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QUARTERLY REPORT BY THE KENYA ANTI-CORRUPTION COMMISSION

OCTOBER TO DECEMBER 2003

Tumalize Ufisadi

PREAMBLE

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

Section 35 provides that:

- (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 provides that:

- (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 made pursuant to section 36 of the Anti-Corruption and Economic Crimes Act.

**INVESTIGATIONS CONCLUDED IN THE PERIOD OCTOBER -
DECEMBER 2003**

1. CR/1/3/2003 ACC 41/2003

This was an inquiry into an allegation that the Sub-Chief in charge of Dandora B Sub Location had solicited Kshs. 15,000/- as an inducement to allow the complainant put up a building in Dandora.

Investigations established that the Sub-Chief had solicited for a bribe and a trap was laid. The Sub-Chief was arrested and arraigned in court.

Recommendation

There was sufficient evidence to warrant a charge of corrupt transaction by agent contrary to section 39(3)(a) as read with section 48 (1)(a) of the Anti- Corruption and Economic Crimes Act, 2003 against the Clerical Officer.

The file was forwarded to the Attorney General on 2nd October 2003. In the meantime the matter proceeded in court and the Sub-Chief was convicted on all counts and sentenced to a fine of Kshs. 10,000/- on each count in default to serve 12 months imprisonment on 3rd September 2004.

*** 2. KACC/INQ 26/22.9.2003**

*not in
our report*

This was an inquiry into allegations of undue influence, bribery and intimidation of delegates at the National Constitutional Conference. ✓

Investigations failed to establish any wrong -doing as the likely witnesses were not co-operative.

Recommendations

That the evidence on record could not sustain any criminal charge and the file was recommended for closure.

The file was forwarded to the Attorney General on 6th November 2003 and action is awaited.

NO communication
3. **ACPU/INQ. 43(B)/ 6.6.2002** ✓

This was an inquiry into allegations of misappropriation of funds by the Investment Promotion Centre (IPC) in the procurement of printing services in respect of a publication known as 'The Investors Guide'.

Investigations revealed that the then General Manager and the then acting Chief Executive acted in total disregard of the procurement procedures and also abused their offices by approving additional payments to the contractor.

Recommendations

That the then General Manager and the then acting Chief Executive be charged with the offence of abuse of office.

The file was forwarded to the Attorney General on 7th November 2003 and action is awaited.

4. **KACC/INQ.16/2003**

This was an inquiry into allegations that a former Managing Director East African Portland Cement Company Ltd, irregularly authorized purchase of motor vehicle reg. No. KAN 220V, Land Rover Discovery worth Kshs. 5,849,354/- from CMC Motor Group Ltd and payment of allowances to the former Chairman of the same company.

Investigations established that there was no justification for the purchase of the motor vehicle without involving the Board of Directors or the sanction of the Directorate of Public Procurement.

Recommendations

- a) That the former Managing Director, the Managing Director and the Mobile Plant and Fleet Manager be

charged with the offence of abuse of office contrary to section 101(1) of the Penal Code, Cap 63 Laws of Kenya.

- b) That the issue of allowances be referred to the Inspector-General for possible surcharge.

The file was forwarded to the Attorney General on 14th November 2003 and action is awaited.

5. KACC/INQ 41/10.11.03

no commination
This was an inquiry into an allegation that a businessman had offered a bribe on 14th August 2003 to a Judge before whom he had a pending case so as to facilitate the release of his passport.

Investigations established that the businessman had offered a bribe to the Judge and a trap was laid. The businessman was arrested and arraigned in court.

Recommendation

There was sufficient evidence to warrant a charge of corruption contrary to section 39(3)(b) as read with section 48 (1)(a) of the Anti-Corruption and Economic Crimes Act, 2003.

The file was forwarded to the Attorney General on 21st November 2003. In the meanwhile the case is pending before court.

6. ACPU/INQ/26(a) 03

This was the second phase of an inquiry into allegations of irregular deposits amounting to Kshs. 519,754.70 into the collapsed Euro Bank. This phase was to establish the beneficiaries of funds invested in Euro Bank by the National Hospital Insurance Fund (NHIF).

Investigations established that the Forex Business and Computer Manager of Euro Bank used to draw various sums of money irregularly. It was also established that Kshs.20,000,000/- was deposited into the former Chief

Executive's account by N.K Brothers being an inducement to award them a contract.

Recommendations

- a) That the Forex Business and Computer Manager of Euro Bank be charged with the offence of stealing contrary to section 282 of the Penal Code, Cap 63 Laws of Kenya.
- b) That former Chief Executive be charged with the offence of corruption in office contrary to section 3(1) of the Prevention of Corruption Act.
- c) That the Directors of N.K Brothers be charged with the offence of corruption contrary to section 3(2) of the Prevention of Corruption Act.

The file was forwarded to the Attorney General on 25th November 2003 and action is awaited.

7. KACC/INQ/11(C)-12.02.2003

This was an inquiry into allegations that the former Director National Aids Control Council (NACC) forged a letter dated 14th November 2000 leading to her inflated salary at the Council.

Investigations established that the former Chairman NACC arbitrarily increased the former Director's salary without consulting the Board. It was also established that the former Director NACC inflated her salary by falsely pretending that her salary was being matched to her former salary and also instructed her juniors to treat her salary figure as net and not gross. It was also established that the former East African Country Team Leader for the Deliver Project wrote a letter giving false information regarding the former Director's salary at her former employment.

Recommendations

- a) That the former Chairman NACC be charged with the offence of abuse of office contrary to section 101(1) of the Penal Code.
- b) That the former East African Country Team Leader for the Deliver Project be charged with the offence of giving false information contrary to section 129 of the Penal Code.
- c) That the former Director NACC be charged with the offences of obtaining by false pretences and abuse of office contrary to sections 313 and 101(2) of the Penal Code (Cap 63 Laws of Kenya) respectively.
- d) That NACC be advised to recover all the monies paid to the former Director in excess of Kshs. 300,000/- per month.

The file was forwarded to the Attorney General on 8th December 2003.

The Attorney General preferred charges against the former Chairman and former Director NACC. The former Chairman was acquitted under section 215 of the Criminal Procedure Code (Cap 75 Laws of Kenya) while former Director was convicted and sentenced to one year on all counts on 30th August 2004.

8. KACC/INQ.36/28.08.2003

This was an inquiry into allegations of fraudulent auction of LR No. Nandi/Cheptarit/104 by Thabiti Finance Company Ltd.

Preliminary investigations revealed that the complaint was of a civil nature and the bank had properly exercised its statutory power of sale.

Recommendation

The file was recommended for closure as no criminal conduct was disclosed on the part of the bank.

The file was forwarded to the Attorney General on 19th December 2003 action is awaited.

STATISTICAL SUMMARY

No. of files forwarded to the Attorney General	8
No. of files recommended for prosecution	6
No of files recommended for administrative or other action	0
No. of files recommended for closure	2
No. of files where recommendation for prosecution accepted	2
No. of files where recommendation for administrative or other action accepted	0
No. of files where recommendation for closure accepted	0
No. of files where recommendation for prosecution not accepted	0
No of files where recommendation for administrative or other action not accepted	0
No. of files where recommendation for closure not accepted	0
No. of files awaiting Attorney General's action	6

DATED at Nairobi this 9th day of November, 2004


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

