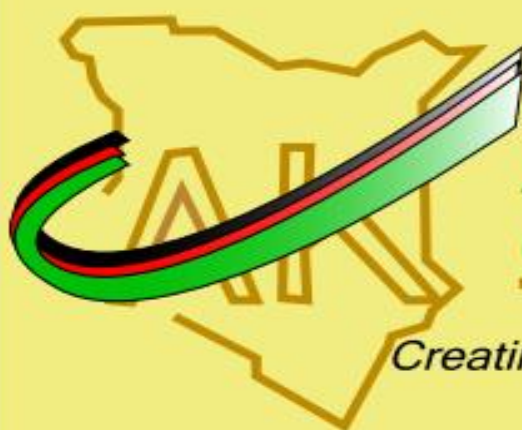


CODE OF CONDUCT FOR MEMBERS AND STAFF OF THE COMPETITION AUTHORITY OF KENYA



**COMPETITION
AUTHORITY
OF KENYA**

Creating efficient markets for consumers

MAY, 2014

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THE COMPETITION ACT

Act No. 12 of 2010

CODE OF CONDUCT

{Made under Section 5(1) of the schedule}

CODE OF CONDUCT FOR MEMBERS AND STAFF OF THE COMPETITION AUTHORITY OF KENYA

PART 1.0: STATEMENT OF INTENT

(1) By establishing this Code of Conduct, the Competition Authority of Kenya fulfills its statutory obligation under the Competition Act, No12 of 2010 and demonstrates its commitment to serve the public. In accordance with its Vision and Mission Statement, the Authority is committed to carry out its mandate with honesty, integrity, accountability, impartiality and professionalism.

(2) This Code of Conduct is intended to ensure that all Members and Staff perform, and from the perspective of the public, are seen to perform, their official duties professionally, impartially and solely and consistently in the public interest. It elaborates standards of conduct and responsibility.

(3) Every Member and Staff shall have the general obligation to comply with all applicable laws, rules and regulations, both in letter and in spirit while discharging duties, performing functions or exercising powers conferred or vested in the Competition Authority of Kenya by such laws, rules or regulations.

PART 2.0: PRELIMINARY PROVISIONS

2.1 Citation

This Code may be cited as the Code of Conduct for Members and Staff of the Competition Authority.

2.2 Application

This Code shall apply to Members and Staff of the Competition Authority of Kenya during, and in some part after their respective tenures of office. For avoidance of doubt upon the expiration of their respective tenures, each Member or Staff shall continue to observe a conduct that complies with provisions on separation from the Authority provided in this Code of Conduct.

The Competition Authority of Kenya shall cause to be published the Code of Conduct in the *Gazette* within ninety days of the receipt of the approval from the Ethics and Anti-Corruption Commission in accordance with Section 39 (3)(4) of Leadership and Integrity Act, 2012).

2.3 Interpretation

In this Code, unless the context requires otherwise:

“**Act**” means the Competition Act, Act No. 12 of 2010, laws of Kenya;

“**Authority**” means the Competition Authority of Kenya established under section 7 of the Act;

“**Business activity**” means the purchase, sale or rental of goods, works, services or real estate, or any interests therein;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for Finance;

“**Conflict of interest**” means a situation or a circumstance in which a member or Staff, has a private or personal interest sufficient to appear to influence the objective and impartial exercise of his or her official duties.

“**Director-General**” means the Director-General appointed under section 12 of the Act;

“**Member**” means a member of the Authority as per section 10 of the Act;

“**Pecuniary interest**” means direct or beneficial ownership of any of the following financial interests: shares, securities, debt obligations, and proprietary or partnership interests; royalties, income, compensation or any other payments or any kind;

“Person” means an individual or a corporation, a partnership, a trust, an unincorporated organization, a government or any agency or political subdivision thereof;

“Primary party of interest” means a person subject to the jurisdiction of the Authority or a person that realizes significant portion of its business activity from making transactions with, or furnishing goods or services to a person subject to the jurisdiction of the Authority; **“Relative”** means -

- a) A spouse, child, parent, brother or sister;
- b) A child, parent, brother or sister of a spouse; or c) any other prescribed relative.

“Secondary party of interest” means a person other than a primary party of interest, materially affected, directly or indirectly, by a matter that is, or is expected to be, pending before the Authority;

“Leaving the Authority” means termination of membership to the Authority by a Member or termination by the Authority of a Staff or vice versa;

“Staff” means any person employed by the Authority, including the Director-General, Divisional Directors, other officers and members of Staff, and consultants/experts who may be engaged to assist the Authority perform its functions and exercise its powers; **“Substantial”** means the ability to materially influence the policy of an undertaking.

“Trickery means” means the use of practice of tricks or ploy to deceive;

2.4 Guiding Values principles and requirements

- 1) A member or staff of the Authority shall respect the values, principles and requirements of the Constitution and the Leadership and Integrity Act No 19 of 2012, including-
 - a) The national values and principles provided for under Article 10 of the Constitution;
 - b) The rights and fundamental freedoms provided for under Chapter Four of the Constitution;
 - c) The principles governing the conduct of the members and/or staff of the Authority provided for under Article 75 of the Constitution;

- d) In so far as is relevant, the values and principles of Public Services as provided for under Articles 232 of the Constitution.
- 2) Nothing under this Code of conduct will be construed in any way as diminishing or derogating from the values and principles under section 3 subsection (2) of the - Leadership and Integrity Act No. 19 of 2012.

PART 3.0: GENERAL STANDARDS

3.1 Internal matters

(1) A relative of a Member or a relative of a member of Staff shall not be employed by the Authority save in a situation where the Authority has waived the prohibition upon determining that, in the case of a Member/Staff, neither Member/Staff would be in a position administratively or managerially subordinate to the other person.

(2) Where a member of Staff becomes a relative of another Staff while both are employed by the Authority, any of such Staff shall not be administratively or managerially subordinate to the other.

3.2 Rule of law

(1) A member or staff of the Authority shall respect and abide by the Constitution and the law.

(2) A member or staff of the Authority shall carry out the duties of the office in accordance with the law.

(3) In carrying out the duties of the office member or staff of the Authority shall not violate the rights and fundamental freedoms of any person unless otherwise expressly provided for in the law and in accordance with Article 24 of the Constitution.

3.3 Public trust

A State office is a position of public trust and the authority and responsibility vested in the member or staff of the Authority shall be exercised by the Member or staff of the Authority- in the best interest of the people of Kenya.

3.4 Responsibility and duties

Subject to the Constitution and any other law, a member or staff of the Authority shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

3.5 Performance of Duties

A Member or staff of the Authority shall, to the best of their ability —

- (a) Carry out the duties of the office efficiently and honestly;
- (b) Carry out the duties in a transparent and accountable manner;
- (c) Keep accurate records and documents relating to the functions of the Office; and
- (d) Report truthfully on all matters of the organization which they Represent.

3.6 Professionalism

Members and Staff shall:

- (a) Perform their official duties in a way that enhances public confidence in the Authority;
- (b) Strive continually to improve their professional competence and their ability to serve the Public;
- (c) Offer professional service to all stakeholders and the public of the public and treat all Persons making information requests with dignity, respect and with the intent to Provide helpful information;
- d) Conduct themselves and their official duties with fairness, objectivity and integrity;
- (e) Not engage in any form of discrimination, bias or harassment either within or outside the Authority;
- (f) Refrain from taking part in any activity of public service duty or transaction where they have, or may appear to have, a conflict of interest (which includes but is not limited to participating intender for the supply of goods or services to a public entity in which the member or staff is serving or otherwise similarly associated but the holding of shares by a member or staff of the Authority in a company shall not be construed as participating in a tender of the company unless the member or staff of the Authority has a controlling shareholding in the company.)
- (g) Dress in respectable attire and observe office etiquette as provided for in various

Authority circulars.

3.7 Financial integrity

(1) A Member or staff of the Authority officer shall not use the office to unlawfully or wrongfully enrich himself or herself or any other person.

(2) Subject to Article 76(2)(b) of the Constitution, a Member or staff of the Authority shall not accept a personal loan or benefit which may compromise the State officer in carrying out the duties.

3.8 Service Quality Standards

Members and Staff shall deliver service that is timely, accessible, efficient, confidential and respectful of all persons involved.

3.9 Protection of Assets

- (1) The Members and Staff shall not use, for personal gain or otherwise, the assets of the Authority, including tangible assets such as equipment and machinery, systems, facilities, materials, resources as well as intangible assets such as proprietary information, relationships with primary or secondary party of interest and shall employ them for the purposes of conducting the business for which they are duly authorized.
- (2) The Members and/or Staff shall return to the Authority all the public property in their custody, possession or control at the end of the appointment, or election term.
- (3) A Member and/or Staff who contravenes subsection (2) or (3) shall, in addition to any other penalties provided for under the Constitution, the Leadership and Integrity Act , No. 19 of 2012 or any other law shall be personally liable for any loss or damage to the public property.

3.10 Proscribed activity

No Member or Staff shall:

- (a) engage in fraudulent, wasteful, abusive or corrupt activities or practices;
- (b) use his or her position to obtain unwarranted privileges or personal benefits for which he or she would otherwise be ineligible;
- (c) solicit or accept, directly or indirectly, bribes and favours from any person;

- (d)) make any decision based upon any hope or expectation of future employment with any primary or secondary party of interest;
- (e) acquire any direct financial interest, in any primary or secondary party of interest;
- (f) solicit, request, suggest or recommend, directly or indirectly, to any primary or Secondary party of interest the commencement or continuation of a business activity with any person that is subject to jurisdiction of the Authority;
- (g) engage in activities that amount to abuse of office;
- (h) engage in wrongful conduct in furtherance of personal benefit;
- (i) misuse public resources;
- (j) discriminate against any person, except as expressly provided for under the law;
- (k) falsify any records;
- (l) engage in actions which would lead to the members or staff removal from the membership of a professional body in accordance with the law; and
- (m) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No.3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (Cap. 141)

3.11 Reporting of Unethical Conduct

Members and Staff shall report suspected incidents of illegal, unethical, or unprofessional conduct through the channels of communication described in this Code.

3.12 Political Neutrality

23. (1) an appointed Member or Staff, other than a Cabinet Secretary shall not, in the performance of their duties:—

- (a) Act as an agent for, or further the interests of a political party or candidate in an election; or
- (b) Manifest support for or opposition to any political party or candidate in an election.

(2) An appointed Member or Staff shall not engage in any political activity that may compromise or be seen to compromise the political neutrality of the Authority subject to any laws relating to elections.

(3) Without prejudice to the generality of subsection (2) a public officer shall not—

(a) Engage in the activities of any political party or candidate or act as an agent of a political party or a candidate in an election;

(b) Publicly indicate support for or opposition against any political party or candidate participating in an election.

3.13 Impartiality

A Member or Staff shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and shall not practice favoritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

3.14 Public Collections

(1) A Member or Staff shall not solicit for contributions from the public for a public purpose unless the President has, by notice in the Gazette, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A Member or staff of the authority shall not take an active part in harambees of any kind and shall not:

- a) use his office or place of work as a venue for soliciting or collecting harambees; or
- b) either as a collector or promoter of a public collection, obtain money or other property from a person by using his official position in any way to exert pressure

3.15 Bank Accounts outside Kenya

19. (1) Subject to Article 76(2) of the Constitution or any other written law, a Member or Staff shall not open or continue to operate a bank account outside Kenya without the approval of the Ethics and Anti-Corruption Commission.

3.16 Conduct of Private Affairs

A Member or Staff shall conduct private affairs in a manner that maintains public confidence in the integrity of the office.

3.17 Tax, Financial and Legal Obligations

(1) A Member or Staff shall pay any taxes due from him or her within the prescribed period.

(2) A Member or Staff shall not neglect their financial or legal obligations.

3.17 Bullying

(1) A State officer shall not bully any person.

(2) For purposes of subsection (1), “bullying” includes repeated offensive behavior which is vindictive, cruel, malicious or humiliating and is intended to undermine a person.

3.18 Sexual Harassment

(1) A Member or Staff of the Authority shall not sexually harass a member of the public or a fellow Member or staff of the Authority.

(2) In subparagraph (1), “sexually harass” includes doing any of the following, if the person doing it knows or ought to know that it is unwelcome.

(a) Making a request or exerting pressure for sexual activity or favours;

(b) Making intentional or careless physical contact that is sexual in nature; and

(c) Making gestures, noises, jokes or comments, including innuendos, regarding another person’s sexuality

PART 4.0: CONFLICT OF INTEREST

4.1 Conflict of Interest

1. Members and staff are free to take part in any activity provided that such activity does not:-

(a) Interfere with the performance of their duties at the Authority;

(b) Constitute a competitive advantage accruing to their position at the Authority; or

(c) Negatively affect the carrying out of their duties at the Authority.

2. Conflicts of interest while serving as a Member or Staff of the Authority comprise, among others, the following matters;

(a) A substantial financial interest in a primary party of interest or secondary party of Interest;

(b) Employment by a primary party of interest or secondary party of interest;

(c) The conduct of a business activity with a primary party of interest or secondary party of Interest.

(4) No Member/ member of Staff shall acquire interest that conflicts, or may conflict, with the performance of his or her duties at the Authority;

4.2 Declaration of Interest

(1) Every Member and member of Staff shall declare any conflict of interest regarding any matter which he or she is dealing with at the Authority;

(2) A Member/member of Staff who fails to declare a conflict of interest or who knowingly makes a false or misleading declaration regarding a material fact of a conflict of interest, shall be in breach of this Code.

3) In the event that a member of Staff identifies a conflict of interest regarding any matter that is before or may come before the Authority, such Staff shall disclose it and thereafter refrain from taking part in its consideration or determination.

(4) Where a member/member of Staff is required by this Code to report a matter in regard to this section of the Code, such member or Staff shall submit a written report to his supervisor who shall retain a permanent record of the report. This includes:

a) Where a Member and/or a Staff of the Authority is present at a meeting, where an issue which is likely to result in a conflict of interest is to be discussed, the State officer or public officer shall declare the interest at the beginning of the meeting or before the issue is deliberated upon.

b) A declaration of a conflict of interest under subsection (a) shall be recorded in the minutes of that meeting

(5) Upon receipt of the report under sub-paragraph (4), the supervisor shall refer the matter to the Director-General for a resolution.

(6) When a matter has been referred to the Director-General for resolution pursuant to sub-paragraph (5), the Director-General shall either-

(a) Dispose of the matter; or

(b) Refer the matter to the Authority for resolution where no resolution was reached.

(7) In the event that the Director-General, or upon his or her referral under sub-paragraph (6), the Authority finds that a matter requires remedial action, the Director-General or the Authority (as the case may be) may require the Staff:

(a) To divest the conflicting interest; or

(b) To assign those duties that are in conflict to another Staff where appropriate, either temporarily or permanently.

(8) In the event that a Member of Staff refuses or is unable to divest the interest identified in sub-paragraph

(7), the Authority shall, after determining that no other remedial action will be consistent with the Act and the requirements of this Code take appropriate action against such Staff.

4.3 Register of conflicts of interest

- (1) The Authority shall establish a Register of conflicts of interest to be maintained by the Director General or Officer designated by him, stating the nature and extent of the conflict.
- (2) For purposes of subsection (1), the registrable interests shall be comprised of declarations of conflict of interest.
- (3) The Authority shall keep the register of conflicts of interest for five years after the last entry in each volume of the register.
- (4) It shall be the responsibility of the Member and/or Staff to ensure that an entry of registrable interests under subsection (1) is updated and to notify the Authority of any changes in the registrable interests, within one month of each change occurring.

4.4 Register of Gifts and Benefits in Kind

- 1) A gift or donation given to a Member or Staff on a public or official occasion shall be treated as a gift or donation to the State.
- 2) Notwithstanding subsection (1), a Member or Staff may receive a gift given to the officer in an official capacity, provided that—
 - (a) the gift is within the ordinary bounds of propriety, a usual expression of courtesy or protocol and within the ordinary standards of hospitality;
 - (b) the gift is not monetary; and

(c) the gift does not exceed such value as may be prescribed by the Commission in the regulations.

3) Without limiting the generality of subsection (2), a Member or Staff shall not—

(a) Accept or solicit gifts, hospitality or other benefits from a person who—

- i. has an interest that may be achieved by the carrying out or not carrying out of the officer's duties;
- ii. carries on regulated activities with respect to which the Member's and/or Staff's organization has a role; or
- iii. has a contractual or legal relationship with the Member's and/or Staff's organization;

(b) accept gifts of jewelry or other gifts comprising of precious metal or stones ivory or any other animal part protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

4) A Member and/or Staff of the Authority shall not receive a gift which is given with the intention of compromising the integrity, objectivity or impartiality of the State officer.

5) Subject to subsection (2), a Member or Staff who receives a gift or donation shall declare the gift or donation to the Authority.

6) In order to avoid compromising the Authority's corporate values and etiquette, Members and Staff shall exercise due care and diligence in accepting gifts, hospitality or other benefit from any party of interest or from contractors or any supplier of any goods or services to the Authority.

PART 5.0: CONFIDENTIAL INFORMATION

5.1 Security of Information

Members and members of Staff shall ensure the security of all information (printed and electronic) in their possession.

5.2 Confidential information

(1) Members and Staff are bound by Section 84 of the Act in respect of confidential information.

(2) Confidential Information is any information in the Authority's possession that:

- (a) Has been declared confidential by the Authority;
- (b) is technically or commercially sensitive and not already lawfully in the public domain;
- (c) The disclosure of which might adversely affect the competitive position of any Person; or
- (d) is determined to be confidential under any applicable law.

(3) Any Member or member of Staff who discloses confidential information otherwise than authorized under the Act shall be in breach of this Code and the following action will be taken against him or her;

- (a) In respect of a member of Staff take appropriate action such member of Staff; and
- (b) In respect of a Member, require the Member to resign and where such Member refuses or fails to resign advise the appointing authority to take appropriate action against such Member.

5.3 Misleading the Public

A Member or staff of the Authority - shall not knowingly give false or misleading information to any person.

5.4 Separation from the Authority

(1) No Member or Staff, during a period of two years unless with the approval of the Authority after leaving the Authority, shall -

- (a) Become a Staff of, conduct a business activity directly or indirectly linked with the matter before the Authority, or acquire a pecuniary interest in any primary party of interest that the Member or Staff has participated in decision making, worked, advised a Member/Authority, or supervised other members or Staff who worked on such matter while serving in the Authority within a period of two years before such Member or Staff separated from the Authority; or
- (b) Disclose any confidential information acquired during membership or employment with the Authority or use such information for personal gain.

(2) No Member or Staff, during a period of two (2) years after leaving the Authority, shall represent any person before the Authority on any matter on which such Member or Staff -

- (a) Participated in decision making;

(b) Worked;

(c) Advised a Member/Authority; or

(d) Supervised other members or Staff who worked on such matter while serving in the Authority.

6 Prohibited Conducts

- 1) No member or Staff shall take advantage of or personally benefit from information obtained in the course of his or her official duties and responsibilities that is not generally available to the public.
- 2) The provisions of subsection (1), shall not apply where the information is to be used for the purposes of—
 - a) Furthering the interests of the Public Officer's Ethics Act, 2003; or
 - b) Educational, research, literary, scientific or other purposes not prohibited by law.
- 3) A Member or Staff of the Authority shall neither ask for nor accept a property or benefit of any kind, for himself or for any person, on account of anything to be done, or omitted to be done, by him in the discharge of his duties or by virtue of his official position.
- 4) Subject to this Rule, a Member or Staff of the Authority or members of his family shall not solicit or accept any gifts, gratuity, hospitality, free passages or favours from any person or anybody corporate or unincorporated that might reasonably be thought to influence, or intended to influence, him in the performance of his duties.
- 5) The provisions of Sub-Rule 5 apply not only to the Member or staff of the Authority himself but also to the members of his family, and a Member or staff of the Authority be held responsible for their observance by the members of his family.
- 6) The provisions of Sub-Rule 5 apply not only to the Member or staff of the Authority himself but also to the members of his family, and a Member or staff of the Authority be held responsible for their observance by the members of his family.
- 7) Subject to sub-rule 5 a gift or donation to a Member or staff of the Authority officer or any public or ceremonial occasion shall be treated as the gift of the Government.
- 8) Where a gift or donation of the nature specified in sub-rule 5 is give without the knowledge of the Member or staff of the Authority or it would be offensive to custom or

against good public relations to refuse the gift, such a Member or staff of the Authority shall forthwith report the matter to the Director-General who shall direct the appropriate mode of disposal of any such gift or donation and the Member or staff of the Authority shall comply with such direction

- 9) Notwithstanding any other provisions of this Rule to the contrary, but subject to Section 11(3) of the General Code of Conduct and Ethics set out in the Public Officers Ethics Act, a Member or staff of the Authority may-
 - (a) Accept gifts which are occasional and inexpensive or in the form of a souvenir; and
 - (b) **accept** personal gifts or donations from relatives or friends on such special occasions as may be recognized by custom.
- 10) When presents are exchanged between officers acting on behalf of the Government in ceremonial intercourse with other Governments or their representatives, the presents received will be handed over to the Director-General who shall direct the appropriate mode of disposal, and any reciprocal presents will be given at the expense of the Authority.

PART 7.0: PUBLIC INTERFACE

7.1 Conduct of Investigations

- (1) While discharging their respective duties the Staff shall conduct investigations in such a way that all matters are investigated diligently, fairly, honestly and appropriately.
- (2) No Staff shall obtain any information by way of coercion, collusion, deceit, intimidation or trickery.
- (3) During the course of investigations, the Authority's officers or appointees shall seek the Information required making an informed decision regarding the matter in question

7.2 Media Relations

- (1) The Authority shall communicate with the public on any issue relating to it through:
 - (a) The Director-General; or
 - (b) Any person duly authorized by the Director General.

(2) Members and Staff shall not be held liable by the Authority in respect of any statement made to the media by member or Staff, provided that such member or Staff acted with the authority of the Authority and in good faith and within the scope of his or her duties.

7.2. 1 Channels of Communication

(1) Members and Staff shall employ the following channels of communication when reporting incidents of illegal, unethical or unprofessional conduct as described in paragraph 3.6;

(a) Where the incident involves two or more Members or between members of Staff and the Director-General, communication shall be to the Chairman;

(b) Where the incident involves a Member and a Staff, communication shall be to the Director-General;

(c) Where the incident involves a Member and/or with the Chairman, communication shall be to the Cabinet Secretary;

(d) Where the incident involves two or more Staff communication shall be to the Director-General; and

(e) Staff shall communicate with their immediate supervisors or the Director General.

(2) When considering communications related to unethical behavior, the Cabinet Secretary, the Chairman or the Director-General as appropriate shall fairly and expeditiously address or investigate and determine all matters brought to its attention.

7.3 Attendance at Conferences and Stakeholder Events

Any invitation to a Member of Staff to attend or speak at a conference or stakeholder event shall be communicated to the Director-General who shall:

(a) Notify the respective Member about such attendance or speaking; and

(b) Give the authorization (where applicable) in writing for such attendance or speaking.

PART 8.0: MISCELLANEOUS

8.1 Contravention of the Code

The Authority shall submit this Code of Conduct to the Ethics and Anti-Corruption Commission who will approve the Code of Conduct upon ensuring that it is consistent with the General Code prescribed under Part II of the Leadership and Integrity Act No. 12 of 2012, any other law and the Constitution.

This Code of Conduct will be implemented in line with the Constitution, Public Officer Ethics Act., Leadership and Integrity Act, N0 19 of 2012.

Where a Member or a Staff member contravenes this Code, appropriate action will be taken as provided for in Leadership and Integrity Act, No. 19 of 2012, the Public Officer Ethics Act, and Article 183, the Laws of Kenya:-

- (a) In respect of a Staff, take appropriate action such Staff; and
- (b) In respect of a Member, require the Member to resign and where such Member refuses or fails to resign advise the appointing authority to take appropriate action such Member.

8.2 Amendments

The provisions of this Code may be amended and modified by the Authority from time to time and all such amendments and modifications shall take effect from the date stated therein.

Wang’ombe Kariuki

Director General

Sign.....

David Ong’olo

Board Chairman

Sign.....

