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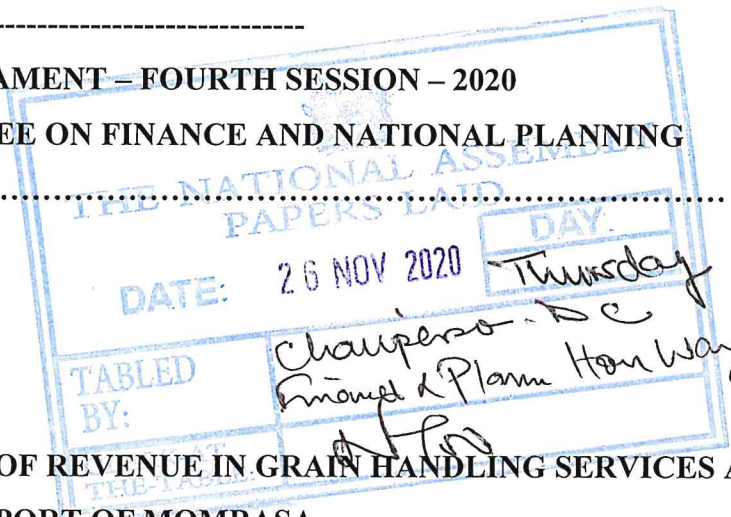
REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING



REPORT ON THE OPTIMIZATION OF REVENUE IN GRAIN HANDLING SERVICES AT THE PORT OF MOMBASA

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2020

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CHAIRPERSON'S FOREWORD

This report contains the findings and recommendations of the Departmental Committee on Finance and National Planning on its fact-finding visit to Grain Bulk Handling Limited (GBHL) which was undertaken on 21st November, 2020.

The objective of the visit was to assess ways of optimization of revenue through the grain handling facilities at the Port of Mombasa. The Committee toured the facilities of GBHL where it was observed that they operate almost 98% of all grain bulk services at the Port of Mombasa and have been in operation since 2002.

Kenya Ports Authority (KPA) has been having one licensed grain bulk handler that is GBHL operating at berths 3 and 4 at the Port of Mombasa with an exclusive mandate that was initially granted and expired on 15th February, 2008. Following this expiry, there has been an agitation to liberalize grain bulk operations by allowing other additional operator(s) and equally promote competition in the industry.

During the past ten (10) years, the Port of Mombasa has equally experienced exponential growth of grain imports (with wheat and grain almost quadrupling). This significant growth has given an impetus on the need to have a second or third or fourth grain bulk handling terminal.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Kenya Ports Authority as well as all the stakeholders who made the inspection visit successful. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report on "*the optimization of revenue in grain handling services at the Port of Mombasa*".

Hon. Gladys Wanga, CBS, MP
Chairperson, Departmental Committee on Finance and National Planning

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:-
 - i. **To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;**
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. To study and review all the legislation referred to it;
 - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
 - vii. To examine treaties, agreements and conventions;
 - viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - x. To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:-
 - i. National Treasury and Planning
 - ii. State Department for Devolution
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget
 - v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members: -

Chairperson

Hon. Gladys Wanga, CBS, MP
MP for Homabay County

ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu
MP for Roysambu Constituency

Jubilee Party

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency

ODM Party

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu East Constituency

Independent Member

Hon. Daniel Nanok, MP
MP for Turkana West Constituency

Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
MP for Siaya County

ODM Party

Hon. Andrew Okuome, MP
MP for Karachuonyo Constituency

ODM Party

Hon. David Mboni, MP
MP for Kitui Rural Constituency

CCU Party

Hon. Francis K. Kimani, MP
MP for Molo Constituency

Jubilee Party

Hon. Joseph Oyula, MP
MP for Butula Constituency

ODM Party

Hon. Joshua Kandie, MP
MP for Baringo Central Constituency

MCC Party

Hon. Stanley Muthama, MP
MP for Lamu West Constituency

Jubilee Party

Hon. Edith Nyenze, MP
MP for Kitui West Constituency

WDM-K

Hon. Catherine Waruguru, MP
MP for Laikipia County

Jubilee Party

Hon. James Mwangi, MP
MP for Tetu Constituency

Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
MP for Wajir South Constituency

Jubilee Party

Hon. Peter Lochakapong, MP
MP for Sigor Constituency

Jubilee Party

Hon. Qalicha Gufu Wario, MP
MP for Moyale Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat: -

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

2 INTRODUCTION

6. Globally, the dry bulk trade has grown because of the need for raw materials in several important industries such as steel, aluminum and fertilizer manufacture, among others. A large fleet exists to service this trade. As a result, bulk shipping has become a rapidly expanding sector of shipping industry and bulk tonnage now accounts for about three-quarters of the world's merchant fleet.
7. KPA has been having one licensed grain bulk handler that is GBHL operating at berths 3 and 4 at the Port of Mombasa with an exclusive mandate that was initially granted and expired on 15th February, 2008.

Table 1: GRAINS HANDLED BY GBHL FROM 2015 TO 2020

Years	Total tonnage handled	No. of Ships
2015	2,043,680	87
2016	1,939,477	81
2017	3,087,643	101
2018	2,422,890	80
2019	2,792,141	85
2020	2,181,766	79
TOTAL	14,467,597	513
TOTAL AVG/YEAR	2,411,266	85

8. Transportation of bulk commodities has undergone a radical change due to the tremendous increase in size and carrying capacity of vessels. This enormous increase in the volume of cargo has emphasized the need for faster and more efficient handling and storage operations, to exploit economies of scale. The scope of global materials handling industry is incredibly varied, from the supply of single pieces of mobile equipment to dedicated turnkey terminals handling millions of tonnes of major bulk commodities annually.

2.1 ESTABLISHMENT OF GRAIN BULK HANDLERS LIMITED

9. The Grain Bulk Handlers Limited (GBHL) is a private limited company incorporated in 2000 to undertake freight and forwarding services with specialty in cereals handling. The Company has installed its equipment at berths 3 and 4 at the Port of Mombasa in Kenya, with the conveyors leading to the storage elsewhere within the precincts of the port.
10. The company owns and operates a specialized bulk discharge and handling terminal for grain imports. GBHL facilities comprise of the following:-
 - i. Vessel handling facility;
 - ii. Bulk transit terminal;
 - iii. A bulk storage terminal;
 - iv. Bagged warehousing; and
 - v. Local transportation.

11. GBHL provides the following services to importers:-
 - i. Discharge of bulk grain vessels;
 - ii. Bulk silos for transit and long term storage;
 - iii. Delivery to road and rail in bulk and bags;
 - iv. Warehousing for bagged cargo for long term storage; and
 - v. Local transportation provided by a fleet of trucks and trailer units for bagged cargo.
12. GBHL draws its clientele from millers, traders, international food relief organizations such as World Food Programme and Non-Governmental Organizations (NGOs) within the region and elsewhere, among others. Importers are charged with the responsibility of cargo clearance and payment of the requisite duty to the Kenya Revenue Authority (KRA).
13. Introduction of the specialized terminal and the operations of the GBHL promoted effective and efficient handling of grain hence reduced the charges levied to importers by shipping companies on the basis of delayed cargo clearance and mainstreamed port operations.

2.2 AGREEMENT BETWEEN KENYA PORTS AUTHORITY AND GBHL

14. The license agreement relating to the handling of grains, cereals and fertilizers in bulk in the Port of Mombasa was signed on 17th December, 2002 between KPA and GBHL. In the agreement, KPA was given the power to supervise some aspects of the operations and activities of GBHL while GBHL agreed to be supervised and regulated by KPA in relation to certain aspects of the operations referred to in the Agreement.
15. In the Agreement, GBHL would operate in berths 3 and 4 and was required to pay KPA a fixed fee of USD 5,000 per annum which would be paid yearly in advance. The fee would be revised after every five years and the new fee payable by GBHL to KPA would be similar to that payable by other operators undertaking the discharge and storage of commodities in bulk from the Port and as published in the Tariff Book. The fee would be paid without any set-off counterclaim or condition whatsoever and free and clear of any deduction or withholding for or on account of taxes except a deduction or withholding for or on account of any present or future tax which GBHL will be required to pay by law.
16. KPA agreed that the ship contracted by GBHL to discharge commodities from or load commodities into shall be given priority access to the berths (or as the case may be, any one of them) provided that KPA's obligation to give priority access to the berths where the ships in question conform to the limitations applicable to the use of the berths (or as the case may be, any one of them) as notified by KPA to all users of the Port from time to time; and where GBHL has informed KPA in writing at least twenty-four (24) hours before the day as of which it is intended that a ship will dock at the berths (or as the case may be, any one of them).
17. KPA committed that it would not license any person for a period of eight (8) years commencing from 15th February, 2000 to construct, develop and/or operate any facility capable of discharging commodities shipped in bulk from a ship docked at any berth in the Port and which commodities after discharge are stored in bulk in silos, warehouses or other similar storage facilities erected on any other land over which KPA or any person controlled by KPA has management or control. KPA would however permit other persons carrying on operations as bagging plant operators on the quayside and undertaking storage of commodities outside the Port.

18. The tariff rate per tonne (or part thereof) of dry general or dry bulk cargo handled at Mbaraki, bulk bitumen handled via bitutainers, soda ash handled via conveyors would be one Dollar and fifty cents (USD 1.50) while the tariff rate (or part thereof) of cargo handled at Mombasa Old Port or Outports or at other than appointed places unless otherwise stated or cargo handled at Mbaraki, soda ash handled via conveyor would be Dollars nought and fifty cents (USD 0.50). Accordingly, the aggregate of the tariff rates would be two Dollars (USD 2) per tonne (or part thereof).
19. In the Agreement, KPA was not to publish or create a separate category of tariff in respect of the handling of commodities through the Terminal and that the tariff rates applicable to the handling of commodities through the Terminal would at all times and from time to time for the purposes of the application of tariff rates by KPA to users of the Port be categorised with and be regarded as being similar to the operations and services that are undertaken by persons other than GBHL as at the date of signing the Agreement.
20. The Agreement was to remain in force for a period of thirty-three (33) years commencing from and including the start date.
21. The Agreement gave GBHL the powers to:-
 - i. discharge commodities from ships docking at the berths pursuant to contractual arrangements between GBHL and its customers;
 - ii. loading of commodities into ships docking at the berths pursuant to contractual arrangements between GBHL and its customers;
 - iii. handling of commodities at the Terminal and areas adjacent to the Terminal including storage warehousing and bagging together with all necessary documentation and accounting pursuant to contractual arrangements between GBHL and its customers; and
 - iv. loading of commodities onto vehicles and railway wagons for delivery to consignees and other cargo handling operations including all necessary documentation and accounting.
22. KPA and GBHL signed the Second Variation of License Agreement in respect of the License Agreement dated 17th December, 2002 and the Variation of License Agreement dated 13th April, 2008.

3 MEETINGS WITH STAKEHOLDERS

23. The Departmental Committee on Finance and National Planning held meetings with stakeholders on Saturday, 21st November, 2020 in order to seek their opinion on the matter under inquiry. The Committee held meetings with:-
- i. Grain Bulk Handlers Limited (GBHL);
 - ii. Cereal Millers Association (CMA);
 - iii. Kenya Ships Agents Association, Kenya Transporters Association and Kenya Freight Forwarders Association; and
 - iv. Kenya Ports Authority (KPA)
24. The stakeholders submitted as follows:-

3.1 GRAIN BULK HANDLERS LIMITED

In their submission, GBHL stated that:-

25. GBHL was established in 1999 and operationalised in 2000 with the mandate of discharge, storage, bagging or delivery of shipped goods to their clients in Kenya and the Great Lakes Region. Some of its clients include World Food Programme (WFP) and United States Agency for International Development (USAID).
26. Operationalisation of GBHL reduced the amount of spillages experienced when offloading goods from ships hence reducing loss to clients. It also reduced the time that vessels spend at the Port from two weeks to between three and five days hence reducing the demurrage charges paid by its clients and congestion at the Port.
27. GBHL signed two agreements with KPA, the Wayleave Agreement which was signed in 1992 for a period of forty-five (45) years and it gave GBHL authority to pass their conveyor belts on KPA's land; and the License Agreement signed in 2000 for a period of thirty-three (33) years from 1999 which governs the operations of GBHL. In the License Agreement, GBHL is supposed to pay KPA USD 3.85 per tonne handled at the Port. GBHL charges USD 13.5 per tonne in bag and USD 16.5 per tonne in bulk to its clients.
28. GBHL recognized the need to revolutionize the handling of bulk grain and fertilizer imports at the Port of Mombasa. The ambitious project was conceived at a time when the handling of bulk grain imports at Mombasa involved combined use of grabs, vacuators and mobile bagging plants situated at the quayside.
29. This mode of handling was characterized by low vessel discharge rates, heavy spillage during discharge operations, heavy dust emission and poor accounting for discharged quantities thus making the port very expensive for bulk grain importers as well as ship operators/owners.
30. GBHL receives deliveries of bulk cereal imports from around the world at the port of Mombasa in order to meet the ever-increasing demand from millers, traders, NGOs and relief agencies in East and Central Africa, including Great Lakes, Southern Sudan and Somalia.
31. The Company has a storage capacity of 200,000 metric tonnes at the Port of Mombasa and 125,000 metric tonnes at the Nairobi Inland Container Depot. At inception, they handled about 400,000 metric tonnes of grain which has since increased to about 2.7 million metric tonnes in 2019 (an increase of about 7%).

3.2 CEREAL MILLERS ASSOCIATION

In their submission, CMA stated that:-

32. Cereal Millers Association was registered in the year 2000 and operationalized in 2007. It represents 40% of the cereal market in Kenya. There are one hundred and fifty six (156) maize millers and fifty six (56) wheat millers in Kenya.
33. There is a deficit of between 2 million to 2.7 million metric tonnes of wheat in Kenya per annum and there are times when maize is also imported when there is a shortage. It is because of these large amounts of grain imports that CMA recommended that there should be more grain handling companies at the Port of Mombasa because having one handler has led to delays in clearance of cereals and payment of high demurrage charges by clients.
34. GBHL was the only company licensed to handle grains at the Port from the year 2008 to 2009. Additionally, the rates charged to GBHL by KPA were lower than those charged to other conventional handlers and this makes it difficult for other handlers to penetrate the market.
35. KPA Board had approved the licensing of a second grain handling company but KPA was yet to issue the license.

3.3 KENYA SHIPS AGENTS ASSOCIATION, KENYA TRANSPORTERS ASSOCIATION AND KENYA FREIGHT FORWARDERS ASSOCIATION

In their submission, they noted that:-

36. The cost of transportation in Kenya was very high and this was occasioned by cess fees charged by when goods are being ferried across the counties, multiple licenses, unharmonised parking fees among others. The situation has really made road transportation expensive with the attendant cost being passed over to the final consumer.
37. There is need to increase rolling stock by both KPA and GBHL. KPA offered nine free storage days while GBHL offered seven free storage days. The free storage days should be increased in order to make the Port attractive to importers. The regional tracking seals and KRA staff should be increased in order to reduce clearance time at the Port.
38. A lot of emphasis is placed on the use of the Standard Gauge Railway (SGR) as opposed to trucks and this denies trucks business. The market has been monopolised by multinational companies which is against the provision of section 16 of the Merchant Shipping Act, 2009.
39. The government agencies stationed at the Port of Mombasa should be harmonised with a view of avoiding overlapping mandates which results in delayed clearance of goods at the Port.

3.4 KENYA PORTS AUTHORITY

In their submission, KPA stated that:-

40. M/s Grain Bulk Handling Limited holds a lease, way-leave and license agreements from KPA for purposes of bulk grain handling from berth 3 and 4 through an overhead conveyor running across the Port area to their facility outside the Port area at Shimanzi. The original owners of GBHL were Jaffer and Jaffer Limited who changed its name to Grain Bulk Handlers Ltd in 1994 (herein referred to as GBHL).

41. The GBHL facility concept was shared with KPA in 1984 when they sought Way leave to put up a conveyor belt system to the port quay for handling and storage of bulk grain. The Wayleave was granted and concluded in December 1992. The construction of the GBHL facility commenced in December, 1998 and completed in February 2000.
42. From inception the GBHL are multi - user service provider working for other parties on a tariff basis and as per the Agreement GBHL was given a duration of thirty three years from February 2000 with a Fixed fee of USD\$ 5,000.00 per annum payable yearly in advance and revisable every 5 years.
43. The GBHL chartered or ship agents appointed were also to be given priority access to berths 3 and 4. In addition, KPA was not to allow or permit or license any other person to develop or operate a similar facility for a period of 8 years from 15th February, 2000. This was so because it would not be economically rational to create additional capacity and the period was necessary for GBHL to recoup their investment of infrastructure.
44. In February 2008, the exclusivity expired and the KPA Board resolved on 30th April, 2008 that the handling of grain at the Port be liberalized to eliminate monopoly and promote healthy competition. KPA began the process of tendering for a second grain handler but the government cancelled the process for further stakeholder consultation. KPA Board however resolved to license a second grain handler and this will be done by the year 2022.
45. GBHL remains as main grain bulk handler at 98% of the grain imported into the country through the Port of Mombasa.
46. Other players such as Kilindini Terminals limited have applied for a way leave for grain bulk handling. Their proposal is being reviewed to establish viability and optimal location.
47. GBHL pays KPA USD 3.85 per tonne of grains that they handle. The last tariff review was done in 2012 and the next one will be done soon. Other conventional operators pay a tariff of USD 10.4. The table below shows the application of tariff payable to KPA.

APPLICATION OF TARIFFS (PAYABLE TO KPA)

48. Table 2: GBHL rates per ton or part thereof from February 2000 to 1st July 2008:-

Item	Tariff Rate (USD)
Stevedoring	1.50
Shorehandling	0.50
TOTAL	2.00

49. Table 3: Quayside bulk grain handling operators rates per ton or part thereof for the same period:-

Item	Tariff Rate (USD)
Stevedoring	6.00
Shorehandling	5.00
TOTAL	11.00

50. The rates were adjusted marginally in 2008 and in 2012 and approved by the Government through the Minister for Transport.

51. GBHL rates per ton or part thereof:-

Item	Tariff Rate (USD)
Stevedoring	1.65
Wharfage	2.20
TOTAL	3.85

52. Quayside bagging and using own equipment rates per ton or part thereof:-

Item	Tariff Rate (USD)
Stevedoring	4.40
Bagging	1.00
Wharfage	5.00
TOTAL	10.40

53. The rationale for the above charges is because KPA tariffs are structured on a through cost-plus-basis giving cognizance to the resource utilization and appropriate profit margin.

54. The difference between GBHL charges and conventional bulk handling is USD 6.55 (10.40-3.85). GBHL benefits from its investment which provide for a more efficient and cost effective handling.

55. Grain Millers pay a handling fee of USD 16 per ton when grains are collected from GBHL. GBHL provides free seven (7) days storage and thereafter pay USD 0.13 per ton per day.

56. It is also noted that GBHL charges to millers exceed what would be paid if the grains were collected directly from KPA by USD 5.6 (16 to 10.4). Since it is a competitive market, millers could be enjoying other advantages at GBHL and hence not collecting their grains from KPA conventional handling methods.

57. In terms of grains handled by GBHL from 2015 to 2020 a total tonnage handled was 14,467,597 tonnes with total number of being five hundred and thirteen (513) as shown in the table below:-

Years	Total tonnage handled	No. Of Ships
2015	2,043,680	87
2016	1,939,477	81
2017	3,087,643	101
2018	2,422,890	80
2019	2,792,141	85
2020	2,181,766	79
TOTAL	14,467,597	513
TOTAL AVG/YEAR	2,411,266	85

58. GBHL has a storage capacity of 220,700 tonnes in Mombasa and Nairobi at 134,000 tonnes, with this capacity and calculated with 20 days free storage their annual throughput capacity for Mombasa alone is approximately 4.027 million tonnes.
59. There has been other applicants who have expressed interest in build and operate a specialized dry bulk discharge and handling terminal for grains at the Port of Mombasa including Kilindini Terminals Limited, Kapa Oil Refinery, Africa Ports and Terminals, Multiship International, Kipevu Inland Container EPZ Limited,

4 COMMITTEES' OBSERVATIONS

Following the inspection visit to the Port of Mombasa and from the stakeholders' submissions, the Committee observed that:-

60. Cargo throughput at the Port of Mombasa has been rising over the years driven by the corresponding economic growth of countries that use the port for import and export.
61. Kenya Ports Authority through the Wayleave Agreement of 1992 for a period of forty-five (45) years and a License Agreement entered in 2000 for a period of thirty-three (33) years designated berths 3 and 4 to GBHL to handle grain bulk vessel discharge alongside the conventional dry grain and fertilizer handling that utilize grabs for bagged cargo.
62. GBHL is a private company which commenced operations in 2000 and solely operates a specialized terminal (berths 3 and 4) for handling bulk grain imports and is the sole operator for mechanical bulk grain handling at the Port of Mombasa.
63. GBHL facilities comprise of a vessel handling facility, a bulk transit terminal, a bulk storage terminal bagged warehousing and local transportation services.
64. Terminal/berths 3 and 4 are designated to GBHL but occasionally, the berth serves as a common user facility for purposes of discharging other vessels when idle.
65. The Port of Mombasa has limited berths for handling specialized cargo including dry bulk grain discharge, this shortage is attributed to the congestion experienced at the Port especially during emergency, surge in importation and or humanitarian crisis.
66. Kenya Ports Authority is responsible for providing the critical infrastructure to support the berthing of grain bulk whereas GBHL has installed equipment for discharge of grain vessels and storage facilities.
67. Grain and bulk handling at the Port is done either through GBHL vide conveyor from the port to silos outside the Port; or conventionally by bagging vide grabs onto bagging plants alongside ships and loaded to trucks.
68. Conventional grain bagging is mainly done where there is excess demand for vessel discharge resulting from long queues of ships awaiting clearance hence waiting time and demurrage charges are not deemed economical.
69. GBHL uses highly mechanized systems with dust suppression filters which has resulted in reduced dust emission to the environment, shorter ship dwell times and reduced cargo wastage.
70. GBHL dry bulk handling terminal in Nairobi is complete with a storage capacity of 134, 000 M/T of cargo, the terminal is adjacent to the Athi SGR station. The two institutions entered into a lease agreement on 25th November, 2018 with the aim of allowing GBHL to reside and conduct dry bulk handling without hindrance. The Nairobi terminal is responsible for non-food products such as clinker, coal and fertilizer.

71. The current rates payable for grain bulk handling under the GBHL service is USD 3.85 per M/T as provided for in the KPA Tariff Book while conventional grain bulk handlers are charged USD 10.4 per M/T. This price differentiation has presented a technical barrier to trade and competition.
72. The projected annual growth in grain handling at the Port of Mombasa is 7%. In 2019, the vessel discharge was at 2.7 million metric tonnes compared to 400,000 metric tonnes in 2000.
73. The License Agreement between KPA and GBHL covers a period of 33 years from the signing period in 2000 and the Agreement provides that GBHL will be granted exclusive operation for a period of 8 years from 2000 to allow her recoup expenditure before exploring the licensing of another grain bulk handler at the Port of Mombasa.
74. Kilindini Terminals Ltd (KTL) was granted wayleave subject to several conditions however, according to KPA, KTL has not responded to KPA on the same. KTL have proposed variation of their initial application to change location from berth 11 to berth 5 which has a width of 76 meters while a vessel has an average length of 200 meters making it inadequate for use.

5 COMMITTEE RECOMMENDATIONS

From the above observations, the Committee recommends that:-

75. In order to optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.
76. The process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability.
77. Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone (SEZ), the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public Private Partnerships (PPPs) framework.
78. To promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing on the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.
79. KPA should continue investing including through the PPP framework in expansion of the Port facility to accommodate more berths to meet the growing demand within the region.

SIGNED.....



DATE.....

26th November 2020

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

MINUTES OF THE 59TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN 5TH FLOOR, CONTINENTAL HOUSE ON WEDNESDAY, 25TH NOVEMBER, 2020 AT 02.00 PM

PRESENT

1. Hon. Gladys Wang'a, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. (Dr.) Christine Ombaka, MP
7. Hon. David M. Mboni, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Edith Nyenze, MP
11. Hon. Catherine Waruguru, MP
12. Hon. James Gichuhi Mwangi, MP
13. Hon. Peter Lochakapong, MP
14. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Daniel E. Nanok, MP
2. Hon. Andrew A. Okuome, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Lauren Wesonga - Clerk Assistant II
3. Mr. Chelang'a Maiyo - Research Officer II
4. Mr. John Njoro - Serjeant-At-Arms
5. Ms. Mercyline Kerubo - Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to consider and adopt the following reports:-**
 - i. **Report on the inspection visits to KRA Offices to ascertain the impact of revenue enhancement initiatives on revenue collection; and**
 - ii. **Report on the optimization of revenue in grain handling services at the Port of Mombasa.**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/283: COMMUNICATION FROM CHAIRPERSON

The meeting was called to order at 02.30 p.m. and a prayer was said. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2020/284: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/285: CONSIDERATION AND ADOPTION OF THE REPORT ON THE INSPECTION VISITS TO KRA OFFICES TO ASCERTAIN THE IMPACT OF REVENUE ENHANCEMENT INITIATIVES ON REVENUE COLLECTION

The Committee considered the report and adopted it having been proposed and seconded by Hon. Shakeel Shabbir, CBS, MP and Hon. James Gichuhi, MP respectively. The Committee agreed on the following observations and recommendations:-

COMMITTEES' OBSERVATIONS

Following the inspection visits to KRA Offices and OSBPS, the Committee observed that:-

1. Revenue collection points installed with scanners collect more revenue compared to those without scanners but with high traffic. For instance, the Malaba OSBP which is busier than the Namanga OSBP managed to collect revenue of KSh. 2 billion in the FY 2019/20 compared to Namanga which collected KSh. 4 billion in the same FY;
2. Automation of systems has enhanced revenue collection by KRA as there is less human intervention and increased information sharing between the regional offices and with the Times tower centralized monitoring centre;
3. KRA is understaffed with four thousand five hundred (4500) permanent and pensionable staff and one thousand eight hundred (1800) under contract terms. This understaffing has resulted in revenue underperformance due to inadequate staff complement; posing a challenge on service delivery;
4. The Malaba OSBPs lacks decent staff housing forcing the staff to travel long distances to and from work which reduces productivity and puts them in an awkward position where they have to seek accommodation in houses owned by smugglers thereby compromising their integrity;
5. There was huge potential of revenue increase if the OSBPs were made to operate 24hours as it will ease of doing business since there is no limitations of working hours. Traders are able to import and export more. The 24hr operations will also ease congestion as the operating hours will be flexible;
6. KRA installed in Regional Electronic Cargo Tracking Seals (RECTS) where all containerized Transit Cargo & Single Customs Territory (SCT) goods from the port, and excisable goods are tracked under the Regional Electronic Cargo Tracking System (RECTS) Seals. The installation of the cargo tracking system has greatly minimized cases of corruption and theft of goods on transit as there is less or no human intervention and thus improved transparency due to real time information sharing. Before the RECTS, KRA was forced to escort trucks physically to ensure that they reach destination as declared. However, the cargo tracking devices are very few with the Inland Container Deport having only five thousand (5,000) seals). The lack of enough seals has created backlog at the Port of Mombasa and hence the need to invest in additional RECTs;
7. The lack of harmonization of tax on commodities between Kenya and her neighbors has encouraged smuggling of goods into the country especially alcoholic and soft drinks. For

- instance, the excise duty payable on alcoholic and soft drinks in Tanzania is relatively lower in comparison to the excise duty charged in Kenya. This has resulted in unscrupulous traders preferring to smuggle the items through the long and porous Kenya-Tanzania Border;
8. The introduction of 10% import duty on non-East African countries has resulted in a decrease in volumes of hardwood imported into Kenya and this may lead to deforestation in the country; and reduction in revenue;
 9. There is need to re-examine the Special Economic Zones policy in Kenya and carry out a comparative study between the SEZ policy in Uganda and Rwanda as there were reports of some businesses relocating to these two countries chiefly because of favorable policies and ease of doing business;
 10. The cost of electricity for manufacturers in Kenya is high compared to Uganda which has lower prices for electricity in the industrial zones making it a preferred business destination. This could be seen by the increase in the number of manufactured products being imported from Uganda to Kenya e.g. tiles and steel bars;
 11. The Malaba OSBP was poorly designed with no parking space for trucks leading to long queues of trucks, the buildings were dilapidated, the paths were not paved and there was no standby generator in case of power failure;
 12. The Malaba OSBP had no clean water and the only water available was being pumped from river Malaba for use in sanitation. The contractor did not carry out a feasibility study to assess whether there was a potential for drilling a borehole to supply water to the OSPB;
 13. Kenya Ports Authority had twenty-two (22) acres of unutilized land close to the Malaba OSBP that can be utilized for parking of trucks and this will go along in reducing traffic congestion;
 14. The road leading to the Busia OSBP was narrow and dilapidated and this leads to long queues of trucks including those carrying explosive material posing a risk in case of an explosion given that there were no fire extinguishers in Busia County;
 15. The speedboats used by KRA for surveillance at the Port of Mombasa are old and are unable to effectively monitor illegal activities in the waters and apprehend the tax evaders;
 16. All OSBPs did not have coolers in their warehouses hence goods stored awaiting clearance go bad quickly;
 17. The long and porous border between Kenya and her Tanzania and Uganda continue to encourage smuggling as the Multi agency teams are unable to provide security surveillance. The cross-border trade continues to undermine revenue collection as the traders use these illegal and unmanned routes.

COMMITTEE RECOMMENDATIONS

From the above observations, the Committee recommends that:-

1. Kenya Revenue Authority should immediately install drive-through scanners and in addition consider purchasing mobile scanners for bulk cargo and smart gates for all One Stop Border Posts. Parliament, through the Departmental Committee on Finance and National Planning should provide this budgetary requirement to be factored through the Supplementary Estimates I 2020/21 with priority on Malaba and Busia One Stop Border Posts and in the long term ensure all OSPBs are adequately equipped with drive-through scanners, mobile scanners for bulk cargo and smart gates;

2. The Kenya Revenue Authority is grossly understaffed at 4500 permanent staff and 1800 staff on contract. The National Treasury should allocate additional funds under the Supplementary Estimates I for 2020/21 to employ additional 2000 staff;
3. The Cabinet Secretary, National Treasury and the Commissioner General, Kenya Revenue Authority, should work out ways of operationalizing all One Stop Border Posts to operate 24 hours a day by the end of the year 2021. There is need for regional diplomatic engagement between Kenya and her neighbors to ensure necessary infrastructure is put in place to facilitate 24 hour operations;
4. The National Treasury should engage with Ministries of Finance in the East African Region during the budget cycle for the FY 2021/2022 in order to harmonize the excise duty charged by respective countries;
5. The Cabinet Secretary for National Treasury should direct Kenya Ports Authority to transfer land owned by Kenya Ports Authority in Malaba to Kenya Revenue Authority for purposes of building a truck parking facility. Once the transfer is done, Treasury should source funding to build the parking facility before the end of 2021;
6. The Cabinet Secretary, National Treasury should provide a report to Parliament on the Status of Special Economic Zone on how they compete with the rest of the East African countries within sixty days upon adoption of the report;
7. The Cabinet Secretary Ministry of Industrialization, Trade and Cooperatives should establish industrial zones where, in consultation with the Cabinet Secretary, Ministry of Energy the cost of electricity shall be subsidized in order to attract investment in the manufacturing sector; Provide a status report on the establishment of industrial zones and the progress made in establishing the same;
8. The National Treasury in consultation with the Departmental Committee on Finance and National Planning should review Tax Laws in the country in order to promote ease of doing business in the country. The amendments should be introduced in the Finance Bill, 2021;
9. The Commissioner General, KRA should include the purchase of regional electronic cargo seals in the Authority's budgets for the Financial years 2021/2022; 2022/2023; and 2023/2024;
10. To effectively combat illegal trade and tax evasion at the Ports of Mombasa and Kisumu, Parliament should allocate funds in Kenya Revenue Authority's budget for the FY 2021/2022 for the purchase of speedboats;
11. Kenya Revenue Authority should budget and purchase cold storage equipment in all One Stop Border Posts to ensure that goods stored in the warehouses are kept in the right conditions before they are dispatched; and
12. Feasibility studies should be carried out to find out the viability of establishing a border post at Shompole as the long and porous border between Namanga and Isebania One Stop Border Posts poses a greater avenue for tax evaders.

**MIN.NO.NA/F&NP/2020/286: CONSIDERATION AND ADOPTION OF THE
REPORT ON THE OPTIMIZATION OF REVENUE
IN GRAIN HANDLING SERVICES AT THE PORT
OF MOMBASA**

The Committee considered the report and adopted it having been proposed and seconded by Hon. Edith Nyenze, MP and Hon. Qalicha Wario, MP respectively. The Committee agreed on the following observations and recommendations:-

COMMITTEES' OBSERVATIONS

Following the inspection visit to the Port of Mombasa and from the stakeholders' submissions, the Committee observed that:-

1. Cargo throughput at the Port of Mombasa has been rising over the years driven by the corresponding economic growth of countries that use the port for import and export.
2. Kenya Ports Authority through the Wayleave Agreement of 1992 for a period of forty-five (45) years and a License Agreement entered in 2000 for a period of thirty-three (33) years designated berths 3 and 4 to GBHL to handle grain bulk vessel discharge alongside the conventional dry grain and fertilizer handling that utilize grabs for bagged cargo.
3. GBHL is a private company which commenced operations in 2000 and solely operates a specialized terminal (berths 3 and 4) for handling bulk grain imports and is the sole operator for mechanical bulk grain handling at the Port of Mombasa.
4. GBHL facilities comprise of a vessel handling facility, a bulk transit terminal, a bulk storage terminal bagged warehousing and local transportation services.
5. Terminal/berths 3 and 4 are designated to GBHL but occasionally, the berth serves as a common user facility for purposes of discharging other vessels when idle.
6. The Port of Mombasa has limited berths for handling specialized cargo including dry bulk grain discharge, this shortage is attributed to the congestion experienced at the Port especially during emergency, surge in importation and or humanitarian crisis.
7. Kenya Ports Authority is responsible for providing the critical infrastructure to support the berthing of grain bulk whereas GBHL has installed equipment for discharge of grain vessels and storage facilities.
8. Grain and bulk handling at the Port is done either through GBHL vide conveyor from the port to silos outside the Port; or conventionally by bagging vide grabs onto bagging plants alongside ships and loaded to trucks.
9. Conventional grain bagging is mainly done where there is excess demand for vessel discharge resulting from long queues of ships awaiting clearance hence waiting time and demurrage charges are not deemed economical.
10. GBHL uses highly mechanized systems with dust suppression filters which has resulted in reduced dust emission to the environment, shorter ship dwell times and reduced cargo wastage.
11. GBHL dry bulk handling terminal in Nairobi is complete with a storage capacity of 134,000 M/T of cargo, the terminal is adjacent to the Athi SGR station. The two institutions entered into a lease agreement on 25th November, 2018 with the aim of allowing GBHL to reside and conduct dry bulk handling without hindrance. The Nairobi terminal is responsible for non-food products such as clinker, coal and fertilizer.
12. The current rates payable for grain bulk handling under the GBHL service is USD 3.85 per M/T as provided for in the KPA Tariff Book while conventional grain bulk handlers are charged USD 10.4 per M/T. This price differentiation has presented a technical barrier to trade and competition.
13. The projected annual growth in grain handling at the Port of Mombasa is 7%. In 2019, the vessel discharge was at 2.7 million metric tonnes compared to 400,000 metric tonnes in 2000.
14. The License Agreement between KPA and GBHL covers a period of 33 years from the signing period in 2000 and the Agreement provides that GBHL will be granted exclusive operation for a period of 8 years from 2000 to allow her recoup expenditure before exploring the licensing of another grain bulk handler at the Port of Mombasa.
15. Kilindini Terminals Ltd (KTL) was granted wayleave subject to several conditions however, according to KPA, KTL has not responded to KPA on the same. KTL have

proposed variation of their initial application to change location from berth 11 to berth 5 which has a width of 76 meters while a vessel has an average length of 200 meters making it inadequate for use.

COMMITTEE RECOMMENDATIONS

From the above observations, the Committee recommends that:-

1. In order to optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.
2. The process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability.
3. Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone (SEZ), the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public Private Partnerships (PPPs) framework.
4. In order to promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing on the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.
5. KPA should continue investing including through the PPP framework in expansion of the Port facility to accommodate more berths to meet the growing demand within the region.

MIN.NO.NA/F&NP/2020/287: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 04.08 p.m. The next meeting will be held on Tuesday, 1st December, 2020 at 10.00 a.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED..........DATE.....*26th November 2020*.....

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE OPTIMIZATION OF REVENUE IN GRAIN
HANDLING SERVICES AT THE PORT OF MOMBASA

DATE: 25TH NOVEMBER, 2020

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU, MP – VICE-CHAIRPERSON	
3. HON. JIMMY N. O. ANGWENYI, MGH, MP	Virtual
4. HON. CHRISTOPHER OMULELE, MP	Virtual
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON. EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	Virtual
17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

Dated as of the

13th

day of

November

, 2018

KENYA PORTS AUTHORITY

- And -

GRAIN BULK HANDLERS LIMITED

SECOND VARIATION OF LICENCE AGREEMENT

In respect of the Licence Agreement dated 17th December 2002 and the Variation
of Licence Agreement dated 13th April 2018

This Second Variation of Licence Agreement is made as of the 13th day of Nov 2018

BETWEEN:

KENYA PORTS AUTHORITY, a body corporate with perpetual succession established under the Kenya Ports Authority Act (Cap. 391) for the purpose hereof of Post Office Box Number 95009 – 80104, Mombasa (hereinafter referred to as “KPA” which expression shall, where the context so requires, include KPA’s successors in title and permitted assigns); and

GRAIN BULK HANDLERS LIMITED, (Company Number C. 18094) a private liability company incorporated in the Republic of Kenya and of Post Office Box 80469 - 80100, Mombasa (hereinafter referred to as “Company” which expression, where the content so requires includes the Company’s successors in title and permitted assigns)

Each hereinafter, referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS:

- (A) The Parties hereto entered into a Licence Agreement (“Licence Agreement”) dated 17th December 2002 relating to handing of grains cereals and fertilizer in bulk in the Port of Mombasa and the Licence Agreement was varied by the Variation of Licence Agreement (“Variation of Licence Agreement”) dated 13th April, 2018.
- (B) The Parties hereto have agreed to further amend and vary the Licence Agreement and the Variation of Licence Agreement on the terms and conditions set out in this Second Variation of Licence Agreement and to make provision for certain additional matters as stipulated hereunder;
- (C) The Parties have agreed that this Second Variation of Licence Agreement shall form and be construed as being part of the Licence Agreement and the Variation of Licence Agreement.

IN CONSIDERATION of the due and punctual performance of the Company of the covenants and agreements in this Second Variation of Licence Agreement and in further consideration of the payment by the Company to KPA the sums of Kenya Shillings Thirty thousand (Kshs. 30,000/-) (receipt whereof is hereby acknowledged by KPA); now it is hereby agreed that with effect on and from the date hereof the Licence Agreement and the Variation of Licence Agreement shall be amended and varied as follows;



CT LAND REGISTRATION
MOMBASA
14 NOV 2018
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1. DEFINITIONS

- 1.1 Words and expressions defined in the Licence Agreement and Variation of Licence Agreement shall bear the same meanings ascribed to them in the Licence Agreement and the Variation of Licence Agreement wherever used in this Second Variation of Licence Agreement (including the recitals to this Second Variation of Licence Agreement) unless the context otherwise requires.

2. VARIATION

- 2.1 It is hereby agreed by the Parties that with effect on and from the date hereof, the Licence Agreement and the Variation of Licence Agreement shall be amended and varied in the following manner:
- 2.2 By deleting the entire definition of "Berths" and replacing it with "*Berths*" means the two adjacent berths at the Port known as "*Berth No. 3 and Berth No. 4 measuring a total length of 437 meters from Bollard Number 15 to 34*".
- 2.3 By inserting on the definition of "Wayleave Agreement" to include "the Third Variation Agreement dated 13th of November 2018 and made between KPA and GBHL to read as follows "Wayleave Agreement" means the wayleave agreement dated 24th December, 1992 and made between KPA and GBHL (previously known as jaffer & jaffer Limited) (as amended by the variation agreement dated 6th March, 1998 made between KPA and GBHL), Second Variation Agreement dated 13th April 2018 made between KPA and GBHL and (further amended by the Third Variation Agreement dated 13th day of November 2018 made between KPA and GBHL).

3. EFFECT OF THE VARIATION ON LICENCE AGREEMENT

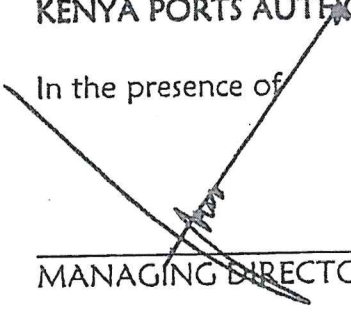
- 3.1 Save as hereinbefore expressly stated the Licence Agreement and the Variation of Licence Agreement shall continue in full force and effect and all references in the Licence Agreement and the Variation of Licence Agreement to "this Agreement" shall be construed as references to the Licence Agreement and Variation of Licence Agreement as amended and varied by this Second Variation of Licence Agreement.
- 3.2 Where there are any inconsistencies between this Second Variation of Licence Agreement and the Licence Agreement and the Variation of Licence Agreement the terms of this Second Variation of Licence Agreement shall prevail.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of each Party as of the date first written above.

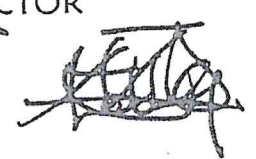
EXECUTION

SEALED with the Common Seal of
KENYA PORTS AUTHORITY

In the presence of

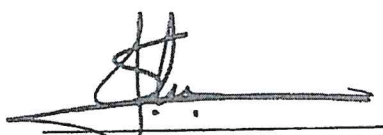


MANAGING DIRECTOR




DIRECTOR/SECRETARY

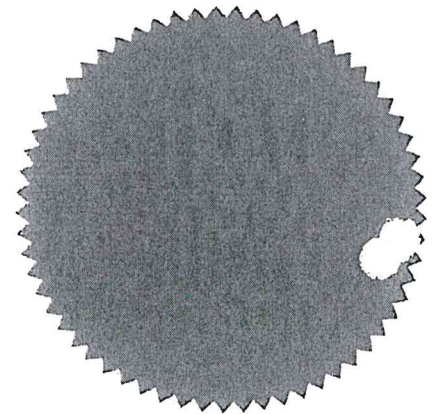
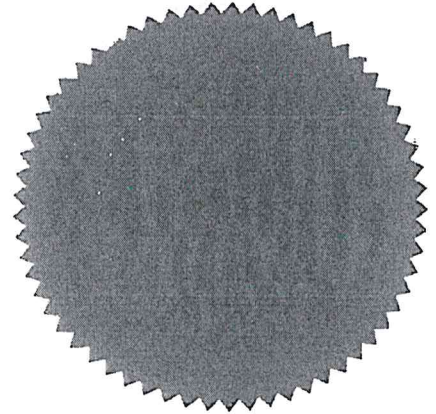
SEALED with the Common Seal of
GRAIN BULK HANDLERS LIMITED
In the Presence of



MANAGING DIRECTOR



DIRECTOR/SECRETARY



REPUBLIC OF KENYA
MINISTRY OF DOCUMENTS
AND RECORDS

15th November 2018
AB 153 813 1885 1637
13956


S. K. Mwangi 503

(13) (13)

Dated as of the 17TH day of DECEMBER, 2002

KENYA PORTS AUTHORITY

- and -

GRAIN BULK HANDLERS LIMITED

LICENCE AGREEMENT

relating to the handling of grains cereals and
fertilisers in bulk
in the Port of Mombasa

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2/90
This Agreement is made as of the 17 day of DECEMBER, 20

BETWEEN:

1. KENYA PORTS AUTHORITY, a body corporate with perpetual succession established under The Kenya Ports Authority Act (Cap. 391) for the purposes hereof of Post Office Box Number 95009, Mombasa (hereinafter referred to as "KPA" which expression shall, where the context so requires, include KPA's successors in title and permitted assigns); and
2. GRAIN BULK HANDLERS LIMITED (Company Number C.18094) a private limited liability company incorporated in the Republic of Kenya of Post Office Box Number 80469, Mombasa (hereinafter referred to as "GBHL" which expression shall, where the context so requires, include GBHL's successors in title and permitted assigns).

embossed on 17-12-20
COLLECTOR OF STAMP DUTY

WHEREAS:

- (A) GBHL presently undertakes the Operations at and adjacent to the Port.
- (B) KPA wishes to supervise and regulate certain aspects of the Operations and activities relating thereto.
- (C) GBHL has agreed to be supervised and regulated by KPA in relation to certain aspects of the Operations referred to in this Agreement and on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the recitals of this Agreement) the following expressions shall, unless the context otherwise requires, have the meanings:

"Act" means The Kenya Ports Authority Act (Chapter 391, laws of Kenya);

"Berths" means the two adjacent berths at the Port known as "Berth No. 3" and "Berth No. 4";

"Business Day" means a day (other than a Saturday Sunday or gazetted public holiday in Kenya) on which banking institutions are generally open for the conduct of banking business in Kenya;

"Commodities" means maize rice wheat and other types of grains and cereals and fertilisers;

"Fee" means the fee payable by GBHL to KPA pursuant to Section 2;

"GBHL Charges" means the rates at which GBHL levies charges to its customers for undertaking the Operations on behalf of its customers;

"Land" means the leasehold interest comprised in Title Numbers: Mombasa/Block I/400, 494 and 1948 of which GBHL is the registered proprietor;

"Lease" means the instrument of lease dated 4th November, 1994 and made between KPA and GBHL (previously known as Jaffer & Jaffer Limited) (as amended by a variation of lease dated 6th March, 1998 and made between KPA and GBHL) pursuant to which KPA leased the land comprised in Title Number: Mombasa/Block I/400 to GBHL;

"Operations" means the services and other activities including the discharge handling storage warehousing loading and unloading of Commodities all as more particularly described in Schedule 1;

"Port" means the Port of Kilindini, Mombasa;

"Quayside" means the area abutting the Berths and commonly referred to as the quayside of the Berths;

"Service Levels" mean the performance and other standards set out in Schedule 2;

"Ships" means vessel docking at the Berths for the purpose of discharging and/or loading of Commodities;

"Start Date" means the date of this Agreement;

"Tariff Book" means the document known as the "Tariff Book of Harbour Dues and Charges" and published by KPA pursuant to section 30 of the Act;

"Terminal" means the integrated facility for the storage and handling of, inter alia, Commodities in bulk erected by GBHL on the Land together with the mechanical conveyor system referred to in the Wayleave Agreement; and

"Wayleave Agreement" means the wayleave agreement dated 24th December, 1992 and made between KPA and GBHL (previously known as Jaffer & Jaffer Limited) (as amended by a variation agreement dated 6th March, 1998 and made between KPA and GBHL) pursuant to which KPA granted a right of wayleave to GBHL over certain land owned by KPA.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular number only shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice versa;
- (b) reference to Sections sub-clauses clauses and Schedules shall be construed as references to sections sub-clauses and clauses of and the schedules to this Agreement;
- (c) the expression "person" shall include any legal or natural person partnership trust company joint venture or other body (whether corporate or unincorporate);
- (d) reference to the expression "month" means a calendar month;
- (e) a reference to a statute shall include any statutory extension or modification amendment or re-enactment and any regulations or order made under that statute and any general reference to a statute includes any regulations or orders made under that statute;
- (f) references to the "parties" or "party" means the persons who are parties to this Agreement;
- (g) "Dollars" and "U.S.\$" denote the lawful currency from time to time of the United States of America;
- (h) a reference to "dwt" means dead-weight;
- (i) a reference to "tax" includes any present or future tax duty impost levy or charge of any kind which is imposed by or pursuant to the laws of the Republic of Kenya (and includes any penalty interest or fine in connection therewith);
- (j) a reference to "tonne" and "tonnage" refers to metric tonnes; and
- (k) references to the "Tariff Book" shall include any revision modification or amendment thereto.

1.3 Section headings shall not affect the interpretation of this Agreement.

1.4 References to or to a provision of a document are references to it as duly amended or supplemented before or after the date of this Agreement.

1.5 Any covenant by a party not to do an act or thing shall be deemed to include an obligation not to permit or suffer any such act or thing to be done by another person where that party is or should be aware that such act or thing is being done.

2. THE FEE

2.1 In consideration of KPA undertaking the activities referred to in Section 3, GBHL shall during the subsistence of this Agreement pay to KPA a fixed fee of United States Dollars five thousand (U.S.\$5,000/=) per annum payable yearly in advance, the first payment to be made within thirty (30) days of the Start Date and each subsequent payment to be made on each successive anniversary of the Start Date. The fee payable by GBHL to KPA shall be revisable every five years and the new fee payable by GBHL shall be similar to that payable by other operators undertaking the discharge and storage of Commodities in bulk from the Port and as published in the Tariff Book.

2.2 Payment of the Fee by GBHL to KPA shall be made:

- (a) without any set-off counterclaim or condition whatsoever; and
- (b) free and clear of any deduction or withholding for or on account of taxes except a deduction or withholding for or on account of any present or future tax which GBHL is required by law to make.

2.3 If GBHL is required by law to make any deduction or withholding for or on account of any present or future tax on account of the Fee payable under this Agreement:

- (a) GBHL shall notify KPA as soon as GBHL becomes aware of the requirement;
- (b) GBHL shall pay the tax deducted to the appropriate taxation authority promptly and in any event before any fine or penalty arises;
- (c) unless KPA shall be entitled to a credit for tax paid in respect of such deduction or withholding, the amount due in respect of the payment shall be increased by the amount necessary to ensure that KPA receives and retains (free from any liability relating to the deduction or withholding) a net amount which after the tax deduction is equal to the full amount which KPA would otherwise have received;
- (d) GBHL shall indemnify KPA against any liability of KPA in respect of such taxes; and

(e) within two (2) months after making any tax deduction GBHL shall deliver to KPA documentary evidence satisfactory to the KPA that the tax had been paid to the appropriate taxation authority.

2.4 Any value added tax payable or which may become payable on the Fee shall be for the account of GBHL.

2.5 If GBHL fails to make payment of the Fee on the due date for payment GBHL shall pay interest on such sum for the period from (and including) the due date for payment up to the date of actual payment (after as well as before any judgement) in accordance with this clause 2.5. Interest shall be payable at the rate which is five per cent. (5%) per annum above the Dollar LIBOR rate published from time to time by Barclays Bank of Kenya Limited throughout the relevant period. Interest under this clause 2.5 shall accrue from day to day be compounded at the end of each month and shall be paid by GBHL on demand.

2.6 If the Fee shall fall due for payment on a day which is not a Business Day payment shall be effected on the immediately following Business Day.

3. SUPERVISION AND REGULATION BY KPA

3.1 GBHL agrees that KPA shall be responsible for monitoring Service Levels and reviewing the GBHL Charges from time to time.

3.2 In order to enable KPA to undertake the matters referred to in clause 3.1, GBHL shall upon a request in writing from KPA provide to KPA the following information and documents:

information and documents in relation to the GBHL Charges

(a) the audited financial statements of GBHL; and

(b) GBHL's published tariff rates (including all revisions);

information and documents in relation to Service Levels

(a) individual Ship's outturn reports;

(b) Monthly Ships' file report; and

(c) GBHL's quarterly marketing report.

3.3 In the event that KPA shall wish to consult with GBHL on any matter or issue relating to Service Levels and/or the GBHL Charges the following procedures shall be followed:

(a) KPA shall give at least thirty (30) days prior written notice (hereinafter called the "Request Notice") to GBHL with details of the issues KPA wishes to consult on the reasons for wishing to do so and the actions which KPA would wish GBHL to undertake in the circumstances;


- (b) GBHL on receipt of the Request Notice shall be entitled to make written representations (hereinafter called the "Representation Notice") within fifteen (15) days of receipt of the Request Notice to KPA on the issues and matters set forth in the Request Notice and setting out GBHL's proposals as to the action GBHL would propose be taken and any alternative actions that might be taken or reasons for not taking action. Within five (5) days of receipt by KPA of the Representation Notice, each of KPA and GBHL shall use its best endeavours to consult with each other by telephone or other modes of communication in an attempt to resolve any conflict of views; and
- (c) if the consultation procedures set out in sub-clause 3.3(b) do not result in a resolution then KPA and GBHL shall after the expiry of thirty (30) days from the date of Request Notice appoint senior officers of each of KPA and GBHL to meet in person with a view to resolve any conflict of views and written minutes of such meetings shall be prepared.

3.4 GBHL shall implement all matters agreed on between KPA and GBHL in the manner agreed between KPA and GBHL and KPA shall be entitled to make recommendations to GBHL for consideration by GBHL on matters on which any conflict of views cannot be resolved.

4. UNDERTAKINGS OF GBHL

4.1 GBHL undertakes that, during the subsistence of this Agreement:

- (a) it will pay the Fee at the times and in manner set out in Section 2;
- (b) (without prejudice to GBHL's rights under the Wayleave Agreement) it will and will procure that its employees perform and observe the rules or regulations governing the terms of access to and from the Port as may be made by KPA from time to time including, without limitation, any rules or regulations regarding:
- (i) the use of roads and other means of access to from and within the Port; and
- (ii) the parking of vehicles at such places within the Port as KPA may from time to time generally permit;
- (c) (without prejudice to GBHL's rights under the Wayleave Agreement) it will not obstruct any service road or other means of access to from or within the Port;

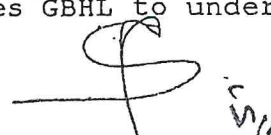


- (d) it will carry out the routine cleaning and clearing of the Quayside and any other areas within the Port following any spillage of Commodities in the conduct of the Operations; and
- (e) it will use all reasonable endeavours to ensure that the Operations are performed in accordance with the Service Levels.

5. AGREEMENTS BY KPA

5.1 In consideration of the agreement by GBHL to be supervised and regulated as set out in Section 3, KPA hereby agrees with GBHL:

- (a) that KPA shall procure that those Ships which GBHL has been contracted to discharge Commodities from or load Commodities into shall be given priority access to the Berths (or, as the case may be, any one of them) provided that KPA's obligation to give priority access to the Berths will only apply in the following cases:
 - (i) where the Ships in question conform to the limitations applicable to the use of the Berths (or, as the case may be, any one of them) as notified by KPA to all users of the Port from time to time; and
 - (ii) where GBHL has informed KPA in writing at least twenty-four (24) before the day as of which it is intended that a Ship will dock at the Berths (or, as the case may be, any one of them);
- (b) that, subject to paragraph 5.1(c), KPA shall not, and KPA shall procure that no person controlled by KPA shall, permit allow and/or licence any person for a period of eight (8) years commencing from 15th February, 2000 to construct develop and/or operate any facility which is capable of discharging Commodities shipped in bulk from a Ship docked at any berth in the Port and which Commodities after discharge are stored in bulk in silos warehouses or other similar storage facilities erected on any land in or in the vicinity of the Port or on any other land over which KPA or any person controlled by KPA has management or control provided that nothing in this sub-clause 5.1(b) shall prevent KPA from permitting other persons carrying on operations as bagging plant operators on the quayside and undertaking storage of Commodities outside the Port;
- (c) KPA hereby permits allows and licences GBHL to undertake and carry on the Operations;

A handwritten signature, possibly 'S', with the initials 'S/M' written to its right.

(d) that the tariff rates under the Tariff Book which are applicable to the handling of Commodities through the Terminal are as follows:

(i) paragraph 10.5 of Section II of the Tariff Book and which refers to "Dry General or Dry Bulk cargo handled at Mbaraki bulk bitumen handled via bitutainers, soda ash handled via conveyors". The tariff rate per tonne (or part thereof) presently payable is Dollar one and fifty cents (U.S.\$1.50); and

(ii) paragraph 13.7 of Section III of the Tariff Book and which refers to "Cargo handled at Mombasa Old Port, or at Outports, or at other then appointed places unless otherwise stated, or cargo handled at Mbaraki, Soda Ash handled via conveyor". The tariff rate per tonne (or part thereof) presently payable is Dollars nought and fifty-cents (U.S.\$0.50).

Accordingly, the aggregate of the tariff rates pursuant to the foregoing sub-clauses 5.1(d)(i) and 5.1(d)(ii) amount to a throughput charge of two Dollars (U.S.\$2.00) per tonne (or part thereof);

(e) that KPA shall not publish or create a separate category of tariff in respect of the handling of Commodities through the Terminal and that the tariff rates applicable to the handling of Commodities through the Terminal shall at all times and from time to time for the purposes of the application of tariff rates by KPA to users of the Port be categorised with and be regarded as being similar to the operations and services which are undertaken by persons other than GBHL as at the date hereof and which are recognised by KPA as falling within the description of operations and services set out in paragraph 10.5 of Section II (in respect of stevedoring services) and paragraph 13.7 of Section III (in respect of shore-handling services) of the Tariff Book;

(f) that the term "quayside" as defined to in the Wayleave Agreement shall include the Berths and the Quayside; and

(g) that nothing in this Agreement shall or shall be deemed to derogate from or in any way limit or vary the rights and obligations of each of KPA and GBHL under the Wayleave Agreement or the Lease or vary or amend the terms and conditions of the Wayleave Agreement and/or Lease and each of the Wayleave Agreement and the Lease shall continue in full force and effect in accordance with its terms without amendment or substitution.

6. REPRESENTATIONS AND WARRANTIES BY KPA

6.1 KPA represents and warrants to GBHL that:

- (a) it has the power to observe and perform its obligations under this Agreement;
- (b) all corporate approvals consents and authorities required by KPA to enter into and perform its obligations under this Agreement have been obtained and remain in full force and effect;
- (c) this Agreement constitutes valid and legally binding obligations of KPA enforceable in accordance with its terms; and
- (d) neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms conditions or provisions of, or constitute a default or require any consent under, any indenture mortgage charge agreement or other instrument or arrangement to which KPA is a party or by which KPA is bound or violate any of the terms or provisions of the Act or any judgement decree or order of any rule or regulation applicable to KPA.

6.2 The representations and warranties in clause 6.1 shall be deemed repeated by KPA on and as of each day that this Agreement remains in force and effect.

7. REPRESENTATIONS AND WARRANTIES BY GBHL

7.1 GBHL represents and warrants to KPA that:

- (a) it has the power to observe and perform its obligations under this Agreement;
- (b) all corporate approvals consents and authorisations required by GBHL to enter into and perform its obligations under this Agreement have been obtained and remain in full force and effect;
- (c) this Agreement constitutes valid and legally binding obligations of GBHL enforceable in accordance with its terms; and
- (d) neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms conditions or provisions of, or constitute a default or require any consent under, any indenture mortgage charge agreement or other instrument or arrangement to which GBHL is a party or by which GBHL is bound or violate any of the terms or provisions of GBHL's memorandum and articles of association or any judgement decree applicable to GBHL;

7.2 The representations and warranties in clause 7.1 shall be deemed repeated by GBHL on and as of each day that this Agreement remains in force and effect.

8. ARBITRATION

8.1 In the event of any dispute or difference between the parties arising out of or in connection with this Agreement and the same cannot be settled through negotiation by the parties within twenty one (21) of an offer by one party to the other to negotiate a settlement, the parties agree to attempt to settle the dispute by mediation or in accordance with the Dispute Resolution Centre (DRC) Mediation guidelines, which guidelines are deemed to be incorporated by reference to this clause 8.1. No party may commence any court proceedings or arbitration in relation to such dispute until mediation has terminated. If the dispute has not been settled pursuant to the mediation procedures aforesaid within ninety (90) days from the date when the mediation was instituted, then the dispute shall be determined by three arbitrators in accordance with the Arbitration Act 1995 (Cap. 49). The decision of such arbitrators shall be final and binding in accordance with the Arbitration Act.

9. NOTICES

9.1 Any demand notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing.

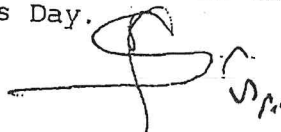
9.2 Any such demand notice or other communication shall be addressed as provided in clause 9.3 and, if so addressed, shall be deemed to have been duly given or made as follows:

(a) if sent by personal delivery, upon delivery at the address of the relevant party set out in clause 9.3;

(b) if sent by registered post five (5) days after the date of posting provided that proof is given that the notice was properly addressed and duly posted by registered post; and

(c) if sent by facsimile, when dispatched provided that the sender has received a receipt indicating proper transmission,

provided that if, in accordance with the above provisions, any such demand notice or other communication would otherwise be deemed to be given or made outside normal working hours on a Business Day in the place of service of the demand notice or other communication it shall be deemed to be given or made at the start of normal working hours on the next Business Day.



9.3 The relevant addressee address and facsimile number of each party for the purposes of this Agreement, subject to clause 9.4 are:

for KPA, to:

P.O. Box 95009
Mombasa

Attn: Managing Director
Fax No: 011-311867

for GBHL, to:

P.O. Box 80469
Mombasa

Attn: Executive Chairman
Fax Nos: 011-316845, 011 230232

9.4 A party may notify the other party to this Agreement of a change to its name address or facsimile number for the purposes of clause 9.3 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than ten (10) days after the date on which notice is given, the date falling fifteen (15) Business Days after notice of any such change has been given.

10. DURATION

10.1 This Agreement shall remain in force for a period of thirty three (33) years commencing from (and including) the Start Date.

11. COSTS

11.1 Each party shall bear its own costs incurred in the negotiation preparation and execution of this Agreement provided that GBHL shall pay the stamp duty which is payable on or in connection with this Agreement.

12. ASSIGNMENT

12.1 No party shall be entitled to assign any of its rights or transfer any of its obligations hereunder without the prior written consent of the other party.

Handwritten signature and initials, possibly 'E.M.', in the bottom right corner of the page.

13. NO PARTNERSHIP

13.1 Nothing in this Agreement shall constitute or be deemed to constitute GBHL the agent or partner of KPA for any purpose whatsoever.

14. MISCELLANEOUS

14.1 This Agreement constitutes the entire agreement between the parties and no amendment or addition to this Agreement shall have any force or effect unless approved by the Board of Directors of each party and is reduced to writing and duly executed by both parties.

14.2 Each party shall during the term that this Agreement remains in full force and effect and subsequent to its termination keep confidential documents data and information concerning the activities business methods and other information of the other party which is provided under the terms of this Agreement or which comes into its possession as a result of this Agreement.

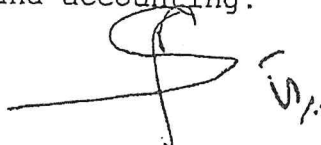
15. GOVERNING LAW

15.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

SCHEDULE 1

DESCRIPTION OF OPERATIONS

1. Discharge of Commodities from Ships docking at the Berths pursuant to contractual arrangements between GBHL and its customers.
2. Loading of Commodities into Ships docking at the Berths pursuant to contractual arrangements between GBHL and its customers.
3. Handling of Commodities at the Terminal and areas adjacent to the Terminal including storage warehousing and bagging together with all necessary documentation and accounting pursuant to contractual arrangements between GBHL and its customers.
4. Loading of Commodities onto vehicles and railway wagons for delivery to consignees and other cargo handling operations including all necessary documentation and accounting.



SCHEDULE 2

SERVICE LEVELS

1. Discharge of Commodities from Ships

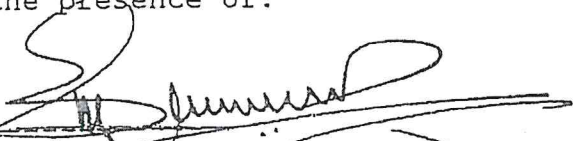
GBHL will use its best endeavours to reach an average through vessel rate of 7,000 dwt per weather working day.

2. Handling of Commodities at the Terminal


GBHL will use its best endeavours to reach an average daily delivery rate of 3,500 tonnes per weather working day, subject to availability of transport.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the day and year first above written.

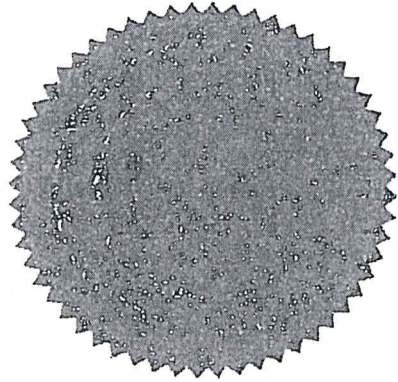
SEALED with the Common Seal of
KENYA PORTS AUTHORITY
in the presence of:




Managing Director




Secretary



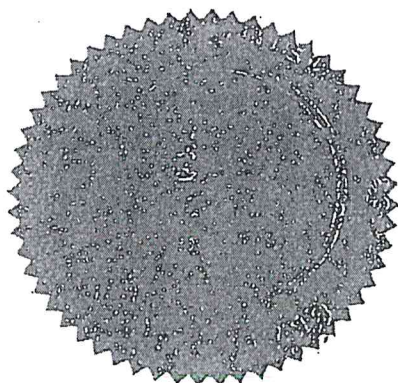
SEALED with the Common Seal of
GRAIN BULK HANDLERS LIMITED
in the presence of:



Director



Director/Secretary



REPUBLIC OF KENYA
AGENCY OF DOCUMENTATION
MOMBASA
2300m 17-12-17

Office of the Managing Director



Kenya Ports Authority

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+254 720 202424
+254 733 337941 - 6
Telefax: +254 (41) 2230906
Website: www.kpa.co.ke

CDD/2/1/13(56)

23rd October 2017

Mr. Mohamed Islam
The Director
Kilindini Terminals Limited
P.O. Box 87074
MOMBASA

Dear *Mohamed,*

APPLICATION TO BUILD AND OPERATE A BULK GRAIN HANDLING FACILITY AT THE PORT OF MOMBASA

The above subject matter and your application dated 10th February 2017 to build and operate a bulk grain handling facility at the Port of Mombasa refers.

We would like to inform you that the KPA Board, at its 334th Regular meeting, approved your application to be granted a way leave to operate at Berth 11 subject to conforming to the following:

- a) The Standard Gauge Railway (SGR) port relief line operations
- b) Berths 11-14 rehabilitation designs and development plans; and
- c) Fulfillment of the requirements of the PPP Act 2013 and other regulatory obligations.

In view of the above, you will be required to comply with the PPP Act 2013 on privately initiated investment proposals.

Yours *sincerely,*


Catherine Mturi-Wairi
MANAGING DIRECTOR



