

THE COMMISSION ON ADMINISTRATIVE JUSTICE  
"Office of the Ombudsman"



*Hata Mnyonge Ana Haki*

Press Statement for Immediate Release

**Ombudsman's Verdict: Tassia II tender process grossly flawed**

**17<sup>th</sup>April 2014**

The Commission on Administrative Justice (CAJ) wants the NSSF Board to cancel a tender awarded to China Jiangxi International (K) in the Sh5.053 billion Tassia II housing project, as the tendering process was marred with irregularities.

The Ombudsman also wants Mr Richard Lang'at, the Managing Trustee/CEO of the National Social Security Fund (NSSF), held responsible for the flawed management of the project including the tendering and approval processes. Further, the Commission wants the Board of Trustees that participated in the irregular approval of the project jointly and severally held responsible for any losses the Fund may have incurred in the contract. It is the Commission's strong view that the NSSF management be made to account for the money amounting to Sh11,244,000 purportedly paid to the county government.

Findings of an investigation by the Commission conducted between 15<sup>th</sup> January and 15<sup>th</sup> April 2014 revealed that the said parties abused power in regard to approval of the Tassia II Housing project thereby contravening Article 10 and Chapter Six of the Constitution. The investigation was prompted by a complaint filed with the Commission by Cotu Secretary General, Mr Francis Atwoli, who claimed irregular approval of the project and flawed procurement processes. The Commission had written to the Managing Trustee, Mr Richard K Lang'at, informing him of the complaints lodged with the Commission, and, although he duly responded, his reply to the Commission was found to be unsatisfactory.

Investigations revealed that NSSF did not meet the pre-approval conditions of Nairobi City County. The Managing Trustee misled the Commission by submitting a copy of a "receipt" for Sh11,244,000, and pointing out, in his response letter, that the money had been paid to the County as fee for inspection and submission of the project plan. The Ombudsman confirmed that the County Government of Nairobi did not receive the payment of the said monies, and that the "receipt" submitted was in fact an invoice.

It was also established the NSSF management sidelined the employees' representative and the Finance, Social Security and Investment Committee in the approval process.

The Commission noted that the procurement process was mismanaged. The alleged approval was done electronically by four out of six board members, contrary to the requirements of the law. The opening, evaluation and award of the tender was rushed – the three processes took place on 17<sup>th</sup> December 2013, while approval of the project was sought on e-mail a day after the award. This is despite the fact that no funds had been earmarked for the project.

Additionally, approval for consultancy fees amounting to Sh424 million was made despite the fact that no actual consultancy had been concluded. The budget captured the upper limit payable for consultancy costs as Sh81,466,642 even as it could be argued that the actual amount payable would be less. For that reason, the approval of Sh424 million was illegitimate as it was done without any basis.

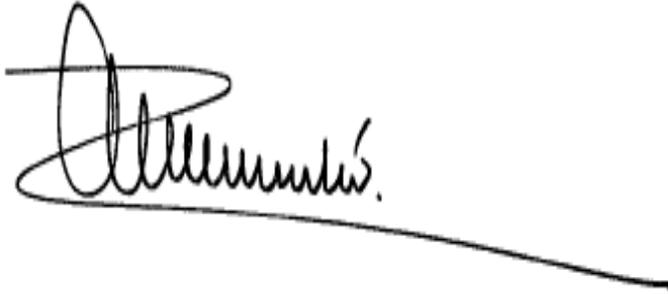
Moreover, the Evaluation Committee, during its deliberations that resulted in the award of the tender to China Jiangxi, altered the amount submitted by the bidder from Sh4,644,897,307.77 to Sh4,629,168,275.70, in what is a clear case of tampering, contrary to procurement rules and regulations.

All these issues raise the question whether contributors to the NSSF fund – both employees and employers – would have got value for their hard-earned money.

The Ombudsman has recommended that EACC swiftly and speedily conducts investigations to determine whether the irregularities in the approval and tendering process for the project were occasioned by corrupt intent on the part of the NSSF Board and management and if so, take appropriate action.

The findings are based on 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, City Engineer, Nairobi County, and Mr Bedan Ndegwa, In-Charge, Bank Reconciliation, Nairobi City County.

A handwritten signature in black ink, appearing to read 'Otiende Amollo', with a long horizontal flourish extending to the right.

**Cmmr Otiende Amollo, EBS**  
**Chairperson/Ombudsman**  
**Commission on Administrative Justice**