



THE COMMISSION ON ADMINISTRATIVE JUSTICE
Hata mnyonge ana Haki

UNEARTHING THE TASSIA TUSSELE

DRAFT INVESTIGATIONS REPORT BY THE OMBUDSMAN-KENYA

ON

ABUSE OF POWER AND DISREGARD OF PROCUREMENT PROCEDURES

BY

**THE Ag. CEO AND THE MANAGEMENT OF NSSF IN THE AWARDING OF THE
TASSIA II INFRASTRUCTURE DEVELOPMENT PROJECT**

APRIL 2014

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Foreword

The Commission on Administrative Justice (CAJ) pursuant to its mandate as stipulated under Section 8 of the constitutive Act, undertook investigations into the allegations of irregular approval of the Kenya Shillings 5.053 Billion Tassia II Infrastructure Development Project by the NSSF Board Chairman and Ag. Managing Trustee/Chief Executive and improper and unprocedural awarding of the tender for the Tassia II Infrastructure Development Project.

The investigations were prompted by the above allegations by Mr. Francis Atwoli, Secretary General COTU and NSSF Board member. Mr. Atwoli stated that he sits on the NSSF Board of Trustees and chairs the Fund's Finance, Social Security and Investment Committee responsible for vetting and approving all financial and investment transactions for the NSSF Board's consideration and decision. He complained that the Board of Trustee's Chairman acted as an Executive Chairman, overstepped and overlooked the mandate of the Finance, Social Security and Investment Committee and the Board in the awarding of the tender. Further the Chairman and the Ag. Managing Trustee purported to have sought the Board's approval through circulation of an e-mail for the payment of Kes. 5.053 Billion from the Fund for the said project.

The Commission wrote to the Ag. CEO/Managing Trustee, Mr. Richard K Langat informing him of the complaints lodged with the Commission on Administrative Justice. In the letter, the Ag. CEO/Managing Trustee was asked to respond to the allegations. He duly responded but his response to the Commission was found to be unsatisfactory hence the decision to carry out investigations on the allegations.

This report is a result of interviews held with Mr. Austin Ouko, Legal Officer NSSF, Ms. Jacqueline Mugo, CEO FKE and employers' representative on the NSSF Board, Eng. S. K. Mburu, Chief City Engineer, Nairobi City County, Eng. Sammy Muthama, Nairobi City County, Mr. Nixon Otieno, Chief Revenue Officer, Nairobi City County and Mr. Bidan Ndegwa, In-Charge Bank Reconciliation, Nairobi City County.

The Commission has made recommendations to relevant authorities and agencies for their official action on those found culpable of various acts of malfeasance and to address identified policy issues.

Signed this.....day of April, 2014

Cmmr. Otiende Amollo E.B.S
Chairperson,
Commission on Administrative Justice
(Office of the Ombudsman)

Preamble

The Commission on Administrative Justice (Office of The Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission on Administrative Justice (CAJ) has a mandate, inter-alia, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

Under Section 31 of its Act, CAJ may investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question.

After undertaking its investigations, the Commission is required under Section 42 of its constitutive Act, to prepare a report to the State organ, public office or organization to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken, reasons whereof and recommendations the Commission deems appropriate.

CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offence as provided for under Section 41 of the CAJ Act.

Section 8 (g) of the CAJ Act gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies.

Section 42 (4) states; If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take the appropriate action.

Further, Article 59(2) (j) of the Constitution of Kenya, 2010 empowers the Commission to report on complaints investigated under paragraph (h) and (i) and **take remedial actions.**

Section 52 (b) and (d) of the CAJ Act 2011, provides that a person who knowingly submits false or misleading information to a member of staff of the Commission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both.

The general layout of the report includes the following:

- Introduction to the investigations
- Investigations strategy
- Normative framework
- Analysis and findings
- Consequential Observations
- Conclusions and Recommendations

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ACRONYMS

EACC Ethics and Anti-Corruption Commission

CAJ Commission on Administrative Justice

CEO Chief Executive Officer

CCN City County of Nairobi

NSSF National Social Security Fund

Summary of Findings, Conclusions and Recommendations

- i. The NSSF procured the services of MultiScope Consulting Engineers Limited to design work and cost the estimates for the Tassia II Infrastructure Development Project without a budget.
- ii. Advertisement for the Tassia II Infrastructure Development Project was done without a budget.
- iii. The NSSF Tassia II Infrastructure Development Project revised cost estimate of Kes. 5.053 Billion was not approved by the Board of Trustees as required by law. The alleged approval by way of email circulation was improper and irregular.
- iv. There was no formal Board meeting where members present could vote and/or make decisions regarding the approval of the contract as required by law.
- v. The quorum for the NSSF Board to be able to transact requires the presence of the representatives of the employers and employees in any such meeting. The employees' representative was side-lined in the approval process.
- vi. The approval process side-lined the Finance, Social Security and Investment Committee which is required by law to approve and recommend all financial transactions for consideration by the NSSF Board.
- vii. The Ag. CEO/Managing Trustee did not provide a policy if any, guiding the use of email communication for seeking and granting approvals for financial transactions and/or making decisions thereof.
- viii. The administrative management of the tender process was fraught with irregularities and impropriety. The opening of the tender, the Evaluation Committee's recommendations and the Tender Committee meeting to award the tender apparently took place on the same day, the 17th December, 2013. While the approval of the project was sought and granted via email on the 18th December, 2013.
- ix. The Minutes of the Tender Committee meeting of the 17th December, 2013 to award the tender were not provided to CAJ.
- x. The tender processing was rushed and the tender awarded before approval.

- xi. The winner of the tender, M/S China Jiangxi International (K) Limited was notified of the award on 20th December, 2013 despite the fact that funds had not been realised from individual plot owners.
- xii. The manner in which the Ag. CEO/Managing Trustee sought and obtained approval via email for the project without ensuring that NSSF had met the pre-approval conditions by the Nairobi City County and the availability of sufficient funds for the project is suspect and amounts to abuse of power.
- xiii. The NSSF Ag. CEO/Managing Trustee misled CAJ by submitting a copy of a “receipt” for the Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) to CAJ and pointing out in his response letter that the money had been paid to the City County of Nairobi for the fee required by the City County Government for inspection and submission of the project plan.
- xiv. CAJ confirmed that the County Government of Nairobi **did not receive the payment of Kenya shillings Eleven million two hundred and forty four thousand (Kes, 11,244,000)** and that the “receipt” submitted to CAJ by NSSF is but an invoice.
- xv. The CEO/Managing Trustee and the management of NSSF deliberately misrepresented facts to the Commission on Administrative Justice and acted with deception and impropriety. They also abused power in regard to the Tassia II Infrastructural Development Project approval. By so doing, they abused the trust vested in them as public officers and are therefore culpable of contravention of Article 10 and Chapter Six of the Constitution.

Consequential findings

Mr. Richard K. Langat: Ag. CEO/Managing Trustee NSSF

- Mr. Richard Langat declined to honour invitations by CAJ thus contravening Section 27 of the CAJ Act 2011.
- Mr. Richard Langat conducted himself in a manner indicative of a desire to evade the investigation by the CAJ by seeking refuge under Section 30 (h) of the CAJ Act and further by writing to the Ethics and Anti-Corruption Commission seeking advice on the way forward regarding the investigations undertaken by the two Commissions.
- Mr. Langat also ignored two formal invitations for an interview with CAJ during the investigations process.
- Upon completion of its investigations, CAJ forwarded the preliminary findings to Mr. Richard Langat inviting his comments, responses or presentations on the adverse findings but he chose not to respond. Mr.

Richard Langat was therefore uncooperative and unresponsive in the course of investigations.

Mr. Adan Mohammed: NSSF Board Chairperson

The NSSF Board Chairperson, Mr. Adan Mohammed was culpably negligent in the performance of his supervisory role insofar as he did not question the mode of approval of the project, and oversaw in the irregular process of approving the contract via email. Ultimately and in accordance with section 15 of the State Corporations Act and section 9 of the Public Officers Ethics Act he takes overall administrative responsibility for the improprieties.

The NSSF Board Members

The NSSF Board members who gave approval for the contract via email were equally culpably negligent in their capacity as the trustees of the Fund, and in breach of their fiduciary responsibility.

It is however, worth noting that one Board Member, Ms. Jacqueline Mugo, the employers' representative is on record as having stated that there was no full disclosure by the Managing Trustee in so far as the actual approval that he sought via email. Ms. Mugo avers that the circulated email had no supporting papers and that the Board did not sit and vote as required by law. CAJ notes that there was, therefore, no unequivocal approval on her part.

EACC's Support

CAJ received a copy of a letter to Mr. Richard Langat from EACC, advising him to cooperate with CAJ or any other Agency investigating the matter. This letter was written on the same date as another letter written by Mr. Michael Mubea, Senior Deputy Commission Secretary/ CEO-Operations of the EACC, curiously seeking to know the areas CAJ was investigating.

Recommendations

- a) The EACC should swiftly and speedily conduct investigations to determine whether the irregularities in the approval and tendering process for the Tassia II Infrastructure Development were occasioned by corrupt intent on the part of the NSSF Board and management and if so, take appropriate action.
- b) The EACC should examine its internal processes to avoid the possibility of issuing concurrent but inconsistent correspondence by different officers on the same subject matter.

- c) Mr. Richard Langat the Ag. Managing Trustee/ CEO of the NSSF should be held responsible for the flawed tendering process and prosecuted for abuse of power.
- d) EACC and DPP should determine whether the abuse of power by Mr. Richard Langat constitutes abuse of office and institute prosecution as appropriate.
- e) The award of the tender to China Jiangxi International (K) Limited should be cancelled.
- f) f) That NSSF should develop and implement proper internal procedures for transacting official business including a policy on the use of email.
- g) The Board of Trustees who participated in the irregular approval of the project, should be jointly and severally held responsible for any losses the Fund may have incurred in the contract.
- h) The NSSF Board of Trustees should be cautioned to have greater scrutiny and care as they are entrusted with millions of Kenyans' hard earned contributions.
- i) A properly and legally constituted forum of the NSSF Board should look into the project to ascertain whether there is value for money in the entire project.
- j) Kenya National Audit Office should undertake audit of the Fund to ascertain the payment of Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11, 244, 000) purported to have been paid to the City County of Nairobi by NSSF and to establish if the money was ever paid out and to whom.
- k) The NSSF management should recover the amount of Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11, 244,000) which it alleged to have paid to the City County of Nairobi. In the event the money was forwarded to its consultant M/S MultiScope Consulting Engineers Limited, its directors should be ordered to refund the money with interest at market value and be blacklisted.
- l) Ultimately, the person who received the Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11, 244, 000) should be prosecuted for obtaining money by false pretences.
- m) The entire approval should be looked at and revoked and withdrawn due to glaring irregularities.

- n) The entire scheme of the Procurement Laws, Rules and Regulations should be re-examined, restructured and rationalised so as to focus on;
- i. Pricing: the current regime has ensured goods procured by Government costs between one and a half to thrice the market value of goods.
 - ii. Quality of goods: the undue focus on “lowest bidder” tends to camouflage and compromise quality of goods supplied.
 - iii. Independent assessment: for projects involving colossal sums of money, however procured, those involved in feasibility/assessment should be disqualified from bidding or selection.
 - iv. For professional services (legal, medical etc) competence and antecedent procurements should be prioritised beyond just the lowest evaluated bidder.
 - v. Generally, due regard should be had to receiving value for money, more than an artificial insistence on procedural competence.
 - vi. All procurement done for projects involving large amounts of money should be done on development plans based on MTF and should be aligned to the multi year approach.
- o) Considering the stake of the Kenyan public in the activities of the NSSF coupled with the fact that the fund is constituted by contributions of all employees and employers in Kenya, it is prudent to incorporate in the Board of Trustees of the NSSF representation of an oversight agency preferably a relevant Constitutional Commission so as to safeguard the public interest.

Introduction to the investigations

This investigation was triggered by a complaint received from Mr. Francis Atwoli, the Secretary General of the Central Organisation of Trade Unions Kenya and also a member of the NSSF Board of Trustees. In his complaint letter dated 14th January 2014 addressed to the Chairperson of the Commission on Administrative Justice (**Marked Exhibit A1**) Mr. Atwoli complained that there was an irregular approval of the Tassia II Infrastructure Development Project by the NSSF Board at a total cost of 5,053 Billion to be paid for by the workers Fund. He also took issue with the tender process undertaken by the management in awarding the contract for the project.

In his letter Mr. Atwoli informed the Commission that he sits on the NSSF Board of Trustees and chairs the Fund's Finance, Social Security and Investment Committee responsible for vetting and approving all financial and investment transactions by the fund for the full Board's consideration and decision. He stated that the Board of Trustee's Chairman acted as an executive chairman and that he overstepped and overlooked the mandate of the Finance, Social Security and Investment Committee and the Board in the awarding of the tender for the Tassia II Infrastructure Development Project. Further, the Chairman and the Ag. Managing Trustee purported to have sought the Board's approval through circulation of an e-mail for the payment of Kes. 5.053 Billion from the Fund for the said project.

The Commission on Administrative Justice (Office of The Ombudsman), pursuant to investigative powers under Articles 59 and 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act, undertook investigations focusing on the administrative management of the process leading to the award of the contract and, the approval of the contract by the Board with a view to establishing the veracity of the allegations and contested matters of fact.

The Commission wrote to the Chief Executive officer of the NSSF on 17th January 2014 (**Marked Exhibit A2**) listing the allegations by Mr. Atwoli seriatim, and sought the response of the NSSF. The NSSF through its Ag.CEO/ Managing Trustee wrote to the Commission on 22nd January 2014. (**Marked Exhibit A3**). Attached to the said correspondence was a report which sought to respond to the allegations made by Mr. Atwoli.

The National Social Security Fund (NSSF) is a Fund established under the National Social Security Act No. 45 of 2013, to provide basic social security for its members and their dependents for various contingencies as provided under the Act.; The Fund is directed and managed by a Board of Trustees known as the National Security Fund Board of Trustees (NSSF Board). The NSSF Board is a body corporate with perpetual Succession and in its corporate name, it can sue and be sued, purchase hold,

manage and dispose movable and immovable property and enter into such contracts as it may consider necessary or desirable for purposes of the NSSF Act.

The Board is comprised of persons representing different interests and stakeholders including Government, Employers Organizations & Workers Organizations.

The Fund is managed by a Managing Trustee who is appointed by the Board and is the Chief Execution Officer. He is also an *ex-officio* member of the Board and is under the general direction of the Board.

It is a legal requirement under the NSSF Act for every employer who under a contract of service employs one or more employees to register with the fund as a contributing employer and to register his employee or employees as members of the Fund where every employer is required to contribute to the Fund on a monthly basis their contribution and that of their employees.

It is this sum of money that constitutes the Fund. These monies may, in the wisdom of the Board, be invested prudently. It is the conduct of one such investment that has invoked this investigation.

It is worth noting that at the material time relevant to these investigations, the law applicable to the NSSF was the National Social Security Fund Act Chapter 258 which has since been repealed and the operational law is now the NSSF Act No.45 of 2013. References in this report however, will be to the repealed Act which was the law in force at the time the relevant facts occurred.

Issues under investigation

The Commission undertook to investigate the following issues:

- Allegation of irregular approval of the Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) Tassia II Infrastructure Development Project by the NSSF Board Chairman and Ag. Managing Trustee/Chief Executive
- Allegation of improper and unprocedural awarding of the tender for the Tassia II Infrastructure Development Project.

Investigative Strategy

The Commission wrote to the Ag. Managing Trustee/ Chief Executive, NSSF Mr. Richard K. Langat informing him of the complaints lodged with the Commission vide letter, dated 19th January 2014. In the letter, Mr. Langat was requested to respond to the allegations.

Offices Visited

The Research and Investigation team visited the following offices:

1. NSSF Ag. Managing Trustee/ CEO's Office
2. Nairobi County Government/ City Council

Interviews held and statements recorded

The CAJ Investigations team held interviews with the following officers:

- i. Mr. Austin Ouko, Legal Officer NSSF
- ii. Ms. Jacqueline Mugo, CEO FKE and employers' representative on the NSSF Board
- iii. Eng. S. K. Mburu, Chief City Engineer, Nairobi City County
- iv. Eng. Sammy Muthama, Nairobi City County
- v. Mr. Nixon Otieno, Chief Revenue Officer, Nairobi City County
- vi. Mr. Bidan Ndegwa, In-Charge Bank Reconciliation, Nairobi City County

Documents Recovered

The Investigations team managed to recover the following documents relevant to the matter:

1. Complaint letter from Mr Francis Atwoli to CAJ **[Marked Exhibit A1]**
2. Letter from CAJ to CEO, NSSF, Ref: CAJ/M.LAB/017/449/2014-VC dated 17th January 2014 **[Marked Exhibit A2]**
3. Response letter from NSSF to CAJ [Marked Exhibit A3]
4. Status of Tassia II Scheme Infrastructure Development Report by the Ag. CEO, NSSF **[Marked Exhibit A4]**
5. High Court Eviction Order **[Marked Exhibit A5]**
6. Letter from CAJ to Mr. Langat dated 27th January 2014 **[Marked Exhibit A6]**
7. Letter from CAJ to CEO NSSF dated 29th January, 2014 **[Marked Exhibit A7]**
8. Letter from CEO NSSF to CAJ Ref: SF/A/10/185 VOL.XI dated 3rd February 2014 **[Marked Exhibit A8]**
9. Letter from CEO NSSF to CAJ Ref: SF/A/10/185 VOL.XI dated 17th February 2014 **[Marked Exhibit A9]**
10. Letter Ref: EACC/6/17/1(77) to CAJ dated 21st February 2014 **[Marked Exhibit A10]**
11. Letter Ref: EACC/6/17/1(76) to CAJ dated 21st February 2014 **[Marked Exhibit A11]**
12. Letter Ref: CAJ/M.LAB/017/449/2014 dated 6th February 2014 **[Marked Exhibit A12]**
13. Letter Ref: CAJ/M.LAB/017/449/14(33) dated 6th March 2014 **[Marked Exhibit A13]**
14. An email dated 1st January 2014 from Ms. Jacqueline Mugo to Mr. Langat, the Managing Trustee expressing reservations regarding the request via email for

- the approval for the Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000). **[Marked Exhibit B1]**
15. A follow up letter dated 6th January 2014 from Ms. Jacqueline Mugo to Mr. Langat on the email dated 1st January, 2014 **[Marked Exhibit B2]**
 16. Press statement by Jacqueline Mugo on her position about the approval of the Tassia II Infrastructure Development Project **[Marked Exhibit B3]**
 17. Notification of approval of development permission for sub-division of Tassia (Form P.P.A 2) **[Marked Exhibit C1]**
 18. Regularization to a sub-division of Block No. 97/21 189 and 21 190 Tassia II and III Embakasi **[Marked Exhibit C2]**
 19. Tender advert No. 07/2013-2014 (Standard Newspaper) for proposed civil Engineering construction works at Tassia plots, Nairobi **[Marked Exhibit C3]**
 20. Tender advert No. 07/2013-2014 (Daily Nation Newspaper) for proposed civil Engineering construction works at Tassia plots, Nairobi **[Marked Exhibit C3a]**
 21. Letter Ref. CE/3916/SMM/rmm/L.R 21 190 from the City Engineer to MultiScope Consulting Engineers Limited **[Marked Exhibit C4]**
 22. Demand Letter by MultiScope Consulting Engineers Limited for Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) being approval fee for Civil Engineering Drawings **[Marked Exhibit C5]**
 23. Bill of Quantities summary by MultiScope Consulting Engineers Limited **[Marked Exhibit C6]**
 24. A copy of City Council of Nairobi "receipt" for Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) **[Marked Exhibit C7]**
 25. Letter Ref. CBD/ADMIN/00530/BNG/mk from Director City Planning **[Marked Exhibit C8]**
 26. Letter Ref. CECM/LHUP/PTO/00139/2014 from Governor Dr. Evans Kidero to Cabinet Secretary, Labour Social Security and Services **[Marked Exhibit C9]**
 27. Revised Evaluation Report for tender No. 07/2013-2014: Proposed Civil Engineering Construction Works at NSSF Tassia Plots **[Marked Exhibit C10]**
 28. Agreement between NSSF Board of Trustees and MultiScope Consulting Engineers **[Marked Exhibit C11]**
 29. Form of Agreement between NSSF Board of Trustees and Surv Plans Limited **[Marked Exhibit C12]**
 30. Contract between NSSF Board of Trustees and S. Njuguna and Associates **[Marked Exhibit C13]**
 31. A letter Ref. SF/ADM/1/19 VOL. II stating purchase price per plot **[Marked Exhibit C14]**

32. A letter Ref. SF/ADM19 VOL. III Committee approval of sale for Tassia II and III plots through tenants purchase scheme **[Marked Exhibit C15]**
33. Copies of email approvals by NSSF Board members **[Marked Exhibit C16]**
34. Letter Ref. No. NCC/REV/CO/NO/52/14 from Chief Revenue Officer, Nairobi City County **[Marked Exhibit C17]**
35. Minutes of the Tender Committee Meeting held on the 19th December, 2013 **[Marked Exhibit C18]**
36. Board Paper No. BSISC/160/2011: Regularization of Tassia II Scheme **[Marked Exhibit C19]**
37. Letter Ref: SF/ADM/4/9 VOL: Action On Board Decision **[Marked Exhibit C20]**
38. NSSF Letter Ref: SF/A/10/16/VOL.XXVI to China Jiangxi International (K) Ltd **[Marked Exhibit C21]**

Normative Framework

Following are excerpts of some of the relevant provisions:

The following are some of the relevant provisions of law considered:

Commission on Administrative Justice Act, 2011

Sections 8(d) states:

"..the commission shall inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service.."

Section 52, states:

A person who-

- (a) Obstructs, hinders or threatens the Commission acting under the CAJ Act
- (b) Submits false or misleading information;
- (c) Fails to honour summons; or
- (d) Misrepresents to or knowingly misleads Commission or a member of Staff of the Commission acting under this Act, Commits an offence and liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Public Officers Ethics Act, 2003 (Revised 2009)

Section 9 of Public Officer's Ethics Act, 2003 states:

"...A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly..."

Section 19 of Public Officer's Ethics Act, 2003 states

"...A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer...."

State Corporations Act Chapter 446

Section 15 of the State Corporations Act states:

- (1) A Board shall be responsible for the proper management of the affairs of a state corporation and shall be accountable for the moneys, the financial business and the management of a state corporation.
- (2) The chief executive of a state corporation may be summoned by the Public Investments Committee to answer on behalf of the Board any question arising from a report, including a special report, of the Controller and Auditor-General concerning the state corporation.

National Social Security Fund Act Cap 258

Sections 5 & 6 provides as follows:

Sec. 5 - The quorum for any meeting of the board of trustees shall be six of whom at least one shall be a representative of employees and one a representative of employers

Sec. 6 - All questions proposed at a meeting of the Board of Trustees shall be decided by a majority of votes of the Trustees present and voting, and in the event of an equality of votes, the chairman or the person presiding shall have a casting vote in addition to his deliberate vote”

Public procurement and Disposal Act, 2005

Section 63 (1) & (2) states:

- (1) The procuring entity may correct an arithmetic error in a tender.
- (2) The procuring entity shall give prompt notice of the correction of an error to the person who submitted the tender.

The National Social Security Fund Act- Subsidiary Regulations.

Public Procurement and Disposal Act, 2005- Subsidiary Regulations.

The Constitution of Kenya.

Analysis and findings

Design Drawings Approval by the City Council of Nairobi

The CAJ undertook investigations to find out whether the NSSF Board gave approval to the management to spend Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) on the **Tassia II Scheme Infrastructure Development Project** and whether there was maladministration in the tendering process and the award of the contract to China Jiangxi International (K) Limited. Investigations sought to unearth any impropriety, conflict of interest, abuse of power or any other commission or omission that would constitute malfeasance in the project.

The investigations established that NSSF purchased all that parcel of land known as Block 97, Block 21190 and Block 21189 in the expansive Tassia Estate Embakasi region along Outer Ring Road in Nairobi between 1992 and 1995. The property measured 350 acres and was purchased at a total cost of Kenya shillings Two billion three hundred and thirty seven million (Kes. 2,337, 000, 000). **(See Exhibit Marked A4)**

That in September 2001, illegal squatters and land grabbers invaded the land and sub-divided Blocks 97-Tassia II 21189 and 21190 Tassia II into 5,500 plots and claimed to have bought the same from various land buying companies. The matter became a subject of litigation namely **High Court Civil Suit No. 529 of 2002 Rachel Njoki Wainanina vs. National Social Security Fund Board of Trustees**. Judgment was delivered in 2004 in favour of the NSSF and an eviction order granted. Thereafter talks with the relevant stakeholders, including the Government ensued and it was decided that an eviction of such a magnitude would pose a great logistical and security challenge and as a result agreed that the plots of land be sold to the squatters. **(See Exhibit Marked A5)**

The City Council of Nairobi (CCN) as it was then, granted **conditional approval** and required NSSF as the registered owner to *inter- alia*:

- 1) Link the settlement to existing neighbourhoods.
- 2) Provide a major through transport corridor (bus route) to serve the scheme.
- 3) Organize and mobilize funds needed for the provision of adopted and reticulated infrastructure services.
- 4) Designate access roads storm under drains and natural drains.
- 5) Incorporate functional type developments likely to observe the residential amenity aesthetics and sustainable development character. **(See Exhibit Marked C1)**

Contravention of Conditional Approval for the Design Drawings

NSSF went ahead and advertised for the sale of the Tassia plots and sold 792 plots out of the 5,500 through the NSSF Tenant Purchase Scheme and 4,708 on cash terms.

All the plots were however unserviced subject to the approval of the Physical Planning Developments plan. The advertisement and sale of these plots was in contravention of the requirements of the Nairobi City Council Infrastructure Development. **(See Exhibit Marked C1 and C2)**

Contravention of Public Procurement Regulations

NSSF further procured the services of M/S MultiScope Consultancy Engineering limited to carry out comprehensive design works, prepare cost estimates and obtain necessary regulatory approval of the design from the CCN and oversee the project implementation. **(See Exhibit Marked C11)**. The Fund management planned to recover money spent on the project from individual plot owners' payments **(See Exhibit Marked C19 and C20)**. By engaging the services of the Consultant without a budgetary provision for the consultancy fee, NSSF contravened Public Procurement regulations and procedures.

In addition, NSSF advertised in the Standard Newspaper of 16th October, 2013 and the Daily Nation of 23rd October 2013, inviting interested contractors to submit bids for the Tassia II Infrastructure Development project. **(See Exhibits Marked C3 and C3a)** NSSF expected to realise the contract sum from payments by the plot owners. The Fund contravened procurement regulations where the procuring entity is required to ensure availability of funds before initiating any procurement process. **(See Exhibits Marked C14 and C15)**

It was noted that the consultant also advised NSSF that the CCN would not approve the preliminary designs without NSSF meeting the preconditions by CCN which included provision of access roads to individual plots. MultiScope Consulting Engineers Limited further submitted a demand letter to NSSF Board requesting for a total sum of Kes.11, 244, 000 to be paid to CCN being submission, inspection and approval fee for the plans. **(See Exhibit Marked C5)**

Investigations also established that the tender for the NSSF Tassia II Infrastructure Development Project was advertised in the local dailies between 16th and 23rd October 2013 and opened on 19th November 2013 in the presence of the bidders. Three bidders met the technical and financial requirements. They were:

- 1) China Jiangxi International (K), Ltd
- 2) China Railway No. 5 Eng. Group
- 3) China Wu Yi Company limited

The contract was awarded to the lowest bidder, China Jiangxi International (K) Ltd at a cost of Kenya shillings Four billion six hundred and twenty nine million one hundred and eight thousand two hundred and seventy five and seventy cents (Kes.

4,629,108,275.70. The contract was for a period of 2 years, yet NSSF had not secured funds for the project. **(See Exhibit marked C4)**

Investigations further revealed that the approval by the NSSF Board of the revised total cost of Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000), for the Infrastructure Development Project was sought by the Ag. CEO/Managing Trustee via an email purportedly circulated to the entire NSSF Board. According to Mr. Francis Atwoli, the email seeking approval was not circulated to him as the Chairman, Finance, Social Security and Investment Committee.

Apparently the email may have been circulated to five (5) out of 6 of the current Board members who approved the revised cost estimate of Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) via email as indicated by emails obtained by CAJ **(See Exhibit marked C16)** .

The Ag. CEO/Managing Trustee did not provide CAJ with a policy on the use of email for official transactions, especially one used in seeking and granting the approval by the NSSF Board members for the expenditure of the Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000). CAJ confirmed that NSSF does not have a policy on the use of email for transacting official business. The approval of the project at the revised cost of Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) via email is therefore, irregular and unprocedural.

It should be noted that the NSSF submitted that the Board had earlier approved the management's recommendation at a project cost of 3.3 billion at its 154th meeting held on the 5th of August 2011. Thereafter M/S MultiScope Consulting Engineers Limited submitted to the Fund a revised cost estimate of Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) meant to include the cost of civil works for individual plots.

According to the Fund Management, the revised figure was as follows:

Construction Cost per award	Kes. 4.629 Billion
Other related costs	Kes. 424 Million
TOTAL	Kes 5.053 Billion

(See Exhibit Marked C4)

The request for approval by the Board circulated through email by the Ag Managing Trustee Mr. Langat to Board members on the 18th December 2013 and the email responses from the five NSSF Board members were submitted to the Commission. It was on the basis of these emails that the Ag. CEO/ Managing Trustee submitted that 5 out of the 6 current Board members gave their approvals for the expenditure. However, from the documents submitted to the Commission there was no proof to

indicate that Mr. Francis Atwoli had been sent the email. Nevertheless, even if he had been sent the same the question is whether NSSF Board approvals can be granted without a formal Board meeting.

A reading of the first schedule to the National Social Security Fund Act Cap 258, sections 5 & 6 provides as follows:

5 The quorum for any meeting of the board of trustees shall be six of whom at least one shall be a representative of employees and one a representative of employers

6 All questions proposed at a meeting of the Board of Trustees shall be decided by a majority of votes of the Trustees present and voting, and in the event of an equality of votes, the chairman or the person presiding shall have a casting vote in addition to his deliberate vote" (emphasis supplied).

From the above it is clear that in order for matters proposed to the Board to be deliberated on, **there must be a Board meeting where members are present and to vote**. Secondly, for there to be a quorum of a Board of Trustees meeting there must be the representatives of both the employees and employers.

It is therefore, in our respectful view, improper to state that a circulation of emails for making key decisions can replace a formal board meeting. In any event, and even if the same was allowed by law, the presence of the representatives of the employees (Mr. Francis Atwoli) and employers (Ms. Jacqueline Mugo) in the board meetings is mandatory.

CAJ found it highly irregular for the NSSF management to have sought such a key approval involving a colossal amount of money and for the board to have granted the approval through email. The NSSF management proceeded to act as though a Board approval recognised in law had been granted.

The fact that there was no proof availed to the Commission to demonstrate that the said email correspondence seeking approval was also sent to Mr. Atwoli and coupled with the fact that the said approval was not presented through a substantive Board meeting, indicates impropriety and abuse of power and process on the conduct of the NSSF management and in particular Mr. Richard Langat.

Similarly, the Commission finds the NSSF Board Chairperson was culpably negligent in the performance of his supervisory role. He was negligent because he did not question the mode of approval of the project which the management had adopted, instead he went ahead and participated in the irregular process. Secondly, as the Chair of the board, he had a fiduciary responsibility to protect the interest of the Fund so as to avoid a situation that may lead to loss of funds. It is such kind of conduct and or omission in state affairs that results in impropriety that occasions loss or wastage of public resources which is prejudicial to public interest.

(See Exhibit Marked C16). Ultimately Mr. Adan Mohamed must take administrative responsibility for the omissions of the Board.

Equally CAJ found the Board members who were involved in the approval via email of the Kenya Shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) culpably negligent on the fiduciary responsibility. It is however, worth noting that one Board Member, Ms. Jacqueline Mugo, the employers' representative is on record as having stated that there was no full disclosure by the Managing Trustee in so far as the actual approval that he sought via email. Ms. Mugo avers that the circulated email had no supporting papers and that the Board did not sit and vote as required by law. CAJ notes that there was, therefore, no unequivocal approval on her part. **(See Exhibits Marked B1, B2 and B3)**

Administrative Management of the Tender Process

Investigations revealed that the management of the tender process was laden with impropriety and irregularities from the onset.

- First, the tender was advertised in the print media on the 16th and 21st October 2013, long before the 'approval' by the Board was even sought. The Managing Trustee later sought the Board's approval via email on 18th December 2013.
- Second, and in any event, according to the revised evaluation report **(marked Exhibit C10)**; the evaluation committee sat and recommended the award of the tender on the 17th December 2013, again before the Board's approval. This was a fundamental flaw in the procurement process where the NSSF Management proceeded with advertising and Evaluation of the tender even **before** the Board of Trustees had been requested to approve the revised project cost of Kes 5.053 Billion.
- It is important to note that the tender was awarded without considering the availability of funds to service the project. NSSF Management expected to realise funds from individual plot owners who had not been officially informed of the increased costs.
- Third, the Evaluation Committee during its deliberations that resulted in the recommendation of the award of the tender to China Jiangxi International (K) LTD was fundamentally flawed since the Committee amended the amount submitted by the bidder from Kenya shillings Four billion six hundred and forty four million eight hundred and ninety seven thousand three hundred and seven and seventy seven cents (Kes. 4,644,897,307.77) to Kenya shillings Four billion six hundred and twenty nine million, one hundred and sixty eight thousand two hundred and seventy five and seventy cents (Kes.4,629,168,275.70), a difference of Kenya shillings Fifteen million seven hundred and twenty nine thousand and thirty two and seven cents (Kes. 15, 729,032.07). NSSF has not

demonstrated that this was an arithmetic error warranting adjustment nor have they shown proof of having notified the bidder of the correction and received concurrence before awarding the tender as per Section 63(2) of the Public Procurement and Disposal Act 2005.

Copies of the minutes of the meeting of the tender Committee held on the 19th December 2013 supplied to the Commission were not signed by the various members. The minutes referred to and confirmed minutes of a previous meeting allegedly held on 17th December 2013. Copies of this previous meeting were not supplied. **(See Exhibit marked C18)**

The Commission noted that the 17th December 2013 is the date of the recommendation of the tender award by the evaluation committee which is the same day the tender committee purports to have held a meeting. In the minutes of the tender committee meeting of the 19th December 2013 it is stated at page 2;

“it was noted that the evaluation report for this tender was discussed extensively in the previous meeting” The meeting being referred to is the alleged tender meeting of the 17th of December 2013 to which no minutes seem to be in existence.

What is suspect though is that the Evaluation Committee sat on the 17th December 2013, did the rigorous Technical and Financial evaluation of the tender, made recommendations, drafted a report and submitted to the tender committee who sat and discussed it ‘extensively’ all in the same day – 17th December 2013. Considering the bulk of the documents that would in ordinary circumstances be involved in bids of such a magnitude all the above cannot be done within the same day in an objective process that is free of any impropriety. Of further interest, the minutes of the above tender meeting constituted only 2 unsigned pages. **(See Exhibit marked C18)**

Drawing from the above, the conclusion is that the management of the tender process was flawed, irregular and likely to result, as it later turned out, to impropriety and prejudice.

Payment to Nairobi City Council for Inspection approval of plans

In the status report by the Ag. CEO/Managing Trustee dated 22nd January 2014 **(Marked Exhibit A4)**, NSSF seemed to suggest that the approval and conditions required by the City Council of Nairobi had been met and payment of the requisite fee of Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) actually effected.

NSSF provided CAJ with a copy of a “receipt” from the Nairobi City Council (as it then was) addressed to the project Consultants, M/S MultiScope Consulting Engineers, which gave the impression that, the said Kenya shillings Eleven million two

hundred and forty four thousand (Kes. 11,244,000) had been paid to the City Council of Nairobi. **(See Exhibit marked C7)**

Upon investigations, it was confirmed that the City Council of Nairobi did not receive the Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) Kes.11, 244,000 and that the said "receipt" **(Exhibit marked C7)** was but an invoice according to the letter from the Chief Revenue Officer, Nairobi City County **Marked Exhibit C17**. This contradicts the Ag. CEO/Managing Trustee's assertion that NSSF had paid the Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) to CCN as indicated on page 4 of the status report **marked Exhibit A4**.

It was further established that the transactions went ahead albeit the project drawing plans not having been approved by the Nairobi City County as indicated in a letter dated 5th February 2014 by the Governor of Nairobi Dr. Evans Kidero to the Cabinet Secretary Ministry of Labour, Social Security and Services Mr Kazungu Kambi stating that the county government had not granted their final approval of the project as yet. In the same letter **marked Exhibit C9**, the Governor observes *inter-alia*:-

"Presently, the NSSF hold the obligation to pay rates and ground rent on the entire parcel of land-204 hectares and only until conditions of the regularization plan are met and the final approval of the scheme is granted by the County Government..."

(Emphasis supplied).

The County Government had only granted conditional approval as contained in a letter Ref. No. CE/3916/SMM/rmm/L.R 21190 dated 18th July 2013 **(marked Exhibit C4)** addressed to MultiScope Consulting Engineers and copied to NSSF Managing Trustee. Ironically one of the conditions in the letter is:

"(k) proof of payment of Kes. 11 million being submission fees, inspection fees for the above works".

The NSSF had not, as at 5th February 2014 complied with the conditions granted by the County government and, therefore, as a result had not been granted approval by the county government. But more critically, is who was paid the ksh11.244 million. The NSSF was not clear whether the said sum was forwarded to the consultants for onward transmission to the county government or whether it had purported to have paid directly. Nonetheless the truth of the matter is, the said sum money was not paid to the county government.

Despite this, the NSSF went ahead with the advertisement and award of the contract as though they had been granted the approval by the County Government. This was highly improper and the Commission had been deceived by the Management of NSSF that it had the requisite approval.

The upshot is that the County Government gave conditional approval of the project but NSSF went ahead without such approval and no payment of Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11,244,000) required by the County Government were made to it.

Project Cost: Value for Money

The project cost rose from the figure of Kenya shillings Three billion three hundred million (Kes. 3, 300, 000, 000) that had been approved by the Board of Trustees during their 154th meeting of 5th August, 2011 to Kenya shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) which sum was not approved by the Board.

The Management alleged that the difference between the tender awarded sum of Kenya shillings Four billion six hundred and twenty nine million (Kes. 4, 629, 000, 000) and Kenya shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) would cater for consultant fees as per contract statutory payments for approval by Nairobi City County, Director of Survey, National Land Commission and National Environmental Management Authority. The required fees were not quantified but a global sum of Kenya shillings Four hundred and twenty four million (Kes. 424, 000, 000) being the difference between Kenya shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) and Kenya shillings Four billion six hundred and twenty nine million (Kes. 4, 629, 000, 000) had been set aside for the same. This is irregular and it poses risk for loss of employees and employers contributions. **(See Exhibit Marked C10)**

The NSSF management suggested that the difference between the contract sum, Kenya shillings Four billion six hundred and twenty nine million (Kes. 4, 629, 000, 000) and the requested amount of Kenya shillings Five billion and fifty three million (Kes. 5, 053, 000, 000) being Kenya shillings Four hundred and twenty four million (Kes. 424, 000, 000) would be used to meet the cost of consultant fees of Kenya shillings Seventy million two hundred and twenty two thousand, six hundred and forty two (Kes. 70,222,642), plan approvals by NCC of Kenya shillings Eleven million two hundred and forty four thousand (Kes.11,244,000), National Land Commission and National Environmental Management Authority statutory payments, but NSSF did not specify the amounts payable to these two institutions.

CAJ notes with great concern that only a total of Kenya shillings Eighty one million four hundred and sixty six thousand, six hundred and forty two (Kes. 81, 466, 642) has been clearly quantified as the upper limit of payment for identified consultancy costs. For all the contracts of service quantified, the amount of Kenya shillings Eighty one million is the total upper limit, and it is arguable that the actual amount payable will be less. Furthermore the occasion to pay had not arisen at the time the approval had been made. None of the consultants had undertaken the full services as to be entitled to payment. For that reason the approval, to the extent to which it included Kenya shillings Four hundred and twenty four million (Kes. 424, 000, 000) for

consultants, was illegitimate as it was done without any basis. Approval of payment for services in such instances should be done on a case by case basis, and not until services have been rendered and an invoice has been submitted.

There is a lacuna as to how the remaining Kenya shillings Three hundred and thirty two million, five hundred and thirty three thousand, three hundred and fifty eight (Kes. 332, 533, 358) would have been utilised in that NSSF management had not indicated the activities the money (Kes. 332, 533, 358) would be spent on. This scenario suggests imprudence and non-compliance with public financial regulations and procedures likely to result in loss of funds.

Consequential Observations

Mr. Richard K. Langat: Ag. CEO/Managing Trustee NSSF

Mr. Richard Langat declined to honour invitation for an interview by CAJ (**See Exhibit Marked A7**) citing Section 30(h) of the CAJ Act, 2011 (**See Exhibit marked A8**) thus contravening Section 27 of the CAJ Act 2011 punishable under Section 52 (c) of the same Act.

Mr. Richard Langat conducted himself in a manner indicative of a desire to evade the investigation by the CAJ by seeking refuge under Section 30 (h) of the CAJ Act and further by writing to the Ethics and Anti-Corruption Commission seeking advice on the way forward regarding the investigations undertaken by the two Commissions. (**See Exhibit marked A9**)

CAJ advised Mr. Richard Langat that it shall continue with investigations albeit his misguided citation of Section 30(h) of the CAJ Act, 2011, informing CAJ that EACC was investigating the matter and therefore CAJ should wait for the outcome and, forwarding to CAJ a copy of the letter he wrote to EACC seeking advice on the investigations conducted by both Commissions. (**See Exhibit Marked A9 and A12**).

Mr. Langat further ignored the second invitation for an interview with CAJ vide letter **Marked as Exhibit A12**.

On 6th March 2014, the Commission on Administrative Justice upon completion of its investigations forwarded preliminary findings to Mr. Richard Langat seeking his comments, response or presentations on the adverse findings in line with Section 36 (**See Exhibit Marked A13**). At the time of compiling the final report, i.e. the 2nd of April 2014, Mr. Langat had not responded. Mr. Richard Langat was therefore uncooperative and unresponsive during the course of investigations.

Mr. Adan Mohammed, NSSF Board Chairperson

The NSSF Board Chairperson, Mr. Adan Mohammed was culpably negligent in the performance of his supervisory role in that he did not question the mode of approval of the project, and oversaw the irregular process of approving the contract via email. Ultimately and in accordance with section 15 of the State Corporations Act and section 9 of the Public Officers Ethics Act he takes overall administrative responsibility for the improprieties.

The NSSF Board Members

The NSSF Board members who gave approval for the contract via email are culpably negligent in their capacity as the trustees of the Fund, and in breach of their fiduciary responsibility.

It is however, worth noting that one Board Member, Ms. Jacqueline Mugo, the employers' representative is on record as having stated that there was no full disclosure by the Managing Trustee in so far as the actual approval that he sought via email. Ms. Mugo avers that the circulated email had no supporting papers and that the Board did not sit and vote as required by law. CAJ notes that there was, therefore, no unequivocal approval on her part.

EACC's Support

CAJ received a copy of a letter to Mr. Richard Langat from EACC, advising him to cooperate with CAJ or any other Agency investigating the matter. This letter was written on the same date as another letter written by Mr. Michael Mubea, Senior Deputy Commission Secretary/ CEO-Operations of the EACC, seeking to know the areas CAJ was investigating.

Conclusions

The allegations of irregular approval of the Kenya Shillings 5.053 Billion Tassia II Infrastructure Development Project and, improper and unprocedural award of the tender for the Tassia II Infrastructure Development Project were founded on the following:

- i. The NSSF procured the services of MultiScope Consulting Engineers Limited to design work and cost the estimates for the Tassia II Infrastructure Development Project without a budget.
- ii. Advertisement for the Tassia II Infrastructure Development Project was done without a budget.
- iii. The NSSF Tassia II Infrastructure Development Project revised cost estimate of Kes. 5.053 Billion was not approved by the Board of Trustees as required by law. The alleged approval by way of email circulation was improper and irregular.
- iv. There was no formal Board meeting where members present could vote and/or make decisions regarding the approval of the contract as required by law.
- v. The quorum for the NSSF Board to be able to transact requires the presence of the representatives of the employers and employees in any such meeting. The employees' representative was side-lined in the approval process.
- vi. The approval process side-lined the Finance, Social Security and Investment Committee which is required by law to approve and recommend all financial transactions for consideration by the NSSF Board.
- vii. The Ag. CEO/Managing Trustee did not provide a policy if any, guiding the use of email communication for seeking and granting approvals for financial transactions and/or making decisions thereof.
- viii. CAJ confirmed that NSSF does not have a policy on the use of email for transacting official business.
- ix. The administrative management of the tender process was fraught with irregularities and impropriety. The opening of the tender, the Evaluation Committee's recommendations and the Tender Committee meeting to award the tender apparently took place on the same day, the 17th December, 2013. While the approval of the project was sought and granted via email on the 18th December, 2013.

- x. The Minutes of the Tender Committee meeting of the 17th December, 2013 to award the tender were not provided to CAJ.
- xi. The tender processing was rushed and the tender awarded before approval.
- xii. The winner of the tender, M/S China Jiangxi International (K) Limited was notified of the award on 20th December, 2013 despite the fact that funds had not been realised from individual plot owners.
- xiii. The manner in which the Ag. CEO/Managing Trustee sought and obtained approval via email for the project without ensuring that NSSF had met the pre-approval conditions by the Nairobi City County and the availability of sufficient funds for the project is suspect and amounts to abuse of power.
- xiv. The NSSF Ag. CEO/Managing Trustee mislead CAJ by submitting a copy of a "receipt" for the Kes, 11,244,000 to CAJ and pointing out in his response letter that the money had been paid to the City County of Nairobi for the fee required by the City County Government for inspection and submission of the project plan.
- xv. CAJ confirmed that County Government of Nairobi **did not receive the payment of Kenya shillings Eleven million two hundred and forty four thousand (Kes, 11,244,000)** and that the "receipt" submitted to CAJ by NSSF is but an invoice.
- xvi. The CEO/Managing Trustee NSSF deliberately misrepresented facts to the Commission on Administrative Justice and acted with deception and impropriety. He also abused power in regard to the Tassia II Infrastructural Development Project approval. By so doing, he abused the trust vested in him as a public officer and is therefore culpable of contravention of Article 10 and Chapter Six of the Constitution.

Recommendations

- a) The EACC should swiftly and speedily conduct investigations to determine whether the irregularities in the approval and tendering process for the Tassia II Infrastructure Development were occasioned by corrupt intent on the part of the NSSF Board and management and if so, take appropriate action.
- b) The EACC should examine its internal processes to avoid the possibility of issuing concurrent but inconsistent correspondence by different officers on the same subject matter.
- c) Mr. Richard Langat the Ag. Managing Trustee/ CEO of the NSSF should be held responsible for the flawed tendering process and prosecuted for abuse of power.
- d) EACC and DPP should determine whether the abuse of power by Mr. Richard Langat constitutes abuse of office and institute prosecution as appropriate.
- e) The award of the tender to China Jiangxi International (K) Limited should be cancelled.
- f) That NSSF should develop and implement proper internal procedures for transacting official business including a policy on the use of email.
- g) The Board of Trustees who participated in the irregular approval of the project, should be jointly and severally held responsible for any losses the Fund may have incurred in the contract.
- h) The NSSF Board of Trustees should be cautioned to have greater scrutiny and care as they are entrusted with millions of Kenyans' hard earned contributions.
- i) A properly and legally constituted forum of the NSSF Board should look into the project to ascertain whether there is value for money in the entire project.
- j) Kenya National Audit Office should undertake audit of the Fund to ascertain the payment of Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11, 244, 000) purported to have been paid to the City County of Nairobi by NSSF and to establish if the money was ever paid out and to who.
- k) The NSSF management should recover the amount of Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11, 244,000) which it alleged to have paid to the City County of Nairobi. In the event the money was forwarded to its consultant M/S MultiScope Consulting Engineers Limited, its

directors should be ordered to refund the money with interest at market value and be blacklisted.

- l) Ultimately, the person who received the Kenya shillings Eleven million two hundred and forty four thousand (Kes. 11, 244, 000) should be prosecuted for obtaining money by false pretences.
- m) The entire scheme of the Procurement Laws, Rules and Regulations should be re-examined, restructured and rationalised so as to focus on;
 - i. Pricing: the current regime has ensured goods procured by Government costs between one and a half to thrice the market value of goods.
 - ii. Quality of goods: the undue focus on “lowest bidder” tends to camouflage and compromise quality of goods supplied.
 - iii. Independent assesment: for projects involving colossal sums of money, however procured, those involved in feasibility/assessment should be disqualified from bidding or selection.
 - iv. For professional services (legal, medical etc) competence and antecedent procurements should be prioritised beyond just the lowest evaluated bidder.
 - v. Generally, due regard should be had to receiving value for money, more than an artificial insistence on procedural competence.
 - vi. All procurement done for projects involving large amounts of money should be done on development plans based on MTF and should be aligned to the multi year approach.
- n) The entire approval should be looked at and revoked and withdrawn due to glaring irregularities.
- o) Considering the stake of the Kenyan public in the activities of the NSSF coupled with the fact that the fund is constituted by contributions of all employees and employers in Kenya, it is prudent to incorporate in the Board of Trustees of the NSSF representation of an oversight agency preferably a Constitutional Commission so as to safeguard the public interest.