



THE ETHICS AND ANTI-CORRUPTION COMMISSION

**THE FOURTH QUARTERLY REPORT COVERING THE PERIOD FROM 1ST OCTOBER 2020
TO 31ST DECEMBER 2020**

DECEMBER 2020

PREAMBLE

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

Section 36 of ACECA provides that:

1. The Commission shall prepare quarterly reports setting out the number of reports made to the DPP 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 accepted or 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 ACECA. The report covers the Fourth Quarter and is for the period commencing 1st October, 2020 to 31st December, 2020.

INVESTIGATION REPORT COVERING THE PERIOD 1ST OCTOBER 2020 TO 31ST DECEMBER 2020

1. EACC/AT/INQ/26/2020

INQUIRY INTO ALLEGATIONS OF IRREGULAR PROCUREMENT AND FRAUDULENT PAYMENTS IN RELATION TO THE PURCHASE AND SUPPLY OF COVID-19 EMERGENCY COMMODITIES AT KENYA MEDICAL SUPPLIES AUTHORITY (KEMSA) BY PUBLIC OFFICIALS THAT LED TO IRREGULAR EXPENDITURE OF PUBLIC FUNDS TO THE TUNE OF KSHS 7.8 BILLION

The Commission received a complaint that Kenya Medical Supplies Authority (KEMSA) had flouted the relevant procurement laws and regulations during the procurement of Covid -19 management items.

Investigations established that the tendering process was commenced by the suppliers who submitted letters of intent to supply Covid -19 management items to KEMSA and in return KEMSA issued them with commitment letters

Investigations further established KEMSA did not engage any of the prequalified service providers for the delivery of the Covid-19 materials but opted for the following companies: Accenture Kenya Limited, Angelica Medical Supplies Limited, Gadlab Supplies Limited, Kilig Limited, Merakay Healthcare Limited, Shop 'N' Buy Limited, Steplabs Limited and Wallabis Ventures Limited; most of which lacked the requisite financial capacity. Further investigations established that the items were procured way above the market price and on delivery were not inspected for value for money, in terms of quality and quantity.

On 19th November, 2020, a report was compiled and forwarded to the DPP with recommendations that the Chief Executive Officer, Director Procurement, Director Commercial Services, Director Finance & Strategy, Quality Assurance Manager, the following companies: Accenture Kenya Limited, Gadlab Supplies

Limited, Meraky Healthcare Limited, Steplabs Technical Services Limited, Wallabis Ventures Limited, Angelica Medical Supplies Limited, Shop n Buy Limited, Kilig Limited and their respective Directors be charged with the following offences; giving a bribe contrary to Section 5(1), receiving a bribe contrary to Section 6(1) all as read with Section 18 of the Bribery Act. Willful failure to comply with the law relating to procurement contrary to Section 45 (2)(b), unlawful acquisition of public property contrary to Section 45 (1)(a), abuse of office contrary to section 46, conspiracy to commit an economic crime contrary to section 47A (3) all as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003. Entering into obligation that has a financial implication for the National Government Budget without authority contrary to Section 196 (3) as read with Section 196 (6) of the Public Finance Management Act. Neglect of official duty by a public officer contrary to Section 128 as read with Section 36 of the Penal Code.

Awaiting the DPP's response.

2. EACC/KSM/FI/INQ/18/2015

INQUIRY INTO ALLEGATIONS OF IRREGULAR PURCHASE OF 32 ACRES OF LAND BY THE COUNTY GOVERNMENT OF BUNGOMA TO BE USED IN CONSTRUCTION OF THE OFFICIAL RESIDENCE OF THE GOVERNOR AT A COST OF KSHS. 163, 200,000.00

The Commission received a complaint alleging that the County Government of Bungoma spent Kshs. 153 million to purchase a 32-acre piece of land for the Governor's residence at an inflated cost and that there were glaring irregularities in the procurement process.

Investigations established that the procurement process for this purchase was not in accordance with the law.

The tender was awarded to New Nyanza Wholesalers at an inflated price of Kshs. 163,200,000/- without engaging a government valuer.

On 7th December, 2020 a report was compiled and forwarded to the DPP with recommendations that the Chief Officer in Charge of Lands, Urban and Physical Planning, Interim Head of Supply Chain Management, Members of the County Tender Committee be charged jointly and severally with the offences of willful failure to comply with the law relating to procurement contrary to section 45 (2) (b) as read with section 48 of Anti-Corruption and Economic Crimes Act.

On 4th March, 2021 the DPP returned the file with instruction for further investigations.

3. EACC/FI/INQ/62/2017

INQUIRY INTO ALLEGATIONS OF IRREGULAR AWARDING OF TENDER FOR PARTITIONING OF COUNCIL OF LEGAL EDUCATION OFFICE SPACE AT KAREN OFFICE PARK AND MISAPPROPRIATION OF KSHS. 14 MILLION

The Commission commenced this investigation pursuant to a report from the Efficiency Monitoring Unit (EMU). The report had several allegations regarding misappropriation of public funds at the Council of Legal Education (CLE). The complaint pointed to procurement irregularities in the tender for partitioning of CLE office space at Karen Park.

Investigations established that the procurement process was irregular and based on forged documents including the Tender Committee Meeting Minutes and bid documents. Financial investigations revealed rampant money transfers from the Director of Howard Construction Company Limited to Procurement Manager at Kenya School of Law, the District Works Officer and the Quantity Surveyor among other officers involved in the procurement process.

On 7th December, 2020, a report was compiled and forwarded to the DPP with recommendations that the Procurement Manager at Kenya School of Law, Langata Sub-County Works Officer, the Quantity Surveyor, Director of Howard Construction Company Limited and Ashford Construction Limited, Sales Manager

at AMACO Insurance Limited and the Proprietor of Boarder Line Solutions be charged with the following offences; conspiracy to commit an economic crime contrary to section 47A, willful failure to comply with the applicable law relating to procurement and tendering of contracts contrary to section 45 (2) (b), unlawful acquisition of public property contrary to section 45(a), dealing with suspect property contrary to section 47(1) and 47(2) (a) all as read with section 48 of Anti-Corruption and Economic Crimes Act. Corruptly giving a benefit contrary to Section 39(3)(b) and corruptly receiving a bribe contrary to Section 39(3)(a) as read with as read with Section 48 of the Anti-Corruption and Economic Crimes Act (repealed) and Section 27(2) of the Bribery Act, 2016.

On 3rd March, 2021 the DPP returned the file with instruction for further investigations.

4. EACC/ELD/FI/INQ/13/2019

INQUIRY INTO THE ALLEGATIONS OF IRREGULAR AWARD OF TENDER FOR SUPPLY OF A FIRE ENGINE BY TURKANA COUNTY GOVERNMENT WHICH WAS NEVER DELIVERRED AFTER PART PAYMENT OF KSHS. 20 MILLION WAS MADE.

The Commission received a complaint of irregular procurement of a fire engine by the Turkana County Government. The complaint indicated that the county entered into an agreement with Winston International Company Limited for the supply and delivery of the fire engine and made an advance payment of Kshs. 20,180, 000.00.

Investigations established that the fire engine was purchased by the Directorate of Urban Areas Management under the Ministry of Lands, Physical Planning & Urban Areas Management without the requisite budgetary allocation for the purchase of the fire engine in the financial year 2014/2015. Investigations further established that vide a supplementary budget in April, 2015 the Directorate of

Urban Areas Management was allocated Kshs. 50,000,000.00 for the purchase of one fire engine but no such purchase was made.

Investigation further established that during financial year 2015/2016 there was no budgetary allocation for the purchase of the fire engine neither were the funds budgeted in the previous financial year reallocated. Despite this, the Directorate of Urban Areas Management initiated the procurement process for the supply of the fire engine.

The Investigator established that eleven companies placed their bids and Winston International Limited won the tender at Kshs. 42,561,560.00. The County Government made an advance payment of Kshs. 20,180,050.00 to the said Winston International Limited but the fire engine was never delivered to the Turkana County Government.

On 7th December, 2020, a report was compiled and forwarded to the DPP with recommendations that the Chief Officer Ministry of Finance, Director Procurement, Chief Officer Ministry of Lands, Physical Planning & Urban Areas Management, Deputy Director Supply Chain Management, Procurement Officer, Accountant, Director Revenue and the Directors of Winston International Limited to be charged with the following offences; conspiracy to commit an economic crime contrary to section 47A, abuse of office contrary to section 46, willful failure to comply with the law contrary to section 45 (2) (b), Engaging in project without prior planning contrary to section 45(2)(c), deceiving principal contrary to section 41(2) and unlawful acquisition of public property contrary to section 45 {1} {a}, all as read with section 48 of Anti-Corruption and Economic Crimes Act. Unauthorized spending of public money contrary to section 196(1) as read with section 196(6) of the Public Finance Management Act, 2012. Making a document without authority contrary to section 357 of the Penal Code.

On 30th November 2020, the DPP returned the inquiry file for further investigations. Upon completion of further investigations, the Commission resubmitted the inquiry file to DPP on 14th January 2021. The DPP returned the inquiry file on 8th March 2021 accepting recommendation for prosecution subject to addressing a few areas.

5. EACC/NKR/INQ/FI/14/2019

ALLEGATIONS OF PROCUREMENT IRREGULARITIES BY THE OFFICIALS OF THE NAKURU WATER AND SANITATION SERVICES COMPANY LIMITED IN THE AWARD OF CONTRACT FOR THE PROVISION OF SECURITY SERVICES IN THE FINANCIAL YEAR 2019/2020

The Commission commenced investigations following a complaint of irregular procurement process for security services by the Nakuru Water and Sanitation Services Company Limited (NAWASCO). Investigations established that NAWASCO tender committee proposed the tender be awarded to Dango Five Security Services. The professional opinion concurred with the decision of the evaluation committee.

Investigations established that the evaluation criteria were neither objective nor quantifiable. Further, Evaluation Committee did not follow the criteria set out in the tender documents. Bonarys Security Services Limited being the lowest evaluated bidder was not awarded the tender and it filed Nakuru High Court Civil Suit No. 708/2019 to contest the award of tender to Dango Five Security Services the second lowest evaluated bidder. The High Court in Nakuru referred the matter to the Public Procurement Administrative Review Board. The same was received as PPARB Review Application No. 76/2019 and determined on 5th August 2019. The board ruled that Bonarys be awarded the contract as the lowest evaluated responsive tenderer.

On 7th December, 2020 a report was compiled and forwarded to the DPP with recommendations that the Managing Director, Procurement Manager and the

Officer in Charge of Administration at NAWASCO be charged with willful failure to comply with the law relating to procurement contrary to section 45 {2} {b}, and abuse of office contrary to section 46 both as read with section 48 of Anti-Corruption and Economic Crimes Act. Inappropriate influence on evaluation contrary to section 38 {1} {b} as read with section 38 {2} of the Public Procurement and Disposal Act.

On 25th February, 2021 the DPP returned the file and concurred with the Commission's recommendation to prosecute the suspects.

6. EACC/OPS/INQ/164/2019

INQUIRY INTO AN ALLEGATION OF BRIBERY, ABUSE OF OFFICE AND CONSPRACY TO COMMIT AN OFFENCE OF CORRUPTION AGAINST KENYATTA UNIVERISTY OFFICERS FROM PROCUREMENT, FINANCE DEPARTMENTS AND THE DIRECTOR OF METNETWORK SOLUTION LIMITED.

The Commission commenced this investigation following a complaint received on 9th October 2019. The complaint indicated that the Director Hospitality, Officer in charge Central Food Stores and a Finance Officer at the Kenyatta University as well as the Director of Metnetwork Solutions had conspired to defraud Kenyatta University of a sum of Kshs. 288,000.00.

Investigation established that indeed the Kshs. 288,000/- was paid to Metnetwork Solutions. The payment was initiated by use of an LPO that had been issued to the supplier to raise an invoice and subsequent payment voucher for the payment of goods that were actually not supplied. Upon payment Kshs. 223,000/- was wired to the account of the Officer in charge of Central Food Stores.

On 7th December, 2020, a report was compiled and forwarded to the DPP with recommendations that the Director Hospitality, Officer in charge Central Food Stores, the Finance Officer and the Director of Metnetwork Solutions be charged with the following offences; conspiracy to commit an economic crime contrary

to section 47A (3), abuse of office contrary to Section 46, fraudulent acquisition of public property contrary to Section 45 (1)(a) all as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003. Money laundering contrary to Section 3 as read with Section 16 of the Proceeds of Crime and Anti-Money Laundering Act Cap 59B.

On 25th January, 2021 the DPP returned the file with instruction for further investigations.

7. EACC/MSA/OPS/INQ/25/2018

INQUIRY INTO ALLEGATIONS THAT A POLICE OFFICER AT THE DCI CHANGANWE POLICE STATION, REQUESTED A FINANCIAL ADVANTAGE OF KSHS. 20,000/- FROM THE COMPLAINANT WITH INTENT THAT IN RETURN HE WOULD TERMINATE POLICE CASE NO.343/176/2018 OF PUBLISHING DEFAMATORY INFORMATION IN THE FACEBOOK AGAINST HIM.

On the 6th June 2018, EACC Mombasa Office received a complaint that a Police Officer attached to DCI Changanwe Police Station had requested for a bribe of Kshs. 20,000/- from the complainant with intent that in consequence, he would terminate Police Case no. 343/176/2018 of publishing defamatory information in the Facebook against him. The bribe was negotiated and reduced to Kshs. 10,000/-

Investigators verified the allegation and through a trap operation the Police Officer was arrested on receipt of the Kshs. 10,000/- from the complainant in Changanwe area within Mombasa County. During the arrest, Kshs. 8,000/- was recovered from the Police Officer part of which Kshs. 3,000/- was the trap money. The Police Officer concealed Kshs.7000/- of the trap money which was not traced or recovered from him.

On 7th December, 2020, a report was compiled and forwarded to the DPP with recommendations that the Police Officer be charged with the offence of receiving a bribe contrary to Section 6 (1) (a) as read with Section 18(1) of the Bribery Act, 2016. Concealing evidence contrary to Section 66 (1) (c) as read with Section 66 (2) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003.

On 10th February, 2021 the DPP returned the file with instruction for further investigations.

8. EACC/OPS/INQ/121/2019

AN INQUIRY INTO ALLEGATIONS OF CORRUPTION AGAINST A PRINCIPAL STATE COUNSEL IN THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS, A BUSINESSS MAN AND A POLICE OFFICER RESPECTIVELY.

The Commission received a complaint that a Bungoma State Counsel requested and received a financial benefit of Kshs. 5,000/= from the complainant, as an inducement for him to forbear approving charges of malicious damage to property preferred against the complainant. It is further alleged that a Police Officer based at Bungoma Police Station also received a bribe of approximately Kshs. 14,000/= from the complainant.

Investigations established that indeed the two officers received money through their M-Pesa from the Complainant. However, there was no evidence pointing to the received money as a bribe because there was no evidence to prove that the officers requested for the same and or the complainant offered the money as a bribe. Nevertheless, the evidence established that the two officers violated the provisions of sections 9(1)(a) and 11(2)(a) of the Public Officers Ethics Act which provide that a Public Officer shall carry out his duties in a way that maintains public confidence in the Integrity of his office.

On 7th December, 2020, a report was compiled and forwarded to the DPP with recommendations that the State Counsel and the Police Officer be subjected to administrative action by their respective employers.

On 8th February, 2021 the DPP returned the file and concurred with the Commission's recommendation for administrative action.

9. EACC/OPS/INQ/111/2019

INQUIRY IN RESPECT OF BRIBERY ALLEGATIONS AGAINST PERSONS PURPORTING TO BE IMMIGRATION OFFICERS

The Commission received a complaint that the suspect impersonated as an Immigration Officer and asked for a bribe of Kshs. 8,000/= so as to assist the complainant in fast tracking the process of obtaining his passport.

Investigations ensued and the allegation was verified. A trap operation was carried out and the suspect was arrested upon receipt of Kshs. 4,000/=. During the operation a second suspect was also arrested who was later established to be a Secretary at the Civil Servant Registration Unit, in the Ministry of Interior and Co-ordination of Government.

Further investigation established that the first suspect does not work with the government but was using the office of the second suspect to meet up clients whom she was assisting to process passports for.

On 7th December 2020, a report was compiled and forwarded to DPP with recommendations that the Secretary at the Civil Servant Registration Unit and the suspect impersonating Immigration Officer be charged with the following offences; receiving a bribe contrary to Section 6 (1) (a) as read with Section 18(1) of the Bribery Act, 2016 and both suspects be charged with the offence of Conspiracy to commit an offence of corruption contrary to Section 47A (3) as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003.

On 8th February, 2021 the DPP returned the file with instruction for further investigations.

10. EACC/OPS/INQ/116/2020

INQUIRY INTO ALLEGATIONS OF BRIBERY AGAINST THE DIRECTOR GENERAL AT THE ENERGY AND PETROLEUM REGULATORY AUTHORITY

The Commission received a complaint that the Director General of Energy and Petroleum Regulatory Authority demanded a bribe of Kshs. 500,000.00 from the complainant as inducement to issue a clearance letter to unseal and open Nyangija Filling Station which was closed for selling adulterated petrol.

Investigation established that indeed there was a bribe demand of Kshs. 200,000/=. The Commission conducted a trap operation that led to the arrest of the Director General upon receipt of the Kshs. 200,000.00 trap money and the same was recovered.

On 14th December, 2020, a report was compiled and forwarded to the DPP with recommendations that the Director General be charged with the following offences; Receiving a bribe contrary to Section 6(1) (a) as read with Section 18 of the Bribery Act No. 47 of 2006. Abuse of office contrary to section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003.

On 11th January, 2021 the DPP concurred with Commission's recommendation to prosecute.

STATISTICAL SUMMARY OF FILES FORWARDED TO THE DIRECTOR OF PUBLIC PROSECUTIONS

1.	Total No. of files forwarded to the Director of Public Prosecutions	10
2.	No. of files recommended for prosecution	9
3.	No. of files recommended for administrative or other action	1
4.	No. of files recommended for closure	0
5.	No. of files recommended for prosecution and the cases are already lodged before Court	0
6.	No. of files where recommendation to prosecute accepted	3
7.	No. of files where recommendation for administrative or other action accepted	1
8.	No. of files where recommendation for closure accepted	0
9.	No. of files returned for further investigations	5
10.	No. of files where recommendation to prosecute not accepted	0
11.	No. of files where recommendation for administrative or other action not accepted	0
12.	No. of files where closure not accepted	0
13.	No. of files where closure declined but administrative action recommended	0
14.	No. of files awaiting the DPP's advice	1

DATED AT NAIROBI THIS

15th

DAY OF

March

2021



**ARCHBISHOP (RTD) ELIUD WABUKALA, EBS
CHAIRPERSON**

/ogm



**TWALIB MBARAK, CBS
SECRETARY/CHIEF EXECUTIVE OFFICER**