



THE ETHICS AND ANTI-CORRUPTION COMMISSION

**THE SECOND QUARTERLY REPORT FOR THE YEAR 2013
COVERING THE PERIOD
1ST APRIL, 2013 TO 30TH JUNE, 2013**

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 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 Attorney General.
4. The Attorney General shall lay a copy of each quarterly report before the National Assembly.
5. The Commission shall cause each quarterly report to be published in the Gazette.

This report is therefore made pursuant to section 36 of the Anti-Corruption and Economic Crimes Act, 2003. The report covers the first quarter of the year 2013 and is for the period commencing 1stApril, 2013 to 30th June, 2013.

1. KACC/KSM/FI/INQ/06/2011

Inquiry into allegations of misappropriation of Kshs. 490,000, funds allocated to Saroiyot Bridge by the Eldoret South Constituency Development Fund.

Investigations established that in the 2009/2010 financial year, A SUM OF Kshs. 490,000 drawn from the Constituency Development Fund was allocated for the Saroiyot Bridge Project by the Eldoret South Constituency Development Fund Committee. The money was deposited in an account opened by the Project Management Committee (PMC) for the said project. Investigations however established that the said PMC was a creation of four persons who put in an elaborate scheme to fraudulently dispose of the CDF funds. The four suspects purported to register a Self Help group for purposes of receiving the funds allocated for the bridge. It was established that the purported registration was irregular, since the registration number issued for Saroiyot Bridge project was for another project. The Certificate of Registration issued to the suspects for their self help group was established to be a forgery.

Investigations further revealed that after the suspects purporting to be the bona fide PMC for the Saroiyot Bridge Project received the Kshs. 490,000, they withdrew the entire sum. However, the funds were not utilized for the intended purpose, which was the bridge. They jointly conspired to embezzle the money and could not account for it. The bridge which was intended for the benefit of the local community was also not constructed. The evidence revealed that the suspects were culpable for embezzlement of CDF funds.

A Report was compiled and forwarded to the DPP on 20th May, 2013 with recommendations that the suspects namely the four officials of the Saroiyot Bridge Project be charged with the offences of Fraudulent acquisition of public property contrary to section 45 (1) (b) of the Anti-Corruption and Economic Crimes Act, 2003 and Misappropriation of CDF Funds contrary to section 51 of the CDF Act.

On 25th June, 2013, the DPP accepted the recommendation for prosecution of the suspects.

2. EACC/NYR/FI/INQ/7/2011

Inquiry into allegations of embezzlement Kshs. 1, 181,800 Local Authority Transfer Fund (LATF) disbursed for the construction of Karama Dispensary in Nyambene County Council and making fictitious payment for non-existing road projects.

The investigations established that in the 2010/2011 Financial Year, the Ministry of Local Government disbursed LATF funds to the County Council of Nyambene. The money was meant

for the implementation of projects that included construction of dispensaries and grading of roads in specific wards. Investigations also established that the projects were to be identified by the local community. The construction of six dispensaries was identified. One such dispensary was the Karama Dispensary.

Investigations established that whereas money was specifically allocated for the said dispensary, it was purportedly diverted for road grading. This was however done without the requisite approval required from the Council and from the local community that had agreed on the construction of the dispensary. The purported change of the project was manoeuvred by the Councillor of Karama Ward who alleged that due consent had been granted. However, investigations established that the purported use of the funds meant for the dispensary to grade the roads in Karama Ward was a cover up for the Councillor and others to embezzle the money. Whereas the Councillor purported that the sum of Kshs. 1,181,800 was paid to casual workers who did the manual road grading, the investigations established that no road works were carried out, nor were any casual workers paid.

Investigations further established that forged documents were used in a bid to account for the money. These included a forged Completion of Certificate presented as evidence of the purported road grading and false payment schedules for the purported casual workers. It was established that the sum of Kshs. 1,181,800 was received by the Councillor with the authority and knowledge of the Council Treasurer and Clerk. The LAF funds were neither used for the construction of the dispensary as intended nor the road grading but were embezzled.

A Report was compiled and forwarded to the Director of Public Prosecutions on 10th June, 2013 with the recommendation that the suspects, namely; the former Councillor of Karama Ward, the Nyambene County Council Clerk and Treasurer be charged jointly with the offences of Abuse of Office contrary to section 46 and Fraudulent making payment from public revenue contrary to section 45(2) (a) of the Anti- Corruption and Economic Crimes Act, 2003; and the Councillor be charged with uttering false documents contrary to section 353 and false accounting by a public officer contrary to section 331 (1) of the Penal Code.

On 1st July, 2013, the DPP accepted the recommendation for prosecution.

3. EACC/FI/INQ/31/2012

Inquiry into allegations that a Supply Chain Management Assistant in the Ministry of Public Works, failed to account for 2,172 reams of photocopying papers worth Kshs. 4,316,000 while he was in charge of the Central Stores

The investigations established that sometime in August, 2009 the Ministry of Public Works was given the mandate to undertake documentation for the various projects under the Economic Stimulus Programme (ESP). The Ministry therefore received funds to procure 13,000 reams of photocopying papers. These reams were purchased at a cost of Kshs. 4,316,000. The suspect was mandated to collect the photocopying papers from the Central Stores. Investigations revealed that he collected the reams of paper, but before he could collect all, he was transferred to another Department.

Investigations further established that even after the said transfer, the suspect without authority, returned to the stores on various dates and collected 2,172 reams of paper worth Kshs.755,856. He however did not deliver them to their destination, nor did he account for them when he was asked to.

A Report was compiled and forwarded to the Director of Public Prosecutions on 10th June, 2013 with recommendations that the suspect be charged with the offence of unlawful acquisition of public property contrary to section 45 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

On 2nd July, 2013 the DPP accepted the recommendation for prosecution.

4. EACC/MSA/FI/INQ/5/13

Inquiry into allegations of irregular transfer of Kshs. 2 million CDF funds allocated to Mrima Secondary School to Likoni Secondary School

The investigation revealed that the National CDF Board through the Likoni CDF Committee allocated a sum of Kshs. 9 million for the construction of an administration block at Mrima School. While the CDF project was on going, the CDF Fund Manager, Likoni, the school Principal and the Chairman of the Board authorized the transfer of Kshs. 2 million meant for the said project to Likoni Secondary School. Such transfer was unlawful as stipulated in the CDF Act.

However, investigations established that the said transfer by the three officials was effected

after much pressure was put on them by the area M.P. It was further established that transfer of the CDF funds from one project to another was a common practice in Likoni.

The Commission was of the opinion that due to the fact that the area MP may have influenced the transfer but without anything on record, this is a matter that administrative action would suffice against the Fund Manager and the officials of the Mrima School.

A Report was compiled and forwarded to the DPP on 24th May, 2013 with recommendations that administrative action be taken against the three officers who authorized the transfer of funds.

On 3rd July, 2013, the DPP advised that the three officials, be charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45 (2) (b) of the Anti-Corruption and Economic Crimes Act, 2003.

5. EACC/NYI/FI/INQ/02/2011

Inquiry into allegations of abuse of office against public officers attached to the Nyeri District Lands Office. It was alleged by the complainant that he was unlawfully dispossessed of his land through corrupt means and in collusion with officers at the Nyeri Lands Office

The investigations revealed that several public officers at the Nyeri Lands Office colluded with private persons, approved and registered the Transfer of a parcel of land belonging to the complainant notwithstanding the subsistence of a valid Caution and a court order in respect of the same title. As a result, the complainant who was in occupation of the land was evicted from the land after it was transferred to a third party. Investigations further established that false documents were used in the Land Control Board and in the assessment of stamp duty. The Green card was also forged to facilitate the irregular transfer of the land in question.

A Report was compiled and forwarded to the DPP on 27th May, 2013 with recommendations that all the suspects be jointly charged with conspiracy to commit an offence of corruption contrary to section 47(a)(3) of the ACECA. It was further recommended that the Land registrar who assessed the stamp duty be charged with forgery contrary to section 345 of the Penal Code.

On 2nd July, 2013, the DPP accepted the recommendation for prosecution.

6. KACC/FI/INQ/56/2011

Inquiry into allegations of misappropriation of public funds amounting to Kshs. 19 million in the construction of Manguva Water and Sanitation Project in Mwingi District

The investigations established that the Manguva Water and Sanitation Project was a project approved and funded by the Water Services Trust Fund. This was a community based project and was being implemented by a local NGO. The Water Trust was to contribute Kshs. 27,327,500 towards the project. Investigations further established that pursuant to the said funding, the NGO sourced for and identified a contractor through procurement. The contractor commenced works on the project but the dam walls that were constructed were washed away by torrential rains before completion of the project.

Investigations further established that at the time the damage occurred, the Water Services Trust Fund had already disbursed Kshs. 19,585,543 to the NGO. The fund engaged an expert to conduct an investigation to establish the cause of the damage. The report by the expert revealed that the damage was as a result of poor design and construction, as well as insufficient supervision of the works. The Fund terminated the contract and stopped further disbursements. The project was taken over and completed by the National Water Conservation and Pipeline Corporation. Investigations established that the dam is being used by the community for domestic and livestock needs. The Fund also instituted a Civil Suit for the recovery of the sum of Kshs. 10,163,479.15 from the NGO being payment received for uncompleted works.

The investigations did not establish any misappropriation of the money allocated for the Manguva Dam Project. They only established that the contract with the NGO was terminated after the dam was damaged before completion due to poor workmanship. No culpability was however established to warrant any criminal proceedings against the officials of the Water Services Trust Fund and the NGO.

A Report was compiled and forwarded to the Director of Public Prosecutions on 6th June, 2013 with recommendations that the inquiry file be closed.

On 2nd July, 2013, the DPP accepted the recommendation for closure of the inquiry file.

7. KACC/FI/INQ/19/2012

Inquiry into allegations of conspiracy between a former Chair of the Law Society of Kenya (LSK) and former Town Clerk, City Council of Nairobi to defraud the Nairobi City Council through verification of legal fees and diversion of a contract meant for the LSK to the chairman's law firm.

Investigations revealed that the Town Clerk, City Council, being concerned with the huge debts arising from legal fees in litigations against the Council, requested the former chair of LSK to carry out a verification exercise. This was to ascertain the authenticity of the legal fees being claimed by the lawyers.

Investigations further established that the verification was duly done and the LSK chair submitted the Report to the Council. The LSK chair did not charge the Council any fees for the benefit of his law firm as alleged. The investigation did not establish any conspiracy between the Town Clerk and the LSK chair to defraud the City Council of Nairobi. There was no culpability established to warrant any action against them.

A Report was compiled and forwarded to the Director of Public Prosecutions on 19th April, 2013 with recommendations that the inquiry file be closed.

On 13th June, 2013, the DPP accepted the recommendation for closure of the inquiry file.

8. KACC/FI/INQ/155/2010

Inquiry into allegations that officials of the Municipal Council of Nanyuki (Council) fraudulently and without following the laid down public procurement procedures irregularly bought 93 acres of land for cemetery at a cost of Kshs. 4,185,000.

Investigations established that sometime in 2008, a need arose for the Council to acquire alternative land for cemetery purposes since the existing cemetery was full. The purchase was recommended by the Department of Public Health. Approval for the purchase of land was given by the relevant committee of the Council. Investigations further established that the procurement process was commenced and an Expression of Interest for the sale of the cemetery land was advertised in the newspapers. Evaluation of the bids received was carried out and the Tender Committee awarded the tender to the most responsive and lowest evaluated bidder who was to sell the Council 93 acres of land.

Investigations also established that the land was valued by the Ministry of Lands and its suitability for use as a cemetery ascertained by the Public Health Department. The seller was duly paid the sum of Kshs. 4,185,000 after entering into and signing an agreement with the Council. The investigations did not reveal irregularities or non-compliance with the Public Procurement and Disposal Act and the Regulations in the purchase of the land nor was the price exaggerated. No culpability was established on the part of the Council officers who were involved in the purchase of the cemetery land to warrant any action being taken against any of them. The Council did not also incur any financial loss in the said purchase.

A Report was compiled and forwarded to the Director of Public Prosecutions on 26th June, 2013 with recommendations that the file be closed.

On 2nd July, 2013, the DPP accepted the recommendation for closure of the inquiry file.

9. KACC/FI/INQ/43/2011

Inquiry into allegations that the Nairobi Water and Sewerage Company Limited (NWSCL) has been paying debt collection fees for accounts that do not exist or accounts that have already been settled.

Investigations established that in its 2009/2010 Annual Business Plan, the Company prioritized sustainable revenue growth. To achieve this, it decided to outsource debt collection services for purposes of recovering debts that stood at Kshs. 5 billion. An invitation for bids to provide consultancy services for debt collection was advertised. Several bids were received and after due procurement was followed; the successful firms were awarded the contract. Investigations further established that the firms commenced the debt collection exercise in the various regions under the supervision of the Regional Managers who were to allocate the cut off period for debt collection.

Investigations further established that the contracted firms performed the task of debt collection and invoiced the NWSCL for services rendered. The firms were duly paid at the agreed commission rate. There was no evidence to show that NWSCL paid the debt collectors for services not rendered, nor that any public money was lost in the exercise.

A Report was compiled and forwarded to the Director of Public Prosecutions on 13th June 2013 with the recommendation that the inquiry file be closed.

On 2nd July, 2013, the DPP returned the file for further investigations.

10. EACC/FI/INQ/28/2012

Inquiry into allegations of irregular procurement of a school bus by the management of Kimaeti Secondary School using funds from the Bumula Constituency Development Fund.

Investigations established that sometime in 2005, the school purchased a school bus for Kshs. 1.5 million. The school borrowed money from other schools to pay for the bus. The school also received Kshs. 600,000 from the Bumula CDF. The bus after sometime developed mechanical problems and was therefore disposed of. Investigations further established that the school purchased a new bus after the disposal of the old one.

Investigations also established that at the time of the purchase and disposal of the buses, the school did not have a Tender Committee or Disposal Committee to approve the sale and disposal. It was evident that the Board of Governors (BOG), the school Principal and the PTA resolved to buy a bus and also dispose of the old one. They also used Kshs. 600,000 CDF funds allocated for the school laboratory to pay for the bus. This was contrary to the public procurement procedures and the Constituency Development Fund Act.

Nonetheless, the investigations did not establish any loss of public funds or personal financial gain on the part of either the school Principal or the BOG members. It was however evident that the management of the Board and the school Principal were not well conversant with the public procurement laws and regulations.

A Report was compiled and forwarded to the Director of Public Prosecutions on 17th June, 2013 with recommendations that; the current and former Principal of the school and the Board of Governors be warned against non-compliance with procurement laws and regulations, the Ministry of Education be advised to train school principals of public schools of the requirements and need to comply with the Public Procurement Law and Regulations in their procurements and use of CDF funds; and the Commission (EACC) to educate and create awareness in public schools on the issues of procurement.

On 28th June, 2013, the DPP accepted the recommendation for administrative action.

11. EACC/KSM/OPS/INQ/5/2012

Inquiry into allegations of corruption against a Zonal Quality Assurance and Standards officer in Ombeyi Zone, Muhoroni District. It was alleged that the suspect solicited for a benefit from the complainant as an inducement to help hi gain entry to a Teachers Training College.

The investigation revealed that the suspect who is an employee of the Ministry of Education corruptly solicited for and received a benefit of Kshs. 10,000 from the complainant as an inducement to facilitate his selection to join a Teachers Training College as a P1 Trainee Teacher. She was arrested upon receipt of the benefit.

A Report was compiled and forwarded to the DPP on 20th May, 2013 with recommendations that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

On 21st June, 2013, the DPP accepted the recommendation for prosecution.

12. EACC/40476/2013

Inquiry into allegations of corruption against an Advocate based in Nyeri County. It was alleged that the Advocate corruptly solicited for a benefit from the complainant as an inducement to assist her obtain a favourable judgement in a case in which she was the complainant.

The investigations established that the advocate solicited for the money and indeed received a sum of Kshs. 8,000 given to him by the complainant in a trap operation. However, whereas the advocate received the money, the Commission was of the opinion that an offence under section 39 (3) (a) of the Anti- Corruption and Economic Crimes Act, 2003 would not be sustained since the essential elements of the offence under the said section were not established.

A Report was compiled and forwarded to the Director of Public Prosecutions on 3rd May, 2013, with the recommendations that the matter concerning the Advocate be referred to the Advocates Disciplinary Committee, Law Society of Kenya for disciplinary action to be taken against the Advocate.

On 27th June, 2013, the DPP returned the file for further investigations.

13. EACC CR.720/40/2013 COURT FILE NAKURU ACC.NO. 1/2013

Inquiry into allegations that an Inspector with the Kenya Forest Service, Maralal, corruptly solicited for a benefit of Kshs. 60,000 from the complainant as an inducement to issue him with a Forest Produce Movement Permit.

The investigations established that the suspect solicited for and received a benefit from the complainant. He was arrested and charged before the Nakuru Anti- Corruption Court.

A report was compiled and forwarded to the Director of Public Prosecutions on 17th April, 2013 with recommendations that the accused be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

On 24th June, 2013, the DPP accepted the recommendation for prosecution.

14. EACC/MSA/PR/INQ/1/2013

Inquiry into allegations of corruption against, a Loading Clerk at the Kenya Ports Authority (KPA).

The investigations revealed that the suspect, who is an employee of the Kenya Ports Authority, corruptly offered a benefit of Kshs. 20,000 to a Security Officer at the KPA as an inducement to release a truck that had been detained for carrying excess bags of wheat belonging to the World Food Programme.

A Report was compiled and forwarded to the DPP on 20th May, 2013 with recommendations that the suspect be charged with the offences of corruptly offering and giving a benefit contrary to section 39 (3) (b) of the Anti- Corruption and Economic Crimes Act, 2003.

On 28th June, 2013, the DPP accepted the recommendation for prosecution

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

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| Total No. of files forwarded to the Director of Public Prosecutions | 14 |
| No. of files recommended for prosecution | 7 |
| No. of files recommended for administrative or other action | 3 |
| No. of files recommended for closure | 4 |
| 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 | 1 |
| No. of files where recommendation for closure accepted | 3 |
| No. of files returned for further investigations | 2 |
| No. of files where recommendation to prosecute not accepted | 0 |
| No. of files where recommendation for administrative or other action not accepted | 2 |
| No. of files where closure not accepted | 1 |
| No. of files awaiting Director of Public Prosecution's action | 0 |

DATED AT NAIROBI THIS DAY OF 2013

HALAKHE D. WAQO, ACIArb
SECRETARY/CHIEF EXECUTIVE OFFICER