



THE ETHICS AND ANTI-CORRUPTION COMMISSION

**THE THIRD QUARTERLY REPORT FOR THE YEAR 2012
COVERING THE PERIOD
1ST JULY, 2012 TO 30TH SEPTEMBER, 2012**

PREAMBLE

The Ethics and Anti-Corruption Commission is required under section 36 of the Anti-Corruption and Economic Crimes Act, 2003, to prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions under Section 35 of the Anti-Corruption and Economic Crimes Act, 2003 as read with Section 11(1) (d) of the Ethics and Anti-Corruption Commission Act, 2011.

Section 36 of the Anti-Corruption and Economic Crimes Act, 2003 provides that:

1. The Commission shall prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions under section 35 and such other statistical information relating to those reports, as the Commission considers appropriate.
2. A quarterly report shall indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was not accepted.
3. The Commission shall give a copy of each quarterly report to the Director of Public Prosecutions.
4. The Attorney General shall lay a copy of each quarterly report before the National Assembly.

The Commission shall cause each quarterly report to be published in the Kenya Gazette.

This report is therefore made pursuant to section 36 of the Anti-Corruption and Economic Crimes Act, 2003. The report covers the third quarter of the year 2012 and is for the period commencing 1st July, 2012 to 30th September, 2012.

INVESTIGATIONS COVERING THE PERIOD 1ST JULY TO 30TH SEPTEMBER, 2012

1. KACC/FI/INQ/14/2011

Inquiry into allegations of bid rigging against Catering and Tourism Development Levy Trustees (CTDLT) officials in the procurement of promotional materials from a private company.

The investigation established that the Catering and Tourist Development Levy Trustee (CTDLT) as apart of its annual activities for the 2010-2011 Financial year planned a budget to spend on advertising and publicity. In this regard, procurement for promotional materials was initiated. Investigations further established that the method of procurement chosen by the procuring entity was Requests for Quotations (RFQs) at a value of Kshs. 11,203,450. This value exceeded the threshold provided for use of this particular method under the Public Procurement and Disposal Act, 2005 and the Regulations. Investigations further established that several documents used in this particular procurement were forgeries since companies named as having sent their quotations have confirmed that they did not do so.

It was further established that the RFQ forms and the accompanying confidential business questionnaires that were evaluated had not been submitted by either of the named bidders. Indeed a Report obtained from the Document Examiner confirmed that some of the documents for one of the said companies were authored by the head of the Procurement Department at CTDLT. It was further confirmed that the companies who were purported to have submitted RFQs did not deal with promotional materials which was the subject of the procurement. Investigations also established that only one company participated in the procurement, and the others used as a front to cover up a flawed procurement process.

The file was forwarded to the Director of Public Prosecutions on 6th September, 2012, with the recommendations that the members of the Tender committee of the Catering and Tourism Development Levy Trustees be charged with the offence of careless failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with section 48(1) (a) of the Anti-Corruption and Economic Crimes Act, 2003, and the Head of the Procurement Department at the Catering and Tourism Development Levy Trustees be charged with the offence of making a document without authority contrary to section 357 (a) of the Penal Code.

On 18th September, 2012, the Director of Public Prosecutions accepted the recommendation for prosecution.

2. KACC/FI/INQ/71/2010

Inquiry into allegations that the Constituency Development Fund Committee (CDFC) for Kaloleni Constituency wrongfully paid a contractor of the Mulungu wa Rero Water Pan Project a sum of Kshs.3,841,250.00 for substandard work.

The investigations established that the Kaloleni Constituency District Fund (KCDF) was allocated Kshs.4,077,703/= for the rehabilitation and expansion of Mulungu Wa Rero water pan (the water pan) in the 2008/2009 Financial Year. Investigations further established that the CDFC obtained designs, drawings and bill of quantities for the project from the District Water Officer. The CDFC Tender Committee resolved to use the restrictive tendering method, and from a list of six pre qualified contractors who tendered, the contract was awarded to the lowest evaluated bidder at the quoted cost of Kshs.3,841,250/=. The investigations further revealed that during the construction of the water pan, some of the works specified in the contract were omitted on the instruction of the Project Manager, who indicated that if those works were carried out, the locals feared that such construction would lead to leakages of the retaining wall, thus weakening it and eventually leading to the collapse of the water pan. Investigations revealed that upon completion of the works on the water pan by the contractor, the Project Manager issued the contractor with the requisite Certificate of Practical Completion of works and payments made. The investigations revealed that there was breach of procurement regulations with regard to the project.

The file was forwarded to the Director of Public Prosecutions on 20th July, 2012 with the recommendation that the members of Kaloleni Constituency Development Fund Tender Committee, and the Project Manager be charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 28th September, 2012, the DPP accepted the recommendation for prosecution.

3. KACC/FI/INQ/29/2011

Inquiry into allegations of embezzlement of public funds amounting to Kshs.12,980,000/= through fraudulent and irregular cash book adjustments by a Cashier at the Ministry of Higher Education, Science and Technology.

The investigation established that the Ministry of Higher Education, Science and Technology receives funds from the Government and donors; and these funds are channelled to the Ministry through the Treasury. The investigations further established that on three occasions, the cashier who is the suspect, prepared requisition forms for the withdrawal of Kshs.2.5 million, 2.5 million and 7.98 million respectively from the Ministry's Recurrent account held at Central Bank of Kenya. Upon the receipt of the cash, the suspect did not make any entries in the cash book to reflect the receipt of the money contrary to the Government Financial Regulations which requires all cash transactions to be recorded on daily basis. Investigations also revealed that at the close of the financial year in June, 2008, the suspect made cash adjustments on the cash book showing a cash receipt of Kshs.2.5 million and a payment of Kshs.15.48 million, without any indication as to who had received the payment. The net effect of the two entries was a loss of Kshs.12.98 million and the suspect was unable to account for the same.

The file was forwarded to the Director of Public Prosecutions on 1st August, 2012 with the recommendation that the suspect be charged with the offences of unlawful acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, and stealing by a person employed in the Public Service contrary to Section 268 (1) as read with Section 280 of the Penal Code.

On 10th September, 2012, the DPP accepted the recommendation for prosecution.

4. KACC/FI/INQ/160/2009

Inquiry into allegations of embezzlement of Kshs.2,657,000/= by the Finance Assistant from the World Bank Financed Western Kenya Community Driven Development and Flood Mitigation Project.

The investigation established that the Finance Assistant received the sum of Kshs.2,657,000/= in form of imprest. The money was to cater for the costs of accommodation, transport, food and night out allowances for participants attending workshops on Participatory Integrated Community Development at the Kakamega Golf Hotel and the Mabanga Agricultural Training Centre. The investigation established that the two workshops proceeded as planned with a total

of 116 participants in attendance. The participants confirmed being paid their entitlements. Investigations further established that the Finance Assistant satisfactorily surrendered his imprest through payment vouchers showing that he had spent the entire sum of Kshs.2,657,000/=.

However, investigations revealed that a Revenue officer at Mabanga A.T.C. presented 28 receipts to the Bungoma South District Treasury officer together with a bank deposit slip of Kshs.521,379.30 purporting that the money was received by the said Mabanga A.T.C. from the sale of farm produce and offering training facilities to various Institutions whereas the same was paid by Western Kenya community Driven Development and Flood Mitigation Project.

The file was forwarded to the Director of Public Prosecutions on 17th August, 2012 with the recommendation that the Revenue Officer be charged with the offences of wilful failure to comply with the law relating to management of public funds contrary to section 45 (2) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, false accounting by a public officer contrary to section 331 (1) as read with section 331 (2) of the Penal Code and uttering a false document contrary to section 353 as read with section 349 of the Penal Code.

On 27th September, 2012, the DPP accepted the recommendation for prosecution.

5. KACC/FI/INQ/90/2011

Inquiry into allegations of failure to comply with the Public Procurement and Disposal Act and Regulations by Kenya Investment Authority (KENINVEST) officials for the Supply, Installation and Commissioning of Hardware and Software.

The investigation established that KENINVEST invited tenders from eligible, qualified and competent bidders possessing the requisite skills, resources and experience for the Supply, Delivery, Installation and Commissioning of Hardware and Software amounting to Kshs. 10 million. Upon evaluation of the bids submitted, the tender was awarded to the lowest evaluated bidder. Investigations further established that since the price quoted by the successful bidder was above the set budget, the Tender Committee authorized negotiations with the bidder. This was however not permissible under the Procurement Regulations. It was also established that in the course of the negotiations, the technical specifications of the goods to be supplied were altered which in turn affected the original specifications, prices and quality which had been prescribed by the User Department. Investigations established that the Tender Committee acted in breach of the Public Procurement and Disposal Act and Regulations.

The file was forwarded to the Director of Public Prosecutions on 25th July, 2012, with the recommendation that the members of the Tender Committee, KENINVEST be charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. In view of the several flaws and irregularities identified in the course of the investigations, the Commission will also carry out an examination of the systems and procurement procedures at KENINVEST. This will be with a view to advising the public entity on how to streamline its processes to eliminate loopholes that are likely to lead to corruption.

On 10th September, 2012, the DPP advised that administrative action be taken against the members of the Tender Committee, in lieu of prosecution. He also concurred that a systems examination be carried out at KENINVEST.

6. KACC FI/INQ/117/2009

Inquiry into allegations of corruption against a Clerical Officer attached to the Pensions Department, Ministry of Finance.

The investigation established that sometime in the month of June, 2009, a pensioner received her monthly pension that was inflated by the sum of Kshs. 50,000. Investigations also established that the overpayment was occasioned by the migration from the old manual system to the new electronic system of computation of pensions at the Pension's Department. Investigations further established that the suspect appears to have been aware of this overpayment, and he thus pestered the pensioner to withdraw the overpayment, and then share it with him. The suspect went as far as sending the complainant money via M-Pesa to facilitate her journey to Nairobi for purposes of sharing the money with the suspect. To confirm that the suspect sent the money to the complainant and communicated with her, a request was made to Safaricom for call data records. However, Safaricom could not provide the information because the transaction and calls had taken place more than six months and the service provider keeps data only for three months from the date of the call or transaction. In the absence of the said confirmation, the Commission was of the opinion that the evidence obtained was not sufficient to prove the offence of corruption against the suspect.

The file was forwarded to the Director of Public Prosecutions on 9th July, 2012, with the recommendation that administrative action be taken against the suspect for improper conduct.

On 7th August, 2012, the Director of Public Prosecutions accepted the recommendation for administrative action against the suspect.

7. KACC/ INQ/FI/68/ 2011

Inquiry into allegations of misappropriation of Kshs. 1,005,400 by an Assistant Director, Quality Assurance and Standards, Ministry of Education.

The investigations established that the Ministry of Education decided to conduct workshops for Quality Assurance Officers in the Nyanza and Western Provinces. The suspect was appointed as the coordinator for the workshops which were held in two phases. Investigations further established that in that regard, she was also authorized to apply for, and receive an imprest of Kshs. 1,000, 500 to cater for reimbursement for facilitators and participants attending the workshops. The investigations also revealed that upon completion of the workshop, the suspect surrendered the imprest, but used false documents in a bid to account for the imprest. She attached payment schedules that bore names of persons who did not attend the workshops. As a result, the suspect could not account for a sum of Kshs. 39,000. The investigation also established that a former Director of Quality Assurance and Standards received a sum of Kshs. 52,000 whereas he did not facilitate at the workshops.

Whereas the evidence disclosed offences of deceiving principal and false accounting, it was deemed appropriate that administrative action be taken against the suspect, and the former director of Quality Assurance and Standards, including the recovery of the money, in lieu of prosecution. The justification for this is that, Regulation **5.6.5** of the Government Financial Regulations provides that where an imprest holder fails to account for the imprest received, then the Accounting Officer is mandated to recover the money from the defaulting officer. In addition to such recovery, the Accounting Officer is also enjoined to take appropriate disciplinary action against the officer concerned for abuse of the imprest.

The file was forwarded to the Director of Public Prosecutions on 25th July, 2012 with recommendations that administrative action be taken against E1 and her supervisor, and the sums misappropriated be recovered by the Permanent Secretary Ministry of Education.

On 10th September, 2012, the DPP accepted the recommendation for administrative action, and recovery of the misappropriated sums.

8. KACC/INQ/AT/65/2008

Inquiry into allegations of irregular alienation of public land within Eldoret Municipal Council next to Eldoret State Lodge (Block 8/87)

The investigation established that the land parcel number Eldoret Municipality Block 8/87 belonged to the Government of Kenya. The land was leased to the Municipal Council of Eldoret for a period of 99 years. Further investigations established that Eldoret State Lodge comprised of land parcel Eldoret Municipality Block 8/61. The area occupied by the State Lodge was later expanded to include a portion of land parcel number Eldoret Municipality 8/87. Investigations also revealed that Block 8/87 was sub-divided into fourteen portions after letters of allotment were issued to private persons and companies. Since the land in question was government land, the pre-requisite procedure for its subdivision and disposal ought to have been adhered to. Moreover, the land was set aside for public use and therefore not available for alienation. The investigation established that the appropriate procedure was not complied with, and therefore the issuance of allotment letters was irregular. It was also established that the purported subdivisions encroached on Eldoret State Lodge.

The file was forwarded to the Director of Public Prosecutions on 2nd August, 2012 with the recommendations that the 14 letters of allotment issued in respect of land parcel Eldoret Block 8/87, and the subsequent subdivisions to create Block 8/773-783 be cancelled, and a title be issued in the name of the Government of Kenya to guard against future encroachment.

On 10th September 2012, the Director of Public Prosecutions accepted the recommendation for cancellation of letters of allotment. He however advised that certain pending issues be investigated. The issues were addressed and the file-resubmitted to the DPP on 2nd October, 2012.

9. EACC/MSA/FI/INQ/5/2012

Inquiry into allegations of tax evasion in the disposal of Crane Number MC 51 by the Kenya Ports Authority (KPA).

The Investigations established that sometime in 2011, a crane namely MC 51 sank in the Dock yard of KPA. The crane was declared unserviceable and hence listed as one of those items that KPA would dispose of. A tender was advertised for the disposal of the crane together with other items. The successful tenderer had bid at a price of Kshs.3,501,000 for the crane VAT inclusive.

Upon payment of the said sum, the buyer removed the crane from the port. Whereas the allegations made were to the effect that the buyer of the crane had failed to pay the requisite taxes, investigation further established that under the Customs External Tariff Schedule obtained, Cranes and fork lifts are zero rated and thus do not attract any duty. Therefore, the buyer was not required to pay any additional taxes save for the VAT which was inclusive of the purchase price of Kshs.3,501,000. It was established that due process was followed in the disposal, and subsequent sale of the crane and no irregularities were noted. The evidence obtained did not establish any culpability either on the part of KPA officials or the person who purchased the crane in question to warrant any action to be taken against them.

The file was forwarded to the Director of Public Prosecutions on 9th August, 2012 with the recommendation that the inquiry file be closed with no further action.

On 10th September, 2012, the Director of Public Prosecutions accepted the recommendation for closure.

10. KACC/AT/INQ/26/2009 - R

Inquiry into allegations that the Nandi County Council acting Treasurer has between 2003 and 2011 accumulated wealth that is not commensurate with his known source of income.

The investigation established the acting Treasurer of Nandi County Council owned several parcels of land within Nandi Hills and Eldoret Townships, motor vehicles, tractors, shares in three companies and cash in various banks. Investigations further established that the Acting Treasurer gave a satisfactory account of how he acquired the numerous assets. The explanation was supported by several documents obtained as well as from witnesses.

The file was forwarded to the Director of Public Prosecutions on 15th August, 2012 with the recommendation that the inquiry file be closed.

On 10th September, 2012, the DPP accepted the recommendation for closure.

11. EACC/MSA/FI/7/2012

Inquiry into allegations that government officers based in Lamu County namely; the District Surveyor, District Physical Planner, Land Adjudication and Settlement Officer and District Lands Registrar, allocated land to themselves and to non-indigenous/non-residents in the proposed Ras Kitau Settlement Scheme (within Manda Island).

Investigations established that the Ras Kitau Land was un-alienated Government Land and the squatters who had been living there for several years, in a bid to formalize their occupation of the land, applied to the Government through their local political leaders, to be considered for allocation of the land and ultimately issued ownership documents. In response, the Government through the District Settler Selection Committee (DSSC), chaired by the County Commissioner for the Lamu County initiated the process of identifying the number of squatters and the corresponding nature of settlement on that land. Investigations further established that a list of the squatters was compiled. However, it was noted that the said settlement did not take care of public utilities such as schools, hospitals, mosques, roads, cemeteries, etc. The DSSC therefore carried out fresh survey and came up with a final list of the proposed beneficiaries and their respective allocations as appearing on the ground, and provisions for public utilities as per the advisory plan. By the Gazette Notice of 17/09/2010 number 11190 issued pursuant to section 19 of Physical Planning Act, any person interested or affected by advisory plan was given sixty days to make their representations or objections in respect of the process. Since there were no objections raised to that plan within the period given, the plan was forwarded to the Director of Physical Planning who certified it and thereafter it was approved by the Minister for Lands.

The file was forwarded to the Director of Public Prosecutions on 20th September, 2012 with the recommendation that the file be closed with no further action.

On 28th September, 2012, the DPP accepted the recommendation for closure.

12. EACC/GSA/FI/INQ/8/2011

Inquiry into allegations of abuse of office by officers from the ministry of gender, children and social services in the allocation of funds meant for orphans and vulnerable children (OVCs) within Madogo division

The investigations established that after the Department of Children rolled out a programme known as Cash Transfer for Orphans and Vulnerable Children (*hereinafter referred to as CT-*

OVC), it was implemented in several districts within the country. One of the benefiting districts was Bura in which eligible households in all its divisions which included Madogo Division benefited from the cash transfer programme. Investigations revealed that the Children's Department carried out a targeting process to identify those persons who would benefit. The key criteria used was to identify those households that had, or were taking care of orphans and vulnerable children. Investigations revealed that out of 213 targeted households, 150 of them received cash under the Cash transfer programme. This was after a validation process was carried out.

The investigation established that due process as outlined in the Operations Manual was followed in the implementation of the CT-OVC programme in Madogo Division. The evidence obtained did not establish that some of the persons who received cash under the programme were undeserving or not eligible as alleged. No culpability was established against the officers who were involved in the implementation of the CT-OVC in Madogo Division. The evidence obtained did not also reveal any embezzlement of the funds disbursed under the CT-OVC programme by either E1 or E2.

The file was forwarded to the Director of Public Prosecutions on 24th September, 2012, with recommendations that the inquiry file be closed.

On 28th September, 2012, the DPP accepted the recommendation for closure.

13. EACC/ELD/INQ/7/2012

Inquiry into allegations that a Station Accountant, Department of Land Settlement and Adjudication, Kakamega corruptly solicited for a benefit from the complainant as an inducement to release a discharge certificate and processing of title deeds in respect of a plot in Kakamega.

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and released on bond awaiting arraignment before the Eldoret Anti-Corruption Court upon the DPP granting consent to prosecute him.

The file was forwarded to the Director of Public Prosecutions on 12th July, 2012 with the recommendation that the suspect be charged with the offences corruptly soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 7th August, 2012, the DPP accepted the recommendation for prosecution. The suspect has already been charged before the Kakamega Anti- Corruption Court.

14. EACC CR.152/69/2012

Inquiry into allegations that two National Hospital Insurance Fund officers attached to Industrial Area Branch, corruptly solicited for and received a benefit from the Manager of a private company as an inducement to have a prosecution against the company, pending before Makadara Law Courts, withdrawn.

The investigation established the solicitation and receipt of the benefit. The suspects were arrested and released pending finalisation of the investigations, and the consent from the DPP to prosecute.

The file was forwarded to the Director of Public Prosecutions on 31st July, 2012 with the recommendation that the suspects be charged with the offences corruptly soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 10th September, 2012, the Director of Public Prosecutions accepted the recommendation for prosecution. Arrangements are being made to arraign the suspects in court.

15. EACC/MSA/INQ/9/2012

Inquiry into allegations that a Police Officer based at Kilifi Police Station corruptly solicited for, and received a benefit from the complainant as an inducement to forbear charging him with an alleged offence of being in possession of fake currency notes.

The investigation established the solicitation and receipt of the benefit. The suspect were arrested and charged before the Mombasa Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

The file was forwarded to the Director of Public Prosecutions on 6th August, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

On 10th September, 2012, the DPP accepted the recommendation for prosecution. The accused has already been charged before the Mombasa Anti- Corruption Court.

16. KACC/CR.141/70/2012

Inquiry into allegations that a Kerugoya/Kutus Municipal Council Askari corruptly solicited for a benefit from the complainant as a protection fee for his matatu business.

The Investigations did not establish the solicitation of the benefit as alleged by the complainant. Investigations further established that the complainant did not disclose the full facts of the case in his report to the Commission. The evidence obtained did not establish that the suspect corruptly solicited for and received a benefit as alleged.

The file was forwarded to the Director of Public Prosecutions on 6th September, 2012 with the recommendation that the file be closed.

On 12th September, 2012, the Director of Public Prosecutions accepted the recommendation for closure.

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**STATISTICAL SUMMARY OF FILES FORWARDED TO
THE DIRECTOR OF PUBLIC PROSECUTIONS**

Total No. of files forwarded to the Director of Public Prosecutions	16
No. of files recommended for prosecution	8
No. of files recommended for administrative or other action	3
No. of files recommended for closure	5
No. of files recommended for prosecution and the cases are already lodged before Court	3
No. of files where recommendation to prosecute accepted	7
No. of files where recommendation for administrative or other action accepted	2
No. of files where recommendation for closure accepted	5
No. of files returned for further investigations	1
No. of files where recommendation to prosecute not accepted	1
No. of files where recommendation for administrative or other action not accepted	0
No. of files where closure not accepted	0
No. of files awaiting Director of Public Prosecution's action	0

DATED AT NAIROBI THIS DAY OF 2012

**JANE W. MUTHAURA (MRS)
AG. SECRETARY/CHIEF EXECUTIVE OFFICER**