



# THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CVI—No. 96

NAIROBI, 19th November, 2004

Price Sh. 40

GAZETTE NOTICE NO. 9284

## THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT

(No. 3 of 2003)

QUARTERLY REPORT MAY TO SEPTEMBER, 2003

### *Preamble:*

The Anti-Corruption and Economic Crimes Act became operational on 2nd May, 2003. The Act provides for the setting up of the Kenya Anti-Corruption Commission with powers to investigate, to educate the public on the dangers of corruption, to prevent conduct constituting corruption/economic crime and to institute civil proceedings against those who have either abetted or benefited from corrupt transactions.

The Kenya Anti-Corruption Commission (KACC) took over and continued with the activities and programmes that were being undertaken by the Anti-Corruption Police Unit (ACPU), some of which were taken over from the defunct Kenya Anti-Corruption Authority (KACA).

Section 35 of the Anti-Corruption and Economic Crimes 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.

The Kenya Anti-Corruption Commission is also under a statutory obligation to prepare an annual report each financial year and the report is to contain among other things, information set out in the quarterly reports. The Commission's financial year is the period of twelve months ending on 30th June each year.

For that reason, the quarterly reports should be in line with the financial year. This report is meant for the first quarter covering the period of July to September, 2003, but the months of May and June have been included as the Commission was established in May, 2003.

### INVESTIGATIONS CONCLUDED IN THE MONTHS OF MAY AND JUNE, 2003 BY THE KENYA ANTI-CORRUPTION COMMISSION (KACC)

#### 1. ACPU/INQ 96(C)/24.5.2000

Inquiry into allegations that three individuals fraudulently obtained a sum of KSh. 2,970,000 from the now defunct Kenya Posts and Telecommunications Company (KPTC) by falsely pretending that they could supply, deliver, install and commission a 1000 KVA diesel engine generator set at K.P.T.C.'s Mombasa Telephone Exchange, through a non existent company trading as Kigs International.

#### *Recommendations:*

After completion of the investigations, it was recommended that the three suspects be charged with the offence of obtaining by false pretences contrary to section 313 of the Penal Code.

It was also recommended that K.P.T.C.'s former Company's Secretary be charged with the offence of obtaining advantage without consideration contrary to section 6 (1) of The Prevention of Corruption Act.

The file was forwarded to the Attorney-General on 2nd May 2003 and action is awaited.

#### 2. ACPU/INQ 25b/14.03.03

This was further investigation following an earlier inquiry into allegations of irregular investments by officials of Pyrethrum Board of Kenya (P.B.K.). A further investigation was undertaken to establish

either there was any conspiracy between the Directors and senior officials of P.B.K. and Euro Bank to defraud public funds.

*Recommendations:*

Other than an earlier recommendation to prosecute three officers of PBK with the offence of abuse of office, the evidence gathered so far was not sufficient to sustain any other offence against members of the Board or any of the senior officers of the institution.

The file was forwarded to the Attorney-General on 22nd May, 2003. The Attorney-General required further investigations to be carried out on 8th June, 2003. The file was re-submitted on 15th July, 2003 and action is awaited.

3. ACPU/INQ 75A/8.10.02

An inquiry into an allegation that the National Social Security Fund (N.S.S.F.) lost KSh. 256,000,000 through irregular discounting of a Treasury Bill No. 1471 and a subsequent irregular deposit of proceeds with Euro Bank. There was evidence that the former Managing Trustee and his Deputy invested the said funds without authority of the Board.

*Recommendation:*

1. That the former Managing Trustee of N.S.S.F. and the Deputy be charged with the offence of abuse of office contrary to section 101 (1) of the Penal Code.
2. That three employees of Euro Bank i.e the Foreign Business Manager, the Chief Accountant and a Driver, be charged together with a private employee of the Foreign Business Manager, with the offence of destruction of evidence (computer server) contrary to section 116 of the Penal Code.

The file was forwarded to the Attorney-General on 6th May 2003 and the recommendation was accepted. The suspects have already been charged and the case is pending before court.

4. ACPU/INQ 30/14.03.03

The inquiry was into an allegation that the management of Kenya Pipeline Company Limited, abused their offices by irregularly investing surplus funds in fixed deposits in the collapsed Euro Bank, thereby causing loss of KSh. 50,000,000 to the said Institution.

*Recommendation:*

That two former Managing Directors of Kenya Pipeline Company Ltd. be charged with the offence of abuse of office contrary to section 101 (1) of the Penal Code, Cap. 63, Laws of Kenya.

The file was forwarded to the Attorney General on 5th April 2003 and the Attorney-General required further investigations to be carried out on 8th of April, 2003. The file was re-submitted to the Attorney-General on 25th April, 2003 and further investigations were asked for on 24th June, 2003. The file was finally re-submitted to the Attorney-General on 8th of September, 2003. Action from the Attorney-General is awaited.

5. ACPU/INQ 29b/14.3.2003

This was a further inquiry following an earlier investigation into allegations of irregular investment of Kenya Tourism Development Corporation (K.T.D.C.) funds by its senior management in Euro Bank. The further investigation was undertaken with a view to establish whether there was any conspiracy between Euro Bank officials and senior officers of K.T.D.C., and whether K.T.D.C. Officials had personally benefited out of the proceeds.

*Recommendations:*

It was recommended that the earlier charge against the former Managing Director of K.T.D.C. be substituted with that of abuse of office contrary to section 101 (2) of the Penal Code. In addition, the General Manager, Finance be charged with the offence of abuse of office contrary to section 101 (1) of the Penal Code while the Foreign Business Manager with Euro Bank, be charged with the offence of fraudulent false accounting contrary to section 330 (b) of the Penal Code.

The file was forwarded to the Attorney-General on 11th June, 2003. Action is awaited.

6. KACC/INQ 11/6.05.03 (CR 142/181/2003 CF ACC 35/03)

Investigations were instituted following allegations that the Officer Commanding Hardy Police Station solicited for a sum of KSh.

50, 000 in order to release a motor vehicle detained at Hardy Police Station as an exhibit in a criminal case in which the complainant was an accused person.

*Recommendations:*

That there was sufficient evidence to warrant a charge of corrupt transaction by agent contrary to 39 (3) 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 24th June, 2003 and the recommendation was promptly accepted. The suspect was duly charged and the case is pending before court.

7. ACPU/INQ 24b/14.03.03

This matter stemmed from an earlier investigation into allegations that the senior management of Postal Corporation of Kenya abused their offices by depositing a sum of KSh. 50,000,000 in the now-collapsed Euro Bank without following the laid down procedures thereby causing loss of funds. The purpose of this inquiry was to establish the beneficiaries of the funds deposited in Euro Bank.

*Recommendations:*

Upon the conclusion of investigations, no clear evidence emerged to pinpoint the actual beneficiaries. It was recommended that there be no further action.

The file was forwarded to the Attorney-General on 22nd May, 2003 and action is awaited.

8. ACPU/INQ.31b/14.3.03

The investigation stemmed out of an earlier inquiry into allegations that the management of Kenya Post Office Savings Bank (Post Bank) illegally banked KSh. 66,000,000 with the collapsed Euro Bank occasioning the loss of the entire amount. This particular inquiry was to seek to identify the beneficiaries of the monies deposited in the bank.

*Recommendation:*

The investigation did not identify the beneficiaries of the specific amounts deposited by Post Bank. However, there was evidence that the former Managing Director of Kenya Post Office Savings Bank had received KSh. 1,000,000 as a result of investing Post Bank's money in Euro Bank. It was recommended that he be charged with the offence of obtaining an advantage without consideration contrary to section 6 (1) of the Prevention of Corruption Act.

The file was forwarded to the Attorney-General on 21st May 2003 and further investigations were required on 15th August, 2003. The file was re-submitted on 25th September, 2003. Action is awaited on the recommended offence of obtaining advantage without consideration.

9. ACPU/INQ 28b/14.3.03

The inquiry herein stemmed out of an earlier investigation into allegations that the Management of Kenyatta National Hospital (K.N.H.) irregularly invested K.N.H. funds in the now collapsed Euro Bank without authority of the Board. This particular inquiry was to find out whether K.N.H. officials received any benefits after making the huge deposits with Euro Bank. There was evidence that the then Director of K.N.H. received a total sum of KSh. 10,750,000 whereas a member of K.N.H. Board at the time, received a sum totaling to KSh. 2,720,000.

*Recommendation:*

That the former Director, K.N.H. and the Board member be charged with the offence of corruption in office contrary to section 3 of the Prevention of Corruption Act, and/or abuse of office contrary to section 101 (2) of the Penal Code.

The file was forwarded to the Attorney-General on 22nd May, 2003. The Attorney-General asked for further investigations on 27th June 2003. The file was re-submitted on 8th September, 2003 and action is awaited.

10. ACPU/INQ 16/ 24.02.03

An allegation of bribery was made against two Criminal Investigation Department officers from Kikuyu Police Station. The two are alleged to have demanded KSh. 80,000 from the complainant

in order for the suspects to forbear arresting and charging the complainant and her staff for dealing in fake P.S.V. and inspection certificates.

*Recommendation:*

The evidence gathered was not sufficient to sustain the offence of corruption. It was recommended that the charges of corruption leveled against the suspects be withdrawn. It was further recommended that the Commissioner of Police do institute the necessary administrative/disciplinary action against the two officers as their conduct was in breach of their code of service.

The file was forwarded to the Attorney-General on 12th June, 2003. The Attorney-General accepted the recommendation and as a result, the two accused persons were discharged under section 87 (a) of the Criminal Procedure Code. A response on our recommendation for Administrative action to be taken is awaited.

**REPORT COVERING THE PERIOD BETWEEN JULY AND SEPTEMBER, 2003**

**11. ACPU/INQ.75C/8.10.02**

The inquiry was into an allegation that on 3rd day of July 2002, a former Member of Parliament obtained a loan of KSh. 32,000,000 from the now collapsed Euro Bank without any securities through his companies namely Kuza Farms and Allied Limited, Riveton Investments Limited and Rajab Waliaula Trust, with an intention to defraud the bank of the money.

*Recommendation:*

The investigation did not disclose any offence against the former Member of Parliament. However, Euro Bank's Chairman and the bank's former Managing Director, were recommended to be charged jointly with the offence of reckless lending contrary to section 11 (g) as read with section 49 of the Banking Act.

The file was forwarded to the Attorney General on 30th July, 2003 and the recommendation was accepted. The two suspects have been charged with the offences. The case is pending before court.

**12. ACPU/INQ. 75b/2002**

The investigation herein was to establish the beneficiaries of the sum of KSh. 256,000,000 invested into Euro Bank by National Social Security Fund (N.S.S.F.). There was an allegation that on the 1st of July, 2002, the Monarch Insurance Company obtained a loan of KSh. 80,000,000 from the now collapsed Euro Bank without having an account in the said bank and in contravention of the Banking Act.

*Recommendation:*

The money loaned to Monarch Insurance Company was secured by an undertaking by a firm of Advocates and the monies were repaid on 9th July, 2002. Though the Insurance Company did not have an account at the time the loan facility was extended to it, no offence could be established from the evidence gathered against the Insurance Company, both under the Banking Act and the Penal Code.

It was recommended that the file be closed.

The file was forwarded to the Attorney General on 30th July 2003 and action is awaited.

**13. KACC/INQ.6/14.5.03**

This was an inquiry into irregular privatization of Kenya Seed Company Limited. (K.S.C.). The Government of Kenya had a controlling shareholding of Kenya Seed Company through Agricultural Development Corporation (A.D.C.), a statutory corporation.

Several officers in Government conspired and proceeded with the privatization of K.S.C. without following the relevant procedures. A good number of them acquired the shares. The illegal increase of share capital reduced the Government's share capital in K.S.C. and consequently, the Government lost its monopoly in the Company.

*Recommendations:*

1. That the following persons be charged with the offences of abuse of office contrary to section 101 (2) of the Penal Code, (Cap. 63, Laws of Kenya):

- (a) The former Managing Director, K.S.C.

- (b) The then Managing Director, A.D.C.

- (c) A Board member, K.S.C.

- (d) The former Deputy MD, K.S.C.

- (e) Company Secretary, K.S.C.

- (f) A former Minister for Agriculture

2. That five other Directors mainly representing various Ministries in the K.S.C. Board be charged with the offence of abuse of office contrary to section 101 (1) of the penal code
3. That the persons listed in (1) and (2) above be subjected to administrative disciplinary action if they are still in public service.
4. That the following directors be charged with the offences of making false statements with intent to defraud the A.D.C. and the Government contrary to section 329 of the penal code.

- (a) The former Managing Director, K.S.C.

- (b) The Deputy Managing Director, K.S.C.

- (c) Representative of the Office of the President in K.S.C. Board.

- (d) Former Managing Director, A.D.C.

- (e) Three other Directors of K.S.C.

- (f) Representative of the Ministry of Agriculture in K.S.C. Board.

5. That the irregular privatization be rectified through civil process so as to restore the company into the hands of Government ownership.

The file was forwarded to the Attorney-General on 18th August 2003 and the Attorney-General asked for further investigations on a number of occasions. The file was finally re-submitted on 10th February 2004. Other than the former Minister for Agriculture, the Attorney-General has already preferred charges of abuse of office against all the persons listed above as recommended. However, the offence of making false statements with intent to defraud has not been preferred.

**14. ACPU/INQ 14A/ 24.2.2003**

The inquiry herein was as a result of information that the management of Harambee Sacco and Credit Society entered into an irregular staff cover contract with Medi Plus Services Limited in which over KSh. 5, 500,000 was irregularly paid as management fee to La Pillule Limited thereby occasioning loss to the Society. Investigations revealed that some officials of the Sacco and La Pillule defrauded the Sacco of KSh. 5,000,000 using the management fee as a cover.

*Recommendations:*

1. That the following persons be charged with the offence of stealing contrary to section 275 of the Penal code.

- (a) The former Chairman of Harambee Sacco

- (b) The former Honorary Secretary of Harambee Sacco.

- (c) The former General Manager of the Sacco

- (d) Two partners of La Pillule Limited.

2. That the two partners of La Pillule be further charged with the offences of forgery and uttering of a false document contrary to sections 349 and 353 of the Penal Code.

The file was forwarded to the Attorney-General on 12th August, 2003 and action is awaited.

**15. KACA/INQ/75/20.3.2000**

The inquiry was based on allegations that the Office Superintendent at the Nairobi Law Courts was awarding contracts to his friends on repairing and carpeting of offices at the High Court. It was also alleged that payments were made for work that was never done.

*Recommendation:*

That the suspect be charged with eleven counts of forgery contrary to section 347 of the Penal Code.

The file was forwarded to the Attorney-General on 16th September, 2003 and action is awaited.

16. ACPU/INQ/63A/10.10.2002

The inquiry was into an allegation of mismanagement of financial resources at the Directorate of Industrial Training (DIT) in the reimbursement of Industrial Training Levy. There was evidence that a son to the Assistant Director in charge of curriculum development at DIT illegally benefited from the Levy by colluding with officers of Kenindia Assurance Co. Limited.

*Recommendation:*

1. That the Assistant Director in charge of Curriculum Development at DIT, his son and two officers from Kenindia Assurance Company Limited be charged jointly with the offence of obtaining KSh. 173,000 by false pretences contrary to section 313 of the Penal Code.
2. That an officer of Kenindia Assurance Company Limited be charged with the offence of giving false information to an officer employed in the public service.

The file was submitted to the Attorney General on 17th September, 2003 and action is awaited.

17. ACPU/INQ 27b/14.03.2003

The initial inquiry was into the allegation that the management of Kenya Sugar Authority (K.S.A.) had abused their offices by illegally investing KSh. 55,000,000 into the collapsed Euro Bank without following the laid down procedures. The investigation culminated with the charging of KSA's former Chief Executive, and the Head of Finance, with the offence of abuse of office. The second phase of investigation was undertaken with a view to establish the beneficiaries of the money paid into Euro Bank by KSA.

*Recommendation:*

The investigation did not identify the beneficiaries of the specific amounts deposited by K.S.A. The debit vouchers prepared around the time of the deposit indicate that the money was for marketing expenses and the beneficiaries are carefully omitted from the debit vouchers. No further action was recommended in the file.

The file was forwarded to the Attorney-General on 8th July 2003 and action is awaited.

18. ACPU/INQ/76/27.3.2000

The inquiry was commenced as a result of allegations of irregularities regarding tendering process for Kericho Vocational Rehabilitation Centre and illegal payments to a contractor. No formal contract was ever executed between the Government and the contractor. There was evidence that the contract was to cost Kshs. 5,900,000 but the contractor ended up being paid KSh. 91,926,203.90 and the project is incomplete to date.

*Recommendation:*

That the officers who were involved in the irregular payments be charged with the offence of abuse of office contrary to section 101 (1) of the penal code.

- (a) Former Permanent Secretary, Ministry of Home Affairs, National Heritage and Sports.
- (b) Former Permanent Secretary, Ministry of Culture and Social Services.
- (c) Assistant Quantity Surveyor, Kericho District.
- (d) District Quantity Surveyor, Kericho.
- (e) District Architect, Kericho.
- (f) District Works Officer, Kericho.

The file was initially forwarded to the Attorney General on 12th March, 2003 and the Attorney-General asked for further investigations on 1st of August 2003. The file was re-submitted on 8th September, 2003 and action is awaited.

19. ACPU/INQ.65/24.9.2002

The inquiry was instituted as a result of allegations by members of the Nairobi West Friends Church, that the Director of Physical

Planning in the Ministry of Lands and Settlement was allocated a plot that the said church had applied for.

*Recommendation:*

No offence was disclosed and the file was recommended for closure

The file was forwarded to the Attorney-General on 21st August 2003 and action is awaited.

20. ACPU/INQ.69A/27.9.2002

The inquiry was into an allegation that a Police Constable attached to Ruiru Police station together with another person obtained a total sum of KSh. Kiganjo.

*Recommendation:*

That the two suspects be charged with the offence of obtaining by false pretences contrary to section 313 of the Penal Code.

The file was forwarded to the Attorney-General on 23rd July, 2003 and action is awaited.

STATISTICAL SUMMARY

No. of files forwarded to the Attorney-General	20
No. of files recommended for prosecution	14
No. of files recommended for administrative or other action	1
No. of files recommended for closure	5
No. of files where recommendation to prosecute accepted	0
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 to prosecute not accepted	0
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 Attorney-General's action	15

Dated the 9th November, 2004.

JUSTICE (RTD.) AARON G. RINGERA,  
Director/Chief Executive,  
Kenya Anti-Corruption Commission.

GAZETTE NOTICE No. 9285

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

QUARTERLY REPORT OCTOBER TO DECEMBER, 2003

*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 TO 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 KSh. 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 KSh. 10,000 on each count in default to serve 12 months imprisonment on 3rd September, 2004.

##### 2. KACC/INQ 26/22.9.2003

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.

##### 3. ACPU/INQ. 43(B)/ 6.6.2002

This was an inquiry into allegations of misappropriation of funds by the Investment Promotion Centre (I.P.C.) 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 Limited, irregularly authorized purchase of motor vehicle reg. No. KAN 220V, Land-Rover Discovery worth KSh. 5,849,354 from C.M.C. Motor Group Limited 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

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 KSh. 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 (N.H.I.F.).

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 KSh. 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 N.A.C.C. 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 KSh. 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 Limited.

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 the 9th November, 2004.

JUSTICE (RTD) AARON G. RINGERA,  
*Director/Chief Executive,*  
*Kenya Anti-Corruption Commission.*

GAZETTE NOTICE NO. 9286

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

QUARTERLY REPORT JANUARY TO MARCH, 2004

#### 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:

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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 TO 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 & T E) 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 (K.I.H.B.T.) 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 K.I.H.B.T. 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 KSh. 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 KSh. 2,683,480.35 and converted KSh. 2,538,872.30 to his own use.

*Recommendation:*

That the former MP and his Accountant, be charged with stealing KSh. 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 KSh. 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 KSh. 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 KSh. 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 KSh.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 the 9th November, 2004.

JUSTICE (RTD) AARON G. RINGERA,  
Director/Chief Executive,  
Kenya Anti-Corruption Commission.

## GAZETTE NOTICE NO. 9287

### THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT

(No. 3 of 2003)

QUARTERLY REPORT APRIL TO JUNE, 2004

#### 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:

- (2) 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 APRIL TO JUNE, 2004

#### 1. KACC/INQ 16D/2.12.2003

This was an inquiry into allegations that the a former Managing Director of East African Portland Cement Company Limited (E.A.P.C.C.) and a transporter had been irregularly advanced KSh. 1,500,000 and KSh.150,000, respectively.

Investigations established that the former Managing Director and transporter obtained advances with the help of the Financial Accountant without following the established procedures and without seeking approval of the Board of Directors.

*Recommendations:*

- (a) That the former Managing Director, E.A.P.C.C. and the transporter be charged with an Economic Crime contrary to section 45 (1) (a) of the Anti-corruption and economic Crimes Act, 2003 for fraudulently or otherwise unlawfully acquiring a benefit.
- (b) That the Financial Accountant E.A.P.C.C. be charged with the offence of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act.
- (c) The file was forwarded to the Attorney-General on 16th April, 2004 and action is awaited.

## 2. KACC/INQ. 51(A)/17.12.03

This was an inquiry into allegations that Directors of the Kenya College of Communications and Technology (K.C.C.T.) advanced themselves various loans in millions of shillings in abuse of the authority of their offices.

Investigations established that two former Directors abused the authority of their office by taking and approving for each other huge loans, which have remained unpaid for unduly long periods.

*Recommendations:*

That the investigation be transferred to the Police Department for an independent assessment of the evidence.

The file was forwarded to the Attorney-General on 3rd May, 2004 and action is awaited.

## 3. ACPU/INQ 43(A)/6.6 2002

This was an inquiry into allegations of misappropriation of funds at the Investment Promotion Centre (IPC) through repair of leased houses.

Investigations established that the telephone exchange in question was installed by the company to the satisfaction of the management and the old one installed in the Eldoret branch office.

*Recommendations:*

That the allegations were unfounded and evidence on record did not reveal any wrong-doing. It was recommended that the file be closed with no further action.

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

## 4. ACPU/INQ.19A/7.03.2003

This was an inquiry into allegations of misappropriation of funds by the management committee of the Ol Kalou Farmers' SACCO Bank in Nyandarua District.

Investigations established that almost the entire management team of the SACCO received various advances of different amounts without following the society's by-laws.

*Recommendations:*

- (a) That the then former General Manager be charged with three counts of stealing.
- (b) That the monies advanced to the management committee be recovered through civil process.

The file was forwarded to the Attorney-General on 21st May, 2004 and a response on the recommendation is awaited.

## 5. KACC/INQ/43/14.11.2003

This was an inquiry into allegations that the Managing Trustee of the National Social Security Fund (N.S.S.F.) cheated about his age in order to obtain a withdrawal benefit from the fund in April, 2002.

Investigations failed to conclusively establish any wrong-doing on the part of the Managing Trustee even though there was a discrepancy on the date of birth in the old generation identity card and the new generation one. The application form for the new generation identity card could not be traced.

*Recommendations:*

That it was difficult to make any conclusive recommendations as there was no sufficient evidence.

The file was forwarded to the Attorney-General on 29th June, 2004 and action is awaited.

## STATISTICAL SUMMARY

No. of files forwarded to the Attorney-General	5
No. of files recommended for prosecution	2
No. of files recommended for administrative or other action	1
No. of files recommended for closure	2
No. of files where recommendation for prosecution accepted	0
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	5

Dated the 9th November, 2004.

JUSTICE (RTD.) AARON G. RINGERA,  
Director/Chief Executive,  
Kenya Anti-Corruption Commission.

## GAZETTE NOTICE No. 9288

## THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT

(No. 3 of 2003)

## QUARTERLY REPORT JULY TO SEPTEMBER, 2004

*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:

- (3) 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 JULY TO SEPTEMBER 2004

## 1. ACPU/86/12.11.02

This was an inquiry into allegations of illegal sale of Kiamokama Farmers Society plot no. 11/23 in Kisii town by the former officials of the Society.



Investigations established that some committee members conspired to defraud the Society by hurriedly proceeding to sell a plot at a throw away price without approval from members.

*Recommendations:*

- (a) That the former Chairman, Secretary and Treasurer be charged with the offence of conspiracy to defraud contrary to section 317 of the Penal Code, Cap. 63 Laws of Kenya.
- (b) That the former Chairman and Secretary be further charged with the offence of making a false document contrary to section 347 (a) of the Penal Code.

The file was forwarded to the Attorney-General on 23rd July, 2004 and action is awaited.

2. KACC/INQ55/27.11.03

This was an inquiry into allegations of abuse of office by a former Senior Litigation Counsel.

Investigation established that there was no abuse on the part of the former Senior Litigation Counsel and the money alleged to have been taken by her was returned to the Teachers Service Commission (T.S.C.).

*Recommendation:*

That the allegations were unfounded and evidence on record did not reveal any criminal offence. It was recommended that the file be closed with no further action.

The file was forwarded to the Attorney-General on 11th August, 2004 and action is awaited.

3. KACC NO.1/1/2/03 ACC NO. 39/03

This was an inquiry into an alleged bribe demand of KSh. 7,000 by a clerical officer attached to the motor vehicles registration section so as to assist in the registration of a motor vehicle.

Investigations established that the clerical officer had solicited for a bribe and a trap was laid. The clerical officer 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 August, 2004, in the meantime the matter is pending before court.

4. KACC NO.1/1/1/04 ACC2/04

This was an inquiry into an alleged bribe demand of KSh. 100,000 by police officers based at Kamukunji Police Station so that they could release items they had confiscated from the complainant.

Investigations established that the police officers had solicited for a bribe and a trap was laid. The police officers were 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 four police officers.

The file was forwarded to the Attorney-General on 2nd August, 2004, in the meantime the matter is pending before court.

5. KACC/INQ/47(A)/17.12.2003

This was an inquiry into allegations of abuse of office at the National Cereals and Produce Board in the purchase of Computers.

Investigations established that the General Manager Finance and Administration, the Supplies Manager and the Computer Operator abused their offices by disregarding the procurement regulations and engaged in direct procurement for the purchase of computers printers.

*Recommendation:*

That the General Manager Finance and Administration, the Supplies Manager and the Computer Operator be charged with the offence of abuse of office contrary to section 101 (1) of the Penal Code (Cap. 63 Laws of Kenya).

The file was forwarded to the Attorney General on 17th August, 2004.

The Attorney-General forwarded the file to the Director of Criminal Investigations for independent investigations.

6. KACC/INQ/44/1.10.03

This was an inquiry into allegations of abuse of office at the National Social Security Fund in the procurement of Actuarial Services.

Investigations established that the former Managing Trustee and the Chairman of the Board abused their offices by procuring actuarial services in total disregard of the procurement rules.

*Recommendation:*

That the former Managing Trustee and the Chairman of the Board be charged with the offence of abuse of office contrary to section 101 (1) of the Penal Code (Cap. 63 Laws of Kenya).

The file was forwarded to the Attorney-General on 23rd August, 2004 and action is awaited.

7. KACC/INQ/5/4.02.2004

This was an inquiry into allegations of bribery of delegates to the Constitution of Kenya Review Conference.

Investigations failed to establish any offence.

*Recommendation:*

That the evidence on record did not reveal any criminal offence and it was recommended that the file be closed with no further action.

The file was forwarded to the Attorney-General on 22nd September, 2004 and action is awaited.

STATISTICAL SUMMARY

No. of files forwarded to the Attorney-General	7
No. of files recommended for prosecution	5
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	0
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	1
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 the 19th November, 2004.

JUSTICE (RTD.) AARON G. RINGERA,  
Director/Chief Executive,  
Kenya Anti-Corruption Commission.