

REPUBLIC OF KENYA



THE SENATE

COS

Recommended for
approval for tabling -

Rt. Hon. Speaker
You may approve
for tabling.
0002
02/12/21

TWELFTH PARLIAMENT – FIFTH SESSION

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE STATEMENT REGARDING THE
STATUS OF THE NEW DANDORA STADIUM

PAPERS LAID	
DATE	2/12/2021
TABLED BY	Sen. Sakaja
COMMITTEE	Labour
CLERK AT THE TABLE	Kavata. M.

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI

December 2021

DC- EG
Recommended & Forwarded for Approval
02/12/2021

ABBREVIATIONS AND ACRONYMS

EACC – Ethics and Anti-Corruption Commission

PPRA – Public Procurement and Regularity Authority

NMS – Nairobi Metropolitan Services

DPP – Director of Public Prosecution

CECM – Committee Executive Committee Member

1. The County Integrated Development Plan (CIDP) for Nairobi City County government for the period 2018-2022 provided for renovation of stadia across Nairobi at a cost of Ksh.1.07 billion;
2. Dandora Stadium is one of the four stadia including Kawangware; Kihumbuini; Ziwani whose construction tender worth Ksh 1.03billion was awarded to Scanjet Construction Limited on 25th April 2018;
3. Out of the Ksh 1.03billion tender, Ksh. 350 million was earmarked for the construction of Dandora Stadium;
4. The works on the Dandora Stadium have stalled due to a dispute between Nairobi County government and the contractor, Scanjet Construction;
5. The gist of the dispute is that the Contractor, Scanjet Construction Limited illegally deviated from the contract terms of reinforcing the terraces with steel as opposed to concrete as had been provided in the contract; However it could not be confirmed with certainty whether the deviations in question were beyond the agreeable twenty five (25) per cent of the project;
6. The Dandora project is at least 65 -70 percent complete;
7. Works on the Stadium is of good quality;
8. The County has so far paid Kshs.123 million for the construction of Dandora Stadium from four (40) valuations report that complied with the scope of the work; However, this contradicts the EACC position that the County Government has made payments amounting to Ksh 137.5 million and the PPRA position at Ksh 196.8million;
9. Nairobi City County can review the contract terms in accordance with the law, terminate the contract and procure new services for construction of the Stadium; and
10. The implications of the incomplete Dandora stadium continues to impact negatively on the socio-economic wellbeing of the youth and the community in Dandora at large.
11. The county government and the contractor are currently going through an arbitration process; and
12. The EACC has not stopped works at the stadium.

And as such recommends THAT –

1. Nairobi County Government to review the contract terms in accordance with the law and complete the project as soon as possible.
2. Due to public interest, EACC concludes on its investigation on the matter as works at the stadium continues.

CHAPTER ONE

BACKGROUND

1.2 The Underlying Problem/ Gist of the Statement

The status of the new Dandora stadium in Nairobi City County was brought to the Senate through a Statement by Senator Johnson Sakaja, CBS pursuant to Standing Order 47(1). The statement alluded to the following issues. THAT-

- (i) The new Dandora stadium has for many years been a community stadium where young people in Nairobi and specifically Dandora have utilized to nurture talent that has resulted in sterling and rewarding careers in soccer and other sporting activities;
- (ii) The construction of the new Dandora stadium in Embakasi North Constituency was commissioned in 2018 by the County Government of Nairobi and its completion was expected in 24 months;
- (iii) The stadium is incomplete as the project is marred by controversies as regards the procurement processes and allegations of poor workmanship by the contractor;
- (iv) The delay has also been occasioned by an ongoing investigation on the procurement irregularities by the Ethics and Anti-Corruption Commission (EACC) with a pending outcome;
- (v) The delay in the completion of the facility continues to be disservice to thousands of talented young people who had hopes that it will be of use to them in enhancing their talents especially in sports;
- (vi) The consequences of the closure has impacted the youth around Dandora and some have resorted to crime consequently losing their lives including through extra judicial killings;
- (vii) In February 2021, the President, His Excellency Uhuru Kenyatta directed that the ongoing (*works of which 20 per cent or less work was yet to be undertaken*) be completed within weeks. However, this has not be heeded to;
- (viii) Further engagements with the Director General of the Nairobi Metropolitan Services (NMS) and then acting Governor of the Nairobi County Government (*and now Governor*) have not resulted in progress;
- (ix) Owing to continued frustrations among the youth in the area, the young people of Dandora intended to access the stadium and commence its usage despite the stadium being incomplete as they are impressed with the work undertaken thus far;

CHAPTER TWO

INTRODUCTION

2.1 About Dandora Stadium

The Dandora Stadium in Dandora phase 4 was one of the four (4) other stadia proposed for construction by the County Government of Nairobi during the 2017/2018. Others are Umeme ground in Ziwani, Kariokor; Kihumbuni ground in Kangemi; and Ndurarua grounds in Kawangware.

The work for the projects at each respective grounds was to include the construction of the following:

- (i) A perimeter wall;
- (ii) Excavating and compacting of the playing pitch;
- (iii) Placement of artificial turf complete with all football field fixtures;
- (iv) Erection of six (6) concrete sitting terraces with an approximate capacity of one thousand seven hundred and seventy (1770) persons;
- (v) Installation of electrical works including flood lights;
- (vi) Construction of storm water drainage;
- (vii) Construction of utility rooms;
- (viii) Construction of toilet blocks;
- (ix) Plumbing works and paved ways

The works on the Dandora Stadium commenced on 4th June 2018 and was to take 18 months.

7. Works at the stadium stalled after the contractor deviated from the contract terms and further the contractor ceased works at the site following EACC commenced investigations on the integrity of the project;
8. The matter became complicated as EACC and PPRA have not advised the County on regarding the following unresolved issues:-
 - (a) The deviations in question were beyond the agreeable twenty five (25) per cent of the project;
 - (b) The contract period has so far lapsed;
 - (c) The County has lost in terms of utilisation of the Dandora Stadium while at the same time the county government is under immense pressure from the community; and
 - (d) The County has no mandate to pay for works not requisitioned.
9. The County proposes that EACC and PPRA submit to the report on the investigations undertaken, terminate the contract and further blacklist the contractor for not honouring the contractual terms;

3.1.2 Presentation by Mr. David Too, Director, Legal Services and Asset Recovery, EACC

In his presentation, the Committee was informed that –

1. On 24th October 2019, EACC began its investigation into allegations of procurement irregularities in the award of tender no. NCC/ED/T/193/2017-2018 for proposed construction and completion of Dandora Stadium by Scanjet Construction Ltd;
2. The Commission collected relevant documents, recorded statements from fifty three (53) persons of interest and engaged the State Department of Public Works who conducted a technical audit of the works undertaken at one the stadiums.
3. The investigations revealed as follows:-
 - (a) The County Integrated Development Plan (CIDP) for Nairobi City County government for the period 2018-2022 provided for renovation of stadia across Nairobi at a cost of Ksh.1.07 billion. The Dandora stadium was one of the four stadia under this programme alongside Kawangware, Kihumbuini and Ziwani;
 - (b) The tender was a multi-year project with a planned implementation period of between 2017/2018, 2018/2019 and 2019/2020;
 - (c) The foregoing had sufficient budget provision for the three years;
 - (d) Through an open national tender, the procurement process commenced in March 2018 and was concluded by a tender award to Scanjet Construction Limited on 28th May 2018 at Ksh.1.03 billion for the construction of the four (4) stadia;

terms of the contract and contrary to section 135(6), 139 of the Public Procurement and Asset Disposal Act, 2015;

- (b) The County Government paid the contractor Ksh 196,876,670; (*Annex c*)
 - (c) The variations carried out by Nairobi County Government were in regard to project materials without any explanation on the cost implications; and
 - (d) There was suspected forgery of documents including the cabinet memo that authorised the contract variations;
4. PPRA vide letters ref no PPRA/COMP/40/53 VOL. II (85) and Ref: PPRA/COMP/40/53 VOL II (87) dated 23rd September 2019 and 23rd October 2019 respectively engaged the County Government of Nairobi to respond to the findings. However, the County Government of Nairobi has failed to respond to the Authority within the given timeframe;
5. In view of the foregoing and pursuant to provisions of Section 38 (1) (c) of the Public Procurement as Asset Disposal Act, the Authority forwarded the report to EACC, Director of Criminal Investigations (DCI) and DPP.

3.2 Committee Site Visit to the New Dandora Stadium

The Committee undertook an inspection visit at the Dandora Stadium on the 1st Dec 2021. During the visit, the committee engaged with representatives from the County Government of Nairobi, representatives from the Dandora community and other youths from the area. Some of the County officials present included CECM, Education, Youth, Sports, Gender Affairs, Culture and Social Services; Director of Sports, Sports Officers and Ward Administrators among others. During the visit, the Committee observed as follows:-

- 1. The New Dandora Stadium is a project at the heart of the Dandora community neighboring a school, churches, and residential buildings and in some cases being encroached by the latter. This may pose future challenges if not adequately resolved;
- 2. The Works at the Dandora stadium are indeed incomplete (*at about 65-70 percent complete*). However, specific fixtures and units had been installed. This include the following-
 - (a) Provision for spectator terraces in the form of steel;
 - (b) Provision for management offices;
 - (c) Provision for changing rooms for both home and away teams;
 - (d) Provision for the sound room;
 - (e) Provision for stalls and business units (*at the back side of the stadium*); and
 - (f) Provision for floodlights.

CHAPTER FOUR: COMMITTEE OBSERVATIONS & RECOMMENDATIONS

4.1 Committee Observations

Following the Committees engagement with the various stakeholders and the subsequent site visit, the Committee makes the following observations. THAT-

1. The County Integrated Development Plan (CIDP) for Nairobi City County government for the period 2018-2022 provided for renovation of stadia across Nairobi at a cost of Ksh.1.07 billion;
2. Dandora Stadium is one of the four stadia including Kawangware; Kihumbuini; Ziwani whose construction tender worth Ksh 1.03billion was awarded to Scanjet Construction Limited on 25th April 2018;
3. Out of the Ksh 1.03billion tender, Ksh. 350 million was earmarked for the construction of Dandora Stadium;
4. The works on the Dandora Stadium have stalled due to a dispute between Nairobi County government and the contractor, Scanjet Construction;
5. The gist of the dispute is that the Contractor, Scanjet Construction Limited illegally deviated from the contract terms of reinforcing the terraces with steel as opposed to concrete as had been provided in the contract; However it could not be confirmed with certainty whether the deviations in question were beyond the agreeable twenty five (25) per cent of the project;
6. The Dandora project is at least 65 -70 percent complete;
7. Works on the Stadium is of good quality;
8. The County has so far paid Kshs.123 million for the construction of Dandora Stadium from four (40) valuations report that complied with the scope of the work; However, this contradicts the EACC position that the County Government has made payments amounting to Ksh 137.5 million and the PPRA position at Ksh 196.8million;
9. Nairobi City County can review the contract terms in accordance with the law, terminate the contract and procure new services for construction of the Stadium; and
10. The implications of the incomplete Dandora stadium continues to impact negatively on the socio-economic wellbeing of the youth and the community in Dandora at large.
11. The county government and the contractor are currently going through an arbitration process; and

**MINUTES OF THE 95TH (ZOOM ONLINE) MEETING OF THE
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE
HELD ON THURSDAY, 2ND DECEMBER, 2021 AT 12.30 PM.**

MEMBERS PRESENT

- | | |
|-------------------------------------|-------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - V. Chairperson |
| 3. Sen. Susan Kihika | - Member |
| 4. Sen. Naomi Masitsa Shiyonga | - Member |
| 5. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------------|----------|
| 1. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 2. Sen. Paul Mwangi Githiomi | - Member |
| 3. Sen. Makori Beatrice Kwamboka | - Member |
| 4. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

SENATE SECRETARIAT

- | | |
|----------------------|---------------------------|
| 1. Mr. Kevin Kibet | - Clerk Assistant/HO |
| 2. Ms. Marale Sande | - Senior Research Officer |
| 3. Ms. Fatuma Abdi | - Audio Officer |
| 4. Mr. Ruben Kimosop | - Serjeant-At-Arms |

MINUTE SEN/SCLSW/404/2021: PRELIMINARIES

The Chairperson called the meeting to order at 12.50 p.m. followed by a word of prayer.

MINUTE SEN/SCLSW/405/2021: ADOPTION OF THE AGENDA

MINUTES OF THE 74TH (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 26TH OCTOBER 2021 AT 9.30 A.M.

MEMBERS PRESENT

- | | |
|--|---------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - Vice-Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 4. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 5. Sen. Naomi Masitsa Shiyonga | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|-----------------|
| 1. Sen. Paul Mwangi Githiomi | - Member |
| 2. Sen. Susan Kihika | - Member |
| 3. Sen. Makori Beatrice Kwamboka | - Member |
| 4. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

IN-ATTENDANCE

- | | |
|----------------------------------|--|
| 1. Ms. Janet Muthoni Ouko | - CECM, Education, Youth, Sports, Gender Affairs, Culture and Social Services |
| 2. Dr. Jarius Musumba | - Ag. County Secretary, Nairobi City County |
| 3. Mr. Daniel Ngari | - Chief Officer, Education, Youth and Social Services |
| 4. Mr. Hari Mwahari | - Director, Sports, Nairobi City County |
| 5. Mr. David Too | - Director, Legal Services and Asset Recovery, Ethics and Anti-Corruption Commission (EACC) |
| 6. Mr. John Lonkoi | - Deputy Director, Forensic Investigation (EACC) |
| 7. Ms. Catherine Ngare | - Investigation Officer (EACC) |
| 8. Mr. Hashim Kamau | - Chairman, Sports Board, Nairobi City County |

9. Ms. Pauline Opiyo - Ag. Director General, Public Procurement Regulatory Authority (PPRA)
10. Mr. Thomas Otieno - Manager, Complaints and Investigations (PPRA)
11. Dr. Francis Kissnger - PPRA

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Ms. Marale Sande | - Senior Research Officer |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Mr. Frank Mutulu | - Media Relations Officer |
| 5. Ms. Fatuma Abdi | - Audio Officer |
| 6. Mr. Ruben Kimosop | - Serjeant-At-Arms |

MINUTE SEN/SCLSW/321/2021: PRELIMINARIES

The Vice-Chairperson called the meeting to order at 10.25 a.m. followed by a word of prayer.

MINUTE SEN/SCLSW/322/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Naomi Shiyonga, MP and seconded by Sen. Stewart Madzayo, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Meeting with the Director General, Nairobi Metropolitan Services (NMS) and Ag. Governor of Nairobi City County on the Statement concerning the State of the New Dandora Stadium; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/323/2021: MEETING WITH THE DG NAIROBI METROPOLITAN SERVICES (NMS) AND AG. GOVERNOR OF NAIROBI

CITY COUNTY ON THE STATEMENT CONCERNING THE STATE OF THE NEW DANDORA STADIUM

(a) Presentation by Ms. Janet Muthoni Ouko, the CECM for Education, Youth, Sports, Gender Affairs, Culture and Social Services

Ms. Janet Muthoni Ouko, the CECM for Education, Youth, Sports, Gender Affairs, Culture and Social Services, presented as follows;

1. Tender worth Ksh.1.03 billion to construct four (4) stadia; Kawangware, Kihumbuini, Ziواني and Dandora was awarded to Scanjet Construction Limited on 25th April 2018.
2. On 12th September 2018, a technical team conducted a site visit to Dandora Stadium and noted that Scanjet Limited has deviated from the contract terms. The site visit revealed that the contractor was erecting steel sitting terraces instead of concrete terraces.
3. Several warning letters were issued to the contractor warning him against erecting different materials and no response was received.
4. PPRA questioned the integrity of the project and they invited EACC to carry out investigations on the project.
5. The County has paid Kshs.123 million so far for the construction of Dandora Stadium from 4 valuations report that complied with the scope of the work.
6. Works done without adhering to the contract terms have not been paid because the county does not have a basis to cost the project.
7. Works stalled after the contractor deviated from the contract terms. Contractor moved out of the site after EACC came in to investigate the integrity of the project.
8. Complexity of the matter comes in because EACC and PPRA have not advised the county on various issues that include;
 - a) Deviation was beyond the agreeable 25 per cent.
 - b) Contract period has lapsed.
 - c) County has lost a lot in terms of utilisation of the Dandora Stadium and the county government is being pressured by the community
 - d) The county cannot pay for works not requisitioned.

9. The county proposes that EACC and PPRA submit to them the investigation report, termination of the contract and blacklist the contractor for not honouring the contract terms.

(b) Presentation by Mr. David Too, Director, Legal Services and Asset Recovery, Ethics and Anti-Corruption Commission (EACC)

Mr. David Too presented as follows;

1. Informed the meeting that the CEO of EACC, Mr. Twalib Mbarak, was unable to attend the meeting due to exigencies of duty and had given an official communication through the Clerk of the Senate.
2. On 24th October 2019, EACC began its investigation into allegation of procurement irregularities in the award of tender no. NCC/ED/T/193/2017-2018 for proposed construction and completion of Dandora Stadium by Scanjet Construction Ltd
3. The Commission collected relevant documents, recorded stated from 53 persons of interest and engaged the State Department of Public Works who conducted a technical audit of the works done on the stadium.
4. The investigations revealed as follows;
 - (i) The county integrated development plan for Nairobi City County government for the period 2018-2022 provided for renovation of stadia across Nairobi at a cost of Kshs.1.07 billion. The Dandora stadium was one of the four stadia under this programme alongside Kawangware, Kihumbuini and Ziwani.
 - (ii) The Tender was a multi-year project that was planned to be implemented during the financial years 2017/2018, 2018/2019 and 2019/2020. This was sufficiently budgeted for in the three years.
 - (iii) Through and open national tender, the procurement process commenced in March 2018 and was concluded by a tender award to Scanjet Construction Limited on 28th May 2018 at Ksh.1.03 billion. This was for construction of the four (4) stadia enlisted above.
 - (iv) The proposed construction of the 4 stadia was supposed to take 18 months and run concurrently. Works on the Dandora Stadium commenced on 4th June 2018. The contractor did not commence works for the other three stadia.

- (v) Kshs.350 million was allocated for the construction of Dandora Stadium, out of the Kshs.1.03 billion which had been allocated for the 4 stadia.
- (vi) So far, the county government of Nairobi has made payments of Kshs.137,526,314.74 to the contractor in 4 installments.
- (vii)The works on the Dandora Stadium have stalled due to a dispute between Nairobi County government and the contractor Scanjet Construction.
- (viii)This dispute was occasioned by the contractor's deviation from reinforced concrete terraces to steel as evidenced in the various correspondences between the county and the contractor.
- 5. The investigations are ongoing and will be finalized in 60 days and thereafter, a report of the findings and recommendations will be submitted to the Director of Public Prosecutions (DPP).
- 6. The investigations began in 2019 but due to the outbreak of COVID-19, operations at EACC were scaled down therefore impeding speedy progress in the remaining investigations.

(c) Presentation by Mr. Thomas Otieno, Manager, Complaints and Investigations (PPRA)

Mr. Thomas Otieno presented as follows;

1. PPRA received a complaint through a letter dated 13th June 2019 regarding the construction of the Dandora Stadium.
2. The complainant alleged that;
 - (i) the contract of Dandora Stadium as awarded and the cost was for construction of a concrete structure
 - (ii) The contract for the project put up steel structures instead of the concrete structure in clear contravention of the specifications and terms of the contract.
 - (iii) The county government had gone ahead to irregularly pay the contractor despite warnings from the technical evaluators of the county.
 - (iv) The contract documents are being forged including cabinet memorandum to state that the stadium should be steel structures when the work is 70% complete.
3. PPRA established that;

- a. The contractor, Scanjet Construction Ltd, supported by officer at the county government of Nairobi put up steel structures instead of the concrete structures as initially tendered for by the bidders in a clear contravention of the specifications and terms of the contract and contrary to section 135(6), 139 of the Public Procurement and Asset Disposal Act, 2015.
 - b. The county government paid the contractor Kshs.196,876,670 as evidenced by the payment record highlighted.
 - c. The variations carried out by Nairobi County government were in regard to project materials without any explanation on the cost implications.
 - d. There was suspected forgery of documents including the cabinet memo that authorised the contract variations.
4. PPRA vide letters ref no PPRA/COMP/40/53 VOL. II (85) and Ref: PPRA/COMP/40/53 VOL II (87) dated 23rd September 2019 and 23rd October 2019 respectively engaged the county government of Nairobi to respond to the findings. However, the county government of Nairobi has failed to respond to the Authority within the given timeframe.
 5. In view of that pursuant to provisions of Section 38 (1) (c) of the Public Procurement as Asset Disposal Act, the authority forwarded the report to EACC, Director of Criminal Investigations (DCI) and DPP.

(d) Members' Interventions.

1. Members sought to know if terminating the contract will tamper with the investigations being undertaken by EACC.
2. Members sought to establish if PPRA faced difficulties in getting any documents from Nairobi City County government.
3. Members urged the County government to engage the Nairobi Metropolitan Services to assist in completion of the project due their public works capacity and machinery.
4. Members lamented on the failure of the Ag. Governor to attend the Committee meetings and stated that the Committee might be compelled to institute other actions against her.

(e) Responses by EACC

1. Nairobi City County can review the contract terms in accordance with the law to terminate the contract and procure new services for construction of the Stadium.
2. EACC undertook to fast track the investigations and report in 60 days.
3. EACC stated that institutions should continue with works on projects that have been flagged off for illegality or any sort of complaints as investigations go on concurrently.

(f) Responses by PPRA

1. The contract in question has lapsed and under the law, a contract that has lapsed cannot be revived. A contract can be extended or varied if it is within its lifetime.
2. PPRA stated that it cannot confirm if the variation of the contract is 25% because the Authority was not given any cost analysis of the variations.
3. PPRA confirmed that it experienced challenges in accessing documents from the Nairobi City County Government.
4. Members resolved to visit the Dandora Stadium to inspect the project.

**MINUTE SEN/SCLSW/324/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 10.55 a.m.



SIGNATURE:.....

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Thursday, 28th October, 2021

MINUTES OF THE 73RD (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 19TH OCTOBER 2021 AT 10.00 A.M.

MEMBERS PRESENT

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|-------------------------------------|---------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - Vice-Chairperson |
| 3. Sen. Susan Kihika | - Member |
| 4. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 5. Sen. Makori Beatrice Kwamboka | - Member |
| 6. Sen. Naomi Masitsa Shiyonga | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------------|----------|
| 1. Sen. Paul Mwangi Githiomi | - Member |
| 2. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 3. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

IN-ATTENDANCE

- | | |
|---------------------------|---|
| 1. Ms. Janet Muthoni Ouko | - CECM, Education, Youth, Sports, Gender Affairs, Culture and Social Services |
| 2. Dr. Jarius Musumba | - Ag. County Secretary, Nairobi City County |
| 3. Mr. Daniel Ngari | - Chief Officer, Education, Youth and Social Services |
| 4. Ms. Maureen Kinyanjui | - The Star |
| 5. Mr. Brian Orina | - Capital FM |
| 6. Ms. Njoki Kihiu | |
| 7. Mr. Abwao | |

SENATE SECRETARIAT

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|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Kevin Kibet | - Clerk Assistant |
| 3. Ms. Marale Sande | - Senior Research Officer |

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|-----------------------|---------------------------|
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Frank Mutulu | - Media Relations Officer |
| 6. Ms. Fatuma Abdi | - Audio Officer |
| 7. Mr. Ruben Kimosop | - Serjeant-At-Arms |

MINUTE SEN/SCLSW/317/2021: PRELIMINARIES

1. The Chairperson called the meeting to order at 10.25 a.m. followed by a word of prayer.
2. The Meeting was informed that the Nairobi Metropolitan Services (NMS) had sent a written apology and requested to be given two weeks to file responses on the matters raised in the Statement.

MINUTE SEN/SCLSW/318/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. (Dr.) Alice Chepkorir Milgo, MP and seconded by Sen. Johnes Mwaruma, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Meeting with the Director General, Nairobi Metropolitan Services (NMS) and Ag. Governor of Nairobi City County on the Statement concerning the State of the New Dandora Stadium; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/319/2021: MEETING WITH THE DG NAIROBI METROPOLITAN SERVICES (NMS) AND AG. GOVERNOR OF NAIROBI CITY COUNTY ON THE STATEMENT CONCERNING THE STATE OF THE NEW DANDORA STADIUM

Ms. Janet Muthoni Ouko, the CECM for Education, Youth, Sports, Gender Affairs, Culture and Social Services, informed the meeting that the Ag. Governor, Ms. Ann Kananu Mwenda, was feeling unwell and could not attend the meeting.

(a) Members' Interventions.

1. Members noted that the Committee had not received any written communication excusing the Ag. Governor from the meeting; and
2. Members unanimously agreed to reschedule the meeting to allow the NMS and the Ag. Governor to appear before the Committee at a later date.

Way Forward

1. The Committee resolved to reschedule the meeting and invite the Ag. Governor and the NMS the following week.
2. The Committee also resolved to invite the Ethics and Anti-Corruption Commission (EACC) and Public Procurement Regulatory Authority (PPRA) to the meeting.

**MINUTE SEN/SCLSW/320/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 10.55 a.m.



SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: **Thursday, 28th October, 2021**

NAIROBI CITY COUNTY

Telephone: +254 20 2224281
+254 20 2212651



City Hall Annex,
P.O. Box 30075 - 00100,
Nairobi,
KENYA.

OFFICE OF THE GOVERNOR COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

SS/5/9/671

18th October, 2021

The Senate
Clerk's Chambers
P O Box 41843 - 00100
NAIROBI

RE: STATUS OF THE NEW DANDORA STADIUM

Reference is made to your letter Ref. SEN/SCLSW/2021/66 dated 12th October, 2021 on the above matter.

BACKGROUND OF THE NEW DANDORA STADIUM

Contract No. NCC/ED/7/193/2017-2018 worth 1,036,551,284.80 was awarded to Ms. Scanjet Construction of P. O. Box 88290-80100 Mombasa vide notification Contract letter dated 25th April, 2018 for proposed construction of 4No. stadia namely:

- ✓ Dandora stadium in Dandora phase 4
- ✓ Umeme ground in Ziwani Kariokor
- ✓ Kihumbuini ground in Kangemi
- ✓ Ndurarua grounds in Kawangware

Work for the whole project at each ground would include, construction of:

- ✓ Perimeter wall
- ✓ Excavating and compacting of the playing pitch
- ✓ Placement of artificial turf compete with all football field fixtures

- a) Deviation was way beyond the agreeable 25%
- b) Contract period has elapsed
- c) County has lost in terms of use of the stadium
- d) There is pressure from the community to use the stadium
- e) County cannot pay for works not requisitioned for

WAY FORWARD

- ✓ Ethics and Anti-Corruption Commission and Public Procurement Regulatory Authority to submit the investigation report
- ✓ Terminate the contract after Ethics and Anti-Corruption Commission hands in its reports and then re-tender for the undone work
- ✓ Black list the contractor for not carrying out the work that was requisitioned even after being warned in writing



DR. JAIRUS MUSUMBA, PhD
AG. COUNTY SECRETARY AND HEAD OF COUNTY PUBLIC SERVICE

Encl.

c.c. H.E. Governor
Nairobi City County

Lt. General Mohammed Abdalla Badi, CBS, SS, ndc (K)
Director General
Nairobi Metropolitan Services

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Ref: PPRA/COMP/40/53 VOL. II (88)

26th November, 2019

Hon. Paul K. Kariuki
The Attorney General
Chair of Multi-Agency Task Team (MATT)
Sheria House, Harambee Avenue
P.O Box 40112- 00100
NAIROBI

Dear Mr. Haji,

A REPORT ON REVIEW OF COMPLAINT REGARDING TENDER NO. NCC/ED/T/193/2017-2018 FOR PROPOSED CONSTRUCTION AND COMPLETION OF 4th STADIA WITHIN NAIROBI CITY COUNTY, DANDORA STADIUM PROJECT

Reference is made to the complaint submitted to Public Procurement Regulatory Authority through letter dated 13th June, 2019 regarding the above subject. In addition, we refer to the letters Ref. No: PPRA/COMP/40/53 VOL. II (71) of 18th June, 2019, NCC/CS/PKW/898 of 24th June, 2019 and PPRA/COMP/40/53 VOL. II (87) of 30th July, 2019 respectively.

The complainant raised the following concerns about the subject procurement:

1. The contract for Dandora Stadium as awarded and the cost was for construction of a concrete structure;
2. The contractor for the project put up steel structures instead of the concrete structure in clear contravention of the specifications and terms of the contract;
3. The County Government has gone ahead to irregularly pay the contractor despite warnings from the technical evaluators of the County;
4. The contract documents are being forged including cabinet memorandum to state that the stadium should be steel structures when the work is at 70% complete.

Cc.

Mr. Twalib Abdalla Mbarak

The Secretary/Chief Executive Officer

Ethics and Anti-Corruption Commission

Integrity Centre, Valley Road/Jakaya Kikwete Rd. Junction

P.O. Box 61130- 00200

NAIROBI.

Mr. George M. Kinoti

The Director of Criminal Investigations

Mazingira House

Kiambu Road

P.O Box 30036

NAIROBI.

Mr. Noordin Haji

The Director of Public Prosecutions

Office of the Director of Public Prosecutions

EU House, Ragatti Road

P.O. Box 30701-00100

NAIROBI

Ref: PPRA/COMP/40/53 VOL. II (85)

23rd September, 2019

County Executive Committee Member
Department of Finance and Planning
P.O. Box 30075-00100
NAIROBI

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**A REPORT ON REVIEW OF COMPLAINT REGARDING TENDER NO.
NCC/ED/T/198/2017-2018 FOR PROPOSED CONSTRUCTION AND
COMPLETION OF 4th STADIA WITHIN NAIROBI CITY COUNTY, DANDORA
STADIUM PROJECT**

Refer to your letter Ref. No. NCC/SCM/JK/pm/065/2019 dated 4th August, 2019 regarding the above subject.

We have reviewed your response together with the documents you submitted in regard to the instructions to the bidders in your tender document, the contract with M/s Scanjet Construction Limited vis-à-vis the allegations raised thereon.

The detailed report is herewith attached for your perusal and necessary action.

In view of the above and pursuant to Section 34 of the Public Procurement and asset Act, 2015, submit to the Authority your response to all the issues raised in the findings of the attached report.

Your response should reach this office by 30th September, 2019.


Thomas Otieno
For: DIRECTOR GENERAL

cc
County Secretary and Head of Public Service
Nairobi City County
P.O. Box 30075-00100
NAIROBI

Page 1 of 2

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Cc.

The Secretary/Chief Executive Officer

Ethics and Anti-Corruption Commission

Integrity Centre, Valley Road/Jakaya Kikwete Rd. Junction

P.O Box 61130- 00200

NAIROBI.

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NAIROBI

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PPRA
PUBLIC PROCUREMENT
REGULATORY AUTHORITY

A REVIEW REPORT

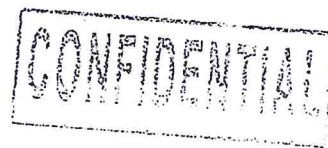
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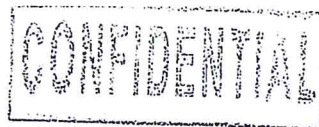
**COMPLAINT REGARDING TENDER NO. NCC/ED/T/193/2017-
2018 FOR PROPOSED CONSTRUCTION AND COMPLETION OF 4
NO. STADIA WITHIN NAIROBI CITY COUNTY, DANDORA
STADIUM PROJECT**

NOVEMBER, 2019

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1. Introduction

Reference is made to the complaint submitted to Public Procurement Regulatory Authority through letter dated 13th June, 2019 regarding the above subject. In addition, we refer to the letters Ref. No. PPRA/COMP/40/53 VOL. II (71) of 18th June, 2019, NCC/CS/PKW/898 of 24th June, 2019 and PPRA/COMP/40/53 VOL. II (81) of 30th July, 2019 respectively.

The complainant raised the following concerns about the subject procurement:

1. The contract for Dandora Stadium as awarded and the cost was for construction of a concrete structure;
2. The contractor for the project put up steel structures instead of the concrete structure in clear contravention of the specifications and terms of the contract;
3. The County Government has gone ahead to irregularly pay the contractor despite warnings from the technical evaluators of the County;
4. The contract documents are being forged including cabinet memorandum to state that the stadium should be steel structures when the work is at 70% complete.

The Authority engaged the County Government of Nairobi (CGN) on the subject matter vide letters Ref. Nos. PPRA/COMP/40/53 VOL. II (71) dated 18th June, 2019 and PPRA/COMP/40/53 VOL. II (78) dated 18th July, 2019 respectively. We reviewed the response and documents submitted by the CGN vide its letter Ref. No. NCC/SCM/JK/pm/065/2019 dated 8th August, 2019 and noted the following observations:

1. Preliminary observations

Through our Ref. No. PPRA/COMP/40/53 VOL II (71) dated 18th June, 2019, the CGN was instructed to submit certified copies of the following documents:

1. Extract of approved budget for the project
2. Copy of approved procurement plan
3. User requisition
4. Tender opening minutes
5. Tender opening register
6. Appointment letter to tender evaluation committee
7. Evaluation report and signed professional opinion
8. Notification letter to the successful and unsuccessful bidders
9. Blank tender document issued to bidders
10. Copy of signed contract
11. Appointment letters to contract implementation team
12. All contract management files, report and variations if any
13. All original tender document submitted by the contractor.

3. Revised and approved tender document or Bills of Quantities (BQs) for the variation of scope of works pursuant to Section 75 of the Act.
4. Original contract signed between County Government of Nairobi and the successful bidder pursuant to Section 135 of the Act.
5. Tender evaluation committee report pursuant to Section 80 of the Act.
6. Professional opinion by the head of procurement for the subject tender pursuant to Section 84 of the Act.
7. Request for contract variation pursuant to Section 139 of the Act.
8. Approved evaluation committee report that deliberated and recommended for the variation pursuant to Section 139 of the Act.
9. Payment vouchers for the subject project pursuant to Section 151 of the Act.
10. Relevant reports to the Authority regarding the variations of the subject contract as per Public Procurement Regulatory Authority Circular No. 1 of 2016.

2. Specific Observations

- a) The contract for Dandora Stadium as awarded alongside three other stadia as enumerated below. The cost of the fourNo stadia was for construction of a concrete structures amounting to Ksh. Kenya Shillings One Billion, Thirty Six Million, Five Hundred and Fifty One Thousand Two Hundred and Fifty Four and Eighty Cents (1,036,551,254.80).
- b) The contract provided specific cost breakdown for the individual stadium as shown in table 1.0:

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3. Contract Variation

The contractor for the project, M/s Scanjet Construction Limited put up steel structures instead of the concrete structure in a clear contravention of the specifications and terms of the contract

A review of documents related to this allegation established that:

- a) Through an Internal Memo Ref. No. URH&PM/ARCHI/I.36/2018jmo of 12th September, 2018 from Pauline Kahiga-Waititu, the Chief Officer for Urban Renewal, Housing & Project Management, the contractor was accused of the following:
 - i. *"That you have continued to do works that were not in the contract bills of Quantities and drawings especially the heavily reinforced and expensive concrete plinth and channel.*
 - ii. *That you have deviated from the Reinforced Concrete Terraces and are preparing ground for Steel Terraces."*

The memo indicated that the above concerns constituted a variation of the contract, which contravenes Section 139 (4) of Public Procurement and Asset Disposal Act, 2015 that states:

"any variation of a contract shall only be considered after twelve months from the date of signing the contract....."

In this regard, the contractor was instructed to proceed with the works as per the Contract Drawings and bills of quantities.

- b) In another Internal Memo Ref. SS/5/5/755 of 28th September, 2018 from Abdimutalib Ibrahim, the Chief Officer for Youth and Sports instructed the Head of Procurement to process a variation of the contract from concrete terraces to steel terraces citing the following as the reasons:
 - i. That steel terraces are highly durable
 - ii. That they have good load carrying capacity unlike concrete structures
 - iii. In addition, the construction process is faster than that of concrete structures
- c) Through another Internal Memo Ref. No. URH&PM/ARCH/M30/2018jmo of 8th October, 2018 from Marion Rono (Mrs), the Head of Supply Chain Management to the Chief Officer for Urban Renewal, Housing & Project Management on the contract variation, she sought written approval for the variation citing Section 139 of the Act. She argued that the variation was over 95% of material variation which she was unable to implement without relevant authorization.

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Chief officer, Urban Renewal, Housing and Project Management. The request was indicated as "VALUATION NO. 5."

- b) An inspection team was appointed vide Memo Ref. No. SCM/INSP/LB/633/2018/2019 dated 26th March, 2019 comprising the following officers:

Name	Position
i. Festus Macharia	Chairman
ii. Eng. Warua George	Member
iii. Eng. E. Lemaiyan	Member
iv. Qs. Oliver Munala	Member
v. Qs. Charles Muchemi	Member
vi. Stephen Cheruiyot	Member
vii. Arch. David Songoro	Member
viii. Arch. Morris Jonyo	Member
ix. Ruth Owuor	Member
x. Preston Miriti	Secretariat
xi. Priscilla Mwangi	Secretary

Section 48 of Public Procurement and Asset Disposal Act, 2015, provides that:

- (1) *An accounting officer of a procuring entity may establish an ad hoc committee known as the inspection and acceptance committee.*
- (2) *The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.*
- (3) *The inspection and acceptance committee shall immediately after the delivery of the goods, works or services—*
 - (a) *inspect and where necessary, test the goods received;*
 - (b) *inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and*
 - (c) *accept or reject, on behalf of the procuring entity, the delivered goods, works or services.*
- (4) *The inspection and acceptance committee shall—*
 - (a) *ensure that the correct quantity of the goods is received;*

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f) There was a request from the Chief officer for Youth and Sports addressed to the Chief Officers for Roads and the one for Urban Renewal, Housing and Project Management vide Internal Memo Ref. No. SS/5/534 dated 13th August, 2018 requesting them to organize for an evaluation of the ongoing works to enable initiation of the payment process for the third phase certificate. In this regard, there was an Internal Memo Ref. No. URH&PM/QS/084/MM/mg dated 4th October, 2018 from M.M. Muiruri, the Assistant Director QS. to the Director Project Management, which instructed the variations to facilitate processing of valuation No. 3. The variations were as follows:

1. Concrete bases for 4No. flood lights
2. Terraces: Change of foundations from conventional strip footing to 350mm thick reinforced raft base slab. The remarks in the memo indicate that the request was done.

Based on the above project status reports, and pursuant to a letter Ref. No. SS/5/9/738 dated 10th June, 2019 addressed to The Clerk of Nairobi City County Assembly responding to Sectoral Committee Meeting on Culture and Community Services Regarding Construction of 4 No. Stadia, payments were effected vide four payment vouchers totaling **Ksh. 123, 713,683.20** submitted for the Authority's review broken down as follows:

Date	Amount
20/06/2018	32,884,301.35
17/07/2018	16,738,144.19
02/10/2018	29,339,450.96
27/02/2019	44,751,786.67
Total	123,713,683.20

A scrutiny of the payment vouchers revealed that they did not bear voucher numbers.

The letter indicated that as at that date, there was a pending payment of Ksh. 73,162,987.08 of 15/05/2019. This led to a total payment of **Ksh. 196,876,670.30 for the construction of Dandora Stadium**. The payment record of the contract is as illustrated in table 2.0

Table 1. 2: Payment history

S/No	Contract	Cost	Payments	Balance	Variation
1.	Dandora stadia	350,000,000	196,876,670	153,123,330	Nil

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According to the annexed copy No. VI of the tender-evaluation committee report, the following persons were indicated as in attendance, although they signed the report.

- | | |
|----------------------|-------------|
| i. Rechael Ngigi | Member |
| ii. John Baraza | Member |
| iii. Everline Kerubo | Secretariat |
| iv. Preston Miriti | Secretary |

- i) It has been observed that the County Government has actually gone ahead to irregularly pay the contractor an amount of Ksh. 196,876,670.30 as evinced by the payment record highlighted above.

5. Forgery of Documents

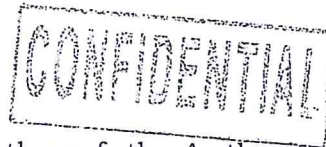
The contract documents appear to have been forged including a cabinet memorandum to state that the stadium should be steel structures when the work is at 70% complete.

All the photocopied documents submitted to the Authority by the County Government of Nairobi were not certified as true copies of the originals as demanded by the Authority. Therefore, it was not possible for the Authority to conclude that the documents were either authentic or otherwise. The particular documents affected by the aforementioned demand/requirement were as explained in table 1.0:

Table 1. 3: Analysis of key documents

S/No.	Document	Remarks
1.	Tender evaluation report	Attached copy was: ➤ Not original ➤ Not certified copy of the original.
2.	Contract variation evaluation report	The attached copy was: ➤ Not original ➤ Not certified copy of the original ➤ Not the final copy of the deliberations based on the numerous crossings in the report on all the 8 pages except pages 3 and 8. ➤ Not signed by the members
3.	Extract of minutes of the meeting with minute 15/CEC/APRIL/2019 of Friday, 26 th April, 2019.	The attached copy was: ➤ Not original ➤ Not certified copy of the original ➤ Signed by Pauline Kahiga Waititu, the Ag. County Secretary.
4.	Cabinet Memo Ref. No. NCC/CECM/CS/2019/VOL. XVII/137	The attached copy was: ➤ Not original ➤ Not certified copy of the original ➤ Not signed by Pauline Kahiga Waititu, the Ag. County Secretary.

Response from the County Government of Nairobi



After the review of the PE's response and documentation thereof, the Authority vide letters Ref. No. Ref: PPRA/COMP/40/53 VOL. II (85) and Ref: PPRA/COMP/40/53 VOL. II (87) dated 23rd September, 2019 and 23rd October, 2019 respectively engaged the PE. However, the PE has failed to respond to the issues raised by the Authority within the required timeframe which was provided for in the three aforementioned letters.

Pursuant to the provisions of Section 38 (1) (c) of the Act, the Authority hereby forwards the report to you for further necessary action.

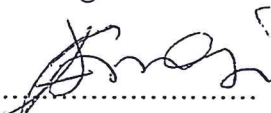
Reviewed by

Name

Sign

Date

Dr. Francis Kissinger Amayi

.....

.....12/11/2019.....



**REPORT BY ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO
THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE
REGARDING STATEMENT ON THE STATUS OF THE NEW DANDORA
STADIUM**

=====
Monday
25th October, 2021
=====

- Investigations revealed the following;
 - i. The **County Integrated Development Plan** for Nairobi City County Government for the **period 2018-2022** provided for renovation of stadia across Nairobi at a cost of **Kshs 1.07 Billion**. The Dandora Stadium was one of the four stadia under this programme alongside **Kawangware, Kihumbuini and Ziwani**.
 - ii. The tender was a **multi-year project** that was planned to be implemented during the **Financial Years 2017/2018, 2018/2019 and 2019/2020**. This was sufficiently budgeted for in the three years.
 - iii. Through an open national tender, the procurement process commenced in **March 2018** and was concluded by a tender award to **M/s Scanjet Construction Limited on 28th May, 2018 at Kshs. 1.03 Billion**. This was for construction of the four (4) stadia enlisted above.
 - iv. The proposed construction of the four (4) stadia was supposed to take **18 months** and run concurrently. Works on the Dandora Stadium commenced on **4th June, 2018**. The contractor **did not commence works for the other three stadia**.
 - v. **Kshs. 350 Million** was allocated for the construction of Dandora Stadium, out of the **Kshs. 1.03 Billion** which had been allocated for the four (4) Stadia.
 - vi. So far, the County Government of Nairobi has made payments of **Kshs. 137,526,314.74** to the contractor in **four (4) instalments**.
 - vii. The works on the Dandora stadium **have stalled due to a dispute** between the **Nairobi City County Government** and the Contractor **M/s Scanjet Construction**.
 - viii. The dispute was occasioned by the Contractor's deviation from **reinforced concrete terraces to steel** as evidenced in the various correspondences between the County and the Contractor.

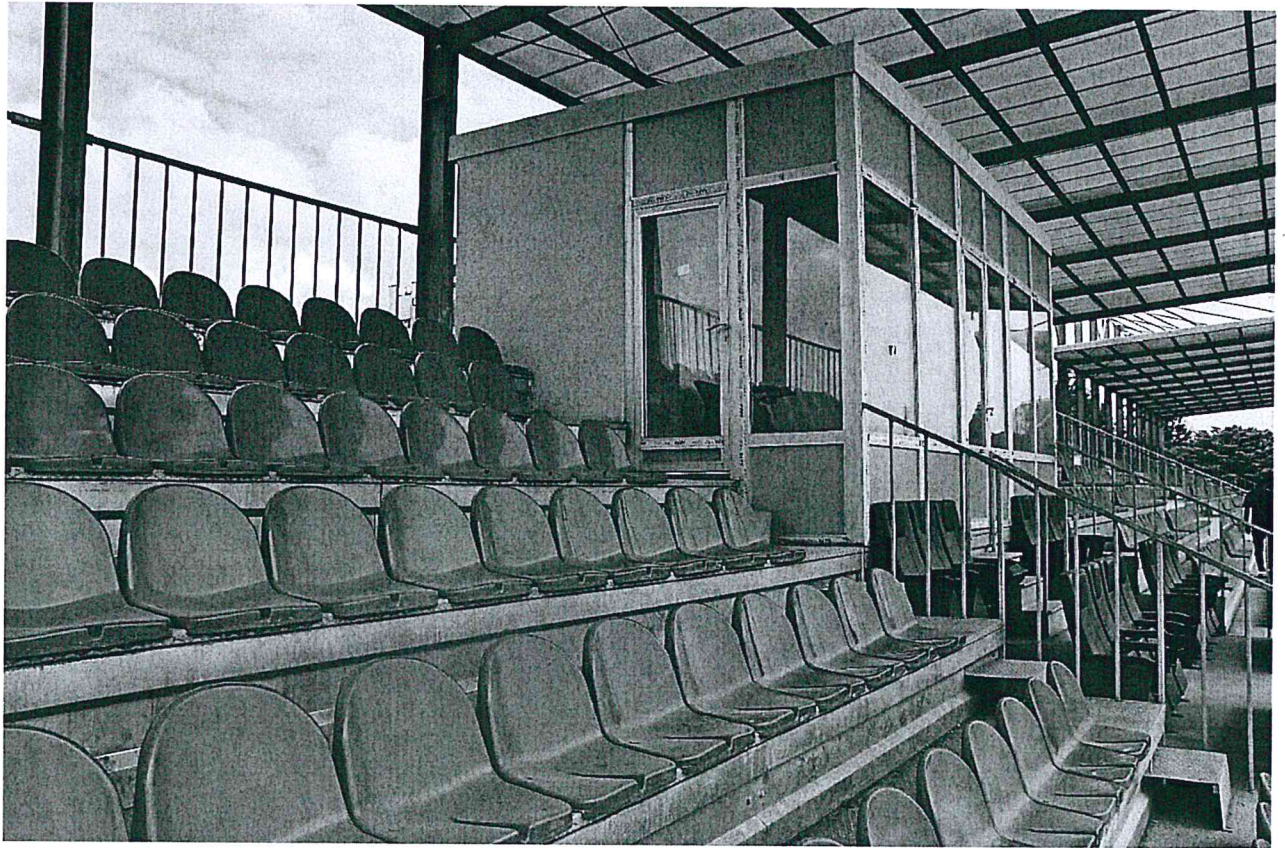


Photo 1 showing unfinished works at the New Dandora Stadium with the contentious steel floors instead of the initial concrete as per the contractual agreement

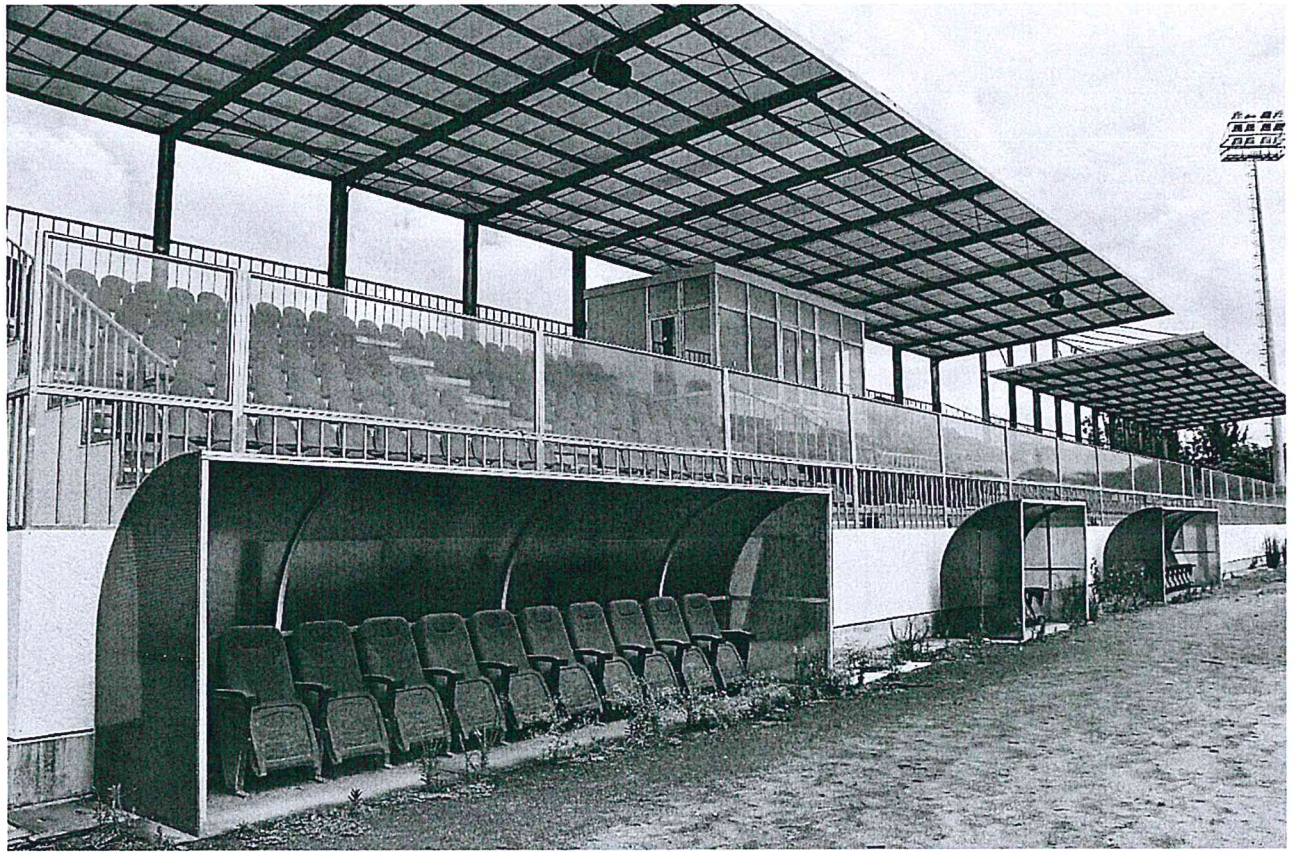


Photo 3 showing the section of the Dandora Stadium with an installed technical sound room, much of the fittings remain intact since their installation 3years ago



Photo 5 showing part of the artificial grass turf and other equipment going to waste. The stadium has so far costed Ksh 123million of the Ksh 350 million earmarked for Dandora Stadium