



THE ETHICS AND ANTI-CORRUPTION COMMISSION

**THE FOURTH QUARTERLY REPORT FOR THE YEAR 2012
COVERING THE PERIOD
1ST OCTOBER, 2012 TO 31ST DECEMBER, 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.
5. 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 October, 2012 to 31st December 2012.

INVESTIGATIONS COVERING THE PERIOD 1ST OCTOBER TO 31ST DECEMBER, 2012

1. EACC/INQ/NYR/04/2012

Inquiry into allegations of abuse of office, Conflict of Interest, bid rigging and irregular procurement of goods and services by officials of Kenya Rural Roads Authority (KeRRA) Meru Regional office and members of Igembe South Constituency Roads Tender Committee in respect of a contract described as 22% Road Maintenance Levy Fund (RMLF) Financial Year 2011 – 2012.

The investigation established that in the year 2010, the Kenya Rural Roads Authority (KeRRA) Meru Regional office prepared work plans for roads to be constructed within Igembe South Constituency in the 2011/2012 financial year. The work plans were approved by the Constituency Roads Committee and later forwarded to Kenya Rural Roads Authority (KeRRA) headquarters for funding. After funding was received, KeRRA Meru Regional Office floated a tender to pre-qualified contractors under the 22% Road Maintenance Levy Fund (RMLF). The tender was advertised through notices and the tender documents contained specifications as prepared by the Roads Engineer. A total of 40 companies tendered for the contract.

Investigations further revealed that the tenders were evaluated by the Tender Evaluation Committee, which submitted a report to the Tender Committee. Upon receipt of the evaluation report which included the recommendations by the Evaluation Committee, the Tender Committee altered the recommendations. Investigations established that the final award of the contracts made by the Tender Committee for the various road projects did not therefore reflect what was recommended by the Tender Evaluation Committee. These alterations were made contrary to the requirements of the provisions of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

Investigations further established that the Igembe South Constituency Manager who was also the Chairman of the Constituency Roads Tender Committee chaired the Tender Committee in which the irregular awards were made. He also presented bid documents in respect of one of the tenderers which were false. The process of procurement and award of the above contracts under the 22% Road Maintenance Levy Fund was flawed and not in accordance with the provisions of the aforesaid Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

The file was forwarded to the Director of Public Prosecutions on 4th December, 2012 with the recommendation that the suspects be charged with the offences of abuse of office contrary to Section 46 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 and 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 No. 3 of 2003.

On 31st December, 2012, the DPP accepted the recommendation for prosecution, subject to statements of two witnesses being included in the Inquiry file. returned the file for further action before a prosecution can be approved.

2. KACC/FI/INQ/97/2010

Inquiry Into Allegation Of Irregular Procurement Of Contractors For The Construction Of Ten (10) Box Culverts Along Hola – Garsen Road (B8) by the Ministry Of Roads (MOR) Officials On Behalf Of Ministry Of Youth Affairs and Sports (MOYAS) and National Youth Service (NYS).

The investigations established that the Ministries of Youth Affairs and Sports (MOYAS) and that of Roads (MOR) conducted a tour of Garsen-Hola-Garissa Road that was under construction funded by MOYAS. They noted that there was need to construct box culverts at some sections of that Road. It was agreed that the MOR provide technical services and procure for the works. The tender for those works was accordingly advertised. A number of companies responded and submitted their bids. The Tender Evaluation Committee proceeded to evaluate the submitted bids on the basis of the specifications in the tender documents and made their recommendations.

The successful contractors were notified of the results of the tender process and offers sent to them. Thereafter contracts were signed between MOYAS and the contractors. The contractors were then authorized to commence the construction of the subject culverts. Investigations further established that upon completion for the works in terms of the contract, the contractors were paid on the basis of interim payment certificates. However, queries were later on raised over the works and some of the payments. An audit team was consequently appointed to assess the works executed vis a vis the payments made. The team's findings were that the works were executed according to the specifications given in the tender documents and contract. The team therefore recommended that there was need for the final accounts to be done for purposes of settlement of the contractors' respective claims.

Further investigations established that the contractors, MOR and MOYAS' representatives and the audit team were all in agreement that the sum expended by MOYAS was for works carried out and completed satisfactorily. There was no evidence to show that payments were made for works not done or not done satisfactorily.

It was however noted in the course of investigations that a Tender Notice was placed in the Standard Newspaper only once instead of at least twice as required by the Public Procurement Regulations. Further, this advertisement was not posted at any conspicuous place reserved for this purpose in the premises of the procuring entity, MOYAS so as to allow for wider publicity for the advert. Investigations also established that the award of the tender was given to the second lowest bidder and not the lowest bidder. The Tender Committee also substituted the proposals by the Tender Evaluation Committee which they had no capacity to do.

The file was forwarded to the Director of Public Prosecutions on 21st November 2012, with the recommendation that the suspect be charged with the offences 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 and an alternative Count of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act, 2003.

On 3rd January, 2013, the DPP returned the file and rejected the recommendation for prosecution. Instead he advised that the file be closed, and in addition that the PS, Ministry of Roads be advised to issue a warning to the members of the Ministerial Tender Committee for substituting the recommendation of the Tender Evaluation Committee contrary to the Procurement Regulations.

3. KACC/AT/INQ/36/2009 (F)

Inquiry into allegations of fraudulent disposal of public property within Kisumu Municipality – Kisumu Block 8/148

The investigation established that in 1966, the Municipal Council of Kisumu purchased land parcel number Kisumu Municipality Block 8/148 from its original registered owners. The evidence gathered revealed that in 2007, a former Town Clerk, Kisumu Municipal Council swore an affidavit submitted to the District Land Registrar, purporting that the original Certificate of Lease was lost, and there was need for a replacement. Investigations further revealed that after

the sought for replacement was effected; the Town Clerk wrote to the Registrar purporting that at a Full Council meeting, the Council had approved an application for transfer of the said parcel of land to a private individual. However, further investigations established that the said transferee was non-existent and there was no Council meeting held to approve the purported transfer. The instructions by the Town Clerk were thus intended to facilitate the irregular transfer of the Council land to a private developer. Investigations established that the council land was consequently transferred to the private developer. The entire process culminating to the transfer was irregular and fraudulent.

The investigations established that a former Town Clerk, Kisumu Municipal Council, a former District Land Registrar, the current registered owner of the parcel of land, her associate and the advocate who facilitated the transfer were all involved in the irregular transfer of the public land and are therefore culpable.

The file was forwarded to the Director of Public Prosecutions on 8th October, 2012 with the recommendation that the suspects be charged with the following offences; (a) Conspiracy to commit an offence of corruption contrary to Section 47 (A) of the Anti-Corruption and Economic Crimes Act, 2003, (b) Fraudulent disposal of public property contrary to Section 45 (1) (b), (c) Fraudulent acquisition of public property contrary to section 45 (1) (a), (d) Wilful failure to comply with the law relating to disposal of public property contrary to Section 45 (2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, (e) Conspiracy to defraud the public contrary to Section 317 and (e) Obtaining registration by false pretence contrary to Section 320 of the Penal Code. In addition, the Commission has initiated civil proceedings for the recovery of the land.

On 13th November, 2012, the DPP accepted the recommendation for prosecution.

4. KACC INQ/FI/34/2011

Inquiry into allegations of conflict of interest against the Procurement Officer, Pumwani Maternity Hospital.

The investigation established that established that sometime in November 2010, Pumwani Maternity Hospital sent quotations to various suppliers for the supply and delivery of suction machine bottles and surgical materials. The Procurement Officer at the hospital was involved in the preparation of the quotations. Investigations established that this procurement officer was connected to one of the companies receiving the quotations by virtue of being a director

thereof. Whereas the suspect was involved in sending out quotations to various bidders and even participated in the Procurement Committee meeting that awarded the contract for the supply of the goods, he failed to disclose his interest in the beneficiary company. The company also received part payment for the delivery of the goods which payment was made vide a cheque paid into the company's bank account at Kenya Commercial Bank, to which the suspect was a signatory.

It was further established that the value of the surgical materials was Kshs. 1,224,000 which amount was way beyond the maximum threshold that the Procurement Committee could adjudicate upon. The award should have been adjudicated upon by the Tender Committee.

The file was forwarded to the Director of Public Prosecutions on 30th October 2012, with the recommendation that the suspect be charged with the offence of failing to disclose a private interest to one's principal contrary to Section 42 (1) (a) and (b) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, 2003.

On 23rd November, 2012, the DPP accepted the recommendation for prosecution and the suspect has since been charged before the Milimani Anti- Corruption Court.

5. KACC/ CR. 141/70/2012

Inquiry into allegations that the former Registrar of Titles Mombasa, fraudulently transferred parcel No. 419/MN/VI to a person who was not the owner.

The investigation established that the bona fide registered owner of the land in question had purchased the land from its original owner in 1994, and it was duly transferred to him. However, sometime in 2010, he learnt that his land was being sold by a person who was claiming ownership. A search in the Lands Office revealed that the land had been transferred to the person purporting to sell it in 2004. Investigations established that the original entries and documents that would evidence how this second transfer was effected were missing from the Lands office. It was also suspected that the entry showing that the land had been transferred to the person purporting to sell it was a forgery. However, in the absence of the relevant documents, it was not possible to carry out a forensic examination to ascertain who was involved in the forgery. The investigation did not establish that the Registrar of Titles was involved in the contested fraudulent transfer of the land to warrant any action against him. There is also a civil suit filed by the complainant that is still pending.

The file was forwarded to the Director of Public Prosecutions on 10th October, 2012 with the recommendation that the inquiry file be closed

On 9th November, 2012, the DPP accepted the recommendation for closure.

6. EACC/GSA/FI/INQ/P1-2

Inquiry into allegations of alleged irregular disposal of unserviceable and obsolete stores and equipment belonging to Ijara District Hospital.

The investigation established that a decision to dispose of unserviceable and idle public assets in the hospitals in the North Eastern Province was made as early as 2006 after a directive was issued by the Provincial Medical Officer to all District Medical Officers of Health in the Province. One of the concerned hospitals was Ijara District Hospital. An inventory of all idle assets at the said hospital was prepared for boarding. The items included four motor vehicles, four motor cycles, a generator and a photocopier. Investigations further established that after the items were inspected by the Mechanical Officer, they were boarded and approval was given by the PS Ministry of Medical Services to dispose them off. Upon this approval being granted, a Tender Notice was advertised in the Daily Nation for the sale of the items. The tenders were opened and the District Tender Committee deliberated on the several bids that had been received in respect of the boarded items. The Committee recommended that awards be made to the highest and most responsive bidders.

Investigations also established that the successful buyers were notified and they made payments for the respective items. The payment was sent to the Ministry of Health Headquarters and the Ijara District Hospital released the sold items. Investigations did not disclose any breach of procurement regulations or conflict of interest by persons who were involved in the boarding, procurement and disposal process as alleged. It is clear that due procurement and disposal processes were followed.

The file was forwarded to the Director of Public Prosecutions on 29th November 2012, with the recommendation that file be closed.

On 2nd January, 2013, the DPP accepted the recommendation for closure.

7. EACC CR. 437/434/2012

Inquiry into allegations that an employee of the Ministry of Lands stationed at Kisii Lands Office corruptly solicited for a benefit from the complainant as an inducement to facilitate the processing of title deeds in respect of a parcel of land in Kitutu Central that the complainant had purchased.

The investigation established the solicitation and receipt of a benefit. The suspect was arrested and released on bond pending the decision of the Director of Public Prosecution.

The file was forwarded to the Director of Public Prosecutions on 15th November 2012, with the recommendation that the suspect be charged with the offence of corruptly soliciting for 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 22nd November, 2012, the DPP accepted the recommendation for prosecution and the suspect has since been charged before the Kisumu Anti- Corruption Court.

8. EACC/MSA/RP/INQ/7/2012

Inquiry into allegations of offering a bribe to a Police Officer by a candidate sitting a driving test in Mombasa.

The investigation did not establish the offer of the benefit as alleged. The evidence obtained was not sufficient to sustain a prosecution.

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

On 9th January, 2013, the DPP accepted the recommendation for closure.

9. EACC/MSA/FI/INQ/06/2012

Inquiry into allegations that Kenya Revenue Authority Customs Officials based in Mombasa corruptly solicited for a benefit from the complainant as an inducement to release duty free, an imported motor vehicle allegedly belonging to a returning

Kenyan resident from the United Kingdom.

Investigations established that a Mercedes Benz was shipped into the country, and the consignee approached a clearing agent seeking advice on how he could be exempted from paying duty for the vehicle since it was for a Kenyan citizen who was returning from abroad. The consignee indicated that the vehicle belonged to his son who was returning from the United Kingdom. Investigations revealed that ordinarily, vehicles for returning residents are exempt from duty so long as due process has been complied with. Investigations further revealed that after the consignee was informed that the vehicle documents should read the names of the returning resident (his son), he and another person presented the documents relating to the vehicle together with the purported returning resident's passport to Kenya Revenue Authority (KRA). The KRA officials however insisted that the returning resident must present himself before the Customs officer for them to ascertain that he was indeed a returning resident as alleged.

Further investigations also established that the consignee and the person could not produce the returning resident. Instead, they presented to the Customs Officer, a forged passport purporting that the returning resident was in the country while indeed he was still abroad. They did this in an attempt to evade paying the taxes due for the vehicle in question.

The investigations did not find any evidence to substantiate the claims by the said consignee that KRA officers had solicited for a benefit from him as an inducement to clear the vehicle duty free. Instead the evidence obtained showed that the consignee who is the suspect and the person attempted to commit an economic crime of evading payment of duty in respect of the Mercedes Benz. The two suspects also gave false information to KRA officers that the purported owner of the vehicle was back in the country whereas he was not.

The file was forwarded to the Director of Public Prosecutions on 19th November 2012, with the recommendation that the suspects be charged with the offences of attempt to commit an economic crime contrary to section 47A(1) of the Anti- Corruption and Economic Crimes Act, 2003, giving false information to a person employed in the public service contrary to section 129 (a) and forgery contrary to section 347(a) of the Penal Code, and an alternative count of uttering a false document contrary to section 353 of the Penal Code. .

On 2nd January, 2013, the DPP returned the file with a recommendation for further investigations.

10. EACC/MSA/RP/INQ.6/2012

Inquiry into allegations that a Clerical Officer, Teachers Service Commission Kaloleni, Kilifi County corruptly solicited for a benefit from the complainant as an inducement to assist him to be employed as a P1 teacher by the Teachers Service Commission.

The investigations established the solicitation and receipt of a benefit. The suspect was arrested and the file forwarded to the Director of Public Prosecutions on 15th October, 2012 with the recommendation that the suspect be charged with the offences of corruptly soliciting for 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 13th November, 2012, the DPP accepted the recommendation for prosecution and the suspect has since been charged before the Mombasa Anti- Corruption Court.

11. KACC/PI/INQ/129/10

Preliminary investigations into allegations of embezzlement by officials of Ministry of Health; of donor funds given to a non-governmental organization under the Global Fund project

The investigation established that the complainant's organization, submitted a proposal for funding to the Global Fund sometime in the year 2002. The investigation did not establish that the complainant organization's proposal was successful. Whereas the complainant alleged that his organization received an award of US dollars 37,440 and 210,000 respectively from the Global Fund, the investigations established that the complainant's organization never submitted a proposal for funding in rounds two and four of the Global Fund malaria budget. Therefore, the organization was neither evaluated for approval by the Global Fund, nor was any agreement for funding signed. Investigations further established that according to a report by an audit firm which was the Financial Management Agent engaged for Kenya for purposes of the Global Fund, the complainant's organization was not on the list of NGOs which benefited from rounds two and four of the Global Fund Malaria disbursements. The same report also showed that the organization was not on the list of NGOs that signed the project grant agreement for rounds two and four. The organization therefore could not have benefitted from any disbursements from the Global Fund as alleged.

The allegations by the complainant that the Ministry of Health officials embezzled funds allocated to his organization by the Global Fund were found not to be tenable. There was no culpability established on the part of the Ministry of Health officials who were concerned with the disbursement of funds issued under the Global Fund.

The file was forwarded to the Director of Public Prosecutions on 21st November, 2012 with the recommendation that the inquiry file be closed.

On 31st December, 2012, the DPP accepted the recommendation for closure.

12. EACC/KSM/OPS/INQ/03/2012

Inquiry into allegations that a Senior Probation Officer, Kisumu East District, Kisumu County corruptly solicited for a benefit from the complainant as an inducement to write and submit a favourable probation report to the High Court to facilitate the release of the complainant's son from prison on probation.

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and released on bond pending the decision of the Director of Public Prosecution.

The file was forwarded to the Director of Public Prosecutions on 5th October 2012, with the recommendation that the suspect be charged with the offence of corruptly soliciting for 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 9th November, 2012, the DPP accepted the recommendation for prosecution and the suspect has since been charged before the Kisumu Anti- Corruption Court.

13. EACC/ INQ/5/2012

Inquiry into allegations that a Revenue Officer and a Debt Manager at Kenya Revenue Authority corruptly solicited for a benefit from the complainant as an inducement to correct omissions made in the statements of account in respect of a company in which the complainant was the Chief Accountant.

The investigation established the solicitation and receipt of a benefit by the suspect.

The file was forwarded to the Director of Public Prosecutions on 30th November 2012, with the

recommendation that the suspects be charged with the offences of corruptly soliciting for 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 31st December, 2012, the DPP returned the file with a recommendation for further investigations.

14. KACC/FI/INQ/9/2012

Inquiry into allegations that an Administrative Officer at the Ministry of Local Government, Nkubu County Council Office corruptly solicited for a benefit from the complainant as an inducement to allocate him a stall at the Jua kali sheds within Nkubu Township.

The investigation established the solicitation and receipt of a benefit by the suspect. The suspect was arrested and the file was forwarded to the Director of Public Prosecutions on 3rd October, 2012, with the recommendation that the suspect be charged with the offence of corruptly soliciting for 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 DPP accepted the recommendation for prosecution and the suspect has since been charged before the Meru Anti- Corruption Court.

15. KACC/MSA/INQ/PR/05/2012

Inquiry into allegations that a Court Clerk at the Mombasa Law Courts corruptly solicited for a benefit from the complainant as an inducement to provide the complainant with regular updates in respect of a case pending before the court in which the complainant was a party.

The investigation established the solicitation of a benefit in which there was sufficient evidence to sustain prosecution.

The file was forwarded to the Director of Public Prosecutions on 4th December 2012, with the recommendation that the suspect be charged with the offence of corruptly soliciting for a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

On 31st December, 2012, the DPP accepted the recommendation for prosecution.

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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	15
No. of files recommended for prosecution	11
No. of files recommended for administrative or other action	0
No. of files recommended for closure	4
No. of files recommended for prosecution and the cases are already lodged before Court	5
No. of files where recommendation to prosecute accepted	7
No. of files where recommendation for administrative or other action accepted	0
No. of files where recommendation for closure accepted	4
No. of files returned for further investigations	3
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 2013

ABDI A. MOHAMUD
AG. SECRETARY/CHIEF EXECUTIVE OFFICER