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REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION, 2010

**REPORT OF
THE DEPARTMENTAL COMMITTEE
ON
AGRICULTURE, LIVESTOCK AND COOPERATIVES**

**ON
THE NON-RENEWAL OF THE EMPLOYMENT CONTRACT OF THE
NEW KENYA COOPERATIVE CREAMERIES (NEW KCC) MANAGING
DIRECTOR, MR. FRANCIS MWANGI, THE MILK GLUT IN 2010 AND
NON-PAYMENT OF FORMER KCC EMPLOYEES**

**PARLIAMENT BUILDINGS
NAIROBI**

FEBRUARY 2011

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PREFACE

Mr. Speaker, Sir,

On Tuesday, 8th December, 2009, the Minister for Cooperative Development and Marketing gave a ministerial statement regarding to termination of contract for the former Managing Director of the New Kenya Cooperative Creameries (NKCC), Mr. Francis Mwangi. This was in response to a statement sought by the Members for Mathira, the Hon. Ephraim Maina.

The ministerial statement attracted great interest and the intense debate that ensued in the House made the Members to request that the matter be referred to the relevant Departmental Committee.

Subsequently, the Speaker was obliged to grant leave for the Departmental Committee of Agriculture, Livestock and Cooperatives to make a report on the subject matter of the ministerial statement, as follows-

'.....But given that all the necessary documents in this matter have been tabled and the Minister given his side of the story, the Committee which oversees this Ministry is at liberty to look at these documents and make a report to the house. I do not need to give a directive in these circumstances. I am afraid I will not, therefore, make that finding.'

The Departmental Committee, during its sitting on Tuesday 2nd February, 2010, deliberated on the matter and resolved to invite the NKCC Board of Directors, the former Managing Director himself, and the Minister for Cooperatives and Marketing to make further inquiries on the issues surrounding the non-renewal of the contract of the Managing Director.

This Report contains the findings of the Departmental Committee on Agriculture, Livestock and Cooperatives on the investigation based on the evidence presented before the Committee. The Committee also made reference to the contents of the Hansard for the debate on the ministerial statement.

The Committee is comprised of-

1. The Hon. John M. Mututho, MP (**Chairperson**)
2. The Hon. Lucas Chepkitony, MP (**Vice Chairperson**)
3. The Hon. Benson Mbai, MP
4. The Hon. (Dr.) Victor Munyaka, MP
5. The Hon. John D. Pesa, MP

'Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its Committees'.

In accordance with the Second Schedule of the Standing Order 198 (2), the Terms of Reference (TOR) for the Departmental Committee of Agriculture, Livestock and Cooperatives are as follows:-

- 1) Agriculture
- 2) Livestock
- 3) Fisheries Development
- 4) Cooperative development
- 5) Production and Marketing

The Committee exercise oversight role on the work and administration of the following six (6) Ministries-

- i. Ministry of Agriculture
- ii. Ministry of Co-operative Development and Marketing
- iii. Ministry of Regional Development
- iv. Ministry of State for Development of Northern Kenya and other Arid Lands;
- v. Ministry of livestock development
- vi. Ministry of Fisheries development

Mr. Speaker, Sir,

On Wednesday, 10th February, 2010, the Committee held its sitting to receive evidence from Mr. Francis Mwangi and the NKCC Board of Directors in the morning and afternoon, respectively. The Committee met with the Minister during its sitting on Thursday, 11th February, 2010. During the meetings the issues of milk glut in early 2010 was also discussed.

On Tuesday, 8th February, 2011, the Committee met with the Minister for Cooperative Development and Marketing to discuss issues relating to non-payment of retrenchees of the former KCC limited, a predecessor to the New KCC, after the matter was raised in the House on Tuesday, 30th November, 2011, by the Hon. Jeremiah Kioni, MP, Ndaragwa Constituency.

Thereafter, the Committee analyzed the evidence to arrive at conclusions of this report and whose details have been presented in section 5.0.

1.0 INTRODUCTION

01. The New Kenya Cooperative Creameries (NKCC) is the largest dairy processor in East Africa buying raw milk from farmers, processing it into various milk products, and marketing and selling and distribution of the products. The milk and milk products include KCC Fresh milk, Gold Crown, flavoured and unflavoured Mala, Yoghurt Delite, Long life Milk, Milk Shake, Shakalaka, Butter, Safariland (Powdered Milk), Ghee and Cheese. The KCC products are sold in the domestic and export markets.
02. The history of KCC dates back to 1925 when it started its operations. Its outfit, the New Kenya Co-operative Creameries Ltd (NKCC), was registered on 25th June, 2003, as a limited liability cooperative at the initiative of the Government. Earlier in 2001, KCC was converted into KCC 2000 by resolution of the farmers in which farmers bought shares under KCC Holdings.
03. Except for the NKCC factory at Miritini at the coastal region, the NKCC factories and coolers are located strategically in the medium and high potential parts of Kenya. Currently, NKCC processes a milk monthly capacity of approximately 16.7 million litres (see annex 1).
04. The liberalization of the dairy sector in the early 1990's led to emergence of private dairy processors whose operations worked to create stiff competitions for the then KCC. By late 1990's, the KCC had lost its market share and could not operate profitably. This led to delayed payments to farmers and suppliers, while it could not process milk and sell to consumers. KCC was also riddled with serious financial irregularities and procurement malpractices which resulted in its high operation costs and huge borrowing to settle outstanding debts.
05. Subsequently, in August 1999, KCC was placed under receivership by the Kenya Commercial Bank (KCB) as the debenture holder. Thereafter, in August 2000, the Company was transformed into a new outfit, KCC 2000, following bids by the receiver managers, Pricewaterhouse Coopers (PWC). This did not make the Company recover from losses, forcing the government to intervene in 2003 with the formation of New KCC when the NARC government assumed power.
06. Since 2003, NKCC has been recording upward trend in milk intake, as illustrated by the data presented at Table and graph at annex 1. This has also been reflected in corresponding sales figures and profits as presented at annex 2. Consequently, producer price per kilogram of milk has steadily increased from Kshs. 17.00 in 2003, to Kshs. 24.00 in 2009, as presented in the Table at annex 3.

deliberate on the issues raised in the ministerial statement and the debate which ensued. Among those invited include-

- i. The Minister for Cooperative Development and Marketing
- ii. The former Managing Director of NKCC Mr. Francis Mwangi
- iii. The Board of Directors and Management of NKCC

13. The Committee also deliberated on milk gut experienced in the country in early 2010 with the stakeholders. Its report is presented in **section 3.0** of this report.

2.0 CONSIDERATION OF NON-RENEWAL OF THE EMPLOYMENT CONTRACT OF FORMER MANAGING DIRECTOR OF THE NEW KCC, MR. FRANCIS MWANGI

14. In considering the matter of termination of the employment contract of Mr. Mwangi by the Minister for Cooperative Development and Marketing, the Committee received evidence, as follows-

2.1 THE BOARD OF THE NEW KCC

15. On 10th February, 2010, the New KCC Board of Directors informed the Committee that:-
 - i. The decision not to renew the contract of the former Managing Director was made by the Minister for Cooperative Development and Marketing based on a report by the Inspectorate of State Corporations of June 2009 which he explained contained a numbers of organizational weaknesses in the New KCC captured in detail in his ministerial statement in Parliament on 8th December, 2009.
 - ii. The audit report being referred to by the Minister had not been availed to the new KCC Board to guide them to make informed decisions relating to the issues raised.
 - iii. The Board of New KCC recommended the renewal of the contract of the former Managing Director, Mr. Francis Mwangi, for one year in a letter dated 4th November, 2009, to the Minister for Cooperative Development and Marketing for the necessary approval (copy attached at annex 6).
 - iv. The Board recommended a one year renewal of the contract to allow time for the company to develop a tool to evaluate the Managing Director's performance after it was observed that the performance contracting tool

- iv. On allegation of his poor relationship with members of the Board and other management staff, the former MD denied this was the case, and explained that the staff, Board and management had a good relationship with him and no one had ever raised any complaint through correspondence or in the Board meetings.
- v. Regarding the absence of an evaluation tool at the company, Mr. Mwangi explained that though the government contracting system was in place at New KCC, it could not be used to assess the MD on the grounds that it lacked the dimension of soft variants of leadership.
- vi. On the allegations of under capacity performance at NKCC at below 50%, the former MD explained the New KCC was working at full capacity at the time of his tenure. The former MD however pointed out that this has since changed due the increased milk supply occasioned by impact of ElNino rains and also from legal and illegal importation of milk.
- vii. Cases of under capacity performance at New KCC was due to failure in the operations of machines bought to cater for surges in milk, but which had not performed well due to poor maintenance work by the engineers at New KCC factories.
- viii. On the allegations of false mileage claims, the former MD responded that he only made one mileage claim when on leave which involved his travel from Muranga to Nairobi to meet the Director General of the Kenya Revenue Authority (KRA) relating to tax amounting to Kshs.300 million which the KRA was demanding from the New KCC. The former MD explained that he used his private car during the trip.
- ix. On the misuse of company vehicles and uncontrolled expenses, Mr. Mwangi explained that there was a committee at New KCC which regulated the use of vehicles and fuel expenses. The Committee was reported to be performing well in accordance with the laid down regulations and within strict budgets.
- x. On allegations of his failure to act on graft, the former MD explained he always took action on graft by referring the cases to the police. The former MD cited cases relating to thefts amounting to Kshs16 million and the Kshs. 10 million at the company.
- xi. The late tax payments leading to penalties from the Kenya Revenue Authority (KRA) were occasioned by late auditing by the Kenya National

- iii. The former MD delayed his application for his renewal of the contract even after he urged him to do so. Consequently, the Minister explained he took the action not to renew MD's contract because he concluded the former MD was no longer interested in the job.
- iv. The Minister stood by his earlier ministerial statement that the former MD had unworkable relationship with the Board members and the staff, and he had earlier tried to unite them in a team building retreat in Mombasa in vain.
- v. The evaluation tool to assess the former MD was not ready prior to the expiry of his contract and that the performance contract by the government was not sufficient to evaluate the soft leadership qualities of managers.
- vi. Only one mileage claim was confirmed to have been officially made by the former MD.
- vii. Poor tendering and contract awards characterized some works done and paid by the New KCC at Dandora and Miritini processing plants which were poorly done.
- viii. The former MD failed to sack some employees who had been implicated on the thefts amounting to Kshs 10 million and Kshs 16 million at the Company, but that the cases were instead only reported to the police. This was consistent with the explanations given by the former MD that he could not sack an employee without following the due process to allow proper investigations to be carried.

17. Other reasons given by the Minister which have been stated earlier included:-

- i. New KCC was operating at 50% capacity, which was explained by the former MD
- ii. Late payment of tax to KRA leading to penalty of Kshs 20 million, which was explained by the former MD as due to delay in preparation of financial statements by the KENAO
- iii. Uncontrolled large expenses, which related to:-
 - Expenses towards welcoming reception for Samuel Wanjiru (athlete) which rose from an approved amount of Kshs 535,000 to Kshs. 1,000,000 in 2009
 - Athletics Kenya Sponsorship advertisements amounting to Kshs 1,400,000 in July/August 2008

- ii. That, the major debenture holder in old KCC was the Kenya Commercial Bank (KCB) which put it under receivership by Price Water House Coopers (PWC) before the Government settled its debt of Kshs. 547 million in 2003.
- iii. That, all the other creditors including the retrenched employees and victims of accidents were not considered in the settlement of the Kshs. 547 million.
- iv. That, the indebtedness of New KCC stood at Kshs. 4.4 billion as at 2003 when the Government settled the amount owed to KCB. This was after the Ministry of Cooperative Development and Marketing requested the Government to help settle these debts to avoid collapse of the company.
- v. That, considering the fact that some accident victims had court orders to be compensated and existence of huge amounts of debt to either creditors or retrenchees, the Ministry was seeking legal advice on how to address the matter.
- vi. That, New KCC Limited was entirely a different legal entity and no claims could be made against it by former employees or creditors of its predecessor, KCC Limited, which was liquidated.
- vii. That, the settlement should have been done by the receiver managers (PWC) when it was under it before the government take-over in 2003.
- viii. That, plans were underway to privatize New KCC and that the farmers were to be given priority so that they owned it through Cooperatives.

At the conclusion of the deliberation on the matter, the Minister made an undertaking to immediately seek advice from the Attorney General's office on how the issue could be resolved and to make a report on the same to the Committee. However, the Minister's findings had not been made known to the Committee by the time of completion of this report.

5.0 COMMITTEE'S OBSERVATIONS AND CONCLUSIONS

22. Upon receiving evidence relating to the termination of the contract of the former New KCC's Managing Director, Mr. Francis Mwangi, the Committee analyzed makes the following observations and conclusions:-
 - i. The delay in the application of the renewal of contract by Mr. Mwangi was negligence on his part since he knew the rules governing his terms of

warranty of one year was reportedly not working. Other machines in Kitale and Eldoret had also broken down putting a lot of pressure on the available machines given the high production occasioned by the El Nino rains. The Committee noted that this was negligence on the part of the Board and the Company engineers.

- vii. Regarding failure to act on graft, the Committee observed the cases had been reported to the police as is usually the case for the due process of the law to take place.
 - viii. Regarding the stagnated profitability of the company The profitability of the company was found to have improved marginally contrarily to the minister's submissions on 8th December 2009 from shs.232million 2006/2007 to Kshs.465million in 2007/2008 and Kshs.500million in 2008/2009 financial years. This is a great achievement by the former MD given that there was low production by 30% in the last two years occasioned by the post election violence, drought and economic recession.
 - ix. The Committee did not find the former MD liable for false mileage claims since the evidence presented indicated that only one mileage claim was made by him when he used his personal car to report to work over a debt owed to the KRA by the New KCC which was due.
 - x. The Minister's explanations for his actions not to renew the contract of the former MD. Mr. Francis Mwangi was not informed by facts but by his own decision to remove the MD from office since the evidence presented did not sustain the Minister's claims.
23. Although the milk glut experienced in early 2010 was explained to have been caused by excess production as a result of rains received towards end of 2009, the Committee noted that lack of planning coupled with procurement of unworkable machines by the management of the New KCC were largely responsible for the problems of milk wastages.

The power surges could also explain for non-performance of the newly procured equipment but that the equipment could have been obsolete or could not easily be serviced by the KCC's engineers due their lack of technical capacity in the operations of the new machines.

The Committee therefore holds the view that New KCC management was responsible for the milk wastages due to their inactions, and recommends that

4. The milk glut experienced in 2010 was caused by poor planning and poor procurement of machines which failed to function in the processing of milk soon after they were delivered. While noting that a new Managing Director had been appointed, the Committee recommends that the procurement of the machines be criminally investigated to ascertain whether this was undertaken in conformity with the procurement procedures.
5. Regarding the former employees of the defunct KCC who had been awarded compensation by the court in 2000, the Committee recommends that they should be paid their dues as granted by the Court and that those found to be still qualified for employment be absorbed in the New KCC but without any compensation for the duration they were out in employment, but to be paid their dues accruing from the defunct KCC with interest at prevailing Central Bank of Kenya (CBK) rates.
6. The Committee therefore exonerates the former Managing Director, Mr. Francis Mwangi, from most of the allegations (in 21 of them) made by the Minister for Cooperative Development and Marketing, the Hon. Joseph Nyagah, EGH, MP, in the House on 8th December, 2009, and holds true on only one (1) that the former Managing Director showed laxity in his application for renewal of contract.

MINUTES

MINUTES OF THE THIRTY SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES HELD IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, ON WEDNESDAY, FEBRUARY 10, 2010 AT 9.30 AM

PRESENT

Hon. John Mututho, MP - Chairperson
Hon. Benson Mbai, MP
Hon. Erastus Mureithi, MBS, HSC, MP
Hon. Peris Chepchumba, MP
Hon. Kambi Kazungu, MP
Hon. Victor Kioko Munyaka, MP
Hon. Fredrick Outa, MP
Hon. Jeremiah Kioni, MP - friend of the Committee

APOLOGIES

Hon. Lucas Chepkitony, MP - Vice-Chairperson
Hon. John D. Pesa, MP,
Hon. Robert O. Monda, MP
Hon. Evans Akula, MP

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Paul K. Ngetich - Senior Research officer
Mr. Evans Oanda - Third Clerk Assistant

NEW KCC MANAGEMENT

Mr. Francis Mwangi -former Managing Director, New KCC Kenya LTD

MIN. 011/2010: PRELIMINARY

The meeting opened with a word of prayer at 9.30 am. The Chairman introduced the Members of the Committee and the secretariat. The Chairman informed the meeting that the hearing is open to members of the public. He therefore welcomed those present at the meeting and outline the rules governing the conduct of open hearings of the Committee.

iv) Undercapacity performance at NKCC (50%)

The Committee heard from the former MD that the NKCC was working at full capacity at the time of his tenure. However, the former MD was quick to point out that has since changed due the increased milk supply occasioned by impact of ElNino rains and also from legal and illegal importation of milk.

The Committee also heard that the machine bought from Sweden to cater for the surge in milk and installed in Nyahururu milk processing plant had not been working well due to poor maintenance work by the NKCC's engineers.

v) False mileage claims, misuse of company vehicles and uncontrolled expenses

The Committee heard that it was only one mileage claim that the MD made during his tenure and that the claim arose when the former MD was on leave in Muranga and had to travel to Nairobi to meet the Director General of the Kenya Revenue Authority (KRA) relating to tax amounting to Kshs.300million which the KRA was demanding from the NKCC. The former MD clarified that he did use the company car for the travel.

The Committee also heard that there was a committee at NKCC that regulate the fuel expenses and the use of vehicles which had been working well according to laid down regulations and within the budget.

vi) Failure to act on graft

The Committee heard that the former MD always took action on graft by referring the cases to the police. The former MD cited cases relating to kshs.16 million and the kshs.10 million at the company.

vii) Late tax payments leading to fines from the KRA

The former MD explained the delays were occasioned by late auditing by the National Audit Office since the law requires that that tax can only be paid based on audited financial statements.

viii) Poor tendering and payment of substandard work

The Committee was informed that this was the work of the NKCC's tendering committee which evaluates the tenders and recommends to the Board for approval and thereafter the Management awards tenders according to the laid down rules and regulations, as well as their payments.

The former MD clarified that the tendering committee is the one that gave the best bidder to fit the vehicle management system at the cost of Kshs.5 million.

The Committee agreed with the former MD that it was inconsistent with gender sensitivity to accuse him of having awarded the females the tenders while at NKCC.

MINUTES OF THE THIRTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES HELD IN MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON WEDNESDAY, FEBRUARY 10, 2010 AT 2.30 PM.

PRESENT

Hon. John Mututho, MP - **Chairperson**
Hon. Benson Mbai, MP
Hon. Erastus Mureithi, MBS, HSC, MP
Hon. Peris Chepchumba, MP
Hon. Fredrick Outa, MP.
Hon. Robert O. Monda, MP
Hon. Kambi Kazungu, MP
Hon. Victor Kioko Munyaka, MP
Hon. Jeremiah Kioni MP. - friend of the Committee

APOLOGIES

Hon. Lucas Chepkitony, MP - **Vice-Chairperson**
Hon. John D. Pesa, MP
Hon. Evans Akula, MP

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Paul K. Ngetich - Senior Research officer
Mr. Evans Oanda - Third Clerk Assistant

NEW KENYA COOPERATIVE CREAMERIES Co. LTD (NKCC)

Matu Wamae - Chairman, NKCC
Seno Nyakenyanya - Permanent Secretary, Ministry of Cooperative Development and Marketing
Milcah G. Mugo - Acting Managing Director
Bore Tek - Director
David M. Mogere - Director
Beatrice W Gathirwa - Alternative Director
Riziki Musa Spana - Director
Gabriel Chepkwony - Director
C. N Kamwithi - Director
Eng. Lawrence M. Awori - Director
Peter Kiboi - Head of Engineering
Olgha Adede - Head of Sales and Marketing, NKCC

existent at the company. It was explained that performance contracting tool from the government was thought to lack evaluation tools for soft variant leadership skills such as team building and people management.

The Committee was also informed that most decisions in the company were not unilaterally made by the Managing Director but were endorsed by the Board. The Board explained they were not consulted on the contents of the Minister's statement in Parliament on Tuesday, 8th December 2009 relating to the non-renewal of the contract of the former Managing Director.

The Committee was informed that indeed the former MD made only one mileage claim as explained earlier when the Committee met with the former MD.

The Committee was briefed of the good working relationship between the former MD and workers of the NKCC by the Board.

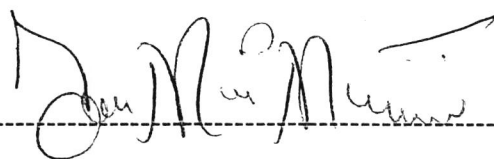
MIN 017/2010: ANY OTHER BUSINESS

1. The Committee urged the government to intervene and compensate the farmers for losses in milk deliveries to the NKCC's factories.
2. The Board requested the Committee to assist in pressurising the government to provide for a stimulus package of Kshs.1 billion to enable the company to run and manage its capacity and to meet farmers' obligations.

MIN.018/2010: ADJOURNMENT

There being no any other business, the meeting was adjourned to Thursday, February 11, 2010 at 10.00 am in main committee room, county hall, parliament buildings.

SIGNED



CHAIRPERSON

DATE

MINUTES OF THE ONE HUNDRED AND TWENTY FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES HELD IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 8TH, FEBRUARY 2011, AT 11:00 A.M.

PRESENT

Hon. John Mututho, MP	-	Chairperson
Hon. Lucas Chepkitony, MP	-	Vice Chairperson
Hon. Benson Mbai, MP		
Hon. Fredrick Outa, MP		
Hon. (Dr.) Robert O. Monda, MP		
Hon. John D. Pesa, MP.		
Hon. Evans Akula, MP		
Hon. Mohammed Sirat, MP		
Hon. (Dr.) Victor Kioko Munyaka, MP		
Hon. (Dr.) Erastus Mureithi, MBS, HSC, MP		
Hon. Charles Onyancha, MP	-	friend of the Committee

APOLOGIES

Hon. Benjamin washiali, MP

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

Mr. Paul Ngetich	-	Senior Research Officer
Mr. Evans Oanda	-	Third Clerk Assistant
Ms. Marale Sande	-	Research Officer

MINISTRY OF COOPERATIVE DEVELOPMENT AND MARKETING

Hon. Joseph Nyagah, EGH, MP	-	Minister
Tom Abuta	-	Senior State Counsel
Symon Mburia	-	Personal Assistant to Hon. Minister
Philip Gichuki	-	Deputy Commissioner of Cooperatives
Edward Iwuju	-	Senior Deputy Secretary

MIN.NO. 035/2011: PRELIMINARY

The meeting started with a word of prayer at 11:00am.

MIN.NO. 036/2011: PRESENTATION FROM THE MINISTER

Ministry of Cooperative Development and Marketing had made an inquiry into the two Saccos and drafted a report which will assist in addressing their woes.

One of the ways to address the said challenges was to set a central desk for determination of who owes who as well as how to settle those debts.

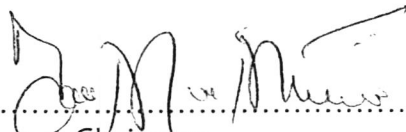
With regard to the timeline and composition of the taskforce to address the above challenges, it should conclude its work by May, 2011. It should include the following officers:

- a) Senior officer in Treasury dealing with taxation
- b) Director of Agriculture
- c) National Irrigation Board Managing Director
- d) Commissioner for Cooperatives as a convener
- e) Attorney General's chambers
- f) Any member of the Agriculture Committee as an ex-official members

The Minister informed the Committee that there a lot of things he would like to share with the Committee and that he will welcome any invitation for a consultative interaction. While accepting to meet with the Committee as from 27th to 28th February, 2011 in Lamu, he also invited the Committee to a Cooperative Movement day to be held 22nd February, 2011.

MIN.NO. 037/2011:ADJOURNMENT

The meeting was adjourned at 2:19pm until Thursday, 10th February, 2011 in Committee Room, 5th floor, Continental House at 11:00am.

Chairperson..........Date

Chairman
(Hon. John Mututho, MP)

MINUTES OF THE THIRTY FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES HELD IN THE MAIN COMMITTEE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS ON THURSDAY, FEBRUARY 11, 2010 AT 10:30 AM.

PRESENT

Hon. John Mututho, MP - Chairperson
Hon. Benson Mbai, MP
Hon. Peris Chepchumba, MP
Hon. Kambi Kazungu, MP
Hon. Victor Kioko Munyaka, MP
Hon. John D. Pesa, MP
Hon. Jeremiah Kioni, MP. - friend of the Committee

APOLOGIES

Hon. Lucas Chepkitony, MP - Vice-Chairperson
Hon. Evans Akula, MP
Hon. Erastus Mureithi, MBS, HSC, MP
Hon. Fredrick Outa, MP.
Hon. Robert O. Monda, MP

**IN ATTENDANCE:
NATIONAL ASSEMBLY**

Mr. Paul K. Ngetich - Senior Research officer
Mr. Evans Oanda - Third Clerk Assistant

MINISTRY OF COOPERATIVE DEVELOPMENT AND MARKETING

Hon. Joseph Nyagah, EGH, MP. -Minister for Cooperative Development and Marketing
Hon. Linah Kilimo - Assistant Minister for Cooperative and Marketing
Mr. Seno Nyakenyanya -Permanent Secretary, Ministry of Cooperative Development and Marketing

MIN. 019/2010: PRELIMINARY

The meeting opened with a word of prayer. Thereafter, the Chairman briefed the meeting on the guidelines of conducting the meeting as provided by the Standing Orders.

MIN. 020/2010: STATUS OF MILK GLUT IN THE COUNTRY

The crisis facing the milk industry was confirmed by the Minister of Cooperative and Marketing to the Committee. The Minister said that the unprecedented high levels of milk (four million liters) witnessed in January was caused by ELNino rains, legal and illegal importation of milk into the country.

(iv) False mileage claims

It was resolved that it was only one mileage claim that was officially made by the former MD.

(v) Poor tendering and contract awards

The Minister made references to some works done and paid by the NKCC at Dandora and Miritini which were poorly done. The Committee however could not agree to these claims based on the earlier submissions by the Board and the management on Wednesday, February 10, 2010.

(vi) Failure to act on graft

The Committee was informed that the former MD failed to sack some employees who had been implicated on the thefts amounting to Kshs.10million and Kshs.16million at the Company, but instead reported the cases to the police. This was consistent with the evidence given by the former MD when he explained that he could not sack an employee without following the due process by reporting the matter to the police for proper investigations to be carried.

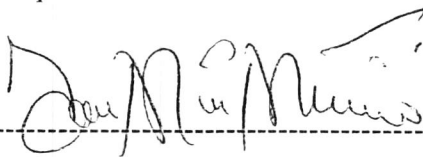
MIN.022/2010: ANY OTHER BUSINESS

- 1) The Board was asked to review the salary package of the top management to attract highly qualified persons to run the Company.
- 2) The Committee urged the government to give dairy farmers, including the ones that lost money when the old KCC collapsed, first priority when privatization programme of the Company is undertaken.
- 3) The excess milk being poured to waste should be loaded to trucks and supplied to needy cases e.g., children in schools in ASAL areas.

MIN. 023/2010: ADJOURNMENT

There being no any other business, the meeting was adjourned at 2:30 pm till Monday, 15th February, 2010 at 2:00 pm at the same venue.

SIGNED



CHAIRPERSON

DATE

MINUTES OF THE 172ND SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES HELD AT THE COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, ON WEDNESDAY, 14TH SEPTEMBER, 2011, AT 10:00 AM

PRESENT

Hon. John Mututho, MP	-	Chairperson
Hon. Lucas Chepkitony, MP	-	Vice Chairperson
Hon. (Dr.) Victor Kioko Munyaka, MP		
Hon. Mohammud Sirat, MP		
Hon. John D. Pesa, MP.		
Hon. Benjamin Washiali, MP		
Hon. Evans Akula, MP		
Hon. Fredrick Outa, MP		

ABSENT WITHOUT APOLOGIES

Hon. (Dr.) Robert O. Monda, MP
Hon. Benson Mbai, MP
Hon. (Dr.) Erastus Mureithi, MBS, HSC, MP

INATTENDANCE

KENYA NATIONAL ASSEMBLY

Paul Ngetich	-	Senior Research Officer
Evans Oanda	-	Clerk Assistant
Denis Dindi	-	Office attendant

MIN.NO. 204/2011: PRELIMINARY

The proceedings of the Meeting started with a word of prayer at 10:30am.

MIN.NO. 205/2011: CONSIDERATION AND ADOPTION OF COMMITTEE REPORTS

- 1) **New KCC report;** while adopting it, the Committee further recommended that all former employees of KCC should be recruited and their terms reviewed immediately in consultation with the Ministry of Cooperative Development and Marketing. However, these employees should not be paid for the period they did not work.
- 2) **ADC Galana report;** the Committee studied it and adopted it with amendments. It made further recommendations to include investigations to ascertain whether the Chief Executive Officer of the ADC was involved in the transfer of the ADC land, loss of fertilizer and procurement mismanagement of assets including ADC tractors.

accompanied the team as discussed during the meeting with the Ministry of Youth Affairs.

MIN.NO. 206/2011: FOREIGN TRIPS

The Committee expressed frustrations that it has not undertaken foreign travels in the last two years, and therefore resolved to seek clarification from the Deputy Speaker on whether it was part of being victimized on its persistent pursued of investigation of GMO maize importation.

The Committee further resolved to undertake the foreign trips earlier proposed, as follows:

1) Netherlands, USA and Argentina/ brazil

The Members in the delegation to be composed of:-

- i. Hon. Lucas Chepkitony, - leader of the delegation
- ii. Hon. Mohammed Sirat, MP
- iii. Hon. John Pesa, MP
- iv. Hon. Dr. Victor Munyaka, MP
- v. Hon. Fredrick Outa, MP

2) Korea, India and China

The Members in the delegation to be composed of:-

- i. Hon. John Mututho – leader of the delegation
- ii. Hon. Benson Mbai
- iii. Hon. Benjamin Washiali
- iv. Hon. Evans Akula
- v. Hon. Robert Monda

The nominations to the trips were done based on the Members who have not travelled frequently and attendance in the sittings of the Committee.

MIN.NO. 207/2011: SUGAR (AMENDMENT) BILL, 2011

The Committee resolved to invite all the sugar stakeholders to consider this bill before it goes for second reading. The Secretariat was therefore directed to arrange for the logistics to hold the meeting in Kisumu on the second Tuesday when Parliament resumes after recess.

MIN.NO. 208/2011: ADJOURNMENT

There being no any other business, the meeting adjourned at 12:11pm. Next meeting will be at 2:30 pm at the same venue.

Chairperson..........Date

(Hon. John Mututho, MP)

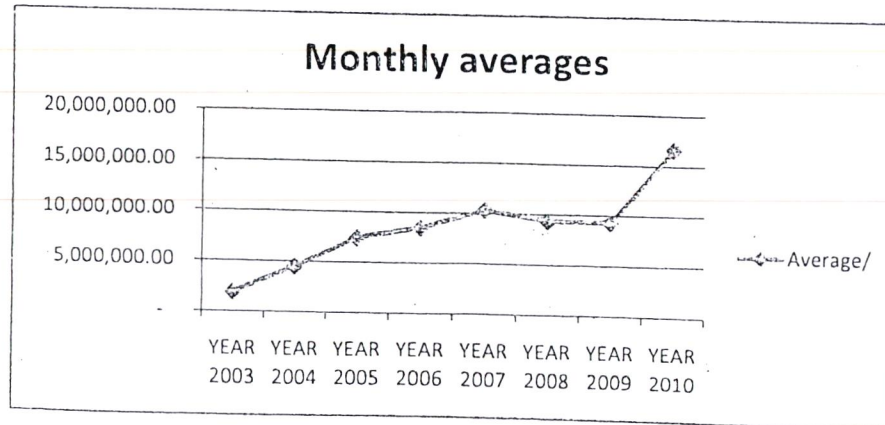
ANNEXES

NEW KENYA CO-OPERATIVE CREAMERIES LIMITED

MONTHLY MILK INTAKE SUMMARY
YEAR 2003 TO 2009.

	YEAR 2003	YEAR 2004	YEAR 2005	YEAR 2006	YEAR 2007	YEAR 2008	YEAR 2009	YEAR 2010
MONTH	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs
JANUARY		3,060,590.7	5,282,859.9	5,091,613.5	12,573,705.5	7,887,509.1	10,246,875.0	16,679,259.0
FEBRUARY		4,376,797.2	4,106,374.8	3,443,856.9	11,440,710.9	7,197,789.8	7,889,191.9	
MARCH		4,490,757.4	3,850,962.2	4,084,568.0	10,689,862.8	6,206,930.3	6,575,884.3	
APRIL		5,712,578.9	4,120,617.0	6,837,717.4	7,901,592.8	6,929,548.8	5,550,025.4	
MAY		9,051,843.0	5,936,944.8	11,145,444.8	8,998,951.9	10,234,180.8	7,538,724.0	
JUNE	3,181,104.0	8,035,508.6	9,372,949.6	11,241,767.2	9,107,002.7	9,257,178.0	9,761,774.4	
JULY	2,269,283.4	5,274,764.2	10,281,275.5	10,048,963.7	9,614,170.8	8,923,467.4	9,341,343.0	
AUGUST	1,899,725.7	2,724,644.0	9,321,360.9	8,809,827.9	8,876,939.0	8,920,199.3	8,824,249.1	
SEPTEMBER	1,707,406.3	2,051,034.4	9,471,136.2	9,282,768.8	9,439,213.5	9,787,951.9	9,460,305.6	
OCTOBER	1,627,364.6	2,067,938.9	9,968,708.8	10,382,542.6	11,498,093.2	11,228,380.2	10,089,354.3	
NOVEMBER	1,258,240.4	2,692,151.9	9,517,200.7	9,875,227.4	11,982,836.9	12,424,437.0	12,765,593.3	
DECEMBER	1,805,002.2	4,384,983.7	7,720,848.6	11,027,504.4	11,503,220.9	12,871,432.0	12,937,811.9	
TOTAL (KGS)	13,748,126.6	53,923,592.9	88,951,238.9	101,271,802.6	123,626,300.9	111,869,004.6	110,981,132.1	16,679,259.0

Average/ month (kg)	1,964,018.09	4,493,632.74	7,412,603.24	8,439,316.88	10,302,191.74	9,322,417.05	9,248,427.68	16,679,258.95
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NKCC PERFORMANCE YR JUL 2003-DEC 2009

	Actual 2003/04 18 Months	Actual 2005/06 18 Months	Actual 2006/07 12 Months	Actual 2007/08 12 Months	Actual 2008/09 12 Months	Actual(Unaudited) 2009/10 6 Months
1. Sales Revenue (Ksh)						
Fresh milk/TCA/TFA	1,534,126,576	3,195,510,949	2,768,170,964	3,520,626,658	4,185,401,022	2,396,692,283
Ultra Heat Treated(UHT) milk	487,389,268	863,664,796	788,253,310	805,044,788	712,089,353	376,257,987
Powder milk	196,337,779	432,872,350	432,379,796	701,745,360	484,347,464	141,632,659
Mala milk	130,274,312	181,938,212	180,982,967	187,243,315	258,396,066	157,258,069
Other dairy products	142,607,067	231,188,052	309,533,459	351,314,789	389,883,954	206,374,363
	2,490,735,002	4,905,174,359	4,479,320,496	5,565,974,910	6,030,117,860	3,278,215,360
NB: Sales Net of VAT & Transport Rebates						
PROFIT BEFORE TAX (Ksh)	(8,224,342)	349,829,289	384,120,731	500,318,759	498,811,298	202,096,268

NEW KENYA CO-OPERATIVE CREAMERIES LIMITED								08.12.09.
MONTHLY MILK PAYOUT								
YEAR 2003 TO 2009.								
PRODUCER PRICES PER KILOGRAM								
MONTHS	YEAR 2003	YEAR 2004	YEAR 2005	YEAR 2006	YEAR 2007	YEAR 2008	YEAR 2009	
	PRICE PER KG	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	INTAKE Kgs	
JANUARY		17.11	18.00	18.00	17.00	20.00	22.00	
FEBRUARY		18.00	18.00	19.00	16.19	21.00	22.00	
MARCH		18.00	18.00	20.00	15.49	21.00	22.00	
APRIL		18.00	18.00	20.00	16.00	21.00	22.00	
MAY		16.87	19.00	19.42	16.00	20.00	24.00	
JUNE	12.00	16.00	17.94	17.68	18.00	20.00	24.00	
JULY	12.00	16.00	17.00	16.00	18.00	22.00	24.00	
AUGUST	12.00	16.00	17.00	16.00	19.03	22.00	24.00	
SEPTEMBER	12.00	16.00	17.00	17.00	20.00	22.00	24.00	
OCTOBER	12.00	16.00	17.00	17.00	20.00	22.00	24.00	
NOVEMBER	12.00	16.00	17.00	17.00	20.00	22.00	24.00	
DECEMBER	16.62	18.00	17.00	17.00	20.00	22.00		

*Paper laid by the Minister for
Cooperatives (Hon Nyong'o) while
issuing a Ministerial Statement
LUP
8/12/2009*

Email: info@newkcc.co.ke
FAX: 553705



TELEPHONE: NAIROBI
552965 / 552952 / 652415 / 650448 / 557
MOBILE: 0722 203668

NEW KENYA CO-OPERATIVE CREAMERIES LTD.
CREAMERY HOUSE DAKAR ROAD P.O. BOX 30131 NAIROBI KENYA

Ref: GM/S.1/225/2006/MW/sw

November 2, 2006

Mr Francis Maingi Mwangi
P O Box 1358, 00618
NAIROBI

Dear Sir

RE: LETTER OF APPOINTMENT ON CONTRACT

Following your successful interview and satisfactory proof of medical fitness for the position of Managing Director, the Board is prepared to engage you in the services of Managing Director on the following terms and conditions:

1. Position

You will be engaged as Managing Director and Chief Executive Officer of New Kenya Co-operative Creameries Ltd.

2. Reporting

You will be responsible to the Board of Directors through its Chairman who will be your Controlling Manager.

3. Duties and Responsibilities

As the Corporation's Chief Executive Officer, you will be responsible for the implementation of the Board's decisions in a results oriented and timely manner to achieve the Corporation's goals, objectives and agreed performance targets. This will entail *inter alia*:

4. **PERFORMANCE MEASURES**

In addition to the duties and responsibilities detailed in this letter of appointment detailed Key Tasks will be agreed between you and the Board, and your performance will be reviewed and appraised regularly and documented in meetings with the Board.

5. **DURATION**

This contract of employment will be for three years commencing 1st December 2006 and Board reserves the right to terminate the contract prematurely depending on your performance.

6. **PROBATION**

Your first three months will be on probation. This period may be extended by a further one month depending on your performance. The company will not extend probation beyond the one month stipulated in this clause.

7. **RENEWAL OF APPOINTMENT**

Should you wish to be reappointed in the same position, you will be required to make a written request at least six (6) months before the expiry date of this contract.

8. **PLACE OF WORK**

You will be based at the Corporation's headquarters, Creamery House, Dakar Road, Industrial Area, Nairobi.

9. **REMUNERATION**

You will be paid a basic salary of KShs.340,000/= per month, housing allowance of KShs.70,000/= per month and other remunerative allowances totaling KShs.30,000/= per month for the duration of the contract. Remuneration paid to you will be subject to taxation at such rates as may be determined by law from time to time.



15. **GRATUITY**

Upon successful completion of each contract term, you will qualify for a one-off Gratuity calculated at a rate of 31% of your annual basic salary. This gratuity is taxable. The gratuity shall not be paid if your separation from the Company is due to gross misconduct as provided for in the Employment Act. If you are a member of some other retirement benefit scheme, you may opt to continue with the retirement benefit scheme to which you are already a member.

16. **GROUP LIFE AND GROUP ACCIDENT INSURANCE SCHEME**

You will be eligible for membership in the Group Life and Group Accident Insurance Scheme of the Corporation. The Rules of the Scheme will be made available to you.

17. **OFFICIAL TRANSPORT**

You will be provided with official transport for use on official duties except when on leave.

18. **MILEAGE CLAIM**

If official transport is unavailable the current AA rates will apply when you use your personal/or your spouse's vehicle for official duties of the Corporation in lieu of official transport, in accordance with the Company's policy.

19. **HOUSING**

You will comply with Government regulations governing occupation of Corporation houses if you reside in a Corporation owned house.

20. **TELEPHONE SERVICE**

You will be entitled to telephone facilities in accordance with provisions of current circulars approved by the Minister in consultation with the State Corporations Advisory Committee from time to time.





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ANNEX 5

MINISTRY OF CO-OPERATIVE DEVELOPMENT AND MARKETING
OFFICE OF THE MINISTER

Telegrams "CO-OPS" NAIROBI
Fax No.: +254-(0)20-2731507
Telephone: +254-(0)20-2731531-9
Web: www.cooperative.go.ke
When replying please quote

SOCIAL SECURITY HOUSE BLK "A"
BISHOPS ROAD, CAPITAL HILL
P.O. Box 30547 - 00100
NAIROBI
KENYA

Ref. No. MCDM/C/2/18 VOL.XIV

November 30, 2009

Date:

Mr. E. Matu Wamae
Chairman
New Kenya Cooperative Creameries Ltd
P.O. Box 30131 - 00100
NAIROBI

Dear Mr. Wamae,

RE: RENEWAL OF EMPLOYMENT CONTRACT - MR. FRANCIS M. MWANGI

I acknowledge receipt of your letter dated 4th November 2009 concerning the above subject.

As Mr. Mwangi's three year contract has come to an end, please arrange for him to hand over to **Ms. Milka Gathoni Mugo**, Company Secretary. Meanwhile, the Board should start the process of recruiting a new Chief Executive Officer.

Yours sincerely,

Hon. Joseph W. N. Nyagah, EGH, MP
MINISTER FOR COOPERATIVE DEVELOPMENT & MARKETING

CC: Mr. Francis M. Mwangi
New Kenya Cooperative Creameries Limited
P.O. Box 30131 - 00100
NAIROBI

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**NEW
KENYA
CO-OPERATIVE
CREAMERIES LTD**

Creamery House,
Dakar Road Industrial Area
P.O. BOX 30131 - 00100 Nairobi Kenya
Tel: +254 020 398 0000
Fax: +254 020 558705
Email: info@newkcc.co.ke
Website: www.newkcc.co.ke

*Paper work
By Dr. Bonny Khehale
on Tuesday 8th December
2009 in ~~connection~~ ^{during} ~~connection~~ ^{minutes}
Statement.*

4th November, 2009

Hon. Joseph W.N. Nyaga FGHMLP
Minister for Co-operative
Development and Marketing
NSSF Building
P.O. Box 30547-00100
NAIROBI

Dear Sir,

RE: RENEWAL OF CONTRACT OF EMPLOYMENT

The three years employment contract for our Managing Director, Mr. Francis Mwangi expires on 30th November, 2009. Mr. Mwangi has requested the Board of NKCC to consider renewing the contract for a further period of three years with effect from 1st December 2009.

Mr. Mwangi's contract stipulated that should he wish to be reappointed in the same position he will be required to make a written request at least six (6) months before expiry date of his contract. Mr. Mwangi's letter is dated 3rd August 2009 and was considered first by the Board in its meeting held on 14th October, 2009.

The Board appointed a committee to produce an instrument or tool for evaluation of the MD's performance during his contract period.

Although this committee met twice they were not able by yesterday 3rd November to complete the exercise. It was further noted that the New KCC Ltd Annual Performance Contract report 2008/2009 has adjudicated NKCC of having achieved a weighted score of 2.4443 which denotes a performance of VERY GOOD. However, the directors felt that they needed a 360 degree evaluation which includes other aspects of assessment than measurable and specific yardstake used by the Government in the Performance Contract.

In view of the short time remaining before the expiration of the current contract, the Board agreed to recommend to the Minister that the contract of Mr. Mwangi be renewed for a further period of one year commencing on 1st December, 2009. This will create sufficient time to finalize the evaluation tool and to assess him accordingly.

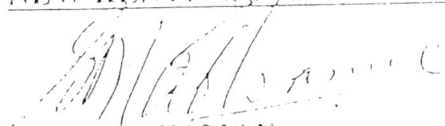
*SKJ
8/12/09*

- 2 -

As you are the appointing authority for the Managing Director of New KCC Ltd, we seek your authority to enable us to grant Mr. Mwangi a contract of one additional year on the current terms and conditions of service.

Yours faithfully,

NEW KENYA CO-OPERATIVE CREAMERIES



E. MATU WAMAE
CHAIRMAN

*Paper laid by the Minister
for Cooperatives (Hon. D. Nyong'o)
in white paper a Ministerial
Statement on the MD of New
KCC.*

*LAP
8/12/2009*

August 3, 2009

THE CHAIRMAN
NEW KCC LTD
NAIROBI

Dear Sir

RE: RENEWAL OF CONTRACT OF EMPLOYMENT

Reference is made to the letter of appointment with New Kenya Cooperative Creameries Ltd dated 2nd November 2006 engaging me on a three year contract as Managing Director and Chief Executive officer of the Company. The Contract was effective 1st December 2006 and expires on November 30th 2009.

I note with appreciation the opportunity which New Kenya cooperative creameries has accorded me in rendering service to this great Nation of Kenya. To me, this has been a life time opportunity and I sincerely don't regret having crossed over from private to public sector.

With the expiry of this contract, I kindly request the Board of Directors to consider renewing the same for a further three year term. To facilitate the evaluation process, I hereby attach a self assessment of my performance during the three year service.

I am very grateful to the Board and the Ministry of Cooperative Development and Marketing for having accorded me the opportunity of serving this company.

Your positive consideration will be highly appreciated.

Yours faithfully



FRANCIS MWANGI
MANAGING DIRECTOR

Enc.

*(Handed in on Oct. 13, 2009
to Chairman, but backdated
to August 3, 2009)
Jimmy
3.12.09*

