

# EACC: Firm got Sh500m from NCPB through fraud

EACC tells court that the tender security bid that Erad Supplies and General Contractors submitted to the arbitrator and courts was a forgery

By ISAIAH LUCHELI

Documents that an arbitrator relied on to award a businessman Sh500 million against the National Cereals and Produce Board (NCPB) in a breach of contract dispute were fraudulent, the court has been heard. Ethics and Anti-Corruption Commission (EACC) told Court of Appeal judges they had information from South Africa that the tender security bid Erad Supplies and General Contractors submitted to the arbitrator and courts was a forgery.

EACC, which is seeking to be enjoined in the suit submitted through lawyer Ben Murei, said it had obtained the crucial evidence recorded by South African authorities on October 29, this year, and was relevant in the appeal filed by NCPB.

"The evidence obtained is critical and goes to the root of the integrity of the arbitration and raises questions on whether the court process is being abused for fraudulent purpose," he said, adding that EACC was investigating the allegations of corruption and irregularity in the procurement by Erad to supply 40,000 metric tonnes of maize to NCPB.

"In particular, one of the documents on the basis of which storage charges of over Sh90 million was awarded to Erad is forged and did not emanate from the purported supplier M/S Chelsea Freight of Durban in South Africa," submitted Murei.

According to EACC, South African authorities established that Chelsea Freight wound up operations in 2013 and two of its former directors currently trading as LTD Logistics Solutions gave evidence that they neither owned a warehouse nor dealt in maize. Erad claims it stored maize in a warehouse owned by Chelsea.

EACC wants the Sh500 million award given to Erad set aside saying one of the directors had lied under oath and also the award had been procured through perjury and false documents contrary to public policy.

The NCPB lawyers Mo-

## WHY EACC WANTS TO JOIN CASE

- EACC says it is investigating allegations of corruption and irregularity in the procurement by Erad of supply 40,000 metric tonnes of maize to NCPB
- The body said it had received information from South African government that the tender security bid that Erad Supplies and General Contractors submitted to the arbitrator and courts was a forgery

hamed Nyaoga, Katwa Kigen, Paul Gicheru and Joshua Nyawara supported the application but lawyer Ahmednasir Abdullahi appearing for Erad opposed the application, arguing that it was an abuse of court process.

Ahmednasir argued that EACC had no right to be enjoined in the appeal as it had not been a party in the proceedings in the lower and superior court over the matter.

"This is an attempt by the EACC to scuttle the appeal. If EACC has evidence of fraud let it institute criminal proceedings against those involved but not seeking to be enjoined in the suit," said Ahmednasir. He told appellate judges Al-nashir Visram, John Mwera and Kathurima M'Inoti that allowing EACC to be enjoined in the case would set a bad precedent and would open a door for parties to seek to be enjoined in suits they are not party to.

Erad has already recovered over Sh300 million after sale of movable assets following the Sh500 million award after NCPB cancelled a contract for the supply of relief maize. Erad had applied to sell immovable assets such as silos and NCPB land to recover the remaining Sh200 million when the appellate judges stopped the process. Judges will rule whether to enjoin EACC on December 18.

## Ongeri sues Ombudsman over land grabbing claims

By KAMAU MUTHONI

Kenya's envoy to UN Habitat Sam Ongeri has moved to court to have a damning report released by the Ombudsman on illegal land acquisition in Kisii quashed.

In a case filed under a certificate of urgency yesterday, Prof Ongeri complained that the Ombudsman's report had tainted his name and could be used to condemn and remove him from office.

He said there were possibilities that people would demand he relinquishes his

current office and also be barred from future appointments over the alleged abuse of office.

Ongeri, in the petition before High Court judge George Odunga, said he was not afforded a chance to respond to the allegations before they were published, adding the same land issue had been in court for determination in Kisii.

"My appointment as an ambassador stands to be challenged in court and jeopardised by the adverse findings in the aforementioned report which was compiled and published unlawfully and with-

out due process of law. The adverse findings on my alleged abuse of office captured in the report are likely to impair any future appointment to public office bestowed upon me," Ongeri said.

In the petition filed by his lawyer Paul David Kalii, Ongeri refuted claims that he had acquired the land illegally, saying he had procured it through valid means. He wants the court to quash the report and also bar the Commission on Administration of Justice and any action with regards to the contested piece of land until the matter before the court is settled.




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