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QUARTERLY REPORT BY THE KENYA ANTI-CORRUPTION COMMISSION

JANUARY TO MARCH 2004

Tumalize Ufisadi

PREAMBLE

The Kenya Anti-Corruption commission is required under sections 35 and 36 of the Anti-Corruption and Economic Crimes Act to prepare quarterly reports.

Section 35 of the Act provides as follows:

- (1) Following an investigation, the Commission shall report to the Attorney General on the results of the investigation
- (2) The Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime.

Section 36 on the other hand provides as follows:

- (1) The Commission shall prepare quarterly reports setting out the number of reports made to the Attorney General 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 prepared pursuant to the provisions of sections 35 and 36 of the Anti-Corruption and Economic Crimes Act.

INVESTIGATIONS CONCLUDED IN THE PERIOD JANUARY-MARCH 2004.

1. KACC/INQ.37/27.10. 03: The inquiry was into an allegation that motor vehicle No. GK 288V Mercedes Benz Tipper was irregularly boarded by the Department of the Chief Mechanical and Transport Engineer (CM&TE) and sold to one Juma Barasa. Investigations revealed that the procedure for disposal of stores and equipment was not followed and vehicles were generally under valued to benefit certain officers in the department.

Recommendations:

A. It was recommended that the following persons be charged with the following offences;

- i. The Chief Mechanical and Transport Engineer, be charged with the offence of abuse of office contrary to section 101(1) of the Penal Code in that he failed to prepare a Board of Survey Form as required by regulation 43(1) of the Exchequer and Audit (Public Procurement) Regulations, 2001
- ii. A Procurement Officer in the Department be charged with the offence of abuse of office contrary to section 101(1) of the penal code in that without any authority, he included nine vehicles from Kenya Institute of Highways and Building Technology (KIHBT) into the Board of Survey Form (F.058), and unilaterally gave them reserve prices.
- iii. The Deputy Principal, KIHBT, be charged with the offence of abuse of office contrary to section 101(1) of the Penal Code in that he released motor vehicle GK 288V Mercedes Benz Lorry from KIHBT without the knowledge or authority of the Principal.

B. Administrative action be taken against a Provincial Roads Engineer, and a member of the Board of Survey, for making various purchases of motor vehicles through proxy without disclosing their personal interest to the Department. This practise encouraged undervaluing of the vehicles leading to loss of revenue for the Government.

The file was forwarded to the Attorney General on 13th January 2004 and action is awaited.

2. KACC/CON.4/2(10): The inquiry was into allegations a former Member of Parliament stole Kshs. 10,605,000 being proceeds of a Harambee presided over by the immediate former president for the benefit of the Lugari Constituency Bursary and Development Fund.

Investigations revealed that the former MP opened an account in the name of the Fund with development Bank of Kenya without the Knowledge of the Nairobi Committee. He deposited cheques totalling to Kshs. 2,683,480.35 and converted Kshs. 2,538,872.30 to his own use.

Recommendation: That the former MP and his Accountant, be charged with stealing Kshs. 2,538,480.35 from Lugari Constituency Bursary and Development Fund.

The file was forwarded to the Attorney General on 10th February 2004 and action is awaited.

3. KACC/CR NO.1/1/12/03 (Kisumu CF No. 75/2004: A complaint was made against a Criminal Investigation Department (CID) Officer attached to Nyanza Provincial CID office, Kisumu, alleging that he had demanded a sum of Kshs. 20,000 so as to forbear arresting and prosecuting the complainant on allegations of stealing and forgery.

Investigations revealed that the suspect had indeed demanded a bribe. This was after a trap was laid and the suspect went ahead and received a sum of Kshs. 10,000 from the complainant.

Recommendation: That the suspect be charged with the offence of corruption contrary to section 39(3)(a) of the Anti-Corruption and Economic Crimes Act as read with section 48(1)(a) of the said Act.

The file was forwarded to the Attorney General on 16th February 2004 and action on the matter is awaited. Meanwhile, the suspect has already been arraigned in Court and the case is pending.

4. ACPU/INQ 14B/17.03.2003: The inquiry was into allegations that the top management of Harambee SACCO Society drew five cheques amounting to Kshs. 8,498,900 disguised as reimbursement to Harambee Sacco Front Office Service Activity (FOSA) from the Harambee main account, but the proceeds were shared among members of Central Management Committee and some top managers of the Sacco.

Investigations revealed that an inquiry team consisting of seven senior Civil Servants was constituted to look into the working and financial conditions of the Sacco and its by-laws. The team sought approval for direct funding by the Sacco covering per diem, stationary and materials and fuel for one GK vehicle. The team however went ahead and received other allowances amounting to Kshs. 8,440,200 without approval by the appointing authority. The honoraria also exceeded the limit stipulated by Directorate of Personnel Management of 150 days.

Recommendation: That the seven members of the inquiry team together with two other officers be surcharged for the irregular allowances received from Harambee Sacco totalling to Kshs.7,696,400/=.

The file was forwarded to the Attorney General on 19th February 2004 and action is awaited.

5. KACC/CON.4/2: Inquiry into an allegation that the Executive Director of Citizens' Alliance Against Corruption had demanded a bribe from a Cabinet Minister in order to postpone a damaging press conference and drop a court case filed against him.

Recommendation: That the suspect be charged with corruption contrary to section 39(3)(a) of the Anti-Corruption and Economic Crimes Act as read with section 48 of the same Act.

The file was forwarded to the Attorney General on 17th March 2004 and the Attorney General required further investigations to be carried out. The file was re-submitted on 19th May 2004. The recommendations were accepted and the suspect was charged. The matter is pending before court.

STATISTICAL SUMMARY

No. of files forwarded to the Attorney General	5
No. of files recommended for prosecution	4
No. of files recommended for administrative or other action	1
No. of files recommended for closure	0
No. of files recommendation to prosecute accepted	1
No. of files recommendation for administrative or other action accepted	0
No. of files recommendation for closure accepted	0
No. of files recommendation to prosecute not accepted	0
No. of files recommendation for administrative or other action not accepted	0
No. of files closure not accepted	0
No. of files awaiting Attorney General's action	4

Dated at Nairobi this *9th* day of *November*, 2004



JUSTICE (RTD) AARON G. RINGERA
DIRECTOR/CHIEF EXECUTIVE
KENYA ANTI-CORRUPTION COMMISSION.