

13th May, 2011

LEGAL NOTICE NO. 44

**THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT
(No. 3 of 2003)**

IN EXERCISE of the powers conferred by section 68 of the Anti-Corruption and Economic Crimes Act, 2003, the Minister for Justice, National Cohesion and Constitutional Affairs makes the following Regulations—

THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMNESTY AND RESTITUTION) REGULATIONS, 2011

1. Citation.

These Regulations may be cited as the Anti-Corruption and Economic Crimes (Amnesty and Restitution) Regulations, 2011.

3. Interest on property or money irregularly obtained.

For the purposes of section 25A (3) (b) of the Act, the rate of interest on any property or money irregularly obtained shall be twelve percent, payable with effect from the day such property or money was obtained.

4. Notice for amnesty applications.

The Commission shall, from time to time, and at least twice every year, by notice in at least two daily newspapers of national circulation, invite interested persons to apply for amnesty in terms of section 25A(2) and 56B (3) of the Act.

5. Time-frame for filing applications.

An application for amnesty under regulation (4) shall be in Form A set out in the Schedule and shall be filed with the Commission within sixty

days of the publication of the notice under that regulation.

6. Undertaking not to institute investigations.

(1) An undertaking by the Commission under section 25 A (1) of the Act shall be in Form B set out in the Schedule.

(2) The Commission shall, before tendering the undertaking referred to in paragraph (1), give notice of its intention to make the undertaking in at least two daily newspapers of national circulation.

(3) An objection made under section 25A (5) of the Act shall be filed within thirty days of the publication of an intention to tender the undertaking.

(4) The Commission shall inform the objector, in writing, the action it has taken under section 25A(6), within twenty one days of its action.

7. Undertaking not to institute criminal proceedings.

An undertaking by the Commission under section 56B (3) of the Act shall be in Form C in the Schedule.

8. Publication of list of persons granted undertaking.

The Commission shall, in at least two daily newspapers of national circulation, publish the names and particulars of the persons granted an undertaking, conditions for each undertaking and any other information the Commission may consider necessary.

9. Consultation to be in writing

The consultations under section 25A (1) of the Act shall be in writing.

10. The Amnesty committee of the Commission.

(1) There shall be a committee to be known as the Amnesty Committee of the Commission (hereinafter referred to as “the Committee”) which shall be constituted by the Director and shall comprise of—

(a) the Deputy-Director who shall be the chairperson;

(b) one Assistant Director of the Commission; and

(c) three other officers of the Commission.

11. Restitution of property to rightful owner.

(1) The Commission shall facilitate the restitution of the property or money paid or refunded to, or deposited with the Commission for, all affected persons by a suspected person under section 25 A (3) (b) to the rightful owner within a period of six months of the date of payment, refund or deposit:

Provided that the Commission may, where appropriate, impose conditions for such restitution and recover any costs incurred in the restitution process.

(2) Where the owner of the property or money paid or refunded to, or deposited with the Commission under section 25A(3)(b), cannot be traced or identified after a period of six months from the time of notice of identification, the property shall be forfeited to the Government.

12. Payment of forfeited into the Consolidated Fund.

The property or money that is forfeited to the Government under regulation 11(2) shall be paid into the Consolidated Fund.

SCHEDULE

Form A

(r. 5)

APPLICATION FOR UNDERTAKING

(Under Section 25A and 56B (3) of the Anti-Corruption and Economic Crimes Act,2003)

**I, (Name of Applicant), holder of Identity Card/
Passport Number of Post Office Box Number
....., do hereby:-**

1. Apply for the tendering of an undertaking by the Kenya Anti-Corruption Commission (hereinafter referred to as “the Commission”) not to institute and/or continue with investigation against me in respect of corruption and economic crimes regarding:

(Give the particulars of the nature of the corrupt conduct, the place and period committed, and the names of persons or institutions affected by the corrupt conduct)

.....
.....
.....
.....

2. Make this application while conscious of the attendant prohibitions and inhibitions provided for under section 25A of the Anti-Corruption and Economic Crimes Act, 2003.

3. Declare that in exchange for the undertaking from the Commission, I shall solemnly satisfy and abide by the following conditions:

(a) I will disclose to the Commission any information requested on illegally or irregularly-acquired property or funds.

(b) I undertake to provide an inventory of all property found to have been illegally or irregularly acquired.

(c) I undertake to voluntarily surrender all that property that I acquired illegally or irregularly.

(d) I undertake to surrender all documents and to provide any information in my possession for purposes of effecting the restitution of any properties that may have come into my possession to the Commission or any other person as may be directed by the Commission and further undertake to execute all documents necessary for purposes of such restitution or reparation.

(e) I understand that if I withhold any information regarding property illegally or irregularly owned by me whether in my name or through other persons in breach of any term of the amnesty, the undertaking shall be revoked and the Commission may institute civil or criminal action against me.

(f) I undertake to offer full cooperation to the Commission in respect of all matters which are the subject of this application.

(g) Upon grant of amnesty, I undertake to cease and desist from engaging in any form of corrupt conduct and shall at all times observe high standards of integrity.

4. Make this application of my own volition.

5. State that the information I have provided in this application is true to the best of my knowledge, information and belief.

Made atthis.....day of.....20.....)

Signed by the said:)
(Name of Applicant)) (Signature of Applicant)
)

Application (Reference No.....) received on this....day of.....,
20.....

DIRECTOR/CHIEF EXECUTIVE.
Kenya Anti-Corruption Commission.

WITNESSED BY:

Name:

.....

ID. Number/Passport Number:

.....

Postal

Address:.....

Physical

Address:.....

Telephone Number:

.....

Relationship with the Applicant:

.....

Form B

(r.6 (1))

**UNDERTAKING NOT TO INSTITUTE OR CONTINUE WITH
INVESTIGATIONS**

(Under Section 25A of Anti-Corruption and Economic Crimes Act, 2003)

IN EXERCISE of the powers conferred by section 25A of the Anti-Corruption and Economic Crimes Act, 2003, the Kenya Anti-Corruption Commission, after consultations with the Minister for Justice, National Cohesion and Constitutional Affairs, being the Minister responsible for integrity issues, and the Attorney General, hereby undertakes not to institute or continue with investigations against.....(Name of Applicant), holder of Identity Card/Passport No., and of Post Office Box Number....., following an application (Reference No..... of) for the undertaking under section 25A of the Act. In exchange for the undertaking, the Applicant has complied with the terms of the amnesty including, but not limited to the following:

- 1. has made full and true disclosure to the Commission, of all acts of corruption and economic crimes committed by the said Applicant.**
- 2. has submitted an inventory of all property that the Applicant acquired corruptly, where such property is held and the persons in whose names the property is registered or held.**
- 3. has paid or deposited with the Commission, money or other property corruptly or illegally or irregularly acquired by the Applicant.**
- 4. has fully restored all immovable properties illegally or irregularly acquired through surrender and registration of title.**
- 5. has made reparation to persons affected by, and paid for all loss of public property occasioned by his corrupt conduct.**
- 6. has agreed that if it is established that the Applicant withheld any**

information regarding any property owned by him, whether in his name or through other persons, or any acts of corruption he may have committed or breaches any term of the amnesty, this undertaking shall be revoked.

7. by accepting this undertaking, the Applicant undertakes not to engage in any form of corrupt conduct and shall at all times observe high standards of integrity, failing which the amnesty may be revoked.

In consideration of compliance by the Applicant with the terms of undertaking as set out under section 25A of the Act, and other terms set prior to the undertaking to the Applicant, and in order to meet the intents and purposes of section 25A of the Act, the Commission undertakes not to investigate the Applicant for offences covered under the undertaking.

.....
DIRECTOR/CHIEF EXECUTIVE,
Kenya Anti-Corruption Commission.

I, (Name of Applicant), having understood the terms of the above undertaking, do hereby accept them and undertake to abide by them.

Made by the said (Name of Applicant)
atthisday of20.....)
)
)
) (Signature of Applicant)

BEFORE ME:

.....
MAGISTRATE / COMMISSIONER FOR OATHS

Form C (r.7)

UNDERTAKING NOT TO INSTITUTE CRIMINAL PROCEEDINGS

(Under Section 56B(3) of Anti-Corruption and Economic Crimes Act, 2003)

IN EXERCISE of the powers conferred by section 56B(3) of the Anti-Corruption and Economic Crimes Act, 2003, the Kenya Anti-Corruption Commission, after consultations with the Minister for Justice, National Cohesion and Constitutional Affairs, being the Minister responsible for integrity issues, and the Attorney General, hereby undertakes not to institute criminal proceedings against.....(Name of Person), holder of Identity Card/Passport No., and of Post Office Box Number

..... The person has complied with the terms of the amnesty including, but not limited to the following:

- 1. has made full and true disclosure to the Commission, of all acts of corruption and economic crimes committed by him.**
- 2. has submitted an inventory of all property that he acquired corruptly, where such property is held and the persons in whose names the property is registered or held.**
- 3. has paid or deposited with the Commission, money or other property corruptly or illegally or irregularly acquired by him.**
- 4. has fully restored all immovable properties illegally or irregularly acquired through surrender and registration of title.**
- 5. has made reparation to persons affected by, and paid for all loss of**

public property occasioned by his corrupt conduct.

6. has agreed that if it is established that he withheld any information regarding any property owned by him, whether in his name or through other persons, or any acts of corruption he may have committed or breaches any term of the amnesty, this undertaking shall be revoked.

7. by accepting this undertaking, the person undertakes not to engage in any form of corrupt conduct and shall at all times observe high standards of integrity, failing which the amnesty may be revoked.

In consideration of compliance by the person with the terms of undertaking as set out under section 56B (3) of the Act, and other terms set prior to the tendering of an undertaking to him, and in order to meet the intents and purposes of section 56B of the Act, the Commission undertakes not to institute criminal proceedings against him for offences covered under the amnesty.

**DIRECTOR/CHIEF EXECUTIVE,
Kenya Anti-Corruption Commission.**

I, (Name of Person), having understood the terms of the above undertaking, do hereby accept them and undertake to abide by them.

Made by the said(Name of person),)
)
atthisday of20.....).
)
) (signature of person)

BEFORE ME:

.....

MAGISTRATE / COMMISSIONER FOR OATHS

MUTULA KILONZO,

Minister for Justice, National Cohesion and Constitutional Affairs.