

CASE STUDIES



THE ANTI-CORRUPTION LAW

Sample Case Studies

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FOREWORD

The Kenya Anti-Corruption Commission is committed to ensuring that as many Kenyans as possible fully understand the phenomenon of corruption, its effects on society and the benefits of prevention. In this regard, the Commission has developed this complement of Case Studies to illustrate how corruption and unethical conduct are manifested in real life. The Case Studies will serve as a guide to public officers, private citizens and members of the public to identify, understand, confront and resolve corruption and ethical dilemmas in their daily work and interactions.

The “Cases” in this publication are designed in such a way as to require the reader to isolate and think through the key issues involved. In this way, the reader is enabled to comprehend corruption as defined by our laws and unethical conduct in the practical, real life in which we live as Kenyans. The reader is then provoked to identify appropriate strategies for the resolution of the ‘Case.’ As we endeavour to develop more reader and user friendly anti-corruption texts, using simpler methods and illustrations, the Commission hopes that more Kenyans will learn and participate knowledgeably and courageously in the fight against corruption. This fight, as we have repeatedly stressed, will only be won when Kenyans make it their personal responsibility to fight corruption.

To benefit meaningfully from these Case Studies, it is important that the reader understands the nature, types and forms of corruption and unethical conduct as defined in the relevant Kenyan laws and other legal instruments. In this regard, the Commission has simultaneously simplified and produced free copies of the Anti-Corruption and Economic Crimes Act 2003, the Public Officer Ethics Acts 2003, and the Public Procurement and Disposal Act 2003 for public dissemination.

Corruption and unethical behaviour have economic, social, political and cultural effects, which are deleterious to the well being of our society. The Case Studies bring out some of these adverse effects in ways that we hope will stir Kenyans from the hopelessness of apathy to the abundance of informed action. It is therefore important that public officers, private citizens and the general public interact with these Case Studies using them as the guiding light in identifying, confronting, and eradicating the evil of corruption from our beloved country.



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CASE STUDY A

Chotara Mwenzangu is a foreign student studying at a college in a neighbouring country. He is conducting research on the capacity of the military in Kenya to respond to external attacks for his term paper and would like information on the structure of the military, number of soldiers and the equipment at their disposal. He approaches a government department for this information. At the entrance to the department, he finds a big sign reading “**This is a Corruption-Free Zone**”. Below this sign is a big wooden box on which is written the words “**Report Corruption Here**”.

Kerich Maarufu, a Public Officer with the department, attends to him. After listening to Chotara, he informs him that the department is not at liberty to disclose the information as it is classified and touches on matters of national security. Chotara pleads with him for assistance stating that he cannot make any headway on his paper without the information and might be forced to change his research topic altogether. This, he states, is not an option as he is already late in handing in his assignment.

Kerich appears to sympathise with Chotara’s predicament. He tells him that he is willing to assist him on condition that Chotara parts with ‘something small’ and that he is not named as the source of the information. He emphasizes that he will land in serious trouble if it is known that he disclosed such information to Chotara. Chotara promises him that he will not disclose the source of the information.

Kerich directs Chotara to put a stated amount of money in an envelope. He advises him to place the envelope in the middle of a newspaper which he is to bring with him the following day. He should then ‘forget’ the paper at Kerich’s desk when he comes for the information. Chotara agrees.

The following day finds Chotara at Kerich’s desk with the envelope hidden in the newspaper. Kerich gives him certain documents containing the information and as agreed, Chotara ‘forgets’ the newspaper at Kerich’s desk as he leaves.

That evening, Chotara boards a bus to go back home. At the border, his bag is inspected and the documents found. Chotara is arrested and asked to explain how he came by them. He discloses that Kerich gave him the documents when he visited him in the office that morning. The following day, the police visit Kerich at his office, and in the presence of his supervisor, question him on how Chotara got the documents. Kerich emphatically refutes ever giving them to Chotara and informs his supervisor and the police that he has no knowledge whatsoever on how Chotara came by the documents. The police leave and ask him to report to the local police station for further questioning later that day.

Questions:

1. In your opinion, have any offences been committed? If so, which ones?

A number of corruption offences have been committed. These are:

(a) Bribery/Bribery involving Agents – section 39 (ACECA)

Kerich asked Chotara for ‘something small’ in order to help him. He thus commits the offence of bribing agents. He is guilty of:

- o Soliciting a bribe
- o Receiving a bribe

Chotara also commits the offence of bribing agents. He commits the offence of giving a bribe.

(b) Abuse of Office – section 46 (ACECA)

Kerich abused his office by using it to confer a benefit on Chotara unlawfully. Kerich came by the information by virtue of his office. Passing on this highly confidential information to a person who was not authorized to receive it is an abuse of office.

(c) Breach of Trust – section 127 Penal Code

A Breach of Trust occurs when any Public Officer in the discharge of the duties of his office commits fraud or violates the trust placed on his office thereby affecting the public confidence in the performance of his duties. Kerich was in a position of trust as the custodian of confidential information that came his way in the course of official duties. He was duty bound not to disclose such information. By disclosing he committed a Breach of Trust.

2. Have any ethical breaches been committed? If yes, which are these?

Certain ethical breaches have been committed. These include:

(a) Rule of Law (section 10 of the Public Officer Ethics Act)

Kerich is required to carry out his duties in accordance with the law. By disclosing classified information that he was not supposed to, Kerich breached this provision of the Code of Ethics. Kerich breaches the provisions of the Official Secrets Act.

(b) Acting for Foreigners (section 14 of the Public Officer Ethics Act)

As a Public Officer, Kerich is required to behave in a manner that is not detrimental to the security interests of Kenya when dealing with foreign governments, organizations

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or individuals. He breached this provision by furthering the interests of a foreign student when he supplied classified information on the military to Chotara.

- 3. *If you were in Kerich's position what would you have done?***
- 4. *If you were in Chotara's position what would you have done?***
- 5. *If you are a colleague to Kerich and you subsequently came to learn of what had happened, what would you do?***
- 6. *If you were Kerich's supervisor and this matter was reported to you, what action would you take?***
- 7. *If you were a member of the public who somehow had knowledge of what happened, what action would you take?***

CASE STUDY B

A daily newspaper carries a feature early in the year on the severe shortage of teachers in some districts in Kenya and hints on a recruitment drive to be conducted by the Teachers Service Commission (TSC) in the near future. Several months after this feature is published, the TSC places an advertisement in the papers requesting interested teachers with the necessary qualifications to send their letters, curriculum vitae and supporting documents to the Education offices in the respective district offices.

On seeing the advertisement in the newspaper, **Habibi Matatizo** quickly puts her documents together and proceeds to deliver them to her local District Education Office. Habibi graduated as a teacher from Mwalimu Bora Teachers Training College in 1999. She has been unable to find a permanent job since then.

Upon arrival at the Education Office, she is directed to **Lukina Mporaji's** office. He is one of the Education Officers. Lukina informs Habibi that she is late in putting in her application and therefore he cannot accept her documents. Habibi protests that she is within time and produces a copy of the newspaper advert, which she has been carrying in her handbag for some time, to prove her point. Lukina flatly refuses to listen to her and rudely informs her that they have received a circular from TSC headquarters informing them of a change in the dates for receiving applications. He asks her to go away and stop wasting his time.

Almasi Msaidizi, who overhears this conversation, telephones Lukina and confidentially informs him that Habibi is right. She wonders when the circular was sent as she has not seen it and is not aware of any changes in the dates. Lukina tells her to mind her own business and stop eavesdropping into his conversations. Almasi politely hangs up.

After protesting for some time, Habibi, now in tears and desperate, asks Lukina what she must do to have her application considered with the rest. She states that she has looked for a job for a long time and would be heart broken if she lost this opportunity. Lukina, pretending to soften up, tells her that he can help her but only as a personal favour to her. He informs her that he is in charge of processing the applications and could easily slip hers amongst those already submitted without anyone knowing. However, she must do something for him in return.

Lukina tells her that she is a very beautiful lady and he would like to get to know her better. He asks that she avails herself later that evening for dinner with him. He tells her that the fate of her application depends on her co-operation adding that he is a man of great influence and can help her get appointed to any position she desires. She need not go through the laid down procedures that can be long and protracted. Habibi cannot hide her shock.

As he is speaking, he walks round to where Habibi is seated and puts his arm around her shoulders. Habibi, quite disturbed by this act, stands up, pushes his hand away and leaves the office, her application in hand.

Questions:

1. In your opinion, have any offences been committed? If so, which ones?

A number of corruption offences have been committed. These are:

(a) Bribery/ Bribery involving Agents – section 39 (ACECA)

A bribe need not be in form of money. Lukina solicited for an evening out with Habibi in order to process her application. He therefore committed the offence of bribery or bribery involving agents. It does not matter that the act did not occur, as long as the bribe was solicited for. In this case Lukina commits the offence of Soliciting for Sexual Favours.

(b) Abuse of Office – section 46 (ACECA)

The government trusts that Lukina will discharge his duties as a District Education Officer professionally and will assist members of the public without fear or favour. The government also trusts that Lukina will behave in a manner that inspires and promotes public confidence in the integrity of his office. By sexually harassing Habibi, he violates this trust and commits the offence of Abuse of Office.

2. Have any ethical breaches been committed?

Yes. These are:

(a) Sexual Harassment by Lukina – section 21 (POEA)

Sexual Harassment entails:

- Making requests for sexual favours;
- Making intentional or careless physical contact that is sexual in nature; or
- Making comments, including suggestions regarding another's sexuality.

(b) Lack of Professionalism – section 9 (POEA)

Public Officers are expected to perform their duties according to the rules and procedures established over the years. In addition, all public employees are now bound by the Public Officer Ethics Act, 2003, which sets minimum standards of behaviour and conduct. It is now possible to hold individual officers accountable for their actions or omissions.

Lukina was rude, discourteous and disrespectful not only to Habibi but also to his colleague Almasi.

(c) Giving False and Misleading Information - section 19 (POEA) - to Habibi on the deadline for receiving the applications.

(d) Failure to practise and promote the selection of public officers on the basis of integrity, competence and merit – section 22 (POEA)

His consideration for desiring to help Habibi was not based on her professional qualifications.

- 3. *If you were in Habibi's position, what would you do?***
- 4. *If you were in Almasi's position, what would you do?***
- 5. *If you were Lukina's supervisor and this matter was reported to you, what action would you take?***

CASE STUDY C

Chweya Biashara is employed as a doctor in the local District Hospital. He also operates a clinic in town where he spends most of his time. He has left firm instructions with the nurses at the District Hospital to direct his patients to the clinic in town for consultation. However, despite his absence at the District Hospital, Chweya continues to draw a salary from the government at the end of each month, even for the days he is absent from work.

The clinic has not been doing well in recent times and Chweya has found himself deep in debt with many creditors pursuing him for their money. One of the creditors sent an auctioneer to Chweya's clinic a few weeks ago, who attached his assets for rent arrears and closed the clinic. The auction is set to take place in a few days' time.

Other creditors have got wind of the auction and are now pursuing Chweya for payment. Chweya has gone underground. He has stopped going to work at the District Hospital and cannot be found at his last known residential address. The **Medical Superintendent** at the District Hospital has been hard pressed to explain Chweya's whereabouts to creditors who have called on him for that purpose. Colleagues who have bumped into Chweya recently have stated that he has taken to hard drinking and is very unkempt in his appearance.

Due to Chweya's prolonged absence from work, the Medical Superintendent at the District Hospital has written to the Ministry of Health headquarters recommending that Chweya be summarily dismissed for gross misconduct. However, a few days later Chweya visits him at his home and pleads with him to help him keep his job. He promises to resume duty immediately and hands over an envelope to the Medical Superintendent as a 'gift' for his family. Inside the envelope is KSh. 30,000.

The **Medical Superintendent** thanks him for the 'gift' and informs him that he had already recommended his summary dismissal and will need several thousand shillings to have someone withdraw the letter from the file. Chweya agrees to bring the money the following day for onward transmission by the Medical Superintendent to Ministry headquarters. This is done and the Medical Superintendent sends the money to Kiburi Mzalendo, a clerk at the registry with instructions to withdraw and shred the letter in question. Kiburi receives the money, removes the letter from the file and shreds it.

Questions:

1. *In your opinion, have any offences been committed? If so, which are these?*

Several corruption offences have been committed. These are:

(a) Bribery/ Bribery Involving Agents – section 39 (ACECA)

- Chweya has committed the offence of bribery involving agents. The offence has three counts:

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- Offering a Bribe: He brought a “gift” of KSh. 30,000 to the Medical Superintendent to influence his decision in his favour.
- Giving a Bribe: Chweya actually gave Ksh. 30,000 to the Medical Superintendent to influence his decision in his favour.
- Agreeing to Give a Bribe: Chweya agreed to bring some further amount of money for the Medical Superintendent to send to Kiburi as a bribe.
- The Medical Superintendent has also committed the offence of Bribery/ Bribery Involving Agents. The offence has four counts:
 - Receiving a Bribe: The Medical Superintendent actually received the sum of KSh. 30,000.
 - Soliciting for a Bribe: The Medical Superintendent asked that Chweya bring some further amount of money as a bribe for Kiburi.
 - Agreeing to Offer a Bribe: The Medical Superintendent agreed to offer a bribe to Kiburi at Ministry of Health headquarters.
 - Giving a Bribe: The Medical Superintendent actually gave money to Kiburi Mzalendo.
- Kiburi is guilty of the offence of Bribery/ Bribery Involving Agents. The offence has one count:
 - Receiving a Bribe: Kiburi received a bribe from the Medical Superintendent to remove the letter from Chweya’s file at the Ministry’s headquarters.

(b) Abuse of Office – section 46 (ACECA)

The Medical Superintendent used his office to confer an unlawful benefit on Chweya. He got a Public Officer at the Ministry’s headquarters to withdraw a letter unlawfully from a government file. He is guilty of the offence of Abuse of Office. Kiburi abused his office by unlawfully removing a letter from Chweya’s file.

(c) Breach of Trust – section 127 Penal Code

Both the Medical Superintendent and Kiburi are guilty of Breach of Trust. They have been tasked by the government to discharge their duties lawfully, truthfully and honestly. By colluding to remove the letter from Chweya’s file, they commit a breach of trust.

(d) Deceiving the Principal – section 41 (ACECA)

Chweya, Kiburi and the Medical Superintendent are guilty of the offence of Deceiving

the Principal. Chweya bribed the Medical Superintendent in order for him to withdraw the letter outlining Chweya's negligence of duty. The Medical Superintendent and Kiburi then colluded to remove the letter. Should the government refer to the file after the removal of the letter, the impression created is that Chweya is conscientious, has been on duty and is discharging his duties as per the terms of his employment. On this basis, the government will continue to pay Chweya a salary. Chweya, the Medical Superintendent and Kiburi have lied to the government to the detriment of the Kenyan public.

2. *Have any ethical breaches been committed?*

Chweya, Kiburi and the Medical Superintendent have breached a number of provisions of the general Code of Conduct contained in the Public Officer Ethics Act, 2003. These are:

(a) *Improper Enrichment – section 11 (POEA)*

The Medical Superintendent breached the Code of Conduct by receiving a "gift" of KSh. 30,000 from Chweya which he knew or ought to have known was meant to influence his decisions in favour of Chweya.

(b) *Conduct of Private Affairs – section 20 (POEA)*

The Public Officer Ethics Act provides that a Public Officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office and shall not neglect his financial obligations or neglect to settle them. Chweya breached this provision when he neglected to pay his creditors and resorted to hiding from them.

(c) *Conflict of Interest – section 12 (POEA)*

Running of a private clinic by Chweya is not illegal but has the real potential of generating Conflict of Interest with his duties as a government doctor.

- 3. *If you were the Medical Superintendent of the District Hospital, what action would you have taken?***
- 4. *If you were in Kiburi Mzalendo's position, what would you have done?***
- 5. *If you were a member of the public and these events were brought to your attention, what action would you take?***

CASE STUDY D

Mjuaji Marco is a Town Clerk of **Tuendelee Municipal Council**. He recently started a business in town known as **Bidhaa za Kushangaza Suppliers**. The business deals in the supply of stationery.

Tuendelee Municipal Council has floated a tender worth KSh. 300,000/- for the supply of stationery. **Bidhaa za Kushangaza Suppliers**, among others, puts in a bid. Using his office as town clerk, Mjuaji orders **Mtiifu Paulo**, an employee of the Council who knew where the key to the Tender Box was kept, to open the tender box at night and tell him what the other suppliers have quoted. When the Tender Box is opened, he soon realizes that **Bidhaa za Kushangaza Suppliers** have quoted the highest price and are therefore unlikely to win the tender. Mjuaji removes **Bidhaa za Kushangaza Suppliers'** bid, and replaces it with another from them quoting the lowest price.

At a meeting of the Committee dealing with the tender, Mjuaji does not disclose that he has an interest in **Bidhaa za Kushangaza Suppliers**. He participates in the discussions of the Committee and contributes to the Committee's decision to award the tender to **Bidhaa za Kushangaza Suppliers**.

Mlanawe Yohana, a Public Officer in charge of procurement in **Tuendelee Municipal Council**, receives stationery from **Bidhaa za Kushangaza Suppliers** pursuant to the tender. Upon inspection, he discovers that not only are the goods defective, but that they are also far less than those ordered. He threatens to reject the entire consignment.

Mporaji Maarufu, a sales person from **Bidhaa za Kushangaza Suppliers**, implores Mlanawe not to reject the consignment. He informs Mlanawe that **Bidhaa za Kushangaza Suppliers** belongs to the Town Clerk and promises that Mlanawe will be "*handsomely rewarded*" if he receives the goods as they are. To prove his point, Mporaji produces a wad of one thousand shilling notes which he places in Mlanawe's hands. Mlanawe puts the money in his pocket, acknowledges delivery and receives the goods. Mjuaji thereafter arranges for **Bidhaa za Kushangaza Suppliers** to be paid very quickly without due regard to procedure.

Questions:

1. In your opinion, have any offences been committed? If so, which ones?

A number of offences have been committed by the people in this story.

(a) **Mjuaji Marco** has committed the following offences:

- **Conflict of Interest – section 42 (ACECA)**

Mjuaji had an interest in the tender by virtue of owning **Bidhaa za Kushangaza Suppliers** and being the Town Clerk of *Tuendelee Municipal Council*. He did not disclose this interest

and participated in the decision of the Committee considering the bids.

- **Bid Rigging – section 44 (ACECA)**

Mjuaji ordered Mtiifu Paulo to open the tender box at night and inform him on the bids submitted by other suppliers. He then withdrew the bid by **Bidhaa za Kushangaza Suppliers**, changed it and submitted a new bid which quoted a lower price.

- **Abuse of Office – section 46 (ACECA)**

Mjuaji used his position to unlawfully confer a benefit on **Bidhaa za Kushangaza Suppliers**. He therefore abused his office.

- **Breach of Trust – section 127 Penal Code**

Mjuaji breached the trust that has been placed on him to use his best efforts in the interest of the Council, and to discharge his duties honestly and efficiently. He does not disclose his knowledge of the supplying company, which ends up delivering defective goods and far short of what has been ordered by the Council.

- **Economic Crime – section 45 (ACECA)**

Mjuaji facilitated the payment of goods which were not supplied in full to the Council and which were sub-standard. He speeded up payment for the goods and failed to follow procedures for payment of goods by the Council.

(b) Mlanawe Yohana has committed the following offences:

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Mlanawe received some money from Mporaji in order to receive the sub-standard goods from **Bidhaa za Kushangaza Suppliers** on behalf of the Council. He therefore committed the offence of bribery involving agents on the count of receiving a bribe.

- **Deceiving the Principal – section 41 (ACECA)**

Mlanawe signed for the goods confirming that they were of the quality and quantity ordered by the Council. On the basis of this, the Council paid Bidhaa za Kushangaza Suppliers. Mlanawe deceived the Principal.

- **Abuse of Office – section 46 (ACECA)**

Mlanawe abused his office by receiving goods that were not only defective, but also less than the quantity ordered. He abused his office by unlawfully conferring a benefit on **Bidhaa za Kushangaza Suppliers**.

- **Breach of Trust – section 127 Penal Code**

Mlanawe breached the trust, which the Council had placed in him to discharge his duties honestly and efficiently, and in the best interest of the Council. He still went ahead to receive goods that were not only defective but were far less than what had been ordered.

- **Economic Crime – section 45 (ACECA)**

Mlanawe has committed an economic crime. He received goods that he knew were not only defective but less than the number ordered. His statement on the quality and quantity of the goods delivered by **Bidhaa za Kushangaza Suppliers** formed the basis of payment by the Council for goods that were sub-standard and less than what was ordered. Mlanawe commits two offences namely:

- i) Receiving sub-standard goods
- ii) Receiving fewer goods than were ordered

(c) Mporaji Maarufu has committed the following offences:

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Mporaji bribed Mlanawe for him to accept goods that were not only defective but also less than what the Council ordered. He commits the offence of

- Giving a Bribe

(d) Mtiifu Paulo has committed the following offences:

- **Bid Rigging – section 44 (ACECA)**

He assisted Mjuaji to open the tender box at night and informed Mjuaji of the bids put in by other suppliers. He therefore committed the offence of Bid Rigging.

- **Abuse of Office – section 46 (ACECA)**

Mtiifu knew where the key to the Tender Box was kept. He abused his office by irregularly opening the Tender Box and supplying information to Mjuaji.

- **Breach of Trust – section 127 Penal Code**

Mtiifu has been entrusted by the Council to discharge his duties honestly and responsibly. He breached this trust by participating in Bid Rigging.

2. Have any ethical breaches been committed? If yes, which are these?

Yes, some ethical breaches have been committed.

• **Rule of Law – section 10 (POEA)**

Under the Public Officer Ethics Act, 2003, Mjuaji, Mtiifu and Mlanawe must maintain and respect the Rule of Law when discharging their duties. They failed to do this.

- i) Mjuaji did not declare the Conflict of Interest
- ii) Mtiifu gave undue advantage by breaking tender rules
- iii) Mlanawe received less goods than were ordered for and made payment for substandard goods.

• **Conflict of Interest – section 12 (POEA)**

Section 12 of the Public Officer Ethics Act states that a Public Officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties. A public officer shall not award a contract or influence the award of a contract to himself, his spouse, a business associate or a corporation, partnership or other body in which the officer has an interest. Mjuaji breached this provision.

- 3. *If you were in Mlanawe's position what would you have done?***
- 4. *If you were in Mtiifu Paulo's position, what would you have done?***
- 5. *If you were a colleague to Mlanawe and you subsequently come to learn of what happened, what would you do?***
- 6. *If you were Mlanawe's supervisor and this matter is reported to you, what action would you take?***
- 7. *If you were a member of the public who was aware of this transaction, what action would you take?***

CASE STUDY E

James Mabadiliko is a founder and member of *Tudumishe Uzalendo*, a non-governmental organization (NGO) that seeks to promote patriotism in Kenya. The organization views the promotion of patriotism as key to the fight against corruption, and the cure for insecurity in the country. The NGO has employed over 15 people and receives a lot of donor support to aid its work. Part of these funds has gone into the purchase of motor vehicles to facilitate visits and training workshops with people at the grassroots.

James has just started a motor vehicle repair business called *Jua Kali Auto Garage* and sees the NGO as a good source of business. He approaches **Wemasa Mapambano**, the Executive Director of *Tudumishe Uzalendo*, with a proposal. He requests that Wemasa 'push' for the NGO vehicles to be serviced at his garage. In exchange, James offers to share a percentage of any payments made to him with Wemasa. Wemasa readily agrees to the arrangement.

Shortly after this, the NGO's Finance Committee decides to float a tender for the servicing of the NGO's motor vehicles. It sets certain criteria with regard to the tender for its internal vetting purposes. These criteria are not to be disclosed to the suppliers. As Executive Director of the NGO, Wemasa sits on this Committee. Immediately after the meeting, Wemasa calls James and shares these confidential criteria with him. *Jua Kali Auto Garage* then puts in a bid based on these criteria.

When the Finance Committee next meets to discuss the bids, Wemasa fails to disclose that he has an interest in the tender and participates in the deliberations and decision of the Committee. *Jua Kali Auto Garage* is awarded the tender for servicing the NGO's motor vehicles.

The NGO thereafter sends vehicles to *Jua Kali Auto Garage* for repairs and servicing. The garage, however, lacks capacity to perform these tasks with the result that most of the vehicles leave the garage more damaged than when they arrived. Further, the mechanics at the garage proceed to strip the vehicles of their parts and replace them with old ones. They then sell the new vehicle parts.

The terrible state of the NGO's vehicles after servicing at *Jua Kali Auto Garage* prompts **Amali Mwangalifu**, the NGO's Administrator, to complain to Wemasa about the service rendered by the garage. Wemasa assures him that he will follow up on the matter. He, however, does nothing about it.

At the end of the month, *Jua Kali* demands payment. The amount quoted by the garage as costs for repairs and servicing is far higher than what it had tendered for. The garage cites inflation and other factors as its reasons for inflating the cost. Amali protests at this and advises Wemasa not to approve payment as the vehicles are not only in a worse state than when they were taken for servicing, but that the amount demanded by *Jua Kali Auto Garage* is not the one that was agreed upon and therefore cannot be justified. Wemasa ignores Amali's advice and approves payment. *Jua Kali Auto Garage* is soon paid. Thereafter, Wemasa receives the agreed percentage of the payment as his reward.

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Amali informs Wemasa after payment is made to *Jua Kali Auto Garage* that he will raise the matter with the Board of the NGO. He also mentions that it is likely that he will include it in his report to the donors. Wemasa rudely informs Amali that he is the Executive Director of the NGO and can do whatever he pleases. He mockingly tells Amali to go and report him to whatever office he may desire. He then sacks Amali and orders that he leaves the NGO's offices immediately. He issues a directive to the NGO's security team not to allow Amali anywhere near the office.

Questions:

1. In your opinion, have any corruption offences been committed? If yes, which ones? A number of offences have been committed. These are:

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

James promised Wemasa a percentage of all payments made to *Jua Kali Auto Garage* as an incentive for Wemasa to influence the tender in James' favour. He commits the offences of bribery involving agents and is guilty of:

- Offering a Bribe
- Giving a Bribe

Wemasa also commits the offence of Bribery Involving Agents. He agreed to influence the tender in favour of *Jua Kali Auto Garage* in exchange for getting a percentage of all payments made to the Garage. He is guilty of:

- Receiving a Bribe

- **Conflict of Interest – section 42 (ACECA)**

Wemasa failed to disclose that he had an interest in the tender and participated in the proceedings of the Finance Committee in respect of the tender. He is guilty of Conflict of Interest.

- **Bid Rigging – section 44 (ACECA)**

Wemasa passed on confidential information to James. This gave James an unfair advantage over other suppliers who did not have this information. Consequently, James was able to tailor make *Jua Kali Auto Garage*'s bid to meet the Committee's secret criteria. Both James and Wemasa are guilty of bid rigging.

- **Abuse of Office – section 46 (ACECA)**

Abuse of Office is the improper use of office / misuse of office to confer a benefit to oneself or others. In this instance, Wemasa abused his office by illegally helping *Jua Kali Auto Garage* win the tender. By virtue of his position, Wemasa was privy to privileged information about the tender. He used this information to confer a benefit to himself.

2. Are there any ethical breaches committed?

Yes, ethical breaches are evident. Although NGOs and their employees are not covered by the Public Officer Ethics Act, 2003, the breaches outlined in this case study would require to be dealt with under specific Codes of Conduct that apply to the NGO in question.

If you were in Wemasa's position what would you have done?

- 4. *If you were in Amali's position what would you have done?***
- 5. *If you were a colleague to Amali and you subsequently come to learn of what happened, what would you do?***
- 6. *If you were a member of the Board of Tudumishe Uzalendo and this matter is reported to you, what action would you take?***
- 7. *If you were a member of the public who witnessed what happened, what action would you take?***

CASE STUDY F

Mkono Gamu Factory is suspected to have been acquired through corrupt conduct. The directors have been given notice by the Investigating Authority to declare how they acquired Mkono Gamu Factory.

Pending the investigations, the Investigating Authorities apply to court to appoint a Receiver-Manager for Mkono Gamu Factory, since it is and has always been a running concern.

Kinio Maliza, hearing of the application to court to appoint a Receiver-Manager, approaches the lead investigator, **Ian Msimamizi**, to be appointed the Receiver-Manager. Ian recommends Kinio strongly and the court appoints Kinio as the Receiver-Manager.

Prior to the recommendation, Kinio had promised Ian a 'substantial reward'. Ian did not mention to the court or the Investigating Authority about the promise of the 'substantial reward'. On his appointment, Kinio delivers to Ian a brand new S -class Mercedes Benz.

Questions:

1. In your opinion, have any corruption offences been committed? If yes, which ones?

A number of corruption offences have been committed. These are:

- **Improper Benefits to Trustees for Appointment – section 43 (ACECA)**

Kinio Maliza, once appointed a receiver-manager of Mkono Gamu Factory, is a trustee to the court and the investigating authority and any other related beneficiaries. Kinio offered and gave a reward to Ian, lead investigator, for the court to approve his appointment as Receiver-Manager. This reward was a secret between Kinio and Ian. They both commit the offence of Improper Benefits to Trustee for Appointment.

- **Secret Inducements for Advice – section 40 (ACECA)**

Ian, as the lead investigator, is responsible for giving advice to the Investigating Authority and the Court. The Board will usually rely on this advice to make decisions that concern the Authority. Kinio approached Ian with a request that Ian advises the Court to nominate him as the receiver-manager of Mkono Gamu Factory. He secretly promised to give Ian a '*substantial reward*' in exchange. Both Ian and Kinio commit the offence of Secret Inducements for Advice.

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Kinio promised Ian a 'substantial reward' if he recommended him to the Court for appointment as the factory's Receiver-Manager of the factory. After he was appointed, he delivered a brand new Mercedes Benz to Ian. Both commit the offence of Bribery Involving Agents.

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Kinio is guilty of:

- Giving a Bribe

Ian is guilty of:

- Receiving a Bribe

- **Abuse of Office – section 46 (ACECA)**

Ian uses his position of lead investigator to recommend Kinio as Receiver-Manager for Mkono Gamu Factory in consideration of a substantial reward, the brand new S-Class Mercedes Benz.

- **Breach of Trust – section 127 Penal Code**

Ian committed a Breach of Trust. The Investigating Authority trusted that he would dispense advice honestly and truthfully. Ian did not do this.

2. *If you were in Ian's position, what would you have done?*

3. *As a member of the public, if you become aware of the transaction between Ian and Kinio, what action would you take?*

CASE STUDY G

Mzee Wamafua lives in Matajiri area of Wazalendo town. He is a very wealthy man and owns a fleet of country buses, a number of lorries, several shops, and a number of flats which he has rented out. He also owns several hectares of land in Malezi on which he grows flowers and bananas and oranges for export to Europe.

About a month ago, Mzee Wamafua suffered a sudden heart attack and died. After the burial, it was discovered that Mzee Wamafua did not leave a will. This caused problems within the family as his three wives and children all sought to get portions of Mzee Wamafua's wealth for themselves. Before long, the matter was brought before court for determination. The court appoints the Public Trustee as administrator of Mzee Wamafua's estate.

Albero Mlaji, one of the lawyers working in the office of the Public Trustee, approaches his supervisor, **Barafu Obadiah**, with a proposal that Mzee Wamafua's matter be assigned to him. Albero is sure that he is likely to personally benefit from the property of Mzee Wamafua. Barafu asks Albero to give him some time to consider the request.

The following morning finds Albero in Barafu's office with an envelope in his hand. Albero, aware that Barafu has been soliciting for funds to send his son overseas for studies, has brought with him KSh. 30,000/- in the envelope as a 'small contribution' towards the harambee. Barafu gladly receives the envelope and thereafter assigns Mzee Wamafua's matter to Albero. No mention of the 'small contribution' is made to Mzee Wamafua's family.

Questions:

1. *In your opinion, have any corruption offences been committed? If yes, which ones?*

A number of corruption offences have been committed. These are:

- **Improper Benefits to Trustees for Appointment – section 43 (ACECA)**

Albero gave Barafu a 'small contribution' towards his son's harambee. This was in order to influence the assignment of Mzee Wamafua's matter in his favour. The 'small contribution' that changed hands was not mentioned to Mzee Wamafua's family. Both Albero and Barafu therefore commit the offence of Improper Benefits to Trustees for Appointment.

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Albero gave Barafu Sh. 30,000/- as a 'small contribution' towards Barafu's harambee. The contribution was intended to influence Barafu's decision on the assignment of Mzee Wamafua's matter in Albero's favour. Both Albero and Barafu commit the offence of Bribery Involving Agents.

Case Studies

Albero commits the offence of:

- Giving a Bribe

Barafu commits the offence of:

- Receiving a Bribe

- **Abuse of Office – section 46 (ACECA)**

Barafu abused his office by assigning Mzee Wamafua's matter to Albero Mlaji on the basis of the contribution of KSh. 30,000 by Albero towards Barafu's son's harambee.

2. *Have any ethical breaches been committed?*

Yes. These are:

- **Improper Enrichment – section 11 (POEA)**

Section 11 of the Public Officer Ethics Act provides that no Public Officer shall request or receive gifts or favours from a person who has an interest that may be affected by the carrying out, or not carrying out, of the Public Officer's duties. Barafu received KSh. 30,000/- from Albero who had expressed an interest in Mzee Wamafua's matter. He therefore breached this provision of the Public Officer Ethics Act.

- **Collections and harambees – section 13 (POEA)**

Section 13 of the Public Officer Ethics Act provides that a public officer shall not use his office or place of work as a venue for soliciting or collecting harambees.

Barafu breached this provision when he accepted KSh. 30,000/- from Albero towards his son's harambee.

3. *If you were in Barafu's position, what would you have done?*

4. *If you were a member of Mzee Wamafua's family and you came to learn that Barafu was influenced to assign the matter to Albero Mlaji, what would you do?*

5. *If you were a member of the public who came to learn of the dealings between Albero and Barafu, what would you do?*

CASE STUDY H

Kamau Mkarimu is a senior personnel officer in the Livestock Department of the Ministry of Livestock and Fisheries Development. A circular has been recently received from the Ministry's headquarters inviting the Department to nominate two of its most deserving officers for a training to be held in the course of the month. It is understood that the training will be followed by a promotion for the officers. The Head of Department instructs Kamau to act on the Circular.

Mutito Goigoi, an Officer in the Department, is Kamau's childhood friend. Several officers in the Department have complained about Mutito's conduct and quality of work. Mutito always comes to work late and never bothers to comb his hair or shave his beard. His clothes always look crumpled and badly in need of ironing, not to mention that his office is known to be the most untidy in the Department, with old files strewn all over the floor. He never delivers work assigned to him on time, and spends most mornings reading the newspaper and filling out crosswords. He is rude and disrespectful to members of the public and fellow Public Officers. Whenever he hands in work, it is always full of mistakes. Many times the work has to be redone by other officers in the Department. The Head of Department has issued several warnings to Mutito, but these have not caused him to change.

Mutito has remained in the same job group for a long time and it seems unlikely that he will be promoted anytime soon. He approaches Kamau and pleads to be considered for the training as it might be the only chance for him to get a promotion. Kamau agrees to do so on condition that Mutito buys him several drinks and 'nyama choma' over the weekend at their local pub. Mutito agrees. Kamau then endorses Mutito for the training leaving out other more deserving officers. That weekend, Mutito fulfills his part of the bargain and buys Kamau several rounds of drinks and nyama choma at '**Tukimbie Shida' Bar**.

Since learning that **Kamau** has recommended Mutito for the training, other officers have developed a negative attitude in the Department and are not putting their best into their work. The Department's productivity is now at an all time low.

Questions:

1. *Have any corruption offences been committed? If yes, which ones?*

A number of offences have been committed. These are:

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Kamau asked Mutito to buy him drinks and 'nyama choma' in return for his recommending him for the training. The drinks and 'nyama choma' were a bribe. They were intended to influence Kamau's decision in Mutito's favour.

Kamau has committed the offence of Bribery Involving Agents. In his case, the offences are:

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- Soliciting a Bribe
 - o Receiving a Bribe

Mutito has also committed the offence of Bribery Involving Agents. In his case, the offence is:

- o Giving a Bribe
- **Deceiving the Principal – section 41 (ACECA)**

Kamau has committed the offence of deceiving the principal. He was to recommend the most deserving officers for the training. Instead, Kamau recommended the least deserving officer. It is unlikely that Mutito will use the skills acquired at the training for the benefit of the Department. Further, the other officers in the Department are demoralized as a result of Kamau's action. This has resulted in the department's decline in productivity.

- **Abuse of Office – section 46 (ACECA)**

Kamau used his office to unfairly confer a benefit on Mutito. His recommendation was not based on merit. He therefore abused his office by conferring a benefit to an undeserving officer in consideration of the favour of being bought a few drinks and nyama choma.

2. ***Have there been any ethical breaches? If yes, which are these?***

Several ethical breaches have been committed. These are:

- **Lack of Professionalism – section 9 (POEA)**

Section 9 of the Public Officer Ethics Act provides that a Public Officer will carry out his duties in a way that maintains public confidence in the integrity of his office. Mutito breached this provision by his unprofessional conduct. The act also requires Public Officers to:

- o **Treat the public and fellow Public Officers with Courtesy and Respect:** Mutito breached this provision by being rude and disrespectful to his colleagues and members of the public.
- o **Maintain an Appropriate Standard of Dress and Personal Hygiene:** Mutito clearly breached this provision. He never bothered to comb his hair or shave his beard. His clothes always looked crumpled and badly in need of ironing. Furthermore, his office was the untidiest in the department with old files strewn all over the floor.
- o **Observe Official Working Hours:** Mutito always came to work late and spent most mornings reading newspapers. He therefore breached this provision.

- **Improper Enrichment – section 11 (POEA)**

Section 11 of the Public Officer Ethics Act provides that a public officer shall not use his office to improperly enrich himself. It prohibits the acceptance of gifts or favours by Public Officers. Kamau received a favour from Mutito of drinks and 'nyama choma' in exchange for his recommendation. He therefore breached this provision.

- **Nepotism/Favouritism – section 17 (POEA)**

Section 17 of the Public Officer Ethics Act provides that a Public Officer shall not practice nepotism or favouritism. Kamau showed favouritism when he recommended Mutito, a long time friend, for the training. He therefore breached this provision.

3. *If you were in Kamau's position, what would you have done?*

4. *If you were an officer in Mutito's department and knew of the dealings between Mutito and Kamau, what action would you take?*

CASE STUDY I

Injinia Mkora is a senior engineer in one of the Government Ministries. He has information on a proposed road project through participating in its planning work. He attempts to make money by selling the restricted information, as he is not allowed to own a construction firm while in the employment of government.

Injinia seeks the help of Katikati in carrying out his scheme. Before formal invitations for tenders are made public, he informs Katikati that he has restricted information to offer which can assist the bidder to win the contract. In return, he asks for 3% of the contract price as a reward and promises to share part of the profits with Katikati.

Injinia boasts that he has good connections and is a member of the Tender Committee that would consider the tenders. He would therefore *do the needful* to ensure the contract is awarded to the company associated with Katikati. This is agreed to and the tender is finally awarded to Kontrakta as planned.

Injinia then colludes with top Ministry officials to appoint him as the Resident Engineer, acting on behalf of the Chief Engineer. This is on the pretext that he has very good knowledge of the project, having been part of its planning and development. Injinia is appointed the Resident Engineer and gets on very well with Kontrakta owing to their *mutual interest* in the project.

As a token of appreciation for Injinia's assistance, Kontrakta purchases a farm for Injinia and puts up a huge and expensive home for him. Kontrakta also purchases a number of goats and cows for Injinia's family. These are kept on the farm. To avoid detection, the farm and the house are registered in the name of Injinia's wife.

Several months after the project commences, Kontrakta tells Injinia that the funds allocated to the project have run out. He therefore wishes to have the contract sum reviewed upwards. Under the contract, Injinia is empowered to approve claims for additional costs.

Kontrakta persuades him to use his discretionary powers and add a further Ksh. 100,000,000/- to the project. To show his gratitude, Kontrakta promises to treat Injinia and his family to an all-expenses-paid holiday cruise around the world, among other incentives. Coincidentally, Injinia has been agonizing about getting a perfect gift for his wife for their upcoming twentieth wedding anniversary. He believes the cruise is the answer to his dilemma, so he agrees to the arrangement. To show his commitment to the arrangement, Injinia pushes for 10% of the additional sum to be paid to Kontrakta.

Shortly after Injinia's has consented to the arrangement, his dealings are discovered and the Ministry of Roads and Public Works, and Treasury stop any further payments to Kontrakta pending investigations. Subsequently, Kontrakta is blacklisted and labeled a '*cowboy contractor*.' Investigations on Injinia's role in the transaction are going on.

At the end of that year, Injinia, like all other Public Officers, makes a declaration of his

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wealth. He, however, does not mention the farm, cows and goats or other gifts that he received from Kontrakta. He believes that he does not need to declare them as these were registered in his wife's names.

Questions:

1. In your opinion, have any corruption offences been committed? If yes, which ones?

- **Bid Rigging – section 44 (ACECA)**

Injinia assisted Katikati and Kontrakta with valuable information which was not available to all bidders. This way, Kontrakta was able to put in a bid with specified information and win the tender. Injinia, Katikati and Kontrakta therefore commit the offence of Bid Rigging.

- **Abuse of Office – section 46 (ACECA)**

Injinia came by the valuable information on the road project by virtue of his office. He abused his office by using this information to illegally confer a benefit on himself, Katikati and Kontrakta.

As the Resident Engineer, Injinia was empowered to approve claims for additional costs. He abused this power to irregularly increase the cost of the project by Ksh. 100,000,000/-, an unjustified cost.

- **Breach of Trust – section 127 Penal Code**

Injinia has been entrusted by the Ministry with certain responsibilities which he has to discharge honestly and responsibly. He breached this trust by participating in Bid Rigging, abusing his office and exercising his discretion selfishly to the prejudice of the public interest. The doctrine of trust stipulates that Public Officials are entrusted on behalf of Kenyans to discharge their duties fairly, honestly, impartially and in utmost good faith.

- **Bribery Involving Agents – section 39 (ACECA)**

Various offences of bribery have been committed here:

Injinia

Injinia asked Katikati and Kontrakta for a bribe that was 3% of the contract price of the road project in exchange for valuable confidential information on the project. Injinia commits the offences of:

- Soliciting a Bribe
- Receiving a Bribe.

- Injinia also received a bribe in the form of a farm, goats and cows as well as a fully-paid for holiday cruise, among others. He commits the offence of:
 - Receiving a bribe.

A bribe need not be in the form of money.

Katikati

As the middleman in this transaction, he conspired with Injinia and Kontrakta to engage in Bribery and Bribery Involving Agents. The offences committed are:

- Agreeing to Solicit a Bribe (on behalf of Injinia).
- Agreeing to Offer a Bribe (on behalf of Kontrakta).

Kontrakta

Kontrakta agreed to give bribes. He also offered bribes. He therefore committed the offence of Bribery and Bribery Involving Agents. It does not matter that the act did not occur, or that the purpose for which the bribe was solicited or given was not achieved. Kontrakta gave a bribe of 3% to Injinia in exchange for valuable information and to 'buy' Injinia's influence on the tender committee. He also bought Injinia a farm, cows and goats and constructed a house for him. Kontrakta also offered to take him on a fully-paid holiday cruise around the world.

Even though the Treasury stopped payment of Ksh. 90,000,000/- in extra costs, an offence had already been committed.

- **Deceiving the Principal – section 41 (ACECA)**

In agreeing to irregularly and unlawfully review the contract sum by Ksh. 100,000,000/-, Injinia committed the offence of Deceiving the Principal i.e. Ministry of Roads and Public Works and therefore the Government.

- **Submitting a False or Misleading Wealth Declaration – sections 29 and 32 (POEA)**

Apart from the stated corruption offences under the Anti-Corruption and Economic Crimes Act, Injinia failed to make a true, correct and complete declaration of all his assets, incomes and liabilities and those of his wife and dependent children as required by law. This was so as to conceal his corruptly obtained wealth. This is an offence under section 32 (POEA).

- **Economic Crime – section 45 (ACECA)**

Injinia facilitated the payment of Ksh. 10,000,000/- from public funds to Kontrakta for a fictitious expense and for services which had not been rendered.

2. Have there been any ethical breaches?

Yes. These are:

- **Improper Enrichment – section 11 (POEA)**

Injinia breached the Code of Conduct by receiving gifts that influenced his decisions and responsibility.

- **Lack of Professionalism – section 9 (POEA)**

Injinia is required to maintain professionalism and carry out his duties in a way that maintains public confidence in the integrity of his office. He sanctioned variations in anticipation of a reward.

- **Rule of Law – section 10 (POEA)**

Under the Public Officer Ethics Act, Injinia must maintain and respect the Rule of Law when discharging his duties. He failed to do this.

- **Giving False and Misleading Information – section 19 (POEA)**

By giving false information to the government on the cost of the project, Injinia abused his discretion and inflated the cost of the project by Ksh. 100,000,000/-.

3. If you were in Injinia's position, what would you have done?

4. If you were in Katikati's position, what would you have done?

5. If you were the Permanent Secretary of the Ministry that Injinia works with, and this matter was reported to you, what action would you take?

6. If you as a member of the public became aware of the transaction between Injinia and Katikati, what action would you take?

CASE STUDY J

Evario Mapesa is the Chairperson of one of the departments in **Fanya Bidii University**, a public university in Kenya. The Department is in need of an Assistant Lecturer following a resignation. **Akili Nyingi**, one of the lecturers approaches Evario with a request to employ his brother, **Ondoa Maarifa**, who has been idling at home since his graduation from one of the colleges in town about two years ago. Ondoa, having heard of the vacancy at the University, has begged his brother, Akili, to use all means possible to get the job including giving a bribe. Akili Nyingi promises to do his best.

Akili hands over Ondoa's CV and certificates to Evario for her consideration. Upon perusal of the CV and certificates, Evario discovers that Ondoa not only trained in a totally different field but also did not score good grades. Evario raises these issues and informs Akili that there is no way she could help his brother. Akili pleads with Evario on several occasions to consider Ondoa for the job to no avail. Evario finally agrees to consider the request but on condition that Akili uses his "akili."

One fine morning, Akili broaches the subject once more and offers KSh. 20,000 which Evario accepts but requests a further KSh. 10,000 claiming the exercise was tough.

At the next departmental meeting, it is decided that an announcement be posted on the University notice board announcing the vacancy and inviting applications. It is agreed that the applications shall be received by Evario who shall appoint a panel of three people to interview the short-listed applicants. In line with this decision, Evario puts up the Notice and appoints a panel comprising herself, Akili Nyingi and Mwaminifu, a Lecturer in Evario's department.

Many highly qualified candidates apply for the position. Most are, however, not short-listed to give Ondoa a favourable chance of being selected for the job. At the interview, Ondoa performs dismally and it is clear that he is the least qualified to get the job. However, to Mwaminifu's utter shock, Evario and Akili vote to appoint Ondoa to the position. Soon thereafter, Ondoa joins Evario's department as an Assistant Lecturer.

Questions:

1. *Have any corruption offences been committed? If yes, which are these?*

A number of offences have been committed. These are:

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Evario and Akili have committed the offence of Bribery Involving Agents. Akili gave Evario Sh. 30,000/- to influence her to employ his brother. The offence in Akili's case has two counts:

- o Offering a Bribe

- o Giving a Bribe

In Evario's case, the offence also has two counts:

- o Receiving a bribe
 - o Soliciting a bribe. Evario sought to have the amount of the bribe increased. When Akili offered a further Sh. 10,000/-, she accepted.
- **Deceiving the Principal - section 41 (ACECA)**

The Public University has been deceived to employ an unqualified Assistant Lecturer. Evario and Akili have committed the offence of deceiving the principal. They were required to follow laid down procedures on the recruitment of staff. Instead, they manipulated the system to ensure that Ondoa, who was the least qualified candidate, got the job.

- **Conflict of Interest – section 42 (ACECA)**

Evario and Akili should not have participated in the interview panel as they both had an interest in getting Ondoa the job. They did not disclose this interest and participated in the interviewing panel. They therefore committed the offence of conflict of interest.

- **Abuse of Office – section 46 (ACECA)**

Evario abused her office by unlawfully and irregularly ensuring that Ondoa got the job in her department. Akili similarly abused his office as an interviewer by manipulating the recruitment exercise to get his brother employed.

- **Breach of Trust – section 127 Penal Code**

Evario was placed in a position of trust by the University and should have acted in utmost good faith but he did not. Both Evario and Akili betrayed the trust placed in them to discharge their responsibilities honestly and efficiently. They colluded to disqualify qualified applicants and appoint an unqualified person to the position of Assistant Lecturer. They therefore committed a breach of trust.

2. **Are there any ethical breaches?**

A number of ethical breaches have been committed. These are:

- **Lack of professionalism (section 9 of the Public Officer Ethics Act):**

A Public Officer is required to carry out his duties in a way that maintains public confidence in the integrity of his office. Evario and Akili breached this provision by the way they conducted the recruitment exercise.

- **Improper Enrichment (section 11 of the Public Officer Ethics Act)**

A Public Officer must not use his office to improperly enrich himself or others. Evario breached this provision by accepting a 'gift' of Sh. 25,000/- from Akili in order to secure Ondoa a job.

- **Conflict of Interest (section 12 of the Public Officer Ethics Act)**

A Public Officer must ensure that his personal interests do not conflict with his official duties. Evario and Akili breached this provision of the Act by allowing their desire to get Ondoa a job interfere with the way they carried out their official duties.

- **Selection of Public Officers (section 22 of the Public Officer Ethics Act)**

The Public Officer Ethics Act provides that a Public Officer shall practice and promote the principle that public officers should be selected on the basis of integrity and merit. Evario and Akili breached this provision. They appointed Ondoa, the least qualified candidate, to the position of Assistant Lecturer on the basis of a bribe.

3. *If you were in Evario's position, what would you have done?*
4. *If you were in Mwaminifu's position, what action would you take?*
5. *If you as a member of the Public got to know what happened, what action would you take?*

CASE STUDY K

Peter's friend **Joe Mpotevu** is a procurement officer with one of the parastatals in the country. Peter and Joe have been good friends since their primary school days. In fact, Peter was the best man at Joe's wedding and since then has been a close friend of the family. Peter is aware that Joe earns a very modest salary and has had to take several loans to help pay school fees for his siblings. Joe is the eldest in a family of eight children. Making ends meet has been a great challenge for Joe and on many occasions Peter has had to help him settle his debts.

About eight months ago, **Omari Mjanja**, an accountant with the parastatal, approached Joe with a plan aimed at enriching them. Omari and Joe register a company, **Mlaji Supplies**, to front for them in supplying non-existent goods. Joe issues LPOs and Omari facilitates payment. The plan involves Joe pretending to procure goods for the parastatal. In actual fact, these goods are never ordered nor delivered. Omari then approves payment for the goods and also doctors the parastatal's accounting books to ensure that their scheme is not detected. The money received from the parastatal for these non-existent goods is shared between the two of them.

As a result of this scheme, Joe has managed to make a lot of money. He has paid off all his loans and has recently bought a brand new Mercedes Benz. He is presently putting up a block of flats in Wenye Pesa area of the city and hopes to begin building his family home as soon as he has completed the block of flats.

Peter has observed with growing surprise as Joe has amassed wealth over the past eight months. He has on several occasions asked Joe where the money is coming from. Joe has, however, never given him a satisfactory answer. Peter suspects that Joe is engaging in corruption.

One evening, Joe visits Peter looking very anxious, and requests him to keep the Mercedes Benz for him for a few weeks as he looks around for a buyer for it. Joe emphasizes that he must sell the car as soon as possible and informs Peter that he is willing to give him a commission if he helps him find a buyer for the car. In the mean time, Peter may use the car as he pleases. Peter, though surprised at this request, agrees to the arrangement. A week later, he introduces Ken Tafuta to Joe as a potential buyer of the Mercedes Benz.

Questions:

1. What corruption offences, if any, have been committed?

- **Dealing with suspect Property – section 47 (ACECA)**

Peter committed the offence of Dealing with Suspect Property when he agreed to keep the Mercedes Benz for Joe, used it for his own purposes, and introduced Ken to Joe as a potential buyer of the car, yet he suspected that Joe might have acquired the vehicle through corruption.

- **Theft – section 275 (Penal Code)**

Joe and Omari fraudulently and without claim of right converted the monies of the parastatal to their use. They stole monies belonging to the parastatal. As a result of their fraudulent intentions, the theft constitutes a corruption offence as defined by the Anti-Corruption and Economic Crimes Act, 2003.

- **Abuse of Office – section 46 (ACECA)**

Omari and Joe abused their offices. They engaged in a plan that amounted to swindling the parastatal of its revenue.

- **Breach of Trust – section 127 Penal Code**

Joe and Omari are required to discharge their duties honestly and in the best interest of the parastatal. They instead used their positions to swindle and steal money from the organization by registering a company to front for them and issuing LPOs to facilitate payment for non-existent goods. They therefore committed a Breach of Trust.

- **Economic Crime – section 45 (ACECA)**

Joe and Omari facilitated payment by the parastatal for non-existent goods. The money received from the parastatal for these non-existent goods is shared between the two of them. They both committed an economic crime.

2. *If Omari had approached you with such a plan, what would you have done?*
3. *If you were in Peter's position, what would you do?*
4. *If you were Joe's colleague and came to know of this transaction, what would you do?*

CASE STUDY L

Alois is a senior officer in one of the Law Enforcement Agencies. He is stationed in one of the hardship areas. He is married but his family lives in another part of the country. Jane, a young officer, has just been posted to the same station. Jane lives with her 17-year-old brother, Bob.

Alois has been very interested in becoming *good friends* with Jane. He has explained to her that as the Officer-in-charge of the Station, he would determine many things concerning her, including what duties she is allocated. He has also reminded her that promotions and opportunities for further training are very hard to come by these days, unless of course, *you know someone*. He has made it known to her that as a young and attractive officer, she does not need to work as diligently or wait for too long like others to get promotions or training opportunities, if she *cooperates*. A transfer to a desired station or a re-assignment to a favourite unit of the Force could also be arranged. He says that he has helped many young female officers in this way.

Recently, Alois called Jane to his office to brief her on an assignment he wished undertaken. After he finished the *briefing*, he told Jane that he liked her very much and he wanted to *assist her*. He even tried to embrace her but Jane fled from the office. Since the incident, Jane feels very uncomfortable being around Alois. This is beginning to affect her work.

Alois has started giving Jane very difficult and dangerous assignments in the hope that Jane will *cooperate*. Frustrated by Jane's refusal to cooperate, Alois *arranges* for Jane's 17 year-old brother to be arrested by police officers. Somehow Bhang/Marijuana is *found* on him by the officers. Everyone knows that Jane's brother is a law-abiding young man. Alois intends that Jane's brother be taken to court, as a way of teaching Jane a lesson.

Alois calls Jane to his office and explains that her brother's situation is a *small matter* and that Jane has the power to solve it. He then sends Jane away to think about her brother's situation and how she could assist him. You are Jane's friend and so Jane has come to you.

Questions:

1. *Have any corruption offences been committed? If so, which ones?*

a) **Abuse of Office - section 46 (ACECA)**

Alois is abusing his office and position as a senior officer to demand sexual favours from junior female officers in return for promotions, appointments, and transfers.

The policemen who arrested Jane's brother abused the power they have in law to make arrests to harass and intimidate an innocent person on Alois's instructions.

b) Bribery/ Bribery Involving Agents – section 39 (ACECA)

Bribes need not be in monetary terms. They can be in kind and non-monetary. Joe is soliciting bribes in the form of sexual favours from female officers for him to write favourable recommendations for the officers.

It would amount to Bribery Involving Agents if any past female officer willfully agreed to give sexual favours in return for promotions or further training.

c) Deceiving the Principal – section 41 (ACECA)

Alois was in a position of authority. Officers under him depend on his recommendations for their professional advancement and other matters affecting their work. His superiors also depend on him for his impartial advice and recommendations on appointments and promotions. It would therefore amount to an offence of Deceiving the Principal if Alois, on the basis of sexual favours, recommended officers for advancement, especially, if such officers had not met the established criteria, such as merit.

d) Breach of Trust – section 127 Penal Code

Alois is employed to discharge his duties honestly and responsibly and this includes recommending officers for promotions, transfers or other appointments in a fair and transparent manner. He breached this trust by demanding sexual favours from junior female officers.

The officers who ‘planted’ evidence on Jane’s brother, arrested and locked him up did not act professionally and breached the trust placed in them to discharge their duties honestly and responsibly.

2. Have any ethical breaches been committed?

Yes. These are:

- **Lack of Professionalism – section 9 (POEA)**

Public Officers are required to discharge their responsibilities in a professional manner. They are required to discharge their duties in a manner that maintains public confidence in the integrity of their office. Alois was therefore expected to behave in a respectful manner towards all his colleagues and the public, irrespective of who they are, how they look, what their status is, their ethnic or social origin, gender, conscience, belief, religion, political persuasion, disability, culture or language.

- **Favouritism – section 17 (POEA)**

All appointments must be done on the basis of integrity, competence and suitability. There

must be no favouritism. To maintain the integrity of the Public Service, the system of appointments, promotions and rewarding of personnel should be objective and one the public has confidence in. Joe breached this provision. He singled out certain female officers who gave in to his sexual demands for appointment, promotion or transfer, or for preferential treatment. Such actions cause other Public Officers and the public to lose confidence in the public service and respect the rule of law.

- **Sexual Harassment - section 21 (POEA)**

Alois's actions towards Jane amounted to sexual harassment. Public Officers are prohibited from sexually harassing a member of the public or a fellow Public Officer. The act defines sexual harassment to include any of the following, if the person doing it knows or ought to know that it is unwelcome:

- Making a request or exerting pressure for sexual activity or favours;
- Making intentional or careless physical contact that is sexual in nature; and
- Making gestures, noises, jokes or comments, including suggestions and overtones, regarding another person's sexuality.

b. What advice would you give Jane?

CASE STUDY M

Dr. Jembe Maarufu is the Medical Superintendent of Health in a District Hospital where **Dawa Kali** is the District Pharmacist and **Tabitha Mzungu** is the Matron. The District Hospital has 250 beds, a maternity wing, a theatre, and a morgue for 20 bodies.

The three: Dr. Maarufu, Dawa and Tabitha own and run a pharmacy some 200 meters from the gate of the District Hospital. This pharmacy is mainly stocked with drugs and materials from the Hospital.

Juma, the Hospital's Procurement Officer is in-charge of procuring drugs and supplies for the Hospital from Kenya Medical Supplies Agency (KEMSA). Apart from his work at the Hospital, Juma also keeps the accounts of the private pharmacy and is paid 15% of the profits of the pharmacy as a commission. He regularly monitors to ensure that the private pharmacy is well stocked with medicines from the Hospital pharmacy. Consequently, the Hospital Pharmacy regularly lacks drugs and essential medical supplies.

Dr. Jembe Maarufu usually prescribes medicines which he knows are not available in the Hospital Pharmacy. Patients are then forced to look for medicines elsewhere. Dawa and Tabitha are always on hand to direct these patients to the private pharmacy to buy drugs.

Questions:

a) Have any corruption offences been committed? If yes, which are these?

Several corruption offences have been committed. These are:

1. Abuse of Office – section 46 (ACECA)

Dr. Maarufu, Dawa Kali and Tabitha Mzungu have all committed the Offence of Abuse of Office:

- Dr. Jembe Maarufu has abused his office by using the hospital to sell stock in his private pharmacy. He has prescribed medicines that can only be found in the private pharmacy. He has also contributed to the running down of the Hospital pharmacy by frequently restocking the private pharmacy from stocks in the Hospital pharmacy.
- Dawa and Tabitha have also abused their office by directing patients to their private pharmacy instead of giving drugs from the Hospital pharmacy.
- Juma has abused his office by diverting drugs intended for public use to the private pharmacy for sale.

2. Conflict of Interest – section 42 (ACECA)

Dr. Maarufu, Dawa Kali, Tabitha Mzungu and Juma have all committed the offence of Conflict of Interest. They all work in the District Hospital and yet engage in a private business that is in direct competition with the Hospital's pharmacy. They have not disclosed this to the hospital administration and continue to direct patients to their pharmacy at the hospital's expense.

3. Bribery Involving Agents – section 39 (ACECA)

In order to obtain Juma's co-operation in the scheme, Dr. Jembe Maarufu, Dawa Kali and Tabitha have offered Juma 10% of the private pharmacy's profits. In return, Juma helps them with their accounts and ensures that adequate stocks of medicines are transferred from the hospital pharmacy to the private pharmacy. Dr. Maarufu, Dawa, Tabitha and Juma are guilty of the Offence of Bribery or Bribery Involving Agents.

4. Deceiving the Principal – Section 41 (ACECA)

Dr. Maarufu, Dawa Kali, Tabitha and Juma have committed the offence of deceiving the principal. They have opened a private pharmacy without the knowledge of the hospital administration where they send patients to buy medicines. Further, they have run down the Hospital pharmacy by transferring stocks of drugs meant to be given to the public from the Hospital pharmacy to their private pharmacy.

5. Breach of Trust – section 127 Penal Code

Dr. Maarufu, Dawa Kali, Tabitha and Juma are guilty of a Breach of Trust. They are required to discharge their duties honestly, and in the best interest of the hospital and the public whom they serve. Instead, they have deliberately mismanaged their Public Offices for private gain. They are also in breach of the ethics and standards of their professions.

Economic Crimes – section 45 (ACECA)

Dr. Maarufu, Dawa Kali, Tabitha and Juma have committed economic crimes. These include:

- Damaging public property. They have deliberately run down the Hospital pharmacy to create business for their private pharmacy.
- Making payments from public revenues for drugs which are diverted to the private pharmacy.

b) Have any ethical breaches been committed? If yes, which are these?

i. Lack of Professionalism (section 9 of the Public Officer Ethics Act)

Public Officers are required to discharge their professional responsibilities in a professional

manner. They are expected to conduct their affairs in a manner that upholds public confidence in the integrity of their office. Officers who are members of professional organizations are also required to adhere to their professional ethics and standards. Dr. Jembe Maarufu, Dawa Kali, Tabitha Mzungu, and Juma have breached this provision through their behaviour.

ii. Improper Enrichment (section 11 of the Public Officer Ethics Act)

The Hospital Administrator breached the Code of Conduct by receiving a commission of 10% of the profits of the private pharmacy in exchange for his keeping private pharmacy's accounts and supplying the pharmacy with medicines from a public hospital contrary to the law.

iii. Conflict of Interest (section 12 of the Public Officer Ethics Act)

The Public Officer Ethics Act states that public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties. Dr. Jembe Maarufu, Dawa Kali, Tabitha, and Juma breached this provision.

CASE STUDY N

Mary joined the National Improvement Program (NIP), a government security agency, over 25 years ago. Over time she rose to become a very senior officer of the agency. A few years ago, she developed an innovative idea for the institution. The local bus company was not doing very well business-wise. While it had had a monopoly of road transport in the area for a long time, matatus were now offering stiff competition. However, the matatus were not as well organized leading to the emergence of cartels that were restricting the entry of new investors into the business.

In the course of time, Mary got NIP to be involved in the transport business without the approval/authorization from the Board. This would realize income for NIP and help supplement their exchequer allocation. However, given that NIP was a security agency, and that transport business was not a core business of a national security agency, procurement of the buses would have to be done secretly.

Mary has a sister who lives in Holland. She decides to get her sister to secretly arrange meetings with a bus assembly company in Holland with a view to entering into a contract for the supply of buses. Mary is able to influence NIP to award the contract to the company in Holland. The contract with the company in Holland is designed in such a way as to commit NIP to pay for the buses over a period of 20 years. In return for her assistance, the company agrees to inflate the cost of the buses by 25% and pass this onto Mary through her sister as a kick back. As a result, Mary is able to make a small fortune from the deal.

Mary has three brothers who are unemployed and have been staying in her house for the past 3 years since leaving school. She views the NIP bus business as a source of employment for them. As soon as the NIP buses begin operating, Mary ensures that her brothers are employed as conductors. She does not disclose to the Human Resources Manager of NIP that the three men are her brothers. Mary advises her brothers to supplement their income by tucking away “a few shillings” from the bus collections every day.

Once the buses are fully operational, Mary convinces the management of NIP to construct houses to accommodate some of the conductors and drivers of the project. Once these houses are completed, Mary intends to allocate them to her brothers as they have become quite a nuisance at her home. To ensure the housing project succeeds, Mary commits NIP to buying an adjacent piece of land for KSh. 3,000,000/-. The owner of the land has been a friend of Mary's for many years and has had serious difficulties in selling the land. In return, the owner of the land gives Mary a ‘thank you gift’ of Ksh. 100,000/-. Construction of the houses commences but is never completed as the project runs out of money. It was never properly planned or budgeted for by NIP. It will cost NIP a further 1.7 billion shillings to complete the scheme. A few years later, the bus company collapses. The buses are now lying idle in NIP's yard, many of them badly damaged due to the recklessness of the bus drivers.

Questions:

1. In your opinion, have any offences been committed? If yes, which are these offences?

A number of offences have been committed. These are:

a) Abuse of Office – section 46 (ACECA)

- Mary practiced nepotism. She used her senior position to employ her brothers as bus conductors. She also gave her brothers a specific mandate to loot from bus collections.
- Mary also irregularly purchased land for NIP. She convinced NIP to start a housing project solely as a way of providing accommodation for her truant siblings.
- She abused her position to obtain a bribe from the company in Holland.

b) Deceiving the Principal – section 41 (ACECA)

Mary misled NIP on the cost of the buses- the cost included her 25% bribe. She also included a disadvantageous clause in the contract that bound NIP to pay for the buses over 20 years. She never disclosed to NIP that part of the objective for the bus business and the housing project was to create employment and housing for her brothers.

c) Breach of Trust – section 127 Penal Code

Mary was expected to discharge her duties honestly, responsibly and in the best interest of NIP and the public in general. She instead used her position to selfishly and illegally obtain personal gain.

d) Conflict of Interest – section 42 (ACECA)

Mary used her sister in Holland to arrange the bus deal. She however never disclosed her sister's role in arranging the deal and securing her bribe. She also employed her siblings as conductors without disclosing their relationship to the Human Resources Manager of NIP.

e) Bribery/ Bribery Involving Agents – section 39 (ACECA)

Mary solicited and received a bribe from the bus company in Holland. It does not matter that Mary was paid the money through her sister. Mary, her sister and officials of the company in Holland engaged in bribery and bribery involving agents. It should be noted that although Mary's sister lives outside Kenya, she is still subject to the Anti-Corruption and Economic Crimes Act and may be brought before Kenyan courts to answer charges of bribery.

Mary also received a bribe of Ksh. 100,000/- from the owner of the land that was sold to NIP.

Economic Crimes – Section 45 (ACECA)

i. Willfully failing to comply with any law or applicable procedures and guidelines relating to procurement and management of funds – section 45 (2) (b) (ACECA)

Mary commits economic crime by willfully failing to comply with the applicable law and procedure in incurring expenditure and management of funds, contrary to Section 45 (2) (b).

i) Engaging in a Project without Prior Planning – section 45 (2) (c) (ACECA)

Mary committed public funds to projects that were not planned or properly budgeted for. That is why the bus company went under shortly after commencing business. The housing project also stalled.

ii) Flouting Procurement and Tendering Procedures and Processes – section 45 (2) (b) (ACECA)

- Mary caused NIP to secretly source the buses without any competitive bidding, denying NIP the best prices and value for money.
- She also committed NIP and the public to a long-term expenditure of 20 years without the approval of Parliament as required by law.
- She diverted funds from NIP to pay for the land adjacent to NIP simply because she knew the owner.

iv) Fraudulent/Excessive Payment – section 45 (2) (a) (ACECA)

- Procurement was done secretly. It ought never to have been done in the first place;
- The price was inflated by over 25% to accommodate Mary's bribe.

2. Were there any ethical breaches committed?

Yes. These include:-

i. Lack of Professionalism – section 9 (POEA)

Public Officers are required to discharge professional responsibilities in a professional manner and in a way that inspires confidence in their offices. Mary behaved in a most unprofessional manner.

ii. Improper Enrichment – Section 11 (POEA)

Public Officers are prohibited from using their offices to enrich themselves. Mary planned, solicited and received a substantial bribe from the company in Holland. She also accepted a 'Thank You gift' of Ksh. 100,000/- following the purchase of the land adjacent to NIP.

iii. Conflict of Interest – section 12 (POEA)

The Public Officer Ethics Act states that a Public Officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties. Mary breached this provision by using her sister to ‘arrange’ the bus deal. She also breached this provision, which she ensured that her brothers were employed as bus conductors.

iv. Failure to protect public property entrusted to him/her – section 15 (POEA)

Public Officers are required to ensure that public offices and public property are used in the public interest, and never to advance their private interests or the interests of another party. All public resources must be used in a lawful, efficient, effective, prudent and authorized manner. Public Officers are personally liable for any loss or damage which, through their acts or omissions, may be occasioned to public property and resources. Negligent or reckless use of public resources results in damage and waste. Mary did not protect the public resources placed in her care.

vi. Nepotism – section 17 (POEA)

All appointments are supposed to be done on the basis of integrity, competence and suitability. There must be no nepotism. To maintain the integrity of the public service, the system of appointments, promotions and rewarding of personnel should be based on merit. Mary employed her siblings in total disregard of this requirement.

CASE STUDY O

The Electoral Commission of Kenya has recently announced a by-election in *Usijali Ward*. **Jimmy Mlagai**, one of the residents of Usijali Ward decides to run for election. Jimmy is very unpopular in the Ward as he is suspected of engaging in crime in the area. It is therefore unlikely that he will be elected. Jimmy, aware of this, decides to bribe voters with maize flour, cooking oil and *lesos* in order to win.

Andrew Mlegevu, a cousin to Jimmy, gets a job as a polling clerk during the elections. Jimmy approaches Andrew with a request for assistance in order to win. He promises Andrew a 'substantial reward' in return. Andrew agrees to help him.

During the election which is by secret ballot, Andrew identifies the old and illiterate voters and ensures that they place their mark against Jimmy's name and symbol contrary to their intentions. Consequently, Jimmy is elected as the Councilor of Usijali Ward. A week later, Jimmy gives Andrew KSh. 10,000/- as a thank you gift.

Questions:

1. *What corruption offences, if any, have been committed?*

Andrew has committed an Election Offence Contrary to section 4 of the Election Offences Act. The offence is a corruption offence.

- **Bribing Agents – section 10 (Election Offences Act)**

Both Andrew and Jimmy commit the Offence of Bribery Contrary to section 10 of the Election Offences Act. The offence is also a corruption offence. Andrew and Jimmy both directly and indirectly procured and/or induced the voters to vote in a particular way by:

- o Giving Bribes of maize flour, cooking oil and lesos to the voters;
- o Offering a Bribe to Andrew for him to rig the elections;
- o Giving a Bribe of KSh. 10,000/- to Andrew.

Andrew has also committed the offence of bribery. In his case, the offence has two counts:

- o Agreeing to receive a Bribe;
- o Receiving a Bribe of KSh. 10,000/-.

The voters of Usijali Ward who received the maize flour, cooking oil and lesos so that they could vote for Jimmy also commit the offence of bribery. They are guilty of Receiving Bribes.

- **Dishonesty in Relation to Elections of Public Officers – section 4 (Election Offences Act)**

Jimmy and Andrew conspired to rig the elections in Jimmy's favour. Andrew misled the aged and illiterate amongst the voters to vote for Jimmy. Both Jimmy and Andrew are guilty of an offence involving dishonesty in relation to elections of public officers.

- **Abuse of Office – section 46 (ACECA)**

Andrew abused his position as a polling clerk to ensure that Jimmy was elected councilor.

- **Breach of Trust – section 127 Penal Code**

As a polling clerk, Andrew was expected to discharge his duties honestly and fairly. He failed to do so and thus committed a Breach of Trust.

2. *What ethical breaches have been committed?*

- **Lack of Professionalism (section 9 of the Public Officer Ethics Act)**

As a Public Officer, Andrew was expected to carry out his duties in a way that maintains public confidence in the integrity of his office. By helping Jimmy rig the elections, he breached this provision.

- **Rule of Law (section 10 of the Public Officer Ethics Act)**

A Public Officer is expected to carry out his duties in accordance with the law. Andrew broke the law when he assisted Jimmy to rig the elections.

- **Improper Enrichment (section 11 of the Public Officer Ethics Act)**

A Public Officer shall not use his office to improperly enrich himself or others, and shall not accept gifts unless allowed by law and regulations. Andrew breached this provision when he accepted Sh. 10,000/- from Jimmy.

- **Conflict of Interest (section 12 of the Public Officer Ethics Act)**

A Public Officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties. Andrew breached this provision when he agreed to rig the elections for Jimmy, his cousin.

- **Misleading the Public (section 19 of the Public Officer Ethics Act)**

A Public Officer shall not knowingly give false or misleading information to members of the public or any other public officer. By ensuring the aged and illiterate placed their mark against Jimmy's name and symbol during the elections contrary to their intentions, Andrew breached this provision.

- **Selection of Public Officers (section 22 of the Public Officer Ethics Act)**

A Public Officer shall practice and promote the principle that Public Officers should be elected in fair elections. By helping Jimmy rig the election Andrew breached this provision.

3. *If you were in Andrew's position, what would you have done?*

4. *As a voter who witnessed what Andrew did at the polls, what action would you take?*

CASE STUDY P

Ben Msimamizi is the Chief Executive Officer of one of the parastatals in the country. About two months ago, he decided to put up a palatial family home in one of the up-market residential areas in Nairobi. Unable to finance this project from his personal funds, Ben has decided to divert some of the parastatal's revenue to this project. Further, in a desire to meet his other pressing personal obligations, Ben has taken to making many trips locally and abroad ostensibly for official business and has on several occasions taken hefty imprests for that purpose. He has, however, been unable to properly account for these imprests.

Ben is also a loyal member of *Tuendeleo Mbeke Kenya* political party. He has had a desire to launch his political career by becoming the party's chairman. In order to nurture support from the party members, he has manipulated the parastatal's tendering process to ensure that only members of the political party are awarded tenders by the parastatal. In return, the suppliers have ensured that Ben receives a percentage of all payments made to them as a sign of their gratitude.

Ben would like to run for a Parliamentary seat in the next General Elections, and to this end, he has employed many people from his constituency in the parastatal without following the laid down recruiting procedures. He is convinced that this will make him popular and will guarantee him a seat in Parliament in the General Elections.

Questions:

1. What corruption offences, if any, have been committed?

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

In return for manipulating the parastatal's procurement procedures to award tenders to suppliers who are members of his political party, Ben receives a certain percentage of all moneys paid to them. Both Ben and the suppliers commit the offence of bribery.

- **Deceiving the Principal – section 41 (ACECA)**

Ben commits the offence of deceiving the principal in the following ways:

- o By diverting the parastatal's revenue to build his house rather than use it as required by law;
- o By taking hefty imprests for overseas and local trips apparently on official business but really to enable Ben obtain money from the organization;
- o By manipulating the parastatal's tendering system in order to give business to suppliers who belong to the same party as himself.
- o By employing people from his constituency without regard for merit or laid down recruitment procedures.

- **Conflict of Interest – section 42 (ACECA)**

Ben is actively involved in Tuendelee Mbele Kenya Political Party. Instead of declaring this and desisting from participating in the awarding of tenders where members of this party put in bids, Ben manipulates the tendering process to award tenders to fellow party members. He therefore commits the Offence of Conflict of Interest.

- **Bid Rigging – section 44 (ACECA)**

By manipulating the tendering process in the parastatal to ensure that only fellow party members are awarded tenders, Ben commits the Offence of Bid Rigging.

- **Abuse of Office – section 46 (ACECA)**

Ben abuses his position as the parastatal's Chief Executive Officer by:

- o Diverting parastatal funds to his house building project;
- o Granting himself hefty imprests which are not accounted for;
- o Awarding tenders to members of his political party;
- o Employing people from his constituency without following laid down recruitment procedures.

- **Breach of Trust – section 127 Penal Code**

Ben is guilty of a Breach of Trust. He was supposed to discharge his duties honestly and in the best interest of the organization. He failed to do this.

- **Economic Crime – section 45 (ACECA)**

Ben committed an economic crime. He embezzled parastatal funds by diverting these to his building project. He also awarded himself hefty cash imprests on the pretence of traveling locally and overseas on parastatal business, which he failed to account for.

2. What ethical breaches have been committed?

- **Lack of Professionalism (section 9 of the Public Officer Ethics Act)**

A Public Officer must conduct his duties in a way that maintains public confidence in the integrity of his office. Ben's actions were in contravention of this provision.

- **Rule of Law (section 10 of the Public Officer Ethics Act)**

A Public Officer is required to carry out his duties in accordance with the law. Ben did not follow the law with regard to tendering, recruitment of employees and the parastatal's expenditure.

- **Improper Enrichment (section 11 of the Public Officer Ethics Act)**

A Public Officer shall not use his office to improperly enrich himself or others and shall not accept gifts unless this is allowed by law or regulations issued by the organization. Ben received money from suppliers in exchange for his influencing tenders in their favour. He therefore breached this provision.

- **Conflict of Interest (section 12 of the Public Officer Ethics Act)**

A Public Officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties. Ben breached this provision by using his position to influence tenders, and recruitment in favour of his party members and people from his constituency respectively.

- **Political Neutrality (section 16 of the Public Officer Ethics Act)**

A Public Officer shall not, in connection with the performance of his duties as such, act as an agent for, or so as to further the interest of a political party. By influencing tenders in favour of members of his political party, Ben breached this provision.

- **Nepotism (section 17 of the Public Officer Ethics Act)**

A Public Officer shall not practice nepotism or favouritism. Ben breached this provision by manipulating the parastatal's tendering procedures to award tenders to members of his political party. He also breached this provision by recruiting many people from his constituency without regard for laid down recruitment procedures.

- **Selection of Public officers (section 22 of the Public Officer Ethics Act)**

A Public Officer is required to practice and promote the principle that public officers should be selected on the basis of integrity, competence and suitability. By recruiting many people from his constituency without due regard for recruitment procedures, Ben breached this provision.

3. ***As an employee of the parastatal, you become aware of what Ben is doing. What action would you take?***
4. ***As a member of the public you become aware of Ben's actions. What action would you take?***

CASE STUDY Q

Kauli Mnenaji is the Senior Pastor of **Kanisa Mlimani Church**. The church has embarked on a project to build an ultra-modern sanctuary for its 2000 member congregation. It is expected that the project will cost KSh. 6,000,000/-. This amount has been provided for in the church's annual budget.

At a meeting of the church deacons to discuss the project, it is decided that a notice inviting tenders be placed on the church notice board. It is also decided that announcements be made in all three services of the church the following Sunday drawing the congregation's attention to the notice. All tenders are to be received by the Senior Pastor. Kauli is then to convene a meeting of the deacons to discuss the tenders.

Kauli Mnenaji's cousin, **Biashara**, is in the construction industry. He desires to win the tender and approaches Kauli for assistance. Kauli promises to help him on condition that Biashara completes a house that Kauli had begun building in his rural home. Kauli was not able to go beyond the foundation due financial difficulties. He requires KSh. 3,000,000/- to complete the house. Biashara readily agrees to complete it for Kauli using some of the money allocated by the church for the new sanctuary.

Pursuant to the notice, several contractors submit their tenders for the construction of the sanctuary. As Kauli receives these tenders, he passes on important information on pricing and specifications quoted by other contractors to his cousin, Biashara. Using this information, Biashara continuously modifies and improves his bid. By the time Biashara submits his tender, he and Kauli are convinced the tender will be successful.

At the next meeting of the deacons chaired by Kauli, Biashara's tender is unanimously approved and the contract for building the church awarded to him. Kauli participates in the proceedings of the meeting and does not mention that Biashara is in fact his cousin.

Biashara arrives on site and begins work. Construction is supposed to take a year and it is projected that the Church's Christmas services will be held in the new sanctuary. However by October of that year, it becomes clear that Biashara will not complete the construction by Christmas.

In November, Kauli convenes a meeting of the deacons whereupon he informs them that Biashara has run out of money and therefore will not be able to complete the sanctuary within the agreed time. He informs them that it is imperative that the church holds a harambee to raise a further KSh. 3,000,000/- to complete it. He does not, however, tell the deacons that most of the original sum of money that had been set aside for the building of the sanctuary has been used to complete his house. Kauli has since transferred ownership of the house to his wife with her consent.

The deacons vote to have the matter discussed by the entire congregation at a special meeting. At the special meeting the congregation expresses reservations on the proposed

Case Studies

harambee and resolves to have the contractor's work reviewed by an independent assessor. **Alfayo Meneja** is appointed for the task.

On conducting the review, Alfayo discovers that not only has Biashara used sub-standard materials for the building, but also that the quality of the workmanship is poor. His observation is that the building should have cost far much less than the KSh. 6,000,000/- Biashara is claiming.

Aware that Alfayo has made these discoveries, Kauli and Biashara approach him with an offer of KSh. 100,000/- for him to write a favourable report. They also ask Alfayo to recommend that a further KSh. 3,000,000/- be raised by the church to complete construction. Alfayo agrees to do this on condition that Kauli and Biashara give him a further KSh, 150,000/- over and above the KSh. 100,000/- they have brought. Kauli and Biashara agree and thereafter Alfayo issues a report praising the workmanship and progress made on the building and recommending that a further KSh. 3,000,000/- be raised to complete it. This report is issued to the congregation with the result that a decision is made to hold a harambee to raise the balance of KSh. 3,000,000/-. Alfayo is then given the remaining KSh. 150,000/- by Kauli and Biashara.

Questions:

1. What corruption offences, if any, have been committed?

A number of corruption offences have been committed. These are:

- **Bribery/ Bribery Involving Agents – section 39 (ACECA)**

Kauli committed the Offence of Bribery. The offence in his case has four counts:

- o *Soliciting for a Bribe.* He asked Biashara to complete the construction of his house for him in exchange for his assistance in winning the tender.
- o *Receiving a Bribe.* Biashara completed the house for Kauli in exchange for Kauli's assistance to win the tender.
- o *Agreeing to Give a Bribe.* Kauli agreed with Biashara to give Alfayo KSh.100,000/- as a bribe. When Alfayo demanded a further KSh.150, 000/-, he agreed to give it.
- o *Giving a Bribe.* Kauli and Biashara gave Alfayo a bribe of KSh. 250,000/-.

Biashara also committed the offence of Bribery. In his case, the offence has three counts:

- o *Agreeing to Give a Bribe.* Biashara agreed to complete the house for Kauli in exchange for Kauli's assistance with the tender. He also agreed with Kauli to give Alfayo a bribe of KSh. 250,000. When Alfayo demanded a further bribe of KSh. 150,000, he agreed to give it to him.
- o *Giving a Bribe.* Biashara completed the house for Kauli in exchange for Kauli's

assistance with the tender. He also gave Alfayo a bribe of KSh. 250,000/-.

- o *Offering a Bribe.* He offered Alfayo a bribe of KSh. 250,000/- to influence the report Alfayo was to give the congregation.

Alfayo committed the offence of Bribery. The offence in his case has three counts:

- o *Agreeing to Receive a Bribe.* When Kauli and Biashara approached him with the offer of a bribe, he agreed to receive it.
- o *Receiving a Bribe.* He accepted a bribe of KSh. 250,000/- from Kauli and Biashara.
- o *Soliciting a Bribe.* He demanded a further bribe of KSh. 150,000/- over and above what Kauli and Biashara were offering.

- **Secret Inducements for Advice – section 40 (ACECA)**

Kauli and Biashara secretly offered Alfayo a bribe for him to give certain advice to the congregation that was favourable to them.

- **Deceiving the Principal – section 41 (ACECA)**

Kauli committed the offence of Deceiving the Principal. He recommended that the church hold a harambee to raise further funds to complete the sanctuary. He, however, knew fully well that the amount previously allocated by the church for the construction was more than enough to complete construction, and had been misappropriated.

- **Conflict of Interest - section 42 (ACECA)**

Kauli committed the offence of conflict of interest. He failed to disclose the fact that Biashara was his cousin to the deacons, and participated in discussions on the awarding of the tender.

- **Bid Rigging – section 44 (ACECA)**

Kauli and Biashara committed the Offence of Bid Rigging. Kauli had access to tenders submitted by other suppliers. He passed on information contained in these tenders to Biashara. Consequently, Biashara was able to improve his bid and win the tender.

- **Abuse of Office – section 46 (ACECA)**

Kauli used his office to confer a benefit on himself illegally. He got Biashara to complete his house using money from the church in exchange for his assistance with the tender. He therefore abused his office.

Case Studies

- 2. If you were in Kauli's position and Biashara approached you for assistance, what would you do?**
- 3. If you were Alfayo Meneja, what action would you take?**
- 4. If you were a deacon of the church and was aware of what had transpired, what action would you take?**
- 5. If you were a member of the congregation who came to know what had transpired, what would you do?**

In this Training Tool, the case studies illustrated so far have highlighted several offences that amount to corruption and economic crimes under the Anti-Corruption and Economic Crimes Act, 2003. For purposes of this Tool, economic crimes and ethical breaches will now be highlighted more in the remaining Case Studies.

CASE STUDY R

Mr. Ogwanjo is a Senior Officer with a parastatal based in Nakuru. As part of his terms and conditions of service comes a fully furnished five-bed roomed parastatal house which is allocated to him. In the course of time, he becomes very close to the District Land Registrar, **Mr. Monke** following many Departmental meetings and familiarity after many seminars and conferences.

In the course of time, the government decides to dispose of non-core parastatal houses. The house in which Mr. Ogwanjo stays is not among those identified as non-core for disposal. Mr. Monke, having been tasked with the responsibility of identifying the houses for disposal and forwarding the list to the Commissioner of Lands, has compiled his list for Nakuru but has not forwarded it to the Commissioner for Lands. Mr. Ogwanjo approaches Mr. Monke and asks him to include his parastatal-provided residence in the list of houses for disposal. Mr. Monke readily agrees bearing in mind the idea of “you scratch my back, I scratch yours”. Mr. Ogwanjo applies for the relevant consents and approvals which are granted by Mr. Monke and forwarded to Nairobi. The house is later disposed off to Mr. Ogwanjo.

Mr. Ogwanjo is expected to pay Stamp Duty, Land Rates, Land Rent and Transfer Fees. Valuation having been carried out by a government valuer, Mr. Ogwanjo prevails upon Mr. Monke to issue fraudulent receipts in respect of the Stamp Duty of KSh. 1 million, Land Rates of KSh. 50,000, and Land Rent of KSh. 250. On the basis of these fraudulent receipts, the property is transferred to Mr. Ogwanjo. Mr. Monke is paid KSh. 100,000 for his assistance as consideration.

Questions:

1. In your opinion, what economic crimes have been committed?

A number of economic crimes have been committed. These are:

a) Unlawful Acquisition of Public Property – section 45 (1) (a) (ACECA)

The house was not one of those earmarked for public disposal as being non-core.

b) Failure to Pay Taxes or Levies - section 45 (1) (d) (ACECA)

Mr. Ogwanjo colluded with Mr. Monke to issue him with fake receipts for Stamp Duty, Land Rates, Land Rent and Transfer Fees to facilitate the transfer thus denying the government revenue.

c) Failure to Comply with Applicable Laws, Guidelines and Procedures relating to Disposal of Public Property – section 45 (2) (b) (ACECA)

Mr. Ogwanjo and Mr. Monke conspired to include the house among the non-core houses for disposal without following the laid down guidelines and procedures.

Have any ethical breaches been committed?

i. Rule of Law – section 10 (POEA)

All Public Officers are expected to observe and act in accordance with the law irrespective of their position and/or duties. By causing the house to be disposed off without following the applicable laws and guidelines, both Ogwanjo and Monke are in breach of the Rule of Law.

ii. Improper Enrichment – section 11 (POEA)

Ogwanjo has improperly enriched himself by having the house transferred to him by using his office in the public service to acquire the property and therefore, has breached the Public Officer Ethics Act.

iii. Conflict of Interest – section 12 (POEA)

Ogwanjo has breached the code in respect of Conflict of Interest by influencing the transfer to himself.

iv. Conduct of private affairs – section 20 (POEA)

Ogwanjo and Monke have both acted in concert to enable Ogwanjo evade the payment of the relevant taxes and levies. They are in breach of the Code of Conduct.

CASE STUDY S

Tejpa is a businessman in Thika. He employs 1000 workers. He is meant to remit statutory deductions namely, NHIF, NSSF and PAYE, on a monthly basis. However, he has instructed **Mwangi**, the Personnel Officer, to maintain parallel records showing that he only has 20 employees. Tejpa and Mwangi have been remitting statutory deductions in respect of only 20 employees instead of the 1000 from whose salaries they have been deducting on a monthly basis.

Questions:

In your opinion, has any economic crime been committed?

Yes: These are:

a) Failure to Pay Taxes – section 45 (1) (d) (ACECA)

Tejpa has not been remitting PAYE to the Kenya Revenue Authority (KRA)

b) Failure to Pay Levies – section 45 (1) (d) (ACECA)

By failing to remit the NSSF monthly deductions from his employees' and employer's contributions, Tejpa commits an economic crime.

Are there any ethical breaches committed?

Tejpa and Mwangi are not Public Officers as they work for a private company and therefore the Public Officer Ethics Act (POEA) does not apply to them in terms of the advancement of ethics for public servants. They certainly have breached ethics through their conduct. In this respect, there is increasing need to have private entities and professional organizations develop and enforce their own Codes of Conduct.

CASE STUDY T

Jilo is a Senior Systems Programmer in charge of payroll in **Mbula County Council**, which employs 1,500 employees. Every year, 10 employees retire from service. The Human Resource Department advises Jilo to remove the retirees names from the payroll. However, Jilo only removes two names and retains the rest every year. He ensures that those whose names are retained see him privately in order to effect a continuation of their salaries. They have an arrangement where Jilo takes 40% of the salary of each officer retained on the payroll.

For the past 10 years the books of accounts for Mbula County Council have not been audited. Recently, the Controller and Auditor General ordered an audit of the Mbula County Council accounts. The audit revealed serious shortcomings in the financial management of the Council. It also highlighted serious anomalies in the staffing levels, which showed that a big number of staff that had retired had been retained on the payroll.

Questions:

In your opinion, are there any crimes committed?

Yes, there is.

i. Unlawful Acquisition of Public Monies – section 45 (1) (a) (ACECA)

By taking a percentage of the unlawful salaries fraudulently paid, Jilo and the respective retired employees commit the offence of unlawful acquisition of public property.

ii. Failure to Willfully Comply with Applicable Laws, Guidelines and Procedures – section 45 (2) (b) (ACECA)

By failing to remove the names of the retirees from the payroll despite the directive of the Human Resource Department, Jilo also commits the offence of willful failure to comply with the applicable procedures and guidelines on retirees.

iii. Manipulation of Computer Records – section 45 (1) (c)

Jilo unlawfully manipulates a computer to perform a function that results in loss of revenue by retaining retired employees on the payroll.

Are there any ethical offences committed?

Yes.

i. Rule of Law – section 10 (POEA)

Jilo is in breach of the Rule of Law by failing to comply and follow guidelines relating to the proper management of retirement within the Council.

ii. Improper Enrichment – section 11 (POEA)

By taking a percentage of the monies paid out unlawfully, Jilo has improperly enriched himself and the retirees.

iii. Care of Property – section 15 (POEA)

Jilo has failed to take care of public funds entrusted to him by making the unlawful payments and is in breach. He will be personally held responsible for the losses.

CASE STUDY U

Mr. Kabu is one of the drivers stationed in Munyu District Headquarters where the government transports relief food to neighbouring regions afflicted by famine. When they are on these relief missions, they are paid allowances which Mr. Kabu has been relying on besides his salary. Due to some misunderstanding with the Chief Transport Officer, **Mr. Asara**, Mr. Kabu has been stopped from the relief distribution missions and allocated standby night duties, which he really dislikes due to non-attachment of allowances.

One morning as he is retiring, he gains access to Mr. Asara's office. Instead of depositing the key to the vehicle he drives, he takes the keys of other vehicles and proceeds to open the three vehicles in the motor yard. Armed with two large packets of salt, he empties the packets into the three vehicles' engines and retires to his house for the day, satisfied with his mission of vengeance.

The engines of the three vehicles are destroyed. Investigations establish that Kabu was responsible.

Questions:

What, in your opinion, is the economic crime committed?

a) Damage to Public Property – section 41 (1) (c)

Kabu commits the offence of damaging public property by causing the engines of three vehicles to knock by using salt to immobilize the motor vehicles.

Are there any ethical breaches committed?

Yes.

i. Care of Property – section 15 (POEA)

By using the salt to immobilize and damage the three motor vehicles, Mr. Kabu is in breach of the code by failing to take reasonable care of the property. He will be held personally responsible for the losses.

PENALTIES

Omuko is a Public Officer in the Ministry of Lands. Kwamboka approaches him with a request for assistance to secure land in a prime location in the city. Omuko agrees to do so on the understanding that she will give him **KSh. 200,000** for his efforts. Kwamboka agrees and Omuko arranges for the transfer of public utility land in Matajiri area to her. The land is valued at **KSh. 2,000,000** at the time of the transfer.

Kwamboka proceeds to put up a palatial home on the land. Several months later, the Government announces that all constructions on road reserves will be flattened to make room for bypasses. Ministry of Roads and Public Works officers visit Kwamboka's home and declare it to be on a road reserve. They recommend that it should be pulled down.

Since the house is very well constructed, the Ministry is forced to hire a bulldozer to bring it down. The bulldozer costs the Ministry **KSh. 100,000** in hire charges. Omuko and Kwamboka are thereafter arrested and arraigned in Court. They are found guilty of corruption and economic crime and sentenced to **ten years** imprisonment with a fine of **KSh. 1,000,000** each.

Omuko and Kwamboka's conduct resulted in quantifiable benefit and loss. The Court therefore proceeds to determine the **additional mandatory** fine to be paid by Omuko and Kwamboka respectively. The mandatory fine is equal to two times the amount of the benefit received or loss occasioned, or **two times the sum of the amount of the benefit and the amount of the loss** if the conduct that constituted the offence resulted in both a benefit and a loss.

Omuko benefited from receipt of a KSh. 200,000 bribe. Kwamboka benefited from receipt of land valued at **KSh. 2,000,000**, which conversely constituted a loss to the Government. Further, the Ministry of Roads and Public Works suffered a loss of **KSh. 100,000** as it was forced to hire a bulldozer, which it would not have done but for Omuko and Kwamboka's illegal acts.

The sum of the benefits received by Omuko and Kwamboka is **KSh. 2,200,000**. The total loss to the Government is **KSh. 2,100,000**. Thus the additional mandatory fine imposed on Omuko and Kwamboka respectively is **(KSh. 2, 200,000 + KSh. 2,100,000) = KSh. 4,300,000**.

Furthermore, Kwamboka and Omuko are liable to the Ministry of Roads and Public Works for the loss suffered by the Ministry in hiring the bulldozer and may be called upon to pay the amount of Sh. 100,000 plus interest as compensation.

Omuko, being a public officer, is also subject to administrative action for his role in the transaction. Upon being charged with the offence, Omuko was **suspended on half pay** pending the outcome of the trial. Upon conviction, he remained suspended but with **no pay** pending appeal. He lost the appeal against the sentence by the Magistrate's Court and was thereafter **dismissed** from Public Service. Furthermore, he was **disqualified** from holding Public Office for a period of **ten years**. The Commission thereafter published the fact of Omuko's disqualification in the **Kenya Gazette**.

