996.00	283,400,000.00	60,000,000.00	223,400,000.00
8	Distribution Services	Not Provided	0	90,040,000	90,040,000	N/A
<b>TOTAL</b>		<b>N/A</b>	<b>447,354,996.00</b>	<b>14,448,397,642.62</b>	<b>12,050,242,044.12</b>	<b>N/A</b>

3.5.7 It was established that the expenditure amounts for Line of Credit facility, collateral management services and insurance services of Kshs.1,114,983,492.62, Kshs.47,444,000 and Kshs.29,731,800, respectively, all totaling Kshs.1,192,159,292.62 were incurred for the entire Programme, which included cooking oil, subsidy fertilizer, imported rice, and beans. As a result, the Kshs.1,192,159,292.62 could not be apportioned to cooking oil and was therefore reported fully.

***Non-Provision of Documents for Expenditure Incurred for Various Items***

3.5.8 Review of the expenditure documents and schedules provided for audit revealed that out of the eight (8) expenditure items listed in **Table 24**, the Corporation did not provide documentary evidence to support expenditure amounts incurred/invoiced for the following items:

- i. Line of Credit Facility
- ii. Collateral Management Services
- iii. Insurance Services
- iv. Distribution Services

3.5.9 In the absence of these amounts, the Audit Team could not determine the total amounts incurred (invoiced) under the cooking oil Programme, as well as the amounts due for payment by the Corporation.

3.5.10 Review of each expenditure item revealed the following:

**i. Line of Credit Facility**

3.5.11 The Corporation and KCB signed an initial Letter of Offer dated 07 December 2022, with an agreed Revolving Composite Trade Finance Facility of Kshs.10,500,000,000. The Corporation and KCB thereafter signed a Loan Enhancement letter dated 10 January, 2023, with an enhanced total facility of Kshs.24 Billion, being Revolving Composite Trade of Kshs.23.73 Billion, Overdraft of Kshs.100 Million and Asset Based Finance of Kshs.170 Million.

3.5.12 However, the detailed analysis of the total costs incurred in respect to the Line of Credit facility was not provided for audit.

3.5.13 Review and analysis of documents provided for audit revealed that, the total costs for the Line of Credit was approximately Kshs.1,114,983,492.62 out of which Kshs.1,028,815,670.12 was paid, as shown in the table below:

**Table 25: Costs for the Line of Credit Facility**

	<b>Cost/Fee</b>	<b>Approximate Amount in (Kshs)</b>	<b>Amounts Paid</b>
1	Computed Costs on Revolving Composite Trade	309,042,469.00	309,042,469.00
2	Costs on Short-term Loan Facility	109,835,461.10	109,835,461.10
	Repayment of Short-term Loan	445,334,451.90	445,334,451.90
3	Outstanding Interest on Short-term Loans	86,167,822.50	0
4	Interest on Overdraft Facility	164,603,288.12	164,603,288.12
	<b>Total</b>	<b>1,114,983,492.62</b>	<b>1,028,815,670.12</b>

3.5.14 Irregularities noted in the facilities within the Line of Credit facility are as reported herein:

**a) Revolving Composite Trade- Kshs.23,730,000,000**  
***Unaccounted for Costs on Revolving Composite Trade***

3.5.15 Review and analysis of the Letters of Offer indicated that upon acceptance of the offer, the Corporation was to meet various interests and/or commissions as follows:

- i. Letters of Credit: 0.45% per quarter all-inclusive including establishment, acceptance, negotiation, payment, and general amendments excluding confirmation.
- ii. Facilities: Bonds/Guarantees/Commercial SBLC's/Bill Avalisation-Issuance Fee of 0.5% per quarter or part thereof with a minimum of

Kshs.5,000; general amendments-Kshs.5,000; and swift charges-Kshs.2,500

iii. Upon acceptance of the Letter, the Corporation was required to pay a negotiation fee equivalent to 0.75% once off on the Total Facilities and a handling fee of 0.5% flat for every Trust Receipt Facility booked. An additional 20% of the negotiation fee charged was payable to the Government as Excise Duty.

3.5.16 However, documents to support the above costs and how the costs were recorded and accounted for were not provided for audit. The Audit Team could therefore, not determine the incurred costs based on the above clauses, the total payments made and outstanding balances to KCB, for the Line of Credit facility.

3.5.17 A computation of the costs based on the various interests and/or commissions in the Letters of Offer was carried out and the breakdown is as shown below:

**Table 26: Computed Line of Credit Costs as per Letters of Offer**

	<b>Cost/Fee as per Letters of Offer</b>	<b>Chargeable Amount</b>	<b>Approximate Amount in (Kshs)</b>	<b>Remarks</b>
1	0.45% per quarter all-inclusive	N/A	-	Amount could not be determined
2	Issuance Fee of 0.5% per quarter or part thereof	N/A	-	Amount could not be determined
3	Negotiation fee equivalent to 0.75% once off on the Total Facilities	Kshs 23,730,000,000	176,220,000.00	Extracted from Bank statements
4	20% of the negotiation fee charged shall be payable to the Government as Excise Duty	Kshs 176,220,000	35,244,000.00	Extracted from Bank statements
5	Handling fee of 0.5% flat for every Trust Receipt Facility booked (LC Acceptance Commission)	USD74,548,620 (Approximately Kshs.11,399,309,014)	84,757,106.55	Extracted from Bank Statements
6	Tax Charged on Handling fee	Kshs 84,757,106.55	12,821,362.45	Extracted from Bank Statements
	<b>Total</b>		<b>309,042,469.00</b>	

***Unsupported Line of Credit Payments in the Bank Statement***

3.5.18 Review and analysis of documents provided for audit revealed that a total of Kshs.211,464,000 were funds debited on 10 March, 2023, being negotiation fees of Kshs.176,220,000 and tax charged thereon of Kshs.35,244,000.

3.5.19 Further, review and analysis of documents provided for audit revealed that a total of Kshs.97,578,469 were funds debited on various dates, for purposes of

'LC Acceptance Commission' of Kshs.84,757,106.55 and 'Tax Amount Received' of Kshs.12,821,362.45 as detailed in **Appendix V**.

3.5.20 However, payment documents supporting the fees totaling Kshs.309,042,469 were not provided for audit.

**b) Short-Term Loan Facility**

3.5.21 Review of the Letters of Offer signed by the Corporation and KCB revealed that included in the Revolving Composite Trade Facility of Kshs.23.73 Billion, was a short-term loan facility that KCB offered the Corporation in the Programme, capped at Kshs.1.9 Billion at a base rate of 13%.

3.5.22 According to Section 3 of the Letter of Offer signed on 07 December, 2022, the purpose of the short-term loan was to;

- i. Refinance matured LC's pending receipt of payments from buyers
- ii. Finance payment of duty and related importation charges including insurance

3.5.23 It was noted that the short-term loan of Kshs.1.9 Billion was for the entire importation of bulk commodities Programme and consequently, the Audit Team reviewed documents, analyzed and reported the facility in its entirety.

***Irregular Short-Term Loan Amounts Kshs.559,728,896.15***

3.5.24 Review of the bank statements for the KCB (Main) bank account revealed that the Corporation was advanced short-term loan amounts by KCB, to finance various payments as per Section 3 of the Letter of Offer signed on 07 December, 2022. The loan amounts advanced totaled Kshs.2,459,728,896.15 as detailed in **Appendix VI** and shown in the table below.

**Table 27: Short-Term Loan Amounts Advanced To KNTC**

Month	Description	Loan Amount
February 2023	Loan Drawdown	270,574,511.85
March 2023	Loan Drawdown	171,139,925.40
April 2023	Loan Drawdown	144,408,325.75
May 2023	Loan Drawdown	314,623,188.75
June 2023	Loan Drawdown	732,401,726.05
<b>Sub Total</b>		<b>1,633,147,677.80</b>
July 2023	Loan Drawdown	255,801,461.10
August 2023	Loan Drawdown	274,007,384.80
September 2023	Loan Drawdown	171,867,310.60
October 2023	Loan Drawdown	124,905,061.85
<b>Sub Total</b>		<b>826,581,218.35</b>
<b>Total</b>		<b>2,459,728,896.15</b>

3.5.25 Comparison between the total loan amount advanced to the Corporation of Kshs.2,459,728,896.15 and the capped amount of the loan of Kshs.1.9 Billion, revealed an irregular variance of Kshs.559,728,896.15, being the loan amount irregularly advanced beyond the capped Kshs.1.9 Billion therefore, contravening the Letter of Offer.

3.5.26 According to the approval by the CS-The National Treasury dated 04 November, 2022, The National Treasury approved an overdraft of Kshs.2.25 Billion, for paying duties and taxes. Therefore, out of the total short-term loan of Kshs.2,459,728,896.15, the Management did not seek authority from The National Treasury for the excess short-term loan of Kshs.209,728,896.15, contrary to Regulations 82(7) and 82(8) of the Public Finance Management (National Government) Regulations, 2015 which states that, *“(7) No official government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit, authorized by the National Treasury in line with section 28(4) of the Act. (8) The authority in paragraph (7) shall be conveyed in writing to the responsible Accounting Officer and copied to the Auditor-General”.*

***Irregular Excess Interest on Short-Term Loan***

3.5.27 The Management provided the short-term loan’s supporting schedule for the financial year ending 30 June, 2023 as summarized in the table below:

**Table 28: Irregular Additional Interest on the Short-Term Loan**

Month	Loan Amount		Interest Charged at 13.74% (Kshs)		Computed Interest at 13% (Kshs)		Variance (Kshs)	
	All Items	Cooking Oil	All Items	Cooking Oil	All Items	Cooking Oil	All Items	Cooking Oil
Feb 2023	270,574,511.85	0	18,588,468.96	0	17,587,343.27	0	1,001,125.69	0
March 2023	171,139,925.40	0	11,757,312.88	0	11,124,095.15	0	633,217.73	0
April 2023	144,408,325.75	57,621,215.00	9,920,851.98	3,958,577.47	9,386,541.17	3,745,378.98	534,310.81	213,198.50
May 2023	314,623,188.75	0	21,614,613.08	0	20,450,507.27	0	1,164,105.81	0
June 2023	732,401,726.05	216,252,359.05	50,315,998.59	14,856,537.07	47,606,112.19	14,056,403.34	2,709,886.40	800,133.73
<b>Total</b>	<b>1,633,147,677.80</b>	<b>273,873,574.05</b>	<b>112,197,245.49</b>	<b>18,815,114.54</b>	<b>106,154,599.05</b>	<b>17,801,782.32</b>	<b>6,042,646.44</b>	<b>1,013,332.23</b>

3.5.28 Documents provided for audit revealed that Kshs.1,633,147,677.80 was advanced to the Corporation as short-term loan for the five (5) months period ending 30 June, 2023, which included Kshs.273,873,574.05 being the short-term loan for cooking oil. The interest charged on Kshs.273,873,574.05 was Kshs.18,815,114.54, at an interest rate of 13.74%, instead of Ksh.17,801,782.32 at the base rate of 13% in the Letter of Offer, resulting to an unexplained excess interest of Kshs.1,013,332.23. In addition, the schedules

on the short-term facility for the period from July to December, 2023 provided for audit, were incomplete and therefore unreliable.

***Unsupported Payments for Short-Term Loan Facility***

3.5.29 The Audit Team extracted payments for the short-term loan facility from the KCB (Main) bank statement for the period 02 February, 2023 to 31 December, 2023. It was noted that a total of Kshs.2,745,280,732.08 were funds debited for purposes of various payments of the short-term loan facility, as detailed in **Appendix VII** and shown in the table below.

**Table 29: Unsupported Payments for Short-Term Loan Facility**

No.	Description of Payment	Amount Paid (Kshs)
1	Payments to Various Invoices	2,190,110,819.08
	<b>Sub Total</b>	<b>2,190,110,819.08</b>
	<b>Costs Related to Short-term Loan</b>	
1	PIF (Loan) Facilitation Fee	11,078,075.00
2	Tax on PIF Facilitation Fee	2,215,615.00
3	Loan Interest	73,714,555.75
4	Loan Arrears- Interest	21,858,228.05
5	Loan Arrears- Penalty	968,987.30
	<b>Sub Total</b>	<b>109,835,461.10</b>
1	Loan Arrears- Principal	201,555,413.05
2	Loan Repayment	243,779,038.85
	<b>Sub Total</b>	<b>445,334,451.90</b>
	<b>Total</b>	<b>2,745,280,732.08</b>

3.5.30 Out of the total payments, it was established that an amount of Kshs.2,190,110,819.08 were payments made for various invoices, Kshs.109,835,461.10 were costs incurred for the short-term facility while the balance of Kshs.445,334,451.9 was repayment for the short-term facility.

3.5.31 The Corporation did not provide supporting documents for the Kshs.2,745,280,732.08 relating to short-term loans made in the bank statements. It was therefore, not possible to determine the total payable, the total paid and outstanding costs, relating to the short-term facility.

***Outstanding Interest on Short-Term Loan***

3.5.32 For the five (5) months period ending 30 June, 2023, a schedule on details of the short-term loans was provided which amounted to Kshs.1,633,147,677.80. The interest chargeable based on the base rate of 13% as per Letter of Offer, was Kshs.106,154,599.06.

3.5.33 Further, for the six (6) month period from 01 July, 2023 to 31 December, 2023, supporting documents were not provided for audit. The Audit Team relied on the bank statements and extracted loan amounts totaling Kshs.826,581,218.35 out of which, the Audit Team computed the interest chargeable at the base rate of 13% as per Letter of Offer of Kshs.53,727,779.19.

3.5.34 Comparison between the computed chargeable interest and the interest paid as per bank statements is shown in the table below:

**Table 30: Interest Between Interest Chargeable and Paid**

Period	Total Loan Amount (Kshs)	Computed Interest Charged (Kshs)	Interest Paid (Kshs)	Outstanding Interest (Kshs)
01 July 2022 to 30 June 2023	1,633,147,677.80	106,154,599.06	73,714,555.75	86,167,822.50
01 July 2023 to 31 Dec 2023	826,581,218.35	53,727,779.19		
<b>Totals</b>	<b>2,459,728,896.15</b>	<b>159,882,378.25</b>	<b>73,714,555.75</b>	<b>86,167,822.50</b>

3.5.35 As indicated in the table above, an amount of Kshs.86,167,822.50 was the total outstanding interest, which remained unpaid at the time of audit.

**c) Overdraft of Kshs.100 Million**

3.5.36 Review of the Letters of Offer signed by the Corporation and KCB revealed that one of the facilities that KCB offered the Corporation in the Programme was an overdraft facility of up to Kshs.100 Million. However, this facility was for the entire importation of bulk commodities Programme. It was therefore, not possible to compute the cooking oil portion of the facility. Consequently, the Audit Team reviewed documents, analyzed and reported the entire facility.

***Irregular Overdrawn USD Bank Account and an Un-approved Loan***

3.5.37 Review of documents provided for audit including bank statements for the KCB Dollar Account revealed that as at 08 December, 2023, the account had been overdrawn by USD43,238,799.16 (approximately Kshs.6,630,237,463). Further, there was an equivalent credit loan drawdown amount of USD43,238,799 (approximately Kshs.6,630,237,438), which off-set the overdraft of USD43,238,799.16.

3.5.38 It was therefore, possible that the Management applied for the loan amounting to USD43,238,799, to finance/off-set the overdraft. However, the loan agreement was not provided for audit therefore, the Audit Team could not ascertain the terms of the loan. It was further established that after setting-off the overdraft on 08 December, 2023, the Corporation continued overdrawing

the account and as at 11 January, 2024 the account had been overdrawn by a further USD14,828,183.87 (approximately Kshs.2,370,285,192).

3.5.39 Based on the above, the following irregularities were noted;

- i. The overdrawn position of Kshs.6,630,237,463 was beyond the agreed overdraft limit of Kshs.100 Million by Kshs.6,530,237,463 as per the Letters of Offer.
- ii. An approval for the loan drawn on 08 December, 2023 to finance the overdraft of approximately Kshs.6,630,237,438 was not provided for audit review.
- iii. The second overdrawn position of Kshs.2,370,285,192 was beyond the agreed overdraft limit of Kshs.100 Million by Kshs.2,270,285,192 as per the Letters of Offer.

3.5.40 Documents provided for audit review therefore, revealed that the Management applied the loan of USD43,238,799 (approximately Kshs.6,630,237,438) to finance the overdraft without authority, contrary to Regulations 82(7) and 82(8) of the Public Finance Management (National Government) Regulations, 2015 which states that, *"(7) No official government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit, authorized by the National Treasury in line with section 28(4) of the Act. (8) The authority in paragraph (7) shall be conveyed in writing to the responsible Accounting Officer and copied to the Auditor-General"*. Further, the Management failed to comply with the overdraft conditions by overdrawing twice beyond the allowed limit of Kshs.100 Million, by Kshs.6,530,237,463 and Kshs.2,270,285,192.

#### ***Unsupported Interest Payments for the Overdraft Facility***

3.5.41 According to Section 2 of the Letter of Offer signed on 07 December, 2022, the interest on the overdraft facility was 13%. The Audit Team extracted the interest debited from the KCB (Dollar) bank statements for the period 01 January, 2023 to 31 December, 2023. It was noted that a total of USD1,093,652.67 (approximately Kshs.164,603,288.12) were the amounts debited on various dates, being payment of the interest on the overdrawn amounts as detailed in the table below:

**Table 31: Unsupported Interest Payments for Overdraft Facility**

Date	Interest Amount (USD)	Exchange Rate	Computed Interest Amount (Kshs)
30/06/2023	38,624.67	140.52	5,427,673.81
31/07/2023	92,003.56	142.36	13,098,059.22
31/08/2023	43,659.90	145.41	6,348,407.05
30/09/2023	136,243.89	148.10	20,177,720.11
31/10/2023	281,581.83	150.56	42,394,960.32
30/11/2023	397,125.11	153.15	60,819,710.60
31/12/2023	104,413.71	156.46	16,336,757.01
<b>Total</b>	<b>1,093,652.67</b>		<b>164,603,288.12</b>

3.5.42 However, supporting documents for Kshs.164,603,288.12 were not provided for audit. It was therefore, not possible to determine the total interest payable, total paid and outstanding balance, relating to the overdraft facility. In addition to the interest of Kshs.164,603,288.12 on the overdraft, the Corporation may have paid interest on the loan that financed the overdraft. However, in the absence of the loan agreement, the Audit Team could not ascertain the interest payable.

**d) Asset Based Finance of Kshs.170 Million**

3.5.43 The Audit Team established that the asset-based finance facility of Kshs.170 Million was to be used to procure motor-vehicles to transport the various bulk commodities. However, for the cooking oil Programme, the costs of transportation for the cooking oil quantities were included in the clearing agents' charges, thereby incurring no costs under the asset-based finance facility.

**ii. Collateral Management Fees**

3.5.44 Clause 11.1 of the Tripartite agreement states that "*Inspectorate shall issue invoices to the Corporation for payment of the collateral management fees as per the agreement on a monthly basis by the 5th day of every month during the pendency of the agreement for onward transmission to the Bank to effect payment*".

***Lack of Supporting Documents for Collateral Management Fees***

3.5.45 According to Clause 8 of the Tripartite agreement, the various fees charged (all subject to applicable taxes) for the collateral management services for commodities at various locations/warehouse(s) were set as follows;

**Table 32: Fees Charged for Collateral Management Services**

Item	Rate per Warehouse Per Month (Kshs)
Collateral management services for various commodities at various locations/warehouses	250,000
Additional warehouses in a complex	150,000
Risk appraisal (One off at commencement)	30,000
Independent Stock take	30,000

3.5.46 However, the invoices received by the Corporation from Inspectorate E.A. Ltd, and the resultant payment vouchers prepared based on the above charges were not provided for audit. The Audit Team could therefore, not ascertain the total amount payable.

***Unsupported Payments in the Bank Statements***

3.5.47 Based on the cashbooks and bank statements provided for audit review, the Audit Team extracted payments made to Inspectorate E.A. Ltd totaling Kshs.47,444,000, as detailed in the table below:

**Table 33: Unsupported Payments for Collateral Management Services**

No.	Payment Date	Payee as per Bank Statement/Cash book	Amount Paid
1	19 June 2023	Inspectorate E.A. Ltd	10,005,000
2	30 August 2023	Inspectorate E.A. Ltd	24,447,000
3	30 August 2023	Inspectorate E.A. Ltd	12,992,000
<b>Total</b>			<b>47,444,000</b>

3.5.48 In the absence of supporting documents for payments and pending invoices, the Audit Team could not ascertain the total amount invoiced, actual fees paid and payable to Inspectorate E.A. Ltd for collateral management services for commodity cooking oil.

**iii. Supply of Imported Cooking Oil**

3.5.49 The Corporation entered into agreements with Multi Commerce FZC, Charma and Shehena, for the importation of commodity cooking oil at a unit price of 30 USD.

3.5.50 The Audit Team reviewed a schedule which indicated that the letters of credit were issued to the three (3) suppliers on 24 January, 2023 and 03 February, 2023. According to the schedule, the costs to be incurred by the Corporation on the commodity cooking oil amounted to USD84,234,200 (approximately

Kshs.10,463,140,614 based on the exchange rate as at the various LC issue dates).

3.5.51 Review of the schedule for LCs revealed that several payments were made to the three suppliers as follows:

**Table 34: Payments Made to Three Suppliers for Cooking Oil**

	Supplier	Quantity as per Schedule (Jerrycans)	Bank Account	Total LC Amount (USD)	Approximate LC Amount in (Kshs)	Total Amount Paid (USD)	Approximate Amount Paid in (Kshs)
1	Multi Commerce FZC	1,972,390	USD Account	59,171,700	7,347,349,989	59,169,300	7,347,051,981
2	Charma Holdings	535,417	USD Account	16,062,500	1,994,480,625	14,976,720	1,859,659,322
3	Shehena Commodity	300,000	USD Account	9,000,000	1,121,310,000	402,600	50,159,934
	<b>Total</b>	<b>2,807,807</b>		<b>84,234,200</b>	<b>10,463,140,614</b>	<b>74,548,620</b>	<b>9,256,871,237</b>

3.5.52 Comparison between the total LC amount and the total payments of USD 84,234,200 and USD74,548,620 respectively revealed a difference of USD9,685,580, being the unutilized amounts in the LCs, as detailed in the table below.

**Table 35: Unutilized Amounts in the Issued Letters of Credit**

	Supplier	Total LC Amount (USD)	Total Amount Paid (USD)	Unutilized LC Amounts (USD)	Approximate Unutilised Amount in (Kshs)
1	Multi Commerce FZC	59,171,700	59,169,300	2,400	298,008.00
2	Charma Holdings	16,062,500	14,976,720	1,085,780	134,821,302.60
3	Shehena Commodity	9,000,000	402,600	8,597,400	1,071,150,066.00
	<b>Total</b>	<b>84,234,200</b>	<b>74,548,620</b>	<b>9,685,580</b>	<b>1,206,269,376.60</b>

3.5.53 The amount of USD9,685,580 approximately Kshs.1,206,269,376.60, remained unutilized at the time of the audit. The unutilized LCs were as a result of the 289,372 of 20-litre cooking oil not delivered by the suppliers.

***Non-Provision of Supporting Documents for Payments to Suppliers***

3.5.54 It was noted that the payments indicated in the schedule provided for audit were in USD. Comparison between the payments in the schedule and the KCB USD Bank statements was carried out and the total payments at the time of audit amounting to USD74,548,620 were confirmed with the bank statements. However, due to non-provision of payment documents and cashbooks, the Audit Team could not ascertain how the Corporation accounted for the USD74,548,620.

**Foreign Exchange Loss Due to Signing of Contracts in Foreign Currency (US Dollar)**

3.5.55 According to documents obtained and reviewed, the Corporation, in the period under review, signed agreements and issued LCs in USD. Further, payments to the three (3) suppliers were made in USD, through the Corporation's KCB (USD) bank account of USD74,548,620. The Audit Team applied the exchange rate as at the various payment dates to convert USD74,548,620 into Kenya shillings, and it amounted to approximately Kshs.11,399,309,014.20, as detailed in **Appendix VIII**.

3.5.56 Comparison between the amounts paid based on the dates of issuance of the LCs and dates of paying the suppliers revealed that foreign currency losses were incurred, as detailed in **Appendix VIII** and summarized in the table below:

**Table 36: Foreign Currency Losses Incurred**

	Supplier	LC No.	Issuance Date	Exchange Rate as at Issuance Date	Amount Paid (USD)	Computed Payable Amount Using Rate at LC Issue Date (Kshs)	Computed Paid Amount using Rate as at Payment Date (Kshs)	Foreign Exchange Loss (Kshs)
1	Multi Commerce FZC	013	24 January 2023	124.17	17,276,700	2,145,247,839	2,618,541,725.40	473,293,886
2	Multi Commerce FZC	012	24 January 2023	124.17	13,965,000	1,734,034,050	2,082,131,625.00	348,097,575
3	Multi Commerce FZC	014	24 January 2023	124.17	13,965,000	1,734,034,050	2,180,862,774.00	446,828,724
4	Multi Commerce FZC	011	24 January 2023	124.17	13,962,600	1,733,736,042	2,108,186,526.00	374,450,484
5	Charma Holdings	016	24 January 2023	124.17	14,976,720	1,859,659,322	2,344,900,621.80	485,241,299
6	Shehena Commodity	021	03 February 2023	124.59	402,600	50,159,934	64,685,742.00	14,525,808
<b>Totals</b>					<b>74,548,620</b>	<b>9,256,871,237</b>	<b>11,399,309,014.2</b>	<b>2,142,437,776</b>

3.5.57 Due to the contract sum being in US dollars, the Corporation incurred foreign exchange losses due to foreign currency fluctuations amounting to Kshs.2,142,437,776 which should have been avoided if the contracts were in Kenya shillings.

**Irregular Payments to Suppliers**

3.5.58 According to minutes of the special Board of Directors' meeting held on 24 October, 2023, the Managing Director informed the Board that the Corporation negotiated with cooking oil suppliers to reduce prices from USD30 per 20-litre

jerrycan to USD23 per 20-litre jerrycan. Further, the Managing Director informed the Board that the suppliers agreed to the negotiated price and subsequently issued the Corporation with credit notes. However, the credit notes were not provided for audit review.

3.5.59 Further, an analysis of LC payments made after the special Board meeting revealed that USD49,165,140 approximately Kshs.7,656,409,804 detailed in **Appendix IX**, were made at a rate of USD30 per 20-litre jerrycan, instead of the negotiated price of USD23.

3.5.60 Based on the rolled back price of USD23 per jerrycan, the expected amount was to be USD37,693,274 approximately Kshs.5,869,914,183 resulting to an irregular overpayment to suppliers of USD11,471,866 approximately Kshs.1,786,495,621.

#### iv. Insurance Services

##### **Unsupported Payments Made Directly by KCB**

3.5.61 Schedule II of the Letter of Offer dated 07 December, 2022, A.1- Conditions of Sanctions of advance states that “*Comprehensive Insurance Cover to be obtained over all assets securing the Facilities, with the Bank’s interest noted therein as loss payee by an insurance approved by the Bank*”.

3.5.62 However, the Audit Team noted that the Bank (KCB) sourced for Mayfair Insurance Company, to insure the cooking oil. Further, KCB paid the insurer directly from the Corporation’s bank account. In addition, KCB extended the insurance cover in February 2024, although the Corporation had requested to be allowed to procure for the insurance. The payments that were made directly to the insurer were as follows:

**Table 37: Direct Payments for Insurance Services**

<b>Date of Payment</b>	<b>Description</b>	<b>Amount Paid</b>
16-03-2023	Mayfair Insurance Company	19,833,893
16-03-2023	Mayfair Insurance Company	8,009,200
17-08-2023	Mayfair Insurance Company	1,086,142
17-08-2023	Mayfair Insurance Company	802,565
<b>Total</b>		<b>29,731,800</b>

3.5.63 However, documents supporting the payments amounting to Kshs.29,731,800 were not provided for audit.

**v. Clearing and Forwarding Services**

3.5.64 The Corporation signed agreements with three (3) clearing agents- Ufanisi, Seacon and Adshef, for the provision of clearing and forwarding services on the cooking oil imported and delivered by Multi Commerce FZC, Charma Holdings, and Shehena Commodity.

3.5.65 Schedule 1 of each of the agreements outlined the services provided by the clearing agents, as summarized below;

- i. Undertake customs clearance of the cargo upon arrival at the port, prepare pickup order and apply for the import declaration form
- ii. Clear and monitor each consignment and submit daily reports showing clearance position
- iii. Advise the Corporation on customs regulations and payable duties and taxes, pay disbursements on behalf of the Corporation, preparation of KRA documentation and processing of refund claims
- iv. Handling of consignments at the Port and transport consignment while providing security escorts

**Total Clearing and Forwarding Costs**

3.5.66 Analysis of the documents and information provided for audit revealed that, the total clearing and forwarding costs which included demurrage and customs clearance costs for the quantity delivered of 2,518,434 of 20-litres by the three (3) suppliers, amounted to Kshs.2,254,465,192 as detailed in **Appendix X** and shown in the table below:

**Table 38: Total Clearing and Forwarding Costs**

	Supplier's Cooking Oil to Clear	Clearing Agent	Quantities Stripped and Cleared	Invoiced Amount (Kshs)	Amount Paid (Kshs)	Outstanding Amount (Kshs)
1	Multi Commerce FZC	Adshef	1,972,240	2,086,853,140	1,446,858,391	639,994,749
2	Charma Holdings	Ufanisi	532,774	144,537,763	67,925,793	76,611,970
3	Shehena Commodity	Seacon	13,420	23,074,289	0	23,074,289
	<b>Total</b>		<b>2,518,434</b>	<b>2,254,465,192</b>	<b>1,514,784,184</b>	<b>739,681,008</b>

### **Non-Provision of Supporting Documents for Payments to Clearing Agents**

3.5.67 According to the schedules provided for audit, it was noted that Kshs.1,514,784,184 was the total amount paid to two (2) out of the three (3) clearing agents. However, supporting payment vouchers were not provided for audit review.

### **Outstanding Clearing and Forwarding Costs**

3.5.68 According to documents provided for audit including the clearing agents' schedules, the total costs amounted to Kshs.2,254,465,192 as detailed in **Appendix X**. Further, it was established that the total outstanding costs in the period under review amounted to Kshs.739,681,008. Consequently, cooking oil totaling 807,864 of 20-litre jerrycans remained uncleared due to the outstanding clearing and forwarding costs of Kshs.739,681,008, and charges such as demurrage continued to increase.

3.5.69 Further, according to the LC schedules and bank statements, it was established that the suppliers who delivered the uncleared 807,864 of 20-litre jerrycans were paid in accordance with the agreements signed and LCs issued.

### **Analysis of the Clearing and Forwarding Costs**

3.5.70 Review of the schedules provided revealed that the clearing and forwarding costs comprised of customs clearance costs (Import/Excise/IDF/KRD Levy; Customs Rates/Levies; Other Local Charges) and Demurrage costs, as detailed in the table below:

**Table 39: Breakdown of the Clearing and Forwarding Costs**

Cost	Adshel			Ufanisi			Seacon		
	Invoiced Amount	Amount Paid	Outstanding Amount	Invoiced Amount	Amount Paid	Outstanding Amount	Invoiced Amount	Amount Paid	Outstanding Amount
Demurrage	424,950,570	66,474,560	358,476,010	17,494,316	11,936,250	5,558,066	6,207,300	0	6,207,300
Import/ Excise/ IDF/ KRD Levy	0 (Exempted)			0 (Exempted)			0 (Exempted)		
Customs Clearance Costs	1,151,084,936	951,711,784	199,373,152	61,956,661	4,640,000	57,316,661	9,518,290	0	9,518,290
Other Local Charges	510,817,634	428,672,047	82,145,587	65,086,786	51,349,543	13,737,243	7,348,699	0	7,348,699
Total Import Charges	2,086,853,140	1,446,858,391	639,994,749	144,537,763	67,925,793	76,611,970	23,074,289	0	23,074,289
Total Invoiced Amount									2,254,465,192
Total Paid Amount									1,514,784,184
Total Outstanding Amount									739,681,008

#### **a) Demurrage Costs**

3.5.71 Review of documents provided by the Management and clearing agents revealed that out of the total invoiced import costs of Kshs.2,254,465,192, the

Corporation incurred demurrage charges amounting to Kshs.448,652,186 (Approximately 19.90% of total clearing costs) for the period under review, as detailed in **Appendix XI** and summarized in the table below:

**Table 40: Total Demurrage Charges**

Clearing Agent	Invoiced Amount	Amount Paid	Amount Due
Adshel	424,950,570	66,474,560	358,476,010
Ufanisi	17,494,316	11,936,250	5,558,066
Seacon	6,207,300	0	6,207,300
<b>Total</b>	<b>448,652,186</b>	<b>78,410,810</b>	<b>370,241,376</b>

3.5.72 It was noted that the Kshs.448,652,186 was incurred due to various reasons which included but not limited to:

- i. Delays in clearing the cooking oil from the Container Freight Stations (CFSs)
- ii. Delays in filing the requisite documentation
- iii. Delays in payment of the requisite, levies, taxes, duties, and fees
- iv. Storing/holding the cooking oil shipped/delivered in the containers beyond the allowable period, due to non-clearance and stripping.

3.5.73 As at February, 2024, the total demurrage charged was Kshs.448,652,186, out of which Kshs.370,241,376 was still outstanding. The Management would have avoided the costs, if proper planning of the Programme had been done.

**b) Customs Clearance Costs**

3.5.74 The Corporation sought and was granted approval for the importation of bulk commodities, vide letter Ref: NT/PPD/CONF/5/5007 dated 1 December, 2022 by the Cabinet Secretary-National Treasury and Economic Planning.

3.5.75 Consequently, the Corporation through The National Treasury and Economic Planning allowed the Kenya Revenue Authority (KRA) to grant exemption of duty vide letter Ref: TNT/ZZ/GP/30/2023 (4), dated 20 January, 2023. The KRA exemption was issued on and took effect from 20, January, 2023, which was for one year to 19 January, 2024.

3.5.76 Upon request in writing for exemptions on quantities captured into the KRA system for customs clearance, the Corporation received exemption reference numbers for the captured quantities of cooking oil.

3.5.77 As at February, 2024, all the exemption codes via various reference numbers, had expired.

3.5.78 Review of documents and information provided for audit revealed that out of the total clearing costs of Kshs.2,254,465,192, the invoiced, paid and outstanding customs clearance costs amounted to Kshs.1,222,559,887.51, Kshs.956,351,784.66 and Kshs.266,208,102.86 respectively, as summarized in the table below;

**Table 41: Customs Clearance Costs as per Clearing Agents**

Clearing Agent	Invoiced Amount	Amount Paid	Amount Due
Adshef	1,151,084,936.51	951,711,784.66	199,373,151.86
Ufanisi	61,956,661.00	4,640,000.00	57,316,661.00
Seacon	9,518,290.00	0	9,518,290.00
<b>Total</b>	<b>1,222,559,887.51</b>	<b>956,351,784.66</b>	<b>266,208,102.86</b>

3.5.79 Further review and analysis of information provided for audit by KRA revealed that, the Corporation requested for tax exemptions for cooking oil quantities where seventy-five (75) exemptions were received as detailed in **Appendix III**.

3.5.80 It was further established that a total of 2,909,346 of 20-litre jerrycans were delivered by various suppliers on behalf of the Corporation. From the 2,909,346 of 20-litre jerrycans, an amount of Kshs.5,480,928,540 was the total tax computed for payment, Kshs.3,894,925,715 being the total taxes exempted, Kshs.1,586,002,825 being the taxes payable by the Corporation after the exemptions, and the resultant Kshs.517,958,239, being the outstanding taxes not paid by the Corporation, detailed in **Appendix XII** and summarized in the table below:

**Table 42: Taxes Exempted, Paid and Due**

Supplier	Clearing Agent	Quantities Cleared	Total Taxes	Taxes Exempted	Taxes Payable	Taxes Paid	Taxes Due
Multi Commerce FZC	Adshef	1,818,352	3,200,179,784	2,281,629,997	918,549,787	918,549,787	0
		430,730	822,500,129	582,065,080	240,435,049	0	240,435,049
<b>Sub Total</b>		<b>2,249,082</b>	<b>4,022,679,913</b>	<b>2,863,695,077</b>	<b>1,158,984,836</b>	<b>918,549,787</b>	<b>240,435,049</b>
Charma Holdings	Ufanisi	114,070	268,113,354	189,788,366	78,324,988	78,324,988	0
		385,154	917,408,683	649,403,783	268,004,900	0	268,004,900
<b>Sub Total</b>		<b>499,224</b>	<b>1,185,522,037</b>	<b>839,192,149</b>	<b>346,329,888</b>	<b>78,324,988</b>	<b>268,004,900</b>
Shehena Commodity	Seacon	13,420	29,625,410	20,107,120	9,518,290	-	9,518,290
<b>Total</b>		<b>2,761,726</b>	<b>5,237,827,360</b>	<b>3,722,994,346</b>	<b>1,514,833,014</b>	<b>996,874,775</b>	<b>517,958,239</b>
Unknown	Ufanisi	13,420	22,213,530	15,710,790	6,502,740	6,502,740	-
Unknown	Unknown	134,200	220,887,650	156,220,579	64,667,071	64,667,071	-
<b>Total</b>		<b>147,620</b>	<b>243,101,180</b>	<b>171,931,369</b>	<b>71,169,811</b>	<b>71,169,811</b>	<b>-</b>
<b>Grand Total</b>		<b>2,909,346</b>	<b>5,480,928,540</b>	<b>3,894,925,715</b>	<b>1,586,002,825</b>	<b>1,068,044,586</b>	<b>517,958,239</b>

3.5.81 The difference between the customs clearance costs as per the Corporation's records of Kshs.1,222,559,887.51 and the costs (taxes payable) as per KRA of Kshs.1,586,002,825 was noted and may have been as a result of variances in

quantities delivered of 2,518,434 of 20-litre jerrycans and 2,909,346 of 20-litre jerrycans as per Corporation's records and KRA information, respectively.

### ***Inconsistencies in Cooking Oil Quantities***

3.5.82 Information received from KRA revealed that, the total quantities of cooking oil delivered on behalf of the Corporation by various suppliers totaled 2,909,346 of 20-litre jerrycans. However, documents from the Corporation indicated 2,518,434 as the quantity delivered, resulting to a variance of 390,912 of 20-litre jerrycans. An analysis of the 2,909,346 of 20-litre jerrycans revealed the following irregularities/inconsistencies:

**Table 43: Inconsistencies in Cooking Oil Quantities**

Description	Quantity (20-litre Jerrycans)	
<b>Quantity as per KRA information</b>		<b>2,909,346</b>
<i>i) Variances in Bills of Lading</i>	276,842	
<i>ii) Quantities from unknown suppliers</i>	147,620	
Total Unaccounted-for Quantities		(424,462)
Add: Quantities in KNTC not captured by KRA		33,550
<b>Quantity as per Corporation/Agent information</b>		<b>2,518,434</b>

### ***i. Unaccounted for Quantities and Loss in Taxes***

3.5.83 Comparison between the quantities delivered as per the Corporation's records and quantities as per KRA information revealed a variance of 424,462 of 20-litre jerrycans, as shown in the table below:

**Table 44: Quantities of Cooking Oil not Accounted For**

Supplier	Clearing Agent	Bill of Lading	Quantity as Per Corporation's Data Jerrycans	Quantity as per KRA Information Jerrycans	Unaccounted For Jerrycans
Multi Commerce FZC		MEDUP8918245	33500	33,550	50
	Adshef	MAEU227488342	66,500	199,500	133,000
		AYN1041717	15,850	31788	15,938
		AYN1041724	31,844	127,968	96,124
		MEDUP8986036	31,750	63,480	31,730
<b>Sub Total</b>			<b>179,444</b>	<b>456,286</b>	<b>276,842</b>
Unknown	Unknown	MAEU230591627	Not in List	13,420	13,420
Unknown	Ufanisi	MEDUPC075512	Not in List	26,840	26,840
Unknown	Ufanisi	MEDUPC089901	Not in List	26,840	26,840
Unknown	Ufanisi	MEDUPC146867	Not in List	26,840	26,840
Unknown	Ufanisi	MEDUPC152246	Not in List	26,840	26,840
Unknown	Ufanisi	MEDUPC152246	Not in List	26,840	26,840
<b>Sub Total</b>			-	<b>147,620</b>	<b>147,620</b>
<b>Total</b>			<b>179,444</b>	<b>603,906</b>	<b>424,462</b>

3.5.84 As per the table above, Adshef (clearing agent for Multi Commerce FZC quantities) recorded five (5) Bills of Lading (BLs) with quantities totaling 179,444 of 20-litre jerrycans, whereas information obtained from KRA indicated that

similar BLs had delivered 456,286 of 20-litre jerrycans, resulting to 276,842 of 20-litre jerrycans unaccounted-for quantities by the Corporation.

3.5.85 Further, information obtained from KRA indicated that 147,620 of 20-litre jerrycans were delivered using six (6) Bills of Lading. It was further noted that Ufanisi (clearing agent for Charma Holdings quantities) stated via email dated 29 March, 2024 that they had cleared five (5) out of the six (6) BLs. However, the quantities for the five (5) BLs were not indicated in the Corporation's records provided for audit. The Audit Team therefore, was not able to ascertain the quantities as per the Corporation's records. In addition, the clearing agent and the supplier for the balance of one (1) Bill of Lading (MAEU230591627) were also not provided for audit.

3.5.86 An analysis of the unaccounted-for quantity of 424,462 of 20-litre jerrycans revealed tax payable amounting to Kshs.432,793,604.90 as detailed in **Appendix XIII** and summarized in the table below.

**Table 45: Taxes Exempted, Paid and Due for Unaccounted for Quantity**

Supplier/Clearing Agent	Unaccounted For Quantities	Taxes Computed	Taxes Exempted	Taxes Paid	Taxes Due
Multi Commerce FZC	276,842	189,307,082.90	134,676,062.92	44,914,386.76	9,716,633.21
Unknown (MAEU230591627)	13,420	22,213,530.00	15,710,790.00	6,502,740.00	0
Cleared by Ufanisi	134,200	221,272,992	156,493,107	64,779,885	0
<b>Total</b>	<b>424,462</b>	<b>432,793,604.90</b>	<b>306,879,959.92</b>	<b>116,197,011.76</b>	<b>9,716,633.21</b>

3.5.87 Included in the Kshs.432,793,604.90 was Kshs.306,879,959.92 which related to taxes, which may have been irregularly exempted, thereby indicating possible loss of tax revenue.

***ii. Quantities not Captured by KRA***

3.5.88 According to the information obtained from the Corporation and clearing agents, it was established that Ufanisi (clearing agent for Charma Holdings' quantities) recorded a Bill of Lading number AYN1042442, which was used to deliver twenty-five (25) containers with quantities totaling 33,550 of 20-litre jerrycans with an invoiced clearing cost of Kshs.2,823,150. However, the Bill of Lading number AYN1042442 did not appear in the information obtained from KRA and may have therefore, included quantities not meant for the Corporation.

## vi. Warehousing Services

3.5.89 According to the statements of accounts on warehousing services provided for audit, the total warehousing costs amounted to Kshs.165,192,543.96, as detailed in the table below:

**Table 46: Total Costs of Warehousing Services**

Service Provider	Total Invoiced Amount (Kshs)	Total Amount Paid (Kshs)	Unpaid Balance (Kshs)	Remarks
Autoport Warehouse (wallstreet)	15,901,576.96	-	15,901,576.96	Warehouse Closed
KTDA (Lenjoh Enterprises)	13,860,000.00	-	13,860,000.00	Warehouse Closed
Stanster Warehouse	8,352,000.00	-	8,352,000.00	Warehouse Closed
Bepak Warehouse	7,800,000.00	-	7,800,000.00	Warehouse Closed
Benvic (Awanad)	38,041,319.00	18,664,904.00	19,376,415.00	Warehouse Open
NFT Autoport- Container Storage	56,755,848.00	-	56,755,848.00	Warehouse Open
Tripple Frontline (Halogen and Atlantis)	16,564,800.00	-	16,564,800.00	Warehouse Empty
Mtwapa Business Park	7,917,000.00	3,890,250.00	4,026,750.00	Warehouse Empty
KNTC HQs Yarrow Road	No Costs	No Costs	No Costs	
<b>Total</b>	<b>165,192,543.96</b>	<b>22,555,154.00</b>	<b>142,637,389.96</b>	

3.5.90 Included in the Kshs.165,192,543.96, were costs incurred at Wallstreet warehouse totaling Kshs.15,901,576.96 for the period up to October 2023. Costs from October 2023 to February 2024 were not provided for audit. It was therefore, not possible to ascertain the total amount payable and outstanding for warehousing services.

### **Irregular Payment of Handling Charges**

3.5.91 Review of payment records revealed cash withdrawals amounting to Kshs.10,723,345 which were paid to staff as handling charges for cooking oil, as detailed in the table below:

**Table 47: Irregular Payment of Handling Charges**

Date	P.V Number	Amount	Description
31 August, 2023	KNTC-PV_11027	600,210.00	Handling charges
31 August, 2023	KNTC-PV_11028	499,450.00	Handling charges
13 July, 2023	KNTC-PV_10615	406,000.00	Plywood for cooking oil
17 July, 2023	KNTC-PV_10652	396,000.00	Plywood for cooking oil
18 November, 2023	KNTC-PV_11800	408,335.00	Handling charges
17 November, 2023	KNTC-PV_11797	675,155.00	Handling charges
17 November, 2023	KNTC-PV_11799	621,505.00	Handling charges
17 November, 2023	KNTC-PV_11798	525,105.00	Handling charges
18 October, 2023	KNTC-PV_11627	530,010.00	Handling charges
18 September, 2023	KNTC-PV_11135	460,220.00	Handling charges
19 October, 2023	KNTC-PV_11627	530,010.00	Handling charges
16 October, 2023	KNTC-PV_11414	465,850.00	Handling charges
16 October, 2023	KNTC-PV_11415	523,340.00	Handling charges
30 October 2023	KNTC-PV_11662	296,550.00	Handling charges

Date	P.V Number	Amount	Description
30 October 2023	KNTC-PV_11663	275,655.00	Handling charges
15 November 2023	KNTC-IMP_2969	200,000.00	Handling charges
15 September 2023	KNTC-PV_11233	858,440.00	Handling charges
20 September 2023	KNTC-PV_11234	798,300.00	Handling charges
19 September 2023	KNTC-PV_11217	702,650.00	Handling charges
19 September 2023	KNTC-PV_11216	950,560.00	Handling charges
<b>Total</b>		<b>10,723,345.00</b>	

3.5.92 According to the agreements for provision of warehousing services, handling charges were listed as one of the warehousing charges that was to be incurred by the warehouse service providers, and not by staff of the Corporation.

3.5.93 The Management explained that the Kshs.10,723,345 related to other incidental costs such as fumigation and restacking. However, supporting documents to indicate the staff were undertaking fumigation and restacking exercises were not provided for audit.

#### ***Withheld Stock Due to Rent Arrears***

3.5.94 During physical verification and stock count exercise of the cooking oil undertaken in February 2024, a total of 283,693 of 20-litre jerrycans were stored at Wallstreet, Kenya Tea Development Agency (KTDA) warehouse, and Stanster Warehouses. In addition, records for Bepak Warehouse indicated that a total of 76,417 of 20-litre jerrycans were in store, bringing the total stock in the four warehouses to 360,110 of 20-litre jerrycans. However, the Audit Team was not granted access to physically verify the stocks at Bepak Warehouse.

3.5.95 It was also noted that the Corporation could not access the commodity in the four (4) warehouses due to closure occasioned by rent arrears.

3.5.96 At the time of the physical verification exercise in February, 2024, the purchase cost of the 360,110 of 20-litre jerrycans based on the average cost of the imported cooking oil of Kshs.5,298.37 was approximately Kshs.1,907,996,020.70.

3.5.97 An analysis of the schedules and agreements provided for audit revealed that the total rent arrears for the four (4) warehouses as at 31 December, 2023 was Kshs.45,913,577, as detailed in the table below;

**Table 48: Total Rent Arrears for Warehouses**

Service Provider/Warehouses	Total Invoiced Amount	Unpaid Balance
Lenjoh Enterprises (KTDA)	13,860,000	13,860,000
Stanster Warehouse	8,352,000	8,352,000
Autoport Warehouse (Wallstreet)	15,901,577	15,901,577
Bepak Warehouse	7,800,000	7,800,000
<b>Total</b>	<b>45,913,577</b>	<b>45,913,577</b>

3.5.98 The closure of the warehouses may have contributed to the Programme's failure to address its intended purpose as the cooking oil commodity was held at the warehouses instead of being sold to the consumers as intended.

**vii. Legal Costs**

3.5.99 According to the letter referenced MMA/DMB/KNTC/816/2023 dated 11 July, 2023, the Corporation issued a letter of instruction to MMA Advocates, seeking for legal services on case number-Nairobi JR MISC No. E40 of 2023. The fee note of Nairobi JR MISC No. E40 of 2023, together with two (2) others for case number-Nairobi JR MISC N0. E16 of 2023 were provided as detailed below:

**Table 49: Fee Notes for Legal Services**

Case No.	Date	Description	Fee Note Amount
Nairobi Jr Misc No. E40 of 2023	11 July, 2023	The Law Society of Kenya sought to stop the Corporation from importing and selling duty free cooking oil	597,354,996
Nairobi JR MISC N0. E16 of 2023	07 August, 2023	Republic Vs Cabinet Secretary-Ministry of Trade, Investment, and Industry and 3 Others	17,400,000 (Interim fee note)
Nairobi JR MISC N0. E16 of 2023	07 August, 2023	Republic Vs Cabinet Secretary-Ministry of Trade, Investment, and Industry and 3 Others	116,000,000
<b>Total</b>			<b>730,754,996</b>
Unexplained Discount			447,354,996
<b>Net Amount</b>			<b>283,400,000</b>

**Unsupported Payments for Legal Costs**

3.5.100 Review of the fee note amounting to Kshs.597,354,996 dated 11 July, 2023 revealed that the amount was discounted to Kshs.150 Million. However, no documentary evidence was provided to support how the discount of Kshs.447,354,996 (approximately 75%) was arrived at, and whether the negotiations were done in line with Regulation 90(3) of the PPAD Regulations, 2020 which states that, *“the negotiations shall be conducted by the ad hoc Evaluation Committee appointed in accordance with Section 104(b) of the Act”*.

3.5.101 On 25 July, 2023, the Management made a payment of Kshs.60 Million to MMA Advocates, being part payment of the discounted legal fees of Kshs.150 Million. However, payment documents for the Kshs.60 Million were not provided for audit.

**Unsupported Approved Legal Costs**

3.5.102 As at February, 2024, the other two (2) fee notes of Kshs.17.4 Million (approved for payment) and Kshs.116 Million both totaling Kshs.133.4 Million had not been

paid. Further analysis revealed that the Kshs.133.4 Million related to one case- Republic Vs Cabinet Secretary-Ministry of Trade, Investment, and Industry and 3 Others. However, evidence on how the case related to the Programme was not provided for audit.

**viii. Distributors under 2-year Framework Agreements**

3.5.103 The Corporation entered into an agreement with MarketForce on 15 December, 2022, to distribute the Corporation’s products within the Republic of Kenya. Review of the agreement revealed that the agreed contract price to MarketForce was 16.5% of the cost of sales. However, documents supporting the cost payable, the actual amount paid, and any outstanding amounts were not provided for audit.

3.5.104 Further, Clause 4.5 of the agreement stated that “*The Corporation has agreed to supply the products to the Distributor on credit subject to the terms and conditions of this agreement and the availability of security by the Distributor as provided in Clause 5*”.

3.5.105 Documents provided for audit revealed that the Corporation supplied to the Distributors cooking oil on credit, by incurring a total of Kshs.90,040,000 to purchase the cooking oil on behalf of the two distributors, as detailed in the table below;

**Table 50: Purchase of Cooking Oil on behalf of Distributors**

Date of Transfer	Amount (Kshs)	Quantity (Jerrycans)	Entity the Quantity was Released to
12 May, 2023	48,600,000	13,135	Twiga Foods Ltd
18 May, 2023	41,440,000	11,200	MarketForce
<b>Total</b>	<b>90,040,000</b>	<b>24,335</b>	

3.5.106 These funds were debited from the Corporation’s ABSA bank account meant for internal operations, and not for the cooking oil Programme. Supporting documents indicating the approval and payment of Kshs.90,040,000 from the ABSA bank account were not provided for audit.

3.5.107 The agreement between the Corporation and Twiga Foods was not provided for audit review. It was therefore, difficult to ascertain the agreed terms.

### 3.6 Revenue Management

#### Preamble

- 3.6.1 According to the sales schedules provided for audit, the quantity of cooking oil sold as at 31 December, 2023, was 653,174 of 20-litre jerrycans amounting to Kshs.2,408,193,393. The total sales banked in the Corporation's cooking oil (Escrow) bank account amounted to Kshs.2,640,908,942.91, resulting to unexplained excess sales deposits of Kshs.232,715,549.91.
- 3.6.2 The Audit Team reviewed and analysed the revenue process for the Programme and the following audit findings were noted:

#### Revenue Collection Process

- 3.6.3 The Kenya National Trading Corporation (KNTC) generates revenue from activities and operations from its trading activities. According to the approval letter referenced NT/PPD/CONF/5/5/007 dated 01 December, 2022, the following were the areas noted by the Cabinet Secretary-The National Treasury and Economic Planning as revenue generators in the Programme:
- i. Paragraph 5- *"It is further noted that the distributors will pay for the commodities and KNTC will trade for profit by being the linkage between the suppliers and the distributors while cautioning the pricing of commodities in the market"*.
  - ii. Paragraph 6 (b)- *"Commercial activities that involve trading for profit, these activities are governed by a commercial policy for the institution to be able to raise enough funds to run its activities and to make profits"*.

#### **Use of Unapproved Procedure Guidelines and Manuals**

- 3.6.4 The Corporation's guidelines on finance and accounting were provided for audit, and it was noted that the Corporation documented its finance and accounting procedures and processes in the guidelines and manuals. However, the guidelines had not been approved by the Board at the time of the audit.
- 3.6.5 According to engagement with Management, it was noted that the revenue collection process for the cooking oil Programme was centrally managed from Headquarters. The revenue collection process and accounting procedures for sales transactions is detailed in **Appendix XIV** and summarized below;
- i. The customer is issued with a proforma invoice indicating the price and quantity

- ii. The customer deposits the total amount (as per the proforma invoice) in the cooking oil escrow bank account, and forwards the slip to the Corporation
- iii. The Corporation requests in writing to KCB, for a release order of the quantity paid for and KCB issues the release order to both the Corporation's Headquarters and warehouse where the quantity will be dispatched from
- iv. A sales invoice is generated and issued to the client
- v. Customer goes to the warehouse and quantity indicated in KCB's release order is dispatched to the Customer.

### **Total Sales Collected and Banked**

3.6.6 Regulation 64(1) of the Public Finance Management (National Government) Regulations, 2015 states that "*An accounting officer and a receiver of revenue are personally responsible for ensuring that-(a) adequate safeguards exist and are applied for the prompt collection and proper accounting for, all national government revenue and other public moneys relating to their ministries, departments or agencies*".

3.6.7 The Audit Team noted that the Management opened an escrow bank account in which all sales proceeds from the cooking oil Programme were to be banked. The total amount banked in the account between May and December, 2023, was Kshs.2,640,908,942.91.

3.6.8 Recording of the cooking oil sales was done in the cooking oil cashbook. It was noted that all entries in the bank statements were receipted in the cashbook and the total sales in the cashbook amounted to Kshs.2,640,908,942.91.

### ***Non-Refunded Sales by Distributors to the Corporation***

3.6.9 Review of the bank statements and cashbook revealed that out of the Kshs.2,640,908,942.91, the Management transferred a total of Kshs.90,040,000 from the Corporation's ABSA bank account for the purchase of 24,335 of 20-litre jerrycans of cooking oil, as detailed in the table below;

**Table 51: Sales Irregularly Made on behalf of Distributors**

ABSA Bank		Escrow Cooking Oil Account		Entity the Quantity was Released to	Quantity (Jerrycans)
Date of Transfer	Amount Transferred	Date Received	Amount Received		
12 May, 2023	48,600,000	15 May, 2023	48,600,000	Twiga Foods Ltd	13,135
18 May, 2023	41,440,000	18 May, 2023	41,440,000	MarketForce	11,200
<b>Total</b>	<b>90,040,000</b>		<b>90,040,000</b>		<b>24,335</b>

- 3.6.10 The agreement between the Corporation and Twiga Foods was not provided for audit. It was therefore, difficult to determine the contractual terms within which Twiga Foods was engaged by the Corporation.
- 3.6.11 The Corporation entered into and signed an agreement with MarketForce on 15 December, 2022, giving MarketForce distribution rights to distribute the products (which included cooking oil) within the Republic of Kenya.
- 3.6.12 Clause 4.5 of the agreement stated that "*The Corporation has agreed to supply the products to the Distributor on credit subject to the terms and conditions of this agreement and the availability of security by the Distributor as provided in Clause 5*". Further, Clause 5.4 and 5.5 of the agreement stated that "*The Corporation shall be entitled to receive payment for Products sold within fourteen (14) days; Payment shall be made by cash, cheque, bank cheque, direct credit, or by any other method agreed between the Distributor and the Corporation*".
- 3.6.13 Documents provided for audit revealed that the Corporation purchased the 24,335 of 20-litre jerrycans totaling Kshs.90,040,000, on behalf of the two (2) distributors. Documentary evidence of corresponding refunds/payments by the distributors to the Corporation was however not provided, contrary to Clause 5.4 and 5.5 of the agreement. This therefore, indicates loss of public funds, through non-refund of the Kshs.90,040,000.

***Lack of Unique Identifier for the Sales Amounts***

- 3.6.14 Review of the cashbook revealed that individual sales by customers were recorded in the cashbook. However, the sales invoice numbers were not included in the cash book. It was therefore, not possible to trace the sales invoices to the sales amounts in the cashbook.

**Recording and Accounting for Sales**

- 3.6.15 The schedule for the sales release orders provided for the period under review revealed that the Corporation sold 653,174 of 20-litre jerrycans of cooking oil, total sales amounting to Kshs.2,408,193,393 as detailed in **Appendix XV** and summarized in the table below;

**Table 52: Total Sales as per Release Orders**

Month	Quantity (Jerrycans)	Total Sales (Kshs)
May 2023	25,111	93,104,700
June 2023	1,275	5,036,250
July 2023	31,097	112,333,150
August 2023	35,848	129,863,650
September 2023	156,803	517,449,900
October 2023	23,985	93,743,497
November 2023	261,912	1,006,320,269
December 2023	117,143	450,341,977
<b>Totals</b>	<b>653,174</b>	<b>2,408,193,393</b>

3.6.16 The Audit Team reviewed the sales release order schedules provided for audit amounting to Kshs.2,408,193,393 and compared to the amounts in the bank statements and cashbooks amounting to Kshs.2,640,908,942.91 as detailed in **Appendix XV** and summarized in the table below.

**Table 53: Comparison Between Sales Release Orders and Sales Banked**

Narration	Total Sales as per Release Schedule	Total Sales Banked	Variance
Amounts in release order schedule similar to amounts banked	1,105,645,610.00	1,105,645,610.00	0
Amounts in release order schedule more than amounts banked	1,112,594,931.44	1,110,186,347.96	2,408,581.48
Amounts in release order schedule less than amounts banked	189,535,081.12	215,588,667.95	(26,053,586.83)
Amounts in release order schedule, but not banked	417,770.84	0	417,770.84
<b>Sub Total</b>	<b>2,408,193,393.40</b>	<b>2,431,420,627.91</b>	<b>(23,227,234.51)</b>
Amounts banked and not in release order schedule	0	209,488,315.00	(209,488,315.00)
<b>Total</b>	<b>2,408,193,393.00</b>	<b>2,640,908,942.91</b>	<b>(232,715,549.91)</b>

3.6.17 The comparison between the release orders and banked amounts revealed a total cumulative variance of Kshs.232,715,549.91, as a result of the following inconsistencies;

***Amounts in Release Schedule More than Amounts Banked***

3.6.18 A total of Kshs.1,112,594,931.44 were sales amounts in the release order schedule that were more than the amounts banked of Kshs.1,110,186,347.96, leading to a variance of Kshs.2,408,581.48. One of the reasons for the variance that the Audit Team established during the analysis, was the use of varying prices in the proforma invoice and sales release order.

**Amounts in Release Schedule Less than Amounts Banked**

3.6.19 A total of Kshs.189,535,081.12 were sales amounts in the release order schedule that were less than the amounts banked of Kshs.215,588,667.95 leading to a variance of Kshs.26,053,586.83 which may have been due to missing release orders in the schedule. One of the main reasons for the variance that the Audit Team established during the analysis was that one of the customers, Soko Watch Ltd, deposited Kshs.61 Million and Kshs.20 Million on 09 August and 11 September, 2023 respectively, yet the amounts in the release order schedule for the customer were Kshs.37 Million and Kshs.18,486,600 respectively. There was a possibility therefore, of missing release orders in the schedule.

**Amounts in Release Schedule Not Banked**

3.6.20 A total of Kshs.417,770.84 relating to sales amounts in the release order schedule could not be traced to the cooking oil escrow bank statements. The amount was for three release orders for two customers (two orders of Kshs.268,293.20 and Kshs.68,989.68 for Kapa Oil Refineries and Kshs.80,487.96 for Mvita Oils Ltd). No explanation was given for the non-banked amounts.

**Amounts Banked but not in the Release Order Schedule**

3.6.21 A total variance of Kshs.209,488,315 arose due to amounts that had been banked in the KCB escrow cooking oil account but were not included in the release order schedule. Further analysis revealed the following;

- i. Included in the Kshs.209,488,315, was Kshs.150,235,345 banked by customers on various dates which were later transferred in three (3) tranches from the KCB Escrow Cooking Oil bank account to the Corporation's KCB main bank account, as detailed in the table below:

**Table 54: Sales Amounts Banked and Refunded to Customers**

KCB Escrow Cooking Oil A/c		KCB Escrow Cooking Oil A/c		KCB Main A/c	
Date Deposited	Amount Deposited	Date Transferred	Amount Transferred	Date Refunded	Amount Refunded
12 Sept 2023	1,980,000	21 Sept 2023	86,511,207	21 Sept 2023	1,980,000
12 Sept 2023	3,243,103	22 Sept 2023	34,081,035	21 Sept 2023	16,500,000
13 Sept 2023	6,486,207	22 Sept 2023	29,700,000	21 Sept 2023	6,600,000
13 Sept 2023	16,500,000			21 Sept 2023	2,145,000
13 Sept 2023	16,500,000			21 Sept 2023	3,300,000
13 Sept 2023	2,145,000			21 Sept 2023	49,500,000
14 Sept 2023	1,650,000			21 Sept 2023	6,486,207
14 Sept 2023	3,300,000			22 Sept 2023	1,650,000
14 Sept 2023	32,431,035			22 Sept 2023	32,431,035

KCB Escrow Cooking Oil A/c		KCB Escrow Cooking Oil A/c		KCB Main A/c	
Date Deposited	Amount Deposited	Date Transferred	Amount Transferred	Date Refunded	Amount Refunded
14 Sept 2023	3,300,000			22 Sept 2023	16,500,000
14 Sept 2023	27,800,000			22 Sept 2023	13,200,000
14 Sept 2023	13,200,000				
16 Sept 2023	18,400,000				
16 Sept 2023	3,300,000				
<b>Total</b>	<b>150,235,345</b>		<b>150,292,242</b>		<b>150,292,242</b>

It was explained that the purpose of the transfer to the KCB main account was to refund the amounts to the customers. No approval or other documentary evidence was provided for the refunds which were made in unclear circumstances. Further, the Audit Team noted that the total amount deposited of Kshs.150,235,345 was less than the amount transferred and refunded of Kshs.150,292,242, by Kshs.56,897. Documentary evidence on why the transfers/refunds were more than the deposited amount was not provided for audit.

- ii. Further, included in the Kshs.209,488,315, was Kshs.58,468,870 banked into the KCB escrow cooking oil account, on various dates, and later debited out of the account also in unclear circumstances, as detailed below;

**Table 55: Sales Amounts Banked and Debited Out**

Date Deposited	Narration	Amount Deposited	Date Debited	Narration	Amount Debited
13 June, 2023	Transfer KCB Mashariki FT2316	789,760	22 July, 2023	Transfer KNTC	789,760
11 September, 2023	Transfer Purchase of Cooking Oil Abdir	7,682,400	11 September, 2023	Transfer Purchase of Cooking Oil Abdir	7,682,400
21 December, 2023	Transfer Mashi Designs	49,996,710	29 December, 2023	Transfer FT23355727HQ Rev Request	49,996,710
<b>Total</b>		<b>58,468,870</b>			<b>58,468,870</b>

- iii. The balance of Kshs.784,100 out of the Kshs.209,488,315 was banked in the escrow account. Supporting documentation or explanation therein for not being included in the release order schedule was not provided for audit.

### Other Weaknesses Noted

- 3.6.22 The Audit Team noted weaknesses in the revenue management process of the cooking oil Programme which included;

### **Inconsistencies Between Sales in Release Orders and Sales Invoices**

3.6.23 Out of the sales amount in the release schedule of Kshs.2,408,193,393, sales invoices totaling Kshs.1,248,988,802 were provided for audit. Comparison between the sales invoices amounts with the sales amounts in the release order schedule of Kshs.1,240,743,178.88 revealed inconsistencies in prices and quantities, resulting to variances of Kshs.1,206,800 and Kshs.9,452,423.52 for excess and shortfalls respectively, as shown in **Appendix XVI** and summarized below;

**Table 56: Variance Between Sales in Release Orders and Sales Invoices**

Month	As per Release Orders Schedule		As per Sales Invoices		Variance Amount (Kshs)
	Quantity (Jerrycans)	Sales Amount (Kshs)	Quantity (Jerrycans)	Sales Amount (Kshs)	
May 2023	25,111	93,104,700.00	25,069	92,940,300.00	164,400.00
June 2023	1,275	5,036,250.00	1,000	3,997,500.00	1,038,750.00
Aug 2023	32,751	118,403,650.00	32,750	118,400,000.00	3,650.00
<b>Excess</b>	<b>59,137</b>	<b>216,544,600.00</b>	<b>58,819</b>	<b>215,337,800.00</b>	<b>1,206,800.00</b>
July 2023	31,097	112,333,150.00	31,560	114,209,500.00	(1,876,350.00)
Sept 2023	156,803	517,449,900.00	156,803	522,273,302.40	(4,823,402.40)
Oct 2023	16,288	62,427,994.88	16,288	63,523,200.00	(1,095,205.12)
Nov 2023	34,650	133,477,534.00	34,650	135,135,000.00	(1,657,466.00)
Dec 2023	50,900	198,510,000.00	50,900	198,510,000.00	0
<b>Shortfall</b>	<b>289,738</b>	<b>1,024,198,579.88</b>	<b>290,201</b>	<b>1,033,651,002.40</b>	<b>(9,452,423.52)</b>
<b>Total</b>	<b>348,875</b>	<b>1,240,743,178.88</b>	<b>349,020</b>	<b>1,248,988,802.40</b>	

Note: The net variance for both excess and shortfalls was Kshs.8,245,623.52.

### **Sales made at Lower Selling Prices than the Target and Market Price**

3.6.24 The Audit Team noted that, the Corporation sold cooking oil using selling prices that were lower than the targets that had been set by the Corporation from time to time. For instance, the Managing Director wrote to KCB via letter Ref: KNTC/01/07/CORSP/VOL2 (156) dated 25 April, 2023, informing KCB that the prevailing selling price for cooking oil was Kshs.3,700 per 20-litre jerrycan (equivalent to Kshs.185 per litre). Review of the sales release order schedule provided for audit revealed that from 25 April, 2023 being the date of the letter, sales of 209,554 of 20-litre jerrycans amounting to Kshs.706,853,550 had been made with prices ranging from Kshs.3,300 and Kshs.3,650, which were lower than the set price of Kshs.3,700, resulting to loss on the sales amounting to Kshs.68,496,250, as detailed in **Appendix XVII** and summarized in the table below;

**Table 57: Sales at Lower Prices than Target and Market Price**

Month	Quantity	Sales Amount	Expected Sales at Kshs.3,700	Loss in Total Sales
July 2023		108,000,000	111,000,000	3,000,000
August 2023	22,751	81,403,650	84,178,700	2,775,050
September 2023	156,803	517,449,900	580,171,100	62,721,200
<b>Total</b>	<b>209,554</b>	<b>706,853,550</b>	<b>775,349,800</b>	<b>68,496,250</b>

3.6.25 Further, information from the Kenya National Bureau of Statistics (KNBS) provided for audit revealed that the prices between April and December, 2023 ranged between Kshs.315.01 and Kshs.328.37, which was also higher than the prices in the schedule. Justification by the corporation on selling the cooking oil at lower prices was not provided for audit.

***Sales made at Lower Selling Prices than Proforma Invoices***

3.6.26 Out of the total sales as per the release order schedule amounting to Kshs.2,408,193,393.40, the Audit Team was provided with proforma invoices amounting to Kshs.1,679,862,311. Comparison of the information in the documents revealed that sales totaling Kshs.1,961,987.23 had their selling prices lower than the selling price indicated in the proforma invoice, as detailed in the table below;

**Table 58: Sales made at Lower Selling Prices than Proforma Invoices**

Quantities Sold	Proforma Invoice		Release Order Schedule		Variance in Total Sales
	Selling Price	Total Sales	Selling Price	Total Sales	
1,575	3,650.79	5,750,000.00	3,650.00	5,748,750.00	1,250.00
60	3,650.00	219,000.00	3,300.00	198,000.00	21,000.00
5,602	3,570.15	20,000,000.00	3,300.00	18,486,600.00	1,513,400.00
2,878	3,300.00	9,500,000.00	3,300.00	9,497,400.00	2,600.00
1,000	3,900.00	3,900,000.00	3,832.76	3,832,760.00	67,240.00
1,179	3,901.03	4,599,310.00	3,832.76	4,518,824.04	80,485.96
2,245	3,900.13	8,755,801.32	3,832.76	8,604,546.20	151,255.12
1,763	3,900.13	6,875,936.63	3,832.76	6,757,155.88	118,780.75
1,584	3,901.52	6,180,000.00	3,900.00	6,177,600.00	2,400.00
1,260	3,832.76	4,829,278.00	3,832.76	4,829,277.60	0.40
5,354	3,735.52	20,000,000.00	3,735.00	19,997,190.00	2,810.00
1,193	3,735.64	4,456,620.00	3,735.00	4,455,855.00	765.00
<b>25,693</b>		<b>95,065,945.95</b>		<b>93,103,958.72</b>	<b>1,961,987.23</b>

3.6.27 Explanation by the Management for the variance of Kshs.1,961,987.23 was not provided for audit.

## Corporation's Brand Names and Packaging of Finished Edible Oil

### ***Lack of Approval to Use Brand Details***

- 3.6.28 Clause 7: Product Packaging of the agreements signed by the Corporation and Multi Commerce FZC, Charma Holdings and Shehena Trading stated that "*the Seller shall pack consignment in 20 litres jerrycans branded with the Buyer's approved brand details*". The agreements thereby gave the specifications on the branding of the imported cooking oil.
- 3.6.29 Review of documents and records and physical verification of the cooking oil established that the suppliers delivered the cooking oil under five (5) different brand names namely;
- i. Oki
  - ii. Wangsa
  - iii. Viking
  - iv. Mr. Mac
  - v. Maxwill
- 3.6.30 There was, however, no documentary evidence indicating that the Corporation approved the use of the brand names on the delivered cooking oil. The Audit Team could therefore, not ascertain whether the suppliers complied with the agreements.

### ***Use of Registered Brand Names for Unknown Entities***

- 3.6.31 According to Section 2(1) of the Trademarks Act CAP 506, "trade mark" means (except in relation to a certification trade mark) a mark used or proposed to be used (a) in relation to goods for the purpose of indicating a connection in the course of trade between the goods and some person having the right either as proprietor or as licensee to use the mark, whether with or without any indication of the identity of that person or distinguishing goods in relation to which the mark is used or proposed to be used from the same kind of goods connected in the course of trade with any person.
- 3.6.32 According to documents and records provided and reviewed, the suppliers delivered the cooking oil under brand names- Oki; Wangsa; Viking; Mr. Mac; and Maxwill.
- 3.6.33 The Audit Team, through a letter to the Kenya Industrial Property Institute (KIPI), the government entity mandated to implement the Trademarks Act Cap 506 that deals with registration of Trade and Service marks, sought to get

information concerning the brand names on the Commodities cooking oil listed above, together with all trademarks registered by the Corporation.

3.6.34 KIPi responded and gave a breakdown of each brand name, and review of the letter revealed the following;

- i. The Corporation as a Trading Company, did not have any trademarks registered or owned under its name
- ii. The Corporation was using three brand names (Oki, Viking, and Mac) that were registered in Kenya out of which, Mr. Mac had threatened opposition.
- iii. The Corporation was using two brand names (Maxwill and Wangsa) that were not registered.

3.6.35 It was therefore, established that the suppliers in delivering the cooking oil, branded the cooking oil in brand names that had not been approved by the Corporation, as required by Clause 7 of the agreements.

3.6.36 Further, review of information within the KIPi website revealed that, registration of a trademark is direct evidence of exclusive ownership in Kenya and helps keep off potential infringers who would attempt to ride on the goodwill of the owner's mark. It enables one to protect their rights in case someone challenges them, since the burden is on the challenger to prove any rights in a dispute. The process of registration with its thorough checks for conflicting trademarks ensures that a party has a unique mark that does not resemble any other party's mark and in so doing, helps one avoid infringement of other parties' rights.

3.6.37 Though registration is not mandatory, it is highly advisable to register a trademark, as it is direct evidence of one's ownership and enables one to protect their rights more easily, should someone challenge them. Further, the use of an unregistered trademark can lead to an ownership legal dispute. A registered trademark is also an asset for business expansion especially so through licensing franchises.

### **3.7 Value for Money**

#### ***Non-Realization of Programme Goals on Reduction of Cooking Oil Prices***

3.7.1 The Corporation was granted approval by the CS-The National Treasury, to procure cooking oil among other essential food commodities in bulk, vide letter Ref: NT/PPD/CONF/5/5/007 dated 01 December, 2022. Further, Section 4.1 of the Concept Note identified the goals of the Programme as "*to reduce the cost*

of living for ordinary Mwananchi in the Country” and “Contribute towards achievement of food security in the Country”.

- 3.7.2 To realize these goals, the Corporation was exempted from payment of duty on cooking oil, with effect from 20 January, 2023.
- 3.7.3 Data obtained from the Kenya National Bureau of Statistics (KNBS) indicated that as at November 2022 when the Corporation’s mandate was expanded to allow the importation of bulk commodities, cooking oil in the Country retailed at Kshs.344.51 per litre and in December 2023, the price was Kshs.328.37, a decrease of approximately Kshs.16.14.
- 3.7.4 An analysis of the data indicated that there was fluctuation in prices during the period under review. For instance, the price went down from Kshs.344.51 in November 2022 to Kshs.319.85 in April 2023 then in May 2023, the price increased to Kshs.321.60. The price thereafter, reduced to Kshs.315.01 in August 2023.
- 3.7.5 The analysis of the price fluctuations from November 2022 to December 2023 are as detailed in **Appendix XVIII** and summarized in the figure below.

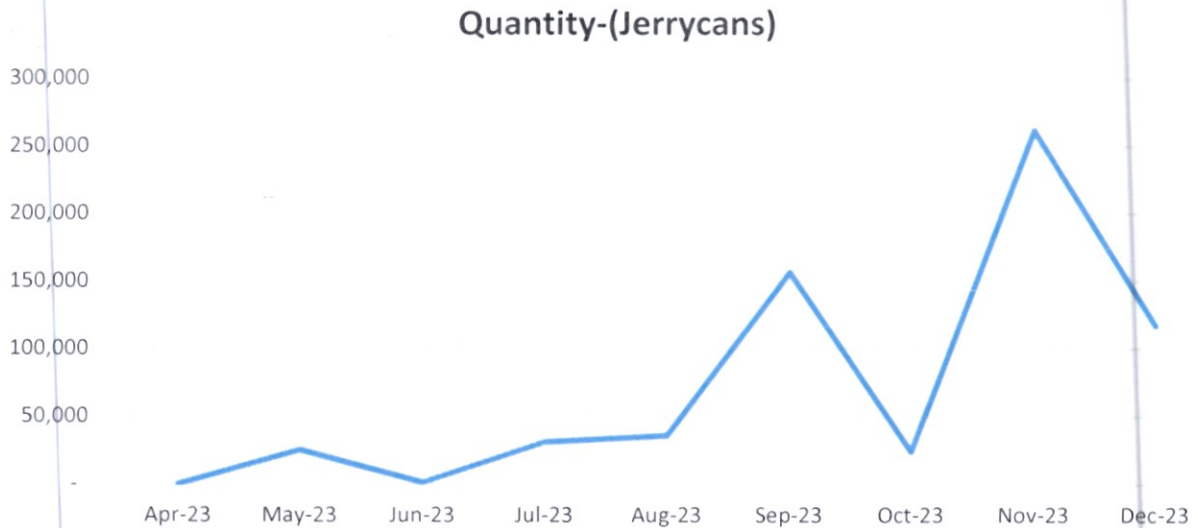
**Figure 1: Cooking Oil Market Price per Litre- November 2022 to December 2023**



- 3.7.6 Review of cooking oil receipts and sales data obtained from the Corporation indicated that the first consignment of cooking oil was cleared and received in the warehouses in the month of May, 2023. Further, cooking oil sales data shows that sales of the commodity began in May, 2023 and by December, 2023, out of the 1,710,269 of 20-litre jerrycans that had been received in the

ten (10) warehouses, the Corporation had sold 653,174 of 20-litre jerrycans (Approximately 38.18% of the total receipts). The sales data is as detailed in **Appendix XIX** and shown in the figure below.

**Figure 2: Cooking Oil Sales May 2023 to December 2023**



- 3.7.7 From the analysis above, the reduction of prices of cooking oil in the market during the period of November 2022 to December 2023 could not be directly attributed to the sale of the imported duty-free cooking oil by the Corporation. This was due to the fact that the market prices for cooking oil were recorded to have reduced from Kshs.344.51 in November 2022 to Kshs.319.85 in April 2023, prior to the receipt and sales of the first consignment of cooking oil which occurred in the month of May 2023.
- 3.7.8 It was noted that the Corporation made the highest sales of the imported cooking oil in the months of September, 2023 and November, 2023 amounting to 156,803 and 261,912 of 20-litre jerrycans respectively. From the analysis, the price in August, 2023, the month prior to these sales was Kshs.315.01. In September and November 2023, the cooking oil prices increased to Kshs.316.94 and Kshs.326.54 respectively.
- 3.7.9 The analysis above therefore, implies that the cooking oil Programme might not have had the required impact on the price of the cooking oil, since the prices increased during the period when the Corporation made the highest sales. In

addition, 603 containers said to comprise 807,864 of 20-litre jerrycans were still uncleared at Focus CFS in Mombasa and Auto Port CFS in Nairobi.

#### ***Non-Executed Consignment Agreements***

3.7.10 The Audit Team noted that the Corporation entered into consignment agreements with three (3) entities namely, Enterprise Supplies Ltd; Evertec General Trading Co.; and Purma Holdings Ltd, to deliver a total of 25,000 MT of cooking oil. However, there was no documentary evidence provided indicating that these agreements were executed or cancelled.

3.7.11 Based on this, the goal of the Programme as per Section 4.1 of the Concept Note being “*to reduce the cost of living for ordinary Mwananchi in the Country*” and “*Contribute towards achievement of food security in the Country*” may not have been achieved, since the quantities that were to be supplied as per the three (3) agreements amounting to 25,000 MT, were not delivered.

#### ***Non-Delivery of Contracted Quantity of Cooking Oil by Suppliers***

3.7.12 According to the documents and information on the delivery of cooking oil provided for audit, Multi Commerce FZC, Charma Holdings and Shehena Trading were issued with letters of credit for delivery of a total of 2,807,806 of 20-litre jerrycans of cooking oil. In Section 5.7 of the Concept Note, the Corporation identified inadequate supplier capacity as one of the risks that could lead to delayed deliveries.

3.7.13 Review of information on the quantities of cooking oil delivered by the three suppliers revealed that 2,518,434 of 20-litre jerrycans had been delivered at the time of audit in February, 2024, leaving a balance of 289,372 of 20-litre jerrycans that had not been delivered.

3.7.14 Out of the balance of 289,372 of 20-litre jerrycans, 286,580 of 20-litre jerrycans (approximately 99.04%) were to be delivered by Shehena Holdings, while 2,642 of 20-litre jerrycans (approximately 0.91%) was to be delivered by Charma Holding Limited. The two entities did not supply the contracted cooking oil quantity, despite KNTC issuing letters of credit to them for the delivery of the cooking oil.

3.7.15 The non-delivery by the companies could be as a result of lack of capacity and inexperience in the supply and delivery of cooking oil.

### ***Delays in Delivery of Cooking oil by the Suppliers***

- 3.7.16 Clause 12- delivery Schedule of the Contracts with the three suppliers of cooking oil specified the timeline by which the cooking oil should have been delivered in the Country.
- 3.7.17 According to the contracts, the dates by which all cooking oil quantities were to have been delivered were as follows: For Multi Commerce FZC, the date specified was 30 July, 2023; for Charma Holdings, the date was 31 March, 2023; while for Shehena the date was 10 April, 2023.
- 3.7.18 Review of records revealed that the three companies delivered quantities as detailed in **Appendix XX** and summarized in the table below.

**Table 59: Quantities Delivered Beyond Stipulated Time**

Entity	Quantity Delivered within Stipulated Time	Quantity Delivered beyond Stipulated Time	Total Quantity Delivered	Quantity Not Delivered	Quantity as per LC	Average Percentage not delivered
Multi Commerce FZC	1,606,190	366,050	1,972,240	150	1,972,390	0%
Charma Holdings	0	532,774	532,774	2,642	535,416	0.49%
Shehena Commodity	0	13,420	13,420	286,580	300,000	95.53%
<b>TOTAL</b>	<b>1,606,190</b>	<b>912,244</b>	<b>2,518,434</b>	<b>289,372</b>	<b>2,807,806</b>	<b>10.31%</b>

- 3.7.19 The analysis revealed that the quantities delivered by Multi Commerce FZC, Charma Holdings Ltd and Shehena Commodity Trading Ltd of 366,050, 532,774 and 13,420 of 20-litre jerrycans respectively, arrived in the Country after the stipulated timeline. The consignment that first arrived beyond the stipulated time of 31 July, 2023 for Multi Commerce FZC, arrived on 04 August, 2023, approximately four (4) days after. The consignment for Charma Holdings Ltd arrived on 18 June 2023, approximately three (3) months after the stipulated time of 31 March, 2023, while the consignment by Shehena Commodity Trading Ltd arrived in the country on 03 September, 2023, approximately five (5) months after the stipulated time of 10 April, 2023.
- 3.7.20 This therefore, implies that the companies did not adhere to the obligations and conditions as set out in the agreements entered into with the Corporation.
- 3.7.21 Section 5.7 of the Concept Note identified transit time variability as one of the risks. The mitigation measure for this risk was indicated as strict contract terms.

However, review of records did not indicate strict enforcement of the contract terms. Documentary evidence showing enforcement by the Corporation of the contract terms on the delays experienced in the delivery of the cooking oil was not provided for audit.

### **Demurrage Charges due to Delays in Clearing Cooking Oil**

- 3.7.22 Review of records and engagement with Management and Clearing Agents revealed that the Corporation incurred demurrage charges as a result of delays in payment of clearing charges and identification of warehouses to store the consignments of cooking oil. As at 31 December, 2023 the Corporation had incurred demurrage charges amounting to Kshs.448,652,186 as detailed in **Appendix XI** and shown in the table below.

**Table 60: Demurrage Charges due to Delays in Clearance**

<b>Clearing Agent</b>	<b>Invoiced Amount</b>	<b>Amount Paid</b>	<b>Amount Due</b>
Adshef	424,950,570	66,474,560	358,476,010
Ufanisi	17,494,316	11,936,250	5,558,066
Seacon	6,207,300	0	6,207,300
<b>Total</b>	<b>448,652,186</b>	<b>78,410,810</b>	<b>370,241,376</b>

- 3.7.23 It was further established that 578 containers said to comprise quantities totaling 807,864 of 20-litre jerrycans, were uncleared quantities of cooking oil as at 31 December, 2023, that continued to incur demurrage costs due to non-clearance. Further, it was established that payment to the suppliers who delivered these quantities had been made.
- 3.7.24 The public therefore, did not get value for money due to the increase in costs and lack of availability of the cooking oil in the market, contrary to the identified goals of the Programme as per Section 4.1 of the Concept Note which included, *“to reduce the cost of living for ordinary Mwananchi in the Country”* and *“Contribute towards achievement of food security in the Country”*.

### **Comparison between Costs of the Imported Cooking Oil and Locally Processed Cooking Oil**

- 3.7.25 As outlined under **Section 3.5.6** in this report, approximately Kshs.14,448,397,642.62 was incurred on the cooking oil importation Programme, and the amount included costs for the Line of Credit facility, collateral management services, suppliers of cooking oil, insurance services,

clearing and forwarding services, warehousing services, legal and distribution services.

- 3.7.26 The Audit Team obtained data from Kenya National Bureau of Statistics (KNBS) with the aim of comparing the average cost of a 20-litre jerrycan imported cooking oil, with the cost of locally processed oil of the same quantity. In calculating the average cost of the imported cooking oil, the Audit Team considered the costs directly attributed to the cooking oil. The comparison between the cost of 20-litre jerrycan imported cooking oil and locally processed oil is as shown in the table below.

**Table 61: Costs Between Imported and Locally Processed Cooking Oil**

Expenditure Item	Quantity Paid for	Incurred Amount (Kshs)
Supply of Imported Cooking Oil		10,463,140,614.00
Clearing and Forwarding Services		2,254,465,192.00
Warehousing Services		165,192,544.00
Legal Services		283,400,000.00
<b>Total</b>		<b>13,166,198,350.00</b>
Quantity of cooking oil paid for as per the LC Schedule obtained from KCB 20-litre Jerrycans	<b>2,484,954</b>	
Average Cost per 20 litre Jerrycan- Imported		<b>5,298.37</b>
Average Cost per 20 litre Jerrycan- Locally processed (KNBS)		<b>6,133.00</b>

- 3.7.27 The analysis revealed that the imported cooking oil was cheaper than locally processed cooking oil. However as stated earlier, there were costs that the Audit Team could not exclusively apportion to cooking oil as they were shared with other items that were imported. Further, the Audit Team was not provided with all the payment vouchers for the Programme therefore, it was not possible to compare the two costs with certainty.

**Losses on the Cooking Oil Sold by December 2023**

- 3.7.28 Section 72(1)(b) of the Public Finance Management Act, 2012 states that “*the Accounting Officer of a National Government entity shall be responsible for the management of the entity's assets and liabilities and that he or she shall manage the assets in a way which ensures that the entity achieves value for money in acquiring, using, and disposing of those assets*”.

3.7.29 Comparison between the average cost of a 20-litre jerrycan of imported cooking oil and the average selling price of the 20-litre jerrycan based on the sales made as at 31 December, 2023 was undertaken, as shown below.

**Table 62: Losses Incurred on Cooking Oil Sold as at December 2023**

Description	Quantities Sold	Cost in Kshs
Average Cost of 20-litre jerrycan		5,298.37
Less: average selling price based on sales up to December 2023		3,687.00
Loss per Jerrycan		(1,611.37)
Quantities sold 20-litre Jerrycans	653,174	
<b>Loss on Quantities Sold</b>		<b>1,052,504,988.38</b>

3.7.30 The Corporation was therefore making an average loss of Kshs.1,611.37 per 20-litre jerrycan of cooking oil. For the 653,134 of 20-litre jerrycans sold by 31 December, 2023, the Corporation had made a cumulative loss of approximately Kshs.1,052,504,988.38. In determining the loss, costs such as insurance, collateral management, and finance costs, were not included, since they could not be apportioned to cooking oil. Therefore, there is possibility of the loss being higher.

### 3.8 Physical Verification and Current Status

3.8.1 Regulation 140(1) of the Public Finance Management (National Government) Regulations, 2015 states that, an “Accounting Officer shall be responsible for the proper custody, care, and use of government inventories under their control, including imported goods in vessels awaiting discharge and in customs warehouses awaiting clearance”.

3.8.2 The Audit Team carried out field verifications between 29 January, and 17 February, 2023 to various warehouses and container freight services (CFSs) where the cooking oil was stored. The purpose of the verifications were to establish the existence and status of the cooking oil.

3.8.3 The Audit Team applied the following approach in the exercise;

- a) Reviewed and analyzed information from;
  - i. Government agencies- Kenya Bureau of Standards (KEBS) and Kenya Ports Authority (KPA), and
  - ii. Clearing agents
- b) Examined warehouses stock records to confirm total quantities of cooking oil received, sold and stock balance
- c) Physical count of cooking oil stock balances

### Cooking Oil Quantity Handled on Behalf of the Corporation

- 3.8.4 Review of information provided for audit revealed that the clearing agents engaged by the Corporation to clear the cooking oil delivered by Multi Commerce FZC, Charma Holding and Shehena Trading were Adshaf Investment Limited; Ufanisi Freighter (K) Ltd; and Seacon (K) Limited which handled 1,479 containers, 497 and ten (10) containers. respectively
- 3.8.5 A summary of the quantities handled by the three clearing agents is detailed in **Appendix IV** and summarized in the table below.

**Table 63: Consignments Imported by KNTC**

Clearing Agent	Supplier	Total Consignments		Stripped Consignment		Uncleared Consignment	
		No. of Bill of Ladings	No. of Containers	No. of Bill of Ladings	No. of Containers	No. of Bill of Ladings	No. of Containers
Adshaf Investment Limited	Multi Commerce FZC	50	1,479	34	1,048	12	281
				4	150		
Ufanisi Freighter (K) Ltd	Charma Holdings Ltd	17	397	4	85	13	312
Seacon (K) Limited	Shehena Commodity Trading Ltd	1	10	0	0	1	10
<b>Sub Total</b>		<b>68</b>	<b>1,886</b>	<b>42</b>	<b>1,283</b>	<b>26</b>	<b>603</b>
Ufanisi Freighter (K) Ltd	Not Provided	5	100	5	100	0	0
<b>Sub Total</b>		<b>5</b>	<b>100</b>	<b>5</b>	<b>100</b>	<b>0</b>	<b>0</b>
<b>Total</b>		<b>73</b>	<b>1,986</b>	<b>47</b>	<b>1,383</b>	<b>26</b>	<b>603</b>

- 3.8.6 The review and analysis revealed the following issues;

#### **Stripping of Containers Prior to Clearance**

- 3.8.7 Review and analysis of records provided for audit revealed that, the stripped consignments handled by Adshaf included 150 containers (4 Bills of Lading) which were stripped before clearance. The 150 containers contained 200,100 of 20-litre jerrycans of cooking oil. At the time of the physical verification exercise, the cooking oil was stored in NFT Autoport warehouse (open space), in Nairobi.

#### **Delay in Clearing Cooking Oil Consignments**

- 3.8.8 The verification exercise revealed that the uncleared consignments totaling 603 containers (said to comprise 807,864 of 20-litre jerrycans of cooking oil) were stored in two Container Freight Stations (CFS); NFT Autoport CFS and Focus CFS, as detailed in **Appendix XXI** and summarized in the table below;

**Table 64: Physical Count of Containers with Uncleared Quantity**

Clearing Agent	Supplier	CFS where Quantity is Held	Uncleared Quantity		Containers Identified	Containers not Identified
			No. of Jerrycans	No. of Containers		
Adshef Investment Ltd	Multi Commerce FZC	NFT Autoport CFS	375,740	281	281	0
Ufanisi Freighter (K) Ltd	Charma Holdings Ltd	Focus CFS	418,704	312	219	93
Seacon (K) Ltd	Shehena Commodity Trading Ltd	Focus CFS	13,420	10	2	8
<b>Total</b>			<b>807,864</b>	<b>603</b>	<b>502</b>	<b>101</b>

3.8.9 Out of the 603 containers, the Audit Team was able to identify the 281 containers using container numbers at NFT Autoport CFS and 221 containers out of the 322 at Focus CFS, detailed in **Appendix XXI**.

#### **Unaccounted for Consignments**

3.8.10 Analysis of KPA information provided for audit revealed that 110 containers arrived at the Port of Mombasa between October and November 2023 and the quantity of the cooking oil in the containers amounted to 147,620 of 20-litre jerrycans. Out of the 110 containers, 100 containers were cleared by Ufanisi but the supplier of the cooking oil was not provided for audit. The clearing agent and supplier for the remaining ten (10) containers could not be ascertained. Details of the unaccounted-for consignments are as shown below;

**Table 65: Unaccounted-for Consignments**

Bill of Lading No.	No. of Containers	No. of Jerrycans	Actual Time of Arrival (ATA)	Clearing Agent
MEDUPC075512	20	26,840	21 October 2023	Ufanisi Freighter (K) Ltd
MEDUPC089091	20	26,840	31 October 2023	Ufanisi Freighter (K) Ltd
MEDUPC089901	20	26,840	31 October 2023	Ufanisi Freighter (K) Ltd
MEDUPC146867	20	26,840	15 November 2023	Ufanisi Freighter (K) Ltd
MEDUPC152246	20	26,840	24 November 2023	Ufanisi Freighter (K) Ltd
230591627	10	13,420	14 October 2023	Not Provided
<b>Total</b>	<b>110</b>	<b>147,620</b>		

#### **Analysis of Stripped Containers**

3.8.11 An analysis of the stripped consignments revealed that a total of 1,710,570 of 20-litre jerrycans were stripped and cleared, out of which 301 were short landings. It was therefore, noted that 1,710,269 of 20-litre jerrycans of cooking oil received were delivered to the ten (10) warehouses, out of which, 1,596,249 of 20-litre jerrycans were delivered by Adshef to nine (9) warehouses and the remaining 114,020 of 20-litre jerrycans delivered by Ufanisi to one warehouse as shown below;

**Table 66: Quantities Delivered to Warehouses by Clearing Agents**

Clearing Agent	Warehouse	Quantities (Jerrycans)	Remarks
Adshef Investment Ltd	Atlantis (Triple Front Line)	65,201	Records provided
Adshef Investment Ltd	Wall Street	236,333	Records provided
Adshef Investment Ltd	NFT Auto port- Open Space	703,388	Records provided
Adshef Investment Ltd	KNTC HQ (Yarrow Road)	79,851	Records provided
Adshef Investment Ltd	KTDA (Lenjoh Enterprises)	164,134	Records provided
Adshef Investment Ltd	Benvic (Awanad Enterprise Ltd)	126,483	Records provided
Adshef Investment Ltd	Hallogen (Triple Front Line)	91,721	Records not provided
Adshef Investment Ltd	Bepak (Athi)	115,951	Records not provided
Adshef Investment Ltd	Stanster Enterprise Ltd	13,187	Records provided
<b>Sub Total</b>		<b>1,596,249</b>	
Ufanisi Freighter (K) Ltd	Saku Mtwapa Projects Ltd	114,020	Records provided
<b>Sub Total</b>		<b>114,020</b>	
<b>Total in Warehouses</b>		<b>1,710,269</b>	
Short landings		301	
<b>Grand Total Cleared</b>		<b>1,710,570</b>	

### Quantities of Cooking Oil Dispatched by Clearing Agents and Received at Warehouses

3.8.12 During the physical verification exercise held on various dates in December, 2023 and February, 2024, the Audit Team reviewed stock book records of 8 out of the 10 warehouses.

3.8.13 At the time of audit verification, Hallogen had no stock of cooking oil and the stock book records were not provided for audit. Bepak warehouse was not accessible due to unpaid rent arrears and the records were also not provided for audit.

### **Unexplained Variance Between Quantities Dispatched by Clearing Agents and Quantities Received as Per Stock Book**

3.8.14 The stock book records for the eight (8) warehouses were provided for audit and comparison between the quantities of cooking oil dispatched to the warehouses as per clearing agents' data, and the quantities received as per warehouse stock books is as detailed below;

**Table 67: Comparison Between Quantities Dispatched and Received**

Warehouses	Quantities Dispatched as per Clearing Agents Data	Quantities Received as per Stock Books	Variance
KNTC HQ (Yarrow Road)	79,851	66,561	13,290
NFT Auto port- Open Space	703,388	704,725	(1,337)
Wall Street	236,333	223,032	13,301
Atlantis (Triple Front Line)	65,201	65,062	139

Warehouses	Quantities Dispatched as per Clearing Agents Data	Quantities Received as per Stock Books	Variance
KTDA (Lenjoh Enterprises)	164,134	162,915	1,219
Stanster Enterprise Ltd	13,187	13,187	0
Benvic (Awanad Enterprise Ltd)	126,483	126,479	4
Saku Mtwapa Projects Ltd	114,020	114,020	0
<b>Total</b>	<b>1,502,597</b>	<b>1,475,981</b>	<b>26,616</b>
Hallogen (Triple Front Line)	91,721	Not Provided	N/A
Bepak (KNTC Athi)	115,951	Not Provided	N/A
<b>Total</b>	<b>1,710,269</b>		

3.8.15 The comparison resulted to an unexplained cumulative variance of 26,616 of 20-litre jerrycans of cooking oil in the eight (8) warehouses, amounting to Kshs.141,021,415.92 being the cost of the unexplained quantities (at Kshs.5,298.37, the approximate cost per 20-litre jerrycan).

#### Quantities Received, Released/Sold and Stock Balances at Warehouses

3.8.16 Review of documents including the warehouse stock book records provided for audit revealed that the total quantities of cooking oil received, quantities released/sold, and stock balances are as detailed below;

**Table 68: Quantities Received, Sold and Balances at Warehouses**

Warehouses	Quantities Received (Jerrycans)	Quantities Released (Jerrycans)	Stock Balance (Jerrycans)
KNTC Yarrow Road	66,561	66,197	364
NFT Autoport- Open Space	704,725	160,761	543,964
Wall street	223,032	86,687	136,345
Atlantis (Triple Front Line)	65,062	65,062	0
KTDA (Lenjoh Enterprises)	162,915	9,202	153,713
Stanster Enterprise Ltd	13,187	0	13,187
Benvic (Awanad Enterprise)	126,479	125,518	961
Saku Mtwapa Projects Ltd	114,020	113,001	1,019
<b>Total</b>	<b>1,475,981</b>	<b>626,428</b>	<b>849,553</b>

#### Physical Count of Cooking Oil Quantities

3.8.17 Comparison between the stock balances as per the records and the physical stock count of cooking oil undertaken on various dates revealed variances as detailed below;

**Table 69: Physical Count of Cooking Oil Quantities**

Warehouses	Date of Visit	Physical Count of Damages	Total Quantities (Jerrycans)- Warehouse Stock Book	Total Quantities (Jerrycans)- Physical Count	Variance (Stock Book Quantity- Physical Count)
KNTC Yarrow Road	11 Dec 2023	0	364	364	0
NFT Autoport	01 Feb 2024	438	543,964	547,628	(3,664)

Warehouses	Date of Visit	Physical Count of Damages	Total Quantities (Jerrycans)- Warehouse Stock Book	Total Quantities (Jerrycans)- Physical Count	Variance (Stock Book Quantity- Physical Count)
Wall street	01 Feb 2024	253	136,345	115,576	20,769
Atlantis (Triple Front Line)	01 Feb 2024	0	0	0	0
KTDA- Lenjoh Enterprises	05 Feb 2024	1,224	153,713	154,930	(1,217)
Stanster	02 Feb 2024	13	13,187	13,187	0
Benvic- Awanad	16 Feb 2024	1,038	961	1,038	(77)
Mtwapa Business Park	17 Feb 2024	0	1,019	1,019	0
<b>Total</b>		<b>2,966</b>	<b>849,553</b>	<b>833,742</b>	<b>15,811</b>

- 3.8.18 The comparison resulted in a cumulative unexplained variance of 15,811 of 20-litre jerrycans in four (4) of the warehouses, without explanation, amounting to Kshs.83,772,528.07 (at Kshs.5,298.37) the approximate cost per 20-litre jerrycan).
- 3.8.19 Further, comparison between the damaged jerrycans as per the clearing agents records of 6,891 jerrycans reported in **Table 19** of this report and the physical stock count of 2,966 jerrycans, revealed a variance of 3,925 jerrycans, amounting to Kshs.18,840,000 (at Kshs.4,800 per jerrycan as per insurance claim), which the Management could not account for.
- 3.8.20 In addition, the following issues were noted during the verification exercise;  
**Commodities Kept Against Required Storage Conditions**
- 3.8.21 During the physical stock count of commodities stored at Autoport NFT warehouse on 01 February 2024, it was observed that the cooking oil, totaling 547,628 of 20-litre jerrycans were stored in an open yard as detailed in **Appendix XXII**, contrary to the conditions on the labels indicating that the cooking oil was to be stored in a cool and dry place, away from direct sunlight.
- 3.8.22 Documents provided for audit revealed that, the 603 uncleared containers said to comprise 807,864 of 20-litre jerrycans of cooking oil, had stayed in the Autoport NFT CFS and Focus CFS from July 2023 to February 2024, the time of the physical stock count. In addition, the Audit Team observed that some of the containers in the CFSs were leaking as detailed in **Appendix XXII**.

#### **Status of Non-Compliant Consignments**

- 3.8.23 The Auditor-General through a letter Ref.OAG/SA/CONF/31/(18) dated 07 February, 2024 requested KEBS for an expert to provide professional assistance to the Audit Team by carrying out tests and reporting on whether the imported cooking oil met relevant Kenyan standards.

- 3.8.24 The expert joined the Audit Team during the verification exercise at Mombasa. However, sampling and testing of the cooking oil in warehouses and CFSs was not carried out by the KEBS expert, during the verification. In an email received by the Audit Team on 13 February, 2024, the KEBS expert explained that, further sampling of the imported cooking oil for purposes of confirming continued suitability of the product, was the responsibility of the importer.
- 3.8.25 An expert report was issued dated 26 February, 2024 which specified that 8 consignments were targeted by KEBS for testing when the consignments arrived in the Country. The report indicated that 44 KNTC consignments had been approved in the KEBS Integrated Management System (KIMS). All 44 Consignments were accompanied with Certificate of Conformity (CoC) issued by SGS, the contracted agencies who carried out inspection of commodities at the Country of origin, against relevant Kenyan standards.
- 3.8.26 Out of the eight (8) targeted consignments, seven (7) consignments failed in vitamin A while one (1) failed in both Insoluble Impurities and Vitamin A. However, tests done at the load port by SGS indicated that all the consignments fully complied with the requirements of the Kenyan Standard.
- 3.8.27 However, action taken against the eight (8) consignments that were non-compliant was not indicated in the report.
- 3.8.28 Further, field visits to the warehouses and analysis of records revealed that two (2) consignments had been sold, two (2) had been stripped and the remaining four (4) could not be traced in the ten (10) warehouses, as detailed below.

**Table 70: Status of 8 Non-Compliant Consignments**

B L Number	Product Brand	Warehouse	B L Quantity	Remarks During Visit Verification
091330173248	Viking	NFT Auto Port	66,500	All containers were stripped
MAEU227055420	Maxwill Gold	Wall Street	40,260	All containers were stripped
MAEU230591627	Valdor	Could not be traced	13,420	N/A
MEDUPC075512	Majestic	Could not be traced	26,840	N/A
MEDUPC089091	Majestic	Could not be traced	26,840	N/A
MEDUPC089901	Majestic	Could not be traced	26,840	N/A
MEDUP8739344	Okki	Benvic & Hallogen	53,200	All quantities received had been sold out
MEDUP8721664	Okki	Benvic & Hallogen	39,900	All quantities received had been sold out

3.8.29 It is therefore, possible that the non-compliant cooking oil, may have found itself into the Kenyan market, despite it failing to meet the appropriate standards.

### **3.9 Other Matters Deemed Relevant**

#### **Donations of Cooking Oil and Oil Dispensers**

##### ***Lack of Documentation on Use of Donations***

3.9.1 Review of documents provided for audit revealed that Indonesia donated five (5) oil dispensers/pumps and 5 MT (5,000 litres) of palm oil to Kenya, out of which four (4) pumps and 4 MT of palm oil were shipped and the remaining one (1) pump and 1 MT of palm oil was transported via air. Documentary evidence indicating how the donations were to be utilized within the Country was not provided for audit.

##### ***Delay in Clearance of Donated Cooking Oil***

3.9.2 According to an internal memo dated 14 August, 2023, the Supply Chain and Logistics Manager requested the Managing Director to approve a team of six members to receive four (4) pumps and four (4) MT of cooking oil in Mombasa, donated by the Government of Indonesia. The Managing Director approved the request on 17 August 2023. An analysis of the information received from KRA revealed that the donation arrived at the Port of Mombasa on 27 August, 2023 and was cleared on 14 September, 2023, incurring demurrage charges of Kshs.41,616.

3.9.3 According to the letter to the Corporation vide Ref: UFKL/GM/023/032 dated 26 September, 2023, Ufanisi Freighters (K) Ltd requested for outstanding amounts of Kshs.383,188, which they had incurred while clearing two airfreight shipments. This implied that the one (1) pump and one (1) MT of palm oil was cleared and paid for by Ufanisi Freighters (K) Ltd.

##### ***Lack of Stores Records for Donated Items***

3.9.4 During the verification exercise at the Corporation's depot, it was observed that there was 1 pumping machine branded "Mama Pima and KNTC" and one tank said to contain one (1) MT (1,000 litres) of cooking oil. The Audit Team was informed that these were part of the donations, and that the tank contained palm oil. However, the Audit Team could not verify the content and whether the items were part of the donations since stores records for the donated cooking oil quantities and pumps were not maintained.

- 3.9.5 In addition, the Audit Team observed that there were four (4) wooden boxes and four enclosed (4) tanks, within the depot and they were informed that the boxes contained the pumps and the tanks contained the donated palm oil. The Audit Team could not verify this information, since all eight (8) were entirely sealed and there was no documentation as to the contents of the boxes and tanks.
- 3.9.6 Lack of stores records made it difficult to ascertain when the items were delivered at the Depot and whether the palm oil was expired or not.

## 4.0 IRREGULARITIES AND RECOMMENDATIONS

4.1.1 The irregularities and weaknesses, responsibility and corresponding recommendations identified by the Audit Team are detailed in the table below;

**Table 71: Irregularities and Recommendations**

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
1	Failure to provide all documents for audit review contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix II of the Report	KNTC Management	The KNTC Management should always comply with the Public Audit Act, 2015, in relation to audit and provision of documents Further investigation by Government investigative agencies for criminal activities, and necessary action on the missing stock and breach of the law.
<b>Conceptualization of the Programme, Governance Issues and Budget and Budgetary Control</b>					
2	Failure to undertake a market survey or feasibility study for the Programme	N/A	1.6.5, 3.1.3	KNTC Management	The KNTC Management should: i. Develop and have approved, a policy on conducting a comprehensive market survey or feasibility study for future Programmes, which should include the objectives, scope, methodology, and resources required in a Programme. ii. Document the lessons learnt from the bulk commodities Programme and integrate them into the Corporation's procedure manuals and operations, to prevent similar gaps and weaknesses in future Programmes
3	Non-adherence with Concept Note on monitoring at Board of Directors level	N/A	1.6.9, 3.2.4	KNTC Board of Directors	The KNTC Board should: i. Strengthen oversight mechanisms at the Board level to prevent future non-adherence through regular review sessions, enhanced reporting frameworks, and robust monitoring protocols ii. Clearly define roles and responsibilities regarding adherence to governance frameworks and concept notes.
4	Variance between Concept Note Projections and Final Budget	49,171,302	1.6.16, 3.3.5	KNTC Management	The KNTC Management should: i. Provide training for staff on effective budgeting ii. Implement a process for regular budget reviews and variance analysis throughout the lifecycle of the Corporation's Programmes.
<b>Procurement Process in the Programme</b>					

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
5	Non-compliance with approvals on the use of Specially Permitted Procurement Procedure (SPPS)	N/A	1.6.11, 1.6.14, 3.4.17	KNTC Management	Further investigation by investigative agencies on non-compliance and administrative action taken on officers in line with established HR policies and Code of Conduct
6	Use of unapproved policies and manuals	N/A	1.6.14, 3.4.17, 3.5.5, 3.6.4	KNTC Board of Directors and Management	The KNTC Board and Management should: i. Review and approve all policies for trading activities. ii. Further investigation by Government investigative agencies for criminal activities and necessary action taken on officers found culpable in line with the Law and Regulations
7	Irregularities in the Procurement Process of service providers i. Non-inclusion of services in procurement plan ii. Unapproved list of registered suppliers iii. Irregular procurement of insurance and legal services iv. Inconsistent procurement methods v. Irregularities in appointment of Committees vi. Signing of contracts with irregularly recommended bidders vii. Irregular notification to bidders	N/A	1.6.17- 1.6.34, 1.6.40-1.6.55, 3.4.22-3.4.173	KNTC Management	Further investigation by Government investigative agencies and necessary action taken on officers found culpable in line with the Law and the Corporation's administrative instruments including surcharge for losses occasioned by their actions.
8	Non-Clearance of contracts for supply of cooking oil by the Attorney General	7,401,196,236	1.6.34, 3.3.68-3.3.72	KNTC Management	Further investigation by Government investigative agencies and necessary action taken on officers found culpable in line with the Law and administrative action in line with the Corporation's instruments on the officers found culpable.
9	Contract splitting under unclear circumstances to avoid Attorney General's clearance	7,401,196,236	1.6.34, 3.3.72	KNTC Management	Further investigation by Government investigative agencies and necessary action taken on officers found culpable in line with the Law and administrative action in line with the Corporation's instruments on the officers found culpable.
10	Unfavourable terms and anomalies in the agreement for suppliers of cooking oil: i. Use of CFR instead of CIF	N/A	1.6.35, 1.6.37, 3.4.73- 3.4.78 3.4.88- 3.4.89	KNTC Management	The KNTC Management should i. Seek for legal advice from the Attorney General, to avoid signing contracts with anomalies and unfavourable

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
	<ul style="list-style-type: none"> <li>ii. Schedule A not attached to agreement</li> <li>iii. Inconsistencies in prices</li> <li>iv. Bank information not included</li> </ul>				<ul style="list-style-type: none"> <li>terms and exposing the entity to risk of loss in future contracts.</li> <li>ii.Undertake administrative action in line with the Corporation's instruments on the officers found culpable.</li> </ul>
11	Inconsistencies between information in the 6 agreements and letters of credit relating to dates, quantities and prices	N/A	1.6.36, 3.4.83, 3.4.85	KNTC Management	The KNTC Management should seek legal advice from the Attorney General on the contracts, to avoid exposing the entity to risk of loss.
12	Use of wrong clause in contract termination of Standard Petroleum LLC contract	N/A	1.6.38, 3.4.90-3.4.93	KNTC Management	The KNTC Management should seek legal advice from the Attorney General and issue an amended termination letter to the supplier.
13	Unclaimed insurance for short landings of 320 Jerrycans for Multi Commerce FZC	1,536,000	1.6.45 3.4.122	KNTC Management	<p>The KNTC Management should:</p> <ul style="list-style-type: none"> <li>i.Lodge claims for all short landings and follow up the payments from the relevant insurance companies.</li> <li>ii.Ensure that procedures including timelines for compensating any short landings are well documented in SOPs and contracts entered into in the future.</li> </ul>
<b>Expenditure and Related Issues</b>					
14	Unaccounted for quantities that may have to loss in taxes (424,462 Jerrycans of 20 litres)	306,879,959	1.6.39, 3.4.97-3.4.101, 3.5.83- 3.5.87	KNTC Management	<p>The KNTC Management should comply with tax exemption approvals, follow up and notify KRA on all irregularly exempted tax amounts for recovery. Further, investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds.</p>
15	Direct payments made by KCB without KNTC approval/concurrence (1,028,815,670+ 2,745,280,732 + 47,444,000 + 29,731,800)	3,851,272,202	1.6.57- 1.6.68, 3.5.4, 3.5.13-3.5.31, 3.5.47, 3.5.62	KNTC Management	<p>The KNTC Management should reconcile, record and account for all invoices, payments and outstanding balances. Further investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds.</p>
16	Unsupported for Line of Credit payments in the bank statements	309,042,469	1.6.57, 3.5.20	KNTC Management	<p>The KNTC Management should support all Line of Credit payments in compliance with the law. Further investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds.</p>
17	Irregular Short-Term Loan Amounts beyond	559,728,896	1.6.58, 3.5.25-3.5.26	KNTC Management	The KNTC Management should comply with the law and

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
	the capped amount of Kshs.1.9Billion				take responsibility for the irregular short-term loan. Further investigation by Government investigative agencies and necessary action on officers involved in any loss of public funds through avoidable interests and charges due to the irregular short-term loan
18	Irregular excess interest on short-term loan	1,013,332.23	1.6.59, 3.5.28	KNTC Management	The KNTC Management should comply with the law, follow up and recover all irregularly paid amounts.
19	Outstanding interest on short-term loan	86,167,822	1.6.60, 3.5.35	KNTC Management	The KNTC Management should: i.Reconcile, settle the correctly incurred outstanding balances and undertake administrative action in line with the Corporation's instruments on the officers found culpable for any irregular outstanding amounts. ii.Budget for obligations and provide for unexpected eventualities in future Programmes.
20	Unsupported payments for short-term loan facility	2,745,280,732	1.6.61, 3.5.29-3.5.31	KNTC Management	The KNTC Management should support all payments in compliance with the law. Further investigation by Government investigative agencies for criminal activities and necessary action on the unsupported payments.
21	Irregular overdrawn USD bank account and an un-approved loan used to clear overdraft (6,630,237,463 2,370,285,192)	9,000,522,655	1.6.62, 3.5.37-3.5.40	KNTC Management	The KNTC Management should: i.Proper revenue collection mechanisms of Programmes are in place, to ensure that funds are available whenever obligations fall due. ii.Implement real-time monitoring systems for bank account balances to immediately detect and address overdrafts.
22	Unsupported Interest payments for the overdraft facility	164,603,288	1.6.63, 3.5.42-3.5.43	KNTC Management	The KNTC Management should support all payments in compliance with the law and administrative action taken in line with the Corporation's instruments on the officers found culpable for any unsupported payments. Further investigation by Government investigative agencies and officers found culpable held liable for the full cost of the overdrawn amount as per Section 28(5) of the PFM Act, 2012.

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
23	Unsupported payments to cooking oils suppliers (USD.74,548,620)	11,399,302.014	1.6.65 3.5.54	KNTC Management	The KNTC Management should support all payments in compliance with the law. Further investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds and breach of the law.
24	Unutilized amounts for letters of credit issued for the supply of cooking oil.	1,206,269,376	1.6.65, 3.5.52- 3.5.53	KNTC Management	The KNTC Management should record, support and disclose the unutilized letters of credit amounts in compliance with the law.
25	Foreign exchange loss due to signing of contracts in foreign currency (US Dollar)	2,142,437,776	1.6.66, 3.5.55- 3.5.57	KNTC Management	The KNTC Management should: i. Enter into contracts with local companies in local currency to avoid exchanges losses. ii. Seek legal advice from the Attorney General prior to signing contracts with foreign companies. iii. Inclusion of clauses that mitigate foreign exchange risk in contracts with foreign companies.
26	Irregular payments to Suppliers of cooking oil by using USD30 instead of the negotiated USD23	1,786,495,621	1.6.67, 3.5.58- 3.5.60	KNTC Management	The KNTC Management should comply with the law, follow up and recover all irregularly paid amounts. Further investigation by Government investigative agencies for criminal activities and necessary action on the irregular payments and breach of the law.
27	Outstanding balance for clearing and forwarding costs	739,681,008	1.6.69, 3.5.68	KNTC Management	The KNTC Management should: i. Follow-up on outstanding amounts to resolve the issues of delay in provision of services and clearing of the cooking oil. ii. Negotiate for a payment plan on the outstanding amounts to avoid further losses
28	Payment to staff Irregularly treated as handling charges	10,723,345	1.6.72, 3.5.91- 3.5.93	KNTC Management	The KNTC Management should comply with the law, follow up and refund to the Programme, all irregularly paid amounts. Further investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds.
29	Rent arrears resulting to Withholding of stock.	45,913,577	1.6.73, 3.5.94- 3.5.98	KNTC Management	The KNTC Management should i. Seek legal advice from the Attorney General on the contracts.

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
					<p>ii. Follow-up on outstanding amounts to resolve the issues of withheld stock.</p> <p>iii. Negotiate for a payment plan to ensure that stocks (cooking oil) held are released to avoid further losses</p>
30	Unexplained discount on legal costs	447,354,996	1.6.74, 3.5.100	KNTC Management	The KNTC Management should comply with the law and guidelines on negotiations.
31	Irregular legal costs (Kshs.60,000,000 paid and Kshs.223,400,000 outstanding)	283,400,000	1.6.74, 3.5.100-3.5.102	KNTC Management	The KNTC Management should comply with the law, follow up and recover all irregularly paid amounts. Further investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds.
32	Unapproved payment for purchase of cooking oil by KNTC on behalf of two distributors	90,040,000	1.6.75- 1.6.76, 3.5.105-3.5.106	KNTC Management	The KNTC Management should ensure that, and all required approvals are sought, all payments are accounted for and fully supported in compliance with the law.
<b>Revenue Management</b>					
33	Unexplained excess sales deposits	232,715,549	1.6.77, 3.6.1, 3.6.17- 3.6.21	KNTC Management	The KNTC Management should account for the unexplained excess sales deposits in compliance with the law and undertake administrative action in line with the Corporation's instruments on the officers found culpable for any irregular variances.
34	Amount not refunded by the distributors after sales of 24,335 of 20-litre Jerrycans	90,040,000	1.6.78, 3.6.9-3.6.13	KNTC Management	The KNTC Management should follow up and initiate recovery of the refunds from the distributors on the cooking oil issued. Further investigation by Government investigative agencies for criminal activities and necessary action on the unaccounted-for funds.
35	Lack of a Unique Identifier for the Sales Amounts in the Cashbook	N/A	1.6.79, 3.6.14	KNTC Management	The KNTC Management should maintain proper books of accounts in compliance with the law.
36	Variances in release orders and sales invoices	8,245,623	1.6.80, 3.6.23	KNTC Management	The KNTC Management should: <p>i. Undertake a reconciliation between the sales invoiced and sales recorded and undertake administrative action in line with the Corporation's instruments on the officers found culpable for any losses as a result of the variances.</p>

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
					ii. Establish well documented approval structures for variations.
37	Loss due to lower selling prices than the target and market price	68,496,250	1.6.81, 3.6.24	KNTC Management	The KNTC Management should: i. Ensure regular reviews and monitoring of Programmes. ii. Undertake administrative action in line with the Corporation's instruments on the officers found culpable for the losses. iii. Ensure compliance with concept documents, feasibility reports and market trend/analysis in future Programmes.
38	Variances in sales invoices and proforma invoices	1,961,987	3.6.26- 3.6.27	KNTC Management	The KNTC Management should: i. Ensure that sales invoiced are as per the agreed prices in the proforma invoices. ii. Maintain detailed reports on variances between sales invoices and proforma invoices and establish well documented approval structures for variations.
39	Lack of approval to use brand details and use of registered brand names for unknown entities	N/A	1.6.82- 1.6.83, 3.6.30, 3.6.34-3.6.35	KNTC Management	The KNTC Management should: i. Register trademark(s), to avoid packaging KNTC products using other brand names. ii. Develop and have approved, a policy on branding of the Corporation's products.
<b>Value for Money</b>					
40	Non-realization of Programme goals on reduction of cooking oil prices	N/A	1.6.84, 3.7.4-3.7.9	KNTC Management	The KNTC Management should i. Comply with the concept documents and market trend/analysis in future Programmes. ii. Develop and have approved, a policy on conducting a comprehensive market survey or feasibility study for future Programmes, which should include the objectives, scope, methodology, and resources required in a Programme. iii. Regularly monitor while promptly taking corrective action on any deviations
41	Non-execution of three (3) consignment agreements belonging to Enterprise Supplies Ltd, Evertec General Trading Co. and Purma Holdings Ltd	N/A	1.6.85, 3.7.10-3.7.11	KNTC Management	The KNTC Management should: i. Seek legal advice from the Attorney General on the non-executed agreements. ii. Strictly enforce contractual terms to avoid non-execution by companies.

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
					iii. Establish and have approved a policy on management of contracts, timeframes for execution and termination.
42	Non-Delivery of Contracted Quantity of Cooking Oil by Suppliers (289,372 of 20-litre jerrycans)	N/A	1.6.86, 3.7.12-3.7.15	KNTC Management	KNTC Management should ensure strict enforcement of the contract terms by taking action as per the provisions of the contract.
43	Delays in delivery of cooking oil by the suppliers	N/A	1.6.87, 3.7.17-3.7.21	KNTC Management	KNTC Management should ensure: i. Strict enforcement of the contract terms. ii. Proper vetting and due diligence of suppliers should be carried out to establish experience and ability to deliver before awarding of contracts.
44	Losses on the cooking oil sold based on the cost of Kshs.5,298.37 and average selling price of Kshs.3,687	1,052,504,988	1.6.88, 3.7.30	KNTC Management	The KNTC Management should ensure future programs are informed by comprehensive feasibility study/research.
<b>Physical Verification and Other Matters</b>					
45	Stripping of containers prior to clearance	N/A	1.6.89, 3.8.7	KNTC Management	The KNTC Management should: i. Develop, have approved and strictly enforce Standard Operating Procedures (SOPs) to guide the handling of KNTC's import business. ii. Comply with tax exemption approvals, follow up and notify KRA on all cleared cooking oil whose taxes have not been paid for recovery. Further, investigation by Government investigative agencies for criminal activities and necessary action on the uncleared stocks.
46	Delay in clearing cooking oil consignments in CFS	N/A	1.6.90, 1.6.96-1.6.97, 3.8.8-3.8.9	KNTC Management	The KNTC Management should fast-track the testing and clearing of the uncleared consignment before releasing to the public.
47	Unexplained variance between quantities received as per clearing agents' records and as per warehouses stock books (26,616 of 20 litres jerrycans)	141,021,415.92	1.6.91- 1.6.92, 3.8.15	KNTC Management	The KNTC Management should undertake a stock count, initiate recovery of lost stock and administrative action taken in line with the Corporation's instruments on the officers found culpable for any lost stock.
48	Unexplained variance between stock balance as per warehouse stock books and physical count	83,772,528.07	1.6.91, 3.8.17-3.8.18	KNTC Management	The KNTC Management should carry out a reconciliation of stock balance, initiate recovery of any lost stock and undertake

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendations
	undertaken in February 2024 (15,811 of 20 litres jerrycans)				administrative action in line with the Corporation's instruments on the officers found culpable for any lost stock.
49	Unexplained variance between damaged jerrycans as per clearing agents' records and physical count undertaken in February 2024 (3,925 of damaged 20 litres jerrycans)	18,840,000	1.6.92, 3.8.19	KNTC Management	The KNTC Management should: i.Undertake a count of the damages and initiate recovery of any lost damaged jerrycans. ii.Undertake administrative action in line with the Corporation's instruments on the officers found culpable for any lost damages. iii.Lodge claims from the respective insurance companies for all damaged jerrycans.
50	Cooking oil kept against required storage conditions	N/A	1.6.93, 3.8.21-3.8.22	KNTC Management	The KNTC Management should subject all uncleared cooking oil in containers and cleared cooking oil stored in open space to testing and inspection before releasing the quantities to the public. Further investigation by Government investigative agencies for criminal activities and necessary action on the suitability of the stocks and quantification of losses occasioned by poor storage.
51	Eight (8) Non-Compliant Consignments as per KEBS report	N/A	1.6.94, 3.8.25-3.8.29	Investigative agencies KEBS	The KNTC Management should follow up, withdraw any unsold non-compliant consignments to prevent further sales before re-testing the withdrawn quantities. Further, investigation by Government investigative agencies for criminal activities and necessary action on the non-compliant consignments.
52	Lack of documentation on use of donations	N/A	1.6.95, 3.9.1	KNTC Management	The KNTC Management should develop and have approved clear policies and procedures for all Programmes within the Corporation.

## 5.0 CONCLUSION

- 5.1.1 The Kenya National Trading Company Ltd through the Concept Note dated 05 October, 2022, indicated that the year-on-year food inflation in Kenya had increased to 12.4% in May, 2022 from 7% in May, 2021. The Concept Note further highlighted that the prices for the staple commodities in the food basket, cooking oil being one of them, had risen by an average of 20% in September, 2022 compared to the same period in 2021. The approval of the framework through the Cabinet Despatch was therefore, one part of the Government's proposed intervention to bring down the cost of living. By strengthening the supply chain for essential products such as cooking oil through KNTC, it was envisaged that affordable prices would be achieved, thereby creating price stabilization for household items.
- 5.1.2 The bulk commodities Programme which included cooking oil, amongst other commodities, was mainly financed through a Line of Credit facility of Kshs.24 Billion, offered by Kenya Commercial Bank Ltd.
- 5.1.3 The major irregularities included use of unapproved policies and manuals, non-compliance with approvals, procurement irregularities, foreign exchange losses due to signing of contracts in foreign currency, unexplained variances, irregular overdrawing of bank account, irregular and unsupported payments, possibility of loss of public funds/revenue (taxes) due to unaccounted-for quantities, unexplained excess sales deposits, non-realization of Programme goals, delays and non-delivery of quantities, cooking oil stored against required conditions, failure to provide some critical documents for audit review, among others.
- 5.1.4 The procured cooking oil amounted to 2,807,806 of 20-litre jerrycans, out of which 2,518,434 of 20-litre jerrycans were delivered by three (3) suppliers and the remaining 289,372 of 20-litre jerrycans was not delivered. Included in the delivered 2,518,434 of 20-litre jerrycans quantities, were actual received quantities of 1,710,269, short landings of 301 jerrycans, and the balance of 603 containers said to comprise 807,864 of 20-litre jerrycans, being uncleared cooking oil.
- 5.1.5 The total expenditure amount for the cooking oil Programme was approximately Kshs.14,448,397,642.62, out of which, Kshs.12,050,242,044.12 was paid.

Included in the paid amount, was foreign exchange losses of Kshs.2,142,437,776 which were incurred due to fluctuating exchange rates.

5.1.6 The total sales made as at December, 2023 was Kshs.2,408,193,393 of 653,174 of 20-litre jerrycans. The total sales banked amounted to Kshs.2,640,908,942.91, resulting to unexplained excess sales deposits of Kshs.232,715,549.91, due to cumulative variances between amounts banked and amounts in the release order schedule. It is not clear where the excess sales deposits of the cooking oil were derived from.

5.1.7 The amount of Kshs.15,718,217,520 was computed as being the unaccounted-for funds indicated as having been spent on the cooking oil programme as summarized below

**Table 72: Total Unaccounted-for Funds for Cooking Oil Programme**

	<b>Irregularity</b>	<b>Unaccounted-for Amounts (Kshs)</b>
1	Unaccounted for quantities that may have led to loss in taxes (424,462 Jerrycans of 20 litres)	306,879,959
2	Direct payments made by KCB without KNTC approval/concurrence	3,851,272,202
3	Unsupported payments to cooking oil suppliers (USD.74,548,620)	11,399,302,014
4	Payment to staff irregularly treated as handling charges	10,723,345
5	Irregular legal costs	60,000,000
6	Irregular distribution costs paid by KNTC on behalf of two distributors and amount not refunded by the distributors after sales of 24,335 of 20-litre jerrycans	90,040,000
<b>Total</b>		<b>15,718,217,520</b>

5.1.8 In view of the findings in this report, we recommend that the investigating agencies conclude their investigations and persons and entities found culpable for the loss of public funds be prosecuted.

  
FCPA Nancy Gathungu, CBS

**AUDITOR-GENERAL**

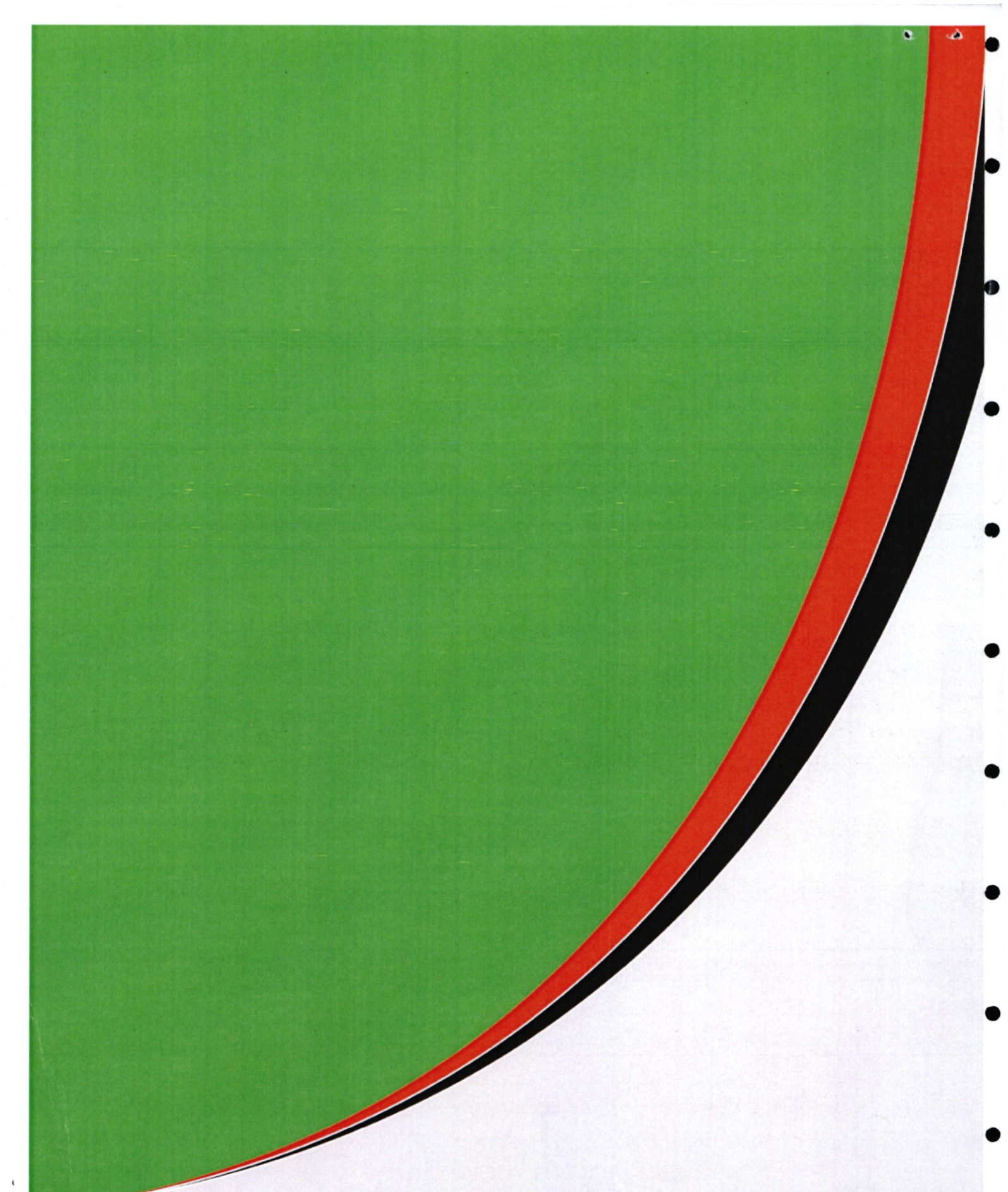
**26 July, 2024**

## 6.0 APPENDICES

6.1.1 The following appendices are part of the report submitted in soft copy;

No.	APPENDICES
Appendix I	Allegation and TORs Transformation Matrix
Appendix II	Documents Not Provided
Appendix III	List of Reference Numbers for Tax Exemptions for Cooking Oil Delivered
Appendix IV	Cooking Oil Quantities (Stripped and Un stripped/Uncleared)
Appendix V	Line of Credit Payments Extracted from Bank Statements
Appendix VI	Short-Term Loan Amounts Advanced to the Corporation
Appendix VII	Unsupported Payments for Short-Term Loan Facility
Appendix VIII	Foreign Exchange Losses Incurred
Appendix IX	Irregular Payments made to Cooking Oil Suppliers
Appendix X	Clearing and Forwarding Costs
Appendix XI	Demurrage Charges
Appendix XII	Taxes Computed, Exempted, Paid and Due for Delivered Cooking Oil
Appendix XIII	Taxes Exempted, Paid and Due for Unaccounted for Quantities
Appendix XIV	Revenue Collection/Sales Flow Chart for Cooking Oil
Appendix XV	Cooking Oil Sales as per Release Order Schedule and Bank Statements
Appendix XVI	Inconsistencies between Sales in Release Orders and Sales Invoices
Appendix XVII	Sales made at Lower Selling Prices than the Target
Appendix XVIII	Market Trend in the Price of 1 Litre of Cooking Oil: November 2022 to December 2023
Appendix XIX	Cooking Oil Sales between May 2023 and December 2023
Appendix XX	Quantities Delivered Beyond Stipulated Time
Appendix XXI	Uncleared Containers at NFT Autoport CFS, Nairobi and Focus CFS, Mombasa
Appendix XXII	Photos Taken During Physical Verification Exercise








## CONTACTS

3rd Floor, Anniversary Towers, University Way, Nairobi

**Phone:** +254 020 3214000 | **Email:** [info@oagkenya.go.ke](mailto:info@oagkenya.go.ke) | **Website:** <https://www.oagkenya.go.ke/>

 Office of the Auditor-General Kenya

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