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NATIONAL ASSEMBLY – FIFTH SESSION

THE PUBLIC INVESTMENTS COMMITTEE

THE REPORT ON CONSIDERATION OF THE SPECIAL AUDIT REPORT
ON UTILIZATION OF COVID-19 FUNDS BY THE KENYA MEDICAL SUPPLIES
AUTHORITY

*The Directorate of Audit, Appropriations and Other Select Committees
The National Assembly,
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LIST OF ABBREVIATIONS/ACRONYMS

Ag.	-	Acting
CEO	-	Chief Executive Officer
COVID	-	Corona Virus Disease
CS	-	Cabinet Secretary
DG	-	Director General
EACC	-	Ethics and Anti-Corruption Commission
HPTs	-	Health Products and Technology
KEMSA	-	Kenya Medical Supplies Authority
KRA	-	Kenya Revenue Authority
MoH	-	Ministry of Health
OAG	-	Office of the Auditor General
PFMA	-	Public Finance Management Act 2012
PFMR	-	Public Finance Management Regulations
PIC	-	Public Investments Committee
PPAD	-	Public Procurement and Asset Disposal Act, 2015
PPE	-	Personal Protective Equipment
PS	-	Principal Secretary
UHC	-	Universal Health Coverage

CHAIRPERSON'S FOREWORD

The Public Investments Committee is mandated by Standing Order 206 of the National Assembly to examine the working of public investments, with a particular focus on financial oversight on use of appropriated public funds.

The Committee examines the annual audited accounts of State Corporations submitted to the National Assembly. In addition to the audited accounts, the Public Investments Committee occasionally requests the Office of the Auditor General to conduct Special Audits in instances where the Committee suspects that relevant laws have been violated in the financial management of State Corporations.

The Covid-19 pandemic is among the most devastating public health crisis the world has faced in decades. Since its emergence in late 2019, the pandemic has caused significant disruption worldwide with public health systems facing severe strain in managing the pandemic. In Kenya, several government agencies have been at the forefront in preparing the country to effectively respond to the pandemic. Key among these entities is the Kenya Medical Supplies Authority, (hereinafter referred to as KEMSA) whose primary mandate is the procurement, warehousing and distribution of drugs and medical supplies for prescribed public health programs, the national strategic stock reserve, prescribed essential health packages and national referral hospitals.

In addition, KEMSA is mandated to collect information and provide regular reports to the National and County governments on the status and cost-effectiveness of procurement, the distribution and value of prescribed essential medical delivery to health facilities, stock status and any other aspects of supply system status and performance which may be required by stakeholders.

In undertaking this critical mandate with a view to mitigating the effects of the Covid-19 pandemic to the country, KEMSA was put on the spot following reports of alleged procurement malpractice by the Authority. Given the grave dangers faced by the country in the face of the pandemic, the reports of financial mismanagement by a key agency at the frontline of fighting the pandemic generated a lot of public interest. The Public Investments Committee invoked its mandate as provided for in Standing Order 206 of the National Assembly Standing Orders and the Speaker's communication No. 12 of 2019 and requested the Office of the Auditor General to conduct a

Special audit on KEMSA, with a focus on utilization of public funds to procure health products and technologies in the fight against the Covid-19 pandemic.

The special audit report on utilization of Covid-19 funds by KEMSA was submitted to the House by the Office of the Auditor General on 1st October 2020 and formed the basis upon which the Committee conducted its inquiry. During the course of the inquiry, the Committee received evidence from various parties including but not limited to the Ministry of Health, the Public Procurement Regulatory Authority, the Office of the Attorney General, the Board and Management of KEMSA and the suppliers of Covid-19 HPTs to the Authority that were given business worth more than Kshs. 40 million. Further, other agencies such that Covid-19 taskforce submitted evidence to the Committee.

The observations and findings of the Committee paint a grim picture of financial mismanagement and wanton disregard of procurement and public finance management laws by the Authority. The recommendations in this report provide a recourse against individuals and entities that occasioned such actions as well as suggestions for amendment of laws to provide recurrence of such acts in future.

On behalf of the Committee, I would like to take this opportunity to thank the various government agencies and private agencies that provided information to the Committee during its inquiry. I also take this opportunity to commend the Members of the Committee for their commitment and diligence in undertaking this inquiry which called for numerous physical sittings over long hours and detailed review of bulky documents at the height of the pandemic. Finally, I wish to record the Committee's appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the work of the Committee in fulfilment of its mandate.

Mr Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 199 (6) to present the Report of the Public Investments Committee on the inquiry into utilization of Covid-19 funds by KEMSA for consideration by the House.

THE HON. ABDULLSWAMAD SHARRIF NASSIR, MP

CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

EXECUTIVE SUMMARY

The Public Investments Committee is mandated to examine the reports and accounts of the public investments to ascertain whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

In undertaking this mandate, the Public Investments Committee requested the Office of the Auditor General to conduct a special audit on utilization of Covid-19 funds by the Kenya Medical Supplies Authority following widespread reports alleging that the Authority had engaged in unlawful procurement processes that could have led to loss of public funds.

The Committee requested the Auditor-General to conduct the special audit and report back to the National Assembly on the following matters that formed the terms of reference of the inquiry:

- (i) Adherence to the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) by KEMSA in the procurement of medical supplies for purposes of combating the COVID-19 pandemic;
- (ii) Adherence to the Public Finance Management Act, 2012 (PFMA, 2012) by KEMSA in the procurement of medical supplies; and
- (iii) Value for money in the procurement of medical supplies by KEMSA, for purposes of combating the pandemic.

The Auditor General produced the requested Special Audit Report,¹ forwarded it to the National Assembly, was tabled in the House on 1st October 2020 and thereafter committed to the Public Investments Committee for consideration.

The report has five sections; the executive summary, the preface, submissions by witnesses, the committee observations and recommendations by the Committee.

In its consideration of the Special Audit Report, the Committee found that the Management of KEMSA failed to adhere to relevant public finance management laws in budgeting and incurring

¹ Special Audit Report of the Auditor General on Utilization of Covid-19 Funds by the KEMSA for the period 13th March to 31st July 2020

expenditure for procurement of Covid-19 HPTs. The Authority exceeded the approved budgets and irregularly utilized the Universal Health Coverage (UHC) funds to purchase Covid-19 HPTs. KEMSA committed a total of Kshs. 8,388,872,706 towards procurement of Covid-19 related items against an approved capital budget of Kshs. 4,655,709,000 for the financial year 2019/2020.

KEMSA Management commenced procurement without sufficient funds to meet the obligations of the resulting contracts which was in contravention of Section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015). Section 43 (b) of the Public Finance Management Regulations (PFMR), 2015 also requires Accounting Officers to ensure public funds are only utilized for the purpose to which they were appropriated

The Committee also established that KEMSA Management ignored the Ministry of Health advise on the items to be purchased using the Kshs. 758,690,583.25 from the World Bank. Having committed to purchase supplies for which the Authority did not have a budget for, the KEMSA CEO bypassed the parent Ministry and wrote directly to the National Treasury on 2nd June, 2020 seeking budgetary support amounting to Kshs. 5,140,943,000.

The KEMSA Management commenced procurement of COVID-19 related items on 18th March, 2020 using alleged retrospective Direct Procurement method without putting in place systems and procedures to guide the use of retrospective Direct Procurement contrary to Section 69 (2) and Section 45 (1) of the PPADA, 2015.

In initiating the procurement, KEMSA Management opted to use commitment letters which are not part of legally recognised documents in procurement process as provided for in the PPDA, 2015. Section 104 of PPADA, 2015 stipulates the procedure which an accounting officer of a procuring entity should adhere to in relation to direct procurement, where the Accounting Officer should issue a tender document which shall be the basis of tender preparation by tenderer and subsequent negotiations. Commitment letters do not fall under the statutorily prescribed procurement documents under the second schedule of the PPDR, 2006.

The inquiry further noted that the issuance of commitment letters was replete with allegations of irregularities. It was alleged that the CEO instructed backdating of some Commitment letters, which was irregular if proved. The Committee was informed of alleged backdating of a commitment letter to Shop 'N' Buy from 5th May 2020 to 30th April 2020. The CEO acted in

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contravention of Public Officer Ethics Act, 2012 section 9 (a) which provides that a Public Officer shall carry out his duties in a way that maintains public confidence in the integrity of his office.

The Committee also established that KEMSA failed to conduct a market survey to establish the market rates that they intended to procure and sell. KEMSA Management settled on a pre-determined price for 3-ply masks (Kshs. 4500 per box of 50) masks and personal protective equipment (Kshs. 9000 per kit) and KN95 and proceeded to buy at these amounts even in instances where suppliers quoted lower amounts. Further, there was no needs assessment carried out by KEMSA to establish the demand for Covid-19 HPTs. All evidence adduced to the committee pointed to a supplier-driven procurement that was initiated through intent letters from suppliers.

The Committee further noted that there was lack of consistency in the procurement processes where some entities went through a bidding process and filled tender documents before supplying KEMSA while others supplied based on their commitment letters then filled tender documents later. Companies like Harleys Limited and Nairobi Enterprises Limited rightfully refused a commitment letter from KEMSA and insisted on use of the procurement processes outlined in the Procurement Act (2015).

Payment to suppliers also reflected a skewed pattern where the companies that insisted on following of Procurement laws had their payments delayed despite being some of the earliest suppliers of Covid-19 HPTs to KEMSA. The fact that KEMSA followed due process of procurement law in dealing with some of the companies indicates that KEMSA Management knew what the law demanded of them but deliberately disregarded the law when dealing with some entities.

The Committee noted with concern that KEMSA bought the KN95, Surgical Masks and Personal Protective Equipment at a higher price than what other entities such as the Covid-19 task force and the Kenya Red Cross were buying at the same period. There is therefore need for an independent determination on how much each specific commodity should have cost the tax payer with a view to refunding any amount that may have been overpaid in line with the doctrine of quantum meruit.

All these violations of law were brazenly committed by KEMSA Management despite clear guidelines issued by the Solicitor General and the Public Procurement Regulatory Authority with regards to emergency procurement of Covid-19 HPTs by public agencies.

CHAPTER ONE

1.0 PREFACE

1.1 COMMITTEE MANDATE

1. The Public Investments Committee is one among three watchdog/investigatory committees of the House established under National Assembly Standing Order (S.O.) 206 and is responsible for the examination of the working of public investments on the basis of their audited reports and accounts.
2. It is mandated to-
 - (i) examine the reports and accounts of the public investments;
 - (ii) examine the reports, if any, of the Auditor General on the public investments; and
 - (iii) examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices;
3. The Committee is guided by the following pieces of legislations and codes in carrying out its mandate: -
 - a) the National Assembly Standing Orders;
 - b) the Constitution of Kenya;
 - c) the National Assembly (Powers and Privileges) Act (Cap. 6);
 - d) the State Corporations Act (Cap. 446);
 - e) the Public Procurement and Disposal Act, 2005;
 - f) the Public Procurement and Disposal Regulations, 2006;
 - g) the Public Procurement and Assets Disposal Act, 2015
 - h) the Public Finance Management Act, 2012;
 - i) the Public Audit Act 2003, and
 - j) the Public Audit Act, 2015, among others.

1.2 COMMITTEE MEMBERSHIP

4. The Committee on Public Investments constituted by the House in December 2017 comprises of the following Members: -

Name of Member	Constituency	Party
The Hon. Abdullswamad Sharrif Nassir, MP Chairperson	Mvita	ODM
The Hon. Ahmed Abdisalan Ibrahim, MP Vice-Chairperson	Wajir North	ODM
The Hon. Raphael Bitta Sauti Wanjala, MP	Budalangi	ODM
The Hon. Thomas Joseph Kajwang', MP	Ruaraka	ODM
The Hon. Omar Mohamed Maalim Hassan, MP	Mandera East	EFP
The Hon. Mishi Mboko, MP	Likoni	ODM
The Hon. Julius Kibiwott Melly, MP	Tinderet	JP
The Hon. Joshua Kandie, MP	Baringo Central	MCCP
Hon. Babu Owino Paul Ongili, MP	Embakasi East	ODM
Hon. James Githua Kamau Wamacukuru, MP	Kabete	JP
The Hon. Mathias Nyamabe Robi, MP	Kuria West	JP
Hon. Mary Wamaua Njoroge, MP	Maragwa	JP
Hon. Mohamed Hire Garane, MP	Lagdera	KANU
The Hon. Rahab Mukami Wachira, MP	Nyeri County	JP
Hon. Paul Kahindi Katana, MP	Kaloleni	ODM
Hon. Rashid Kassim Amin, MP	Wajir East	WDM-K
Hon. Teddy Mwabire, MP	Ganze	ODM
Hon. Zachary Kwenya Thuku, MP	Kinangop	JP

1.3 COMMITTEE SECRETARIAT

5. The secretariat facilitating the Committee comprises -

Evans Oanda	-	Senior Clerk Assistant
Mohamed Boru	-	Clerk Assistant II
Marlene Ayiro	-	Senior Legal Counsel
Joash Kosiba	-	Senior Fiscal Analyst

1.4 COMMITTEE PROCEEDINGS

6. In its consideration of the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority, the Committee held fifty five sittings in which it received both oral and written evidence from the Acting Chief Executive Officer, management and suspended officials of Kenya Medical Supplies Authority (KEMSA), the Principal Secretary & Director General, Ministry of Health, the Office of the Attorney General, the Public Procurement Regulatory Authority, suppliers of Covid-19 Health Products and Technologies and other relevant witnesses.
7. The records of evidence adduced, documents and notes received by the Committee formed the basis of the observations and recommendations as outlined in the Report and can be obtained in the Minutes of the Committee proceedings hereto annexed.²
- 8. The recommendations in this report provide a recourse against individuals and entities that occasioned such actions as well as suggestions for amendment of laws to provide recurrence of such acts in future.

² Committee Minutes

CHAPTER TWO

2.0 SUBMISSIONS BY WITNESSES

2.1 SUBMISSION BY KEMSA MANAGEMENT

Mr. Edward Njoroge, the Ag. Chief Executive Officer of KEMSA, accompanied by Mr. Waiganjo Karanja (Director, Finance & Strategy), Mr. Edward Buluma (Ag. Director, Procurement) and Mr. Evans Cheruyiot (Legal Officer) appeared before the Committee on 11th November, 2020, 24th November, 2020 and 30th March, 2021 respectively to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The Committee was briefed as follows:

9. The Kenya Medical Supplies Authority uses a 'Not-For-Profit' self-sustaining commercial business model where the county health facilities will order and pay for their medical commodities on a demand driven supply system. It allows the Authority to run a self-sustainable supply system. KEMSA's Capital Budget and Procurements of medical commodities had been driven by Demand-Supply approach, hence a revolving fund model. KEMSA Capital entails both EMMS and UHC Health Products and Technology (HPTs).
10. The business model mandates KEMSA to use the funds realized from sale of medical commodities to replenish its stocks. Utilization of KEMSA Capital procurement Budget is guided by the Public Finance Management Act,2012 and the standard operating procedures of the Authority.
11. During the Universal Health Coverage (UHC) scale up, KEMSA was to use existing framework contracts with existing suppliers to call down UHC HPTs that were to be drawn by counties and National Referral hospitals. UHC HPTs commodities were considered as normal stock items to be procured and sold under the KEMSA Capital revolving medical fund.
12. The Ministry budget for UHC HPTs is as described below. This budget was to facilitate replenishment of HPTs procured under KEMSA Capital; that were immediately available for

distribution to counties, HPTs whose deliveries was on going, HPTs that were called down in ~~December 2019 and January 2020 and procurement of Maternity, Basic Equipment and~~ Laboratory essentials medical supplies. This budget was based on the cash flow projection submitted by KEMSA to the Ministry as follows;

Description	AMOUNT IN KSHS
Maternity, Basic Equipment and Laboratory essentials medical supplier	4,526,840,328
UHC-HPTs -Immediately available for distribution to counties	2,756,682,278
UHC-HPT-Whose deliveries was on going	2,682,852,853
UHC-HPT- That were called down in December 2019 and January 2020	1,802,997,659
TOTAL BUDGET	11,769,373,118

13. To facilitate procurement of these HPTs and call downs, additional budget was loaded under KEMSA Capital and this action created budgetary space for creation of LPOs under KEMSA Capital.
14. HPTs for use in fight against the Covid-19 pandemic were charged to the available budget under KEMSA Capital as approved by the Accounting officer. These commodities were considered as normal stock items to be procured and sold under the KEMSA Capital revolving medical fund.
15. The procurement of COVID-19 items was undertaken on an emergency basis by way of direct procurement in line with the Public Procurement and Asset Disposal Act (PPADA) 2015 Section 103 (2) (b) (c) and Section 69 (1) (2).
16. Prospective suppliers wishing to supply the various items at the onset of the Covid-19 pandemic, submitted letters of intent indicating that they wished to supply KEMSA with HPT's.

17. The suppliers were required to submit samples that were evaluated by the technical personnel to ascertain conformance to the technical specifications. Once samples were found to be responsive, the suppliers were issued with commitment letters indicating item description, quantities and delivery date.
18. After the suppliers delivered the goods, a request to initiate procurement process from Commercial Directorate approved by Chief Executive Officer was forwarded to the procurement department which prepared and issued a tender document to the supplier with a deadline for submission.
19. The Chief Executive Officer appointed an ad hoc evaluation committee pursuant to section 46 of the Act to undertake evaluation and negotiate with the supplier. The evaluation committee prepared minutes of the negotiation and an evaluation report with recommendations. Purchase Orders were raised on the basis of the negotiated prices. Copies of the approved purchase orders were sent to the warehouse to facilitate receipt of goods in the ERP.
20. The evaluation report and the minutes were forwarded to the Director Procurement who prepared professional opinion to the Chief Executive Officer for award.
21. Upon approval of the award recommendations, procurement department sent out notification letters to the suppliers. Subsequently, the suppliers submitted acceptance letters. Procurement department prepared contracts and forwarded them to the legal department for verification and signing.
22. Use of Retrospective Direct Procurement Method was therefore not irregular as it's provided for under section 69(2) of the PPADA 2015. The Solicitor General issued an advisory on procurement procedures applicable to urgent purchases to deal with COVID-19. The advisory reiterated the following; -
23. To address the necessary emergency purchases, procuring entities may take advantage of the DIRECT Procurement mode of Procurement whose essential attributes are highlighted hereunder:

24. Pursuant to Article 227 of the Constitution, Parliament enacted the Public Procurement and ~~Assets Disposal Act 2015 (the Act), which provides the procedures for efficient public procurement and for assets disposal by public entities.~~
25. Section 92 of the Public Procurement and Asset Disposal Act 2015, sets out various methods of procurement, with section 91 (1) setting out open tendering as the preferred procurement method. However, section 92 does recognize other methods of procurement including direct procurement.
26. In the present instance, procurement of masks and related items/equipment to address COVID-19 qualified as “urgent need” as provided for under section 103 (b) and (c) above. The term is defined under section 2(1) of the Public Procurement and Asset Disposal Act, as follows:
27. The need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable.
28. COVID-19 poses an actual threat to public health and therefore procurement of masks and related items/equipment to assist in containing the virus qualifies as an urgent need.
29. Procuring entities could also take advantage of section 103 (e) which permits the method of Direct Procurement of goods, works or services provided by a public entity provided that the acquisition price is fair and reasonable and compares well with known prices of goods, works or services in the circumstances.
30. The outbreak of Covid-19 was an emergency and there had not been a budget and procurement plan for procurement of items for the management of the pandemic. As a consequence, KEMSA used the budget that had been approved for the Procurement of Health Products and Technologies (HPTS) for the Financial year 2019/2020 in procurement of the Covid-19 items.
31. Given that Covid -19 procurement was an emergency procurement, there had not been a procurement plan for this procurement. The procurement was undertaken using the approved

budget for Health Products and Technologies (HPTS) for the financial year 2019/2020. However, the procurement process was not aligned to that particular budget as there was procurement over and above the budget.

32. COVID-19 pandemic was being handled for the first time. KEMSA did not do a quantification as it would have been ordinarily as there were no prior disease patterns/trends. The ideal stock holding levels could not be pre-determined. Initially the Covid-19 related Health Products and Technologies (HPTs) were hard to get, there was a high demand and ban of exports from countries like India where the commodities could be bought was not making the matter better. The high demand raised the prices to unprecedented levels. With time the market stabilized as supply of the HPTs from across the world increased. The prices came down and therefore KEMSA could not dispose the HPTs at the prevailing market price.
33. Commitment letters were issued to companies which indicated their ability to supply the PPEs within the given time period. At this point their experience in supplying the PPEs was not a requirement.
34. M/s Gladlab supplies Ltd submitted a letter of intent dated 8th April 2020 for supply of Surgical Face Masks at a price of Kshs. 95 per piece. On 9th April 2020 they submitted another letter to supply the face masks at a price of 30 dollars per box of 50 masks. A commitment letter was issued to them to supply 30,000 packs of boxes of 50 masks. After delivery, they were issued with a tender document which they completed and returned. They quoted a new price of Kshs. 4,750 per box of 50 masks in the tender document. The Negotiation committee then negotiated the price to Kshs. 4,500 per box of 50 masks.
35. The Ministry of Health availed a budget of Kshs. 758,000,000 for the procurement of the items. The budget was supported by World Bank Transformation Systems project (THS).
36. Payment criteria was based on submission of complete documentation to the Finance department to facilitate creation and progression of a payment voucher. Ten (10) Mandatory documents were required to support payment vouchers for medical commodities. These documents were created by the suppliers and departments within KEMSA. Finance department consolidates the documents for each payment voucher created. The documents

included Supplier Invoice, supplier delivery note signed and stamped by an officer from the warehouse department, copy of KEMSA LPO to the Supplier (Pink Copy), Original copy of Goods Received Notes (GRNs) generated from KEMSA Warehouse Management System (WMS), KEMSA Receipt Voucher (S12), Copy of quality Pre- Inspection and Acceptance report from Quality Assurance Department, Copy of the Certificate of Inspection and Acceptance Letter signed by Members of the Inspection and Acceptance Committee. Additional documents include copy of the contract (and Addendum to the contract where applicable), Copy of the Professional Opinion from the Head of Procurement and Supplier statement of account.

37. Without any of these mandatory documents, the payment voucher would not progress for payment. Further documentation would be requested if and where necessary, for instance credit notes and bank details.
38. Several factors determined the payment time for the Suppliers of COVID-19 related HPTs such as the time when the Finance department was able to consolidate all the mandatory support documents. The documents were to be consolidated and attached to the payment voucher before it was forwarded to the Chief Executive Officer for payment approval. Where one or more was missing, the payment voucher was held until the documentation was complete. The documentation check/verification was a 4-step multi-level process before forwarding to the CEO for approval. Payments could only be processed where all the requirements had been met.
39. Suppliers registered with Access to Government Procurement Opportunities (AGPO) and whose payments were fully supported were given priority on payments. They usually would be paid within 30 days.
40. The Ethics and Anti-Corruption Commission (EACC) vide correspondence Ref: EACC. 6/14/4(52) dated 31st August 2020 requested KEMSA to put on hold procurement processes and payments to 79 (Seventy-Nine) Suppliers. This request affected:
 - (a) Suppliers who had delivered but documents had not been processed.

(b) Suppliers whose documents had been processed but payments had not been finalized.

The EACC was yet to give clear guidance on the way forward on the above suppliers.

41. The procurement of COVID-19 items was undertaken on an emergency basis pursuant to Sections 103(1) (2) (b) (c) of the Public Procurement and Asset Disposal Act (PPADA) 2015. Due to the urgency, suppliers were authorized to make deliveries before the procurement process in line with section 69 (2) of the Public Procurement and Asset Disposal Act (PPADA) 2015 that provides for retrospective approval. The commitment letters were issued as authorization to the suppliers to deliver the goods before commencement of the procurement process.
42. The intent letters from the suppliers were done after the suppliers had made inquiries and submitted samples which were evaluated to ascertain conformance to specifications. After approval of the samples and quantities, the suppliers were then requested to write intent letters stating the quantities and the price at which they would supply. They were then issued with commitment letters authorizing them to supply.
43. Supply requirements did not originate from the suppliers but from KEMSA as the intent letters were issued to KEMSA after the process as explained above.
44. Due to the urgent need for PPEs that the pandemic presented, section 69(2) as read with section 103(2)(b) of the Public Procurement & Assets Disposal Act (No. 33 of 2015) were complied with.
45. The procurement of COVID items was done amounting to Kshs. 7,632,068,588.00. This procurement was spread among very many suppliers. The requirement to report to the Attorney General is in regard to single contracts in excess of Kshs. 5 Billion. No single supplier was awarded a contract in excess of Kshs. 5 Billion and the requirement to report to the Attorney General did not therefore apply.
46. KEMSA did not introduce suppliers to Financial Institutions. Suppliers requested KEMSA occasionally to confirm to their banks that they have been given instructions that payments for contracted supply of goods/services be channeled through the specified bank accounts in

those banks. This confirmation however had to be requested for in writing by the contracted supplier to KEMSA and ought to have indicated the bank, branch, and account number to be addressed in the confirmation and did not create any obligation from KEMSA to the banks since the correspondence clearly states that the supplier could give fresh instructions to change the pay point. It was not a guarantee for a loan by the bank to the contracted KEMSA suppliers. KEMSA does not engage the banks beyond confirmation of the authenticity of such communication.

2.2 SUBMISSIONS BY THE CHAIRMAN, KEMSA BOARD OF MANAGEMENT

Sen. Kembi Gitura, the Board Chairperson of Kenya Medical Supplies Authority, accompanied by Mr. Edward Njoroge (Ag. CEO, KEMSA), appeared before the Committee on 11th November, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The Committee was briefed as follows:

47. KEMSA's total proposed recurrent revenue budget for FY-2019/20 was Kshs 4.85 Billion.

This was to be realised from:

- a. Internally Generated Funds - Kshs 3.227 Billion
- b. Government Grants - Kshs 0.3896 Billion
- c. Net Sales Income - Kshs 1.2387 Billion

48. The total expenditure budget proposal was Kshs 37.86 Billion out of which;

- a. Kshs 3.227B was to be spent on recurrent expenditure in operations activities
- b. Kshs 500M was expected from Ministry of Health and was to be used to procure drugs for TB, ARVs and Family Planning.
- c. Kshs 12.16B was for procuring medical commodities for KEMSA MCP Program.
- d. Kshs 2.2B was for procuring Global Fund-GOK Counterpart commodities
- e. Kshs 4.655B was to be used to procure medical commodities under KEMSA-CAPITAL revolving fund.

- f. Kshs 650M was to be used to procure Commodities under the World Bank -HSSP, while Kshs 183.56M was to be used to procure Malaria and nutrition supplements under the UNICEF program.
 - g. Kshs 1.662 Billion for development/capital expenditure. This was to be funded from the following sources;
 - i. Development Grant from the Ministry of Health-Kshs 262.5 Million
 - ii. KEMSA Pending Bill settlement by the Ministry of Health –Kshs 1,093 Billion
 - iii. KEMSA Internal Generated Revenue (AIA) –Kshs 306 Million
49. The approved recurrent revenue is Kshs 3.433 Billion; this was to be realised from:
- a. Internally Generated Funds - Kshs 2.204 Billion
 - b. Net Sales Income - Kshs 1.229 Billion
50. The total expenditure budget proposal is Kshs 26.027 Billion out of which;
- a. Kshs 3.286 Billion will be spent on recurrent expenditure in operations activities;
 - b. Kshs 596.99 Million is expected from Ministry of Health and this will be used to procure drugs for TB, ARVs and Family Planning.
 - c. Kshs 6.966 Billion will be used to procure drugs for Health Products & Technologies, and CHV kits for supply to Counties and National Referral hospital under the Universal Health Coverage (UHC).
 - d. 13.247 Billion is for procuring medical commodities for USAID-KEMSA MCP, Global Fund-GOK Counterpart and Other programmes.
 - e. Kshs 1.931 Billion for development/capital expenditure. This will be funded from the following sources;
 - i. Development Grant from the Ministry of Health-Kshs 250 Million
 - ii. KEMSA Internal Generated Revenue Reserves of –Kshs 1.682 Million
51. The Execution of the budget was within the approved estimates apart from the KEMSA Capital revolving fund budget which was overshoot due to purchase of Covid-19 HPTs, without approval from the Board, The Ministry of Health and The National Treasury.

52. The Board would not ordinarily seek approval as that is a function of the Management. On this regard, the KEMSA board was not aware that the Budget was exceeded hence did not seek both the National Treasury and the Parent Ministry's approval prior to overshooting the budget estimates for the Financial Years 2019/2020.
53. The KEMSA Board was not involved in the procurement process of the equipment meant to fight the Covid 19 pandemic.
54. From time to time, the Ministry of Health issues instructions to KEMSA to facilitate supply chain services for various programs within the Ministry. Since March 2020, KEMSA received a total of Kshs 2.181 Billion from the Ministry of Health
55. Breakdown of monies received from the Ministry of Health for purposes of COVID-19 were spent:
- a. Kshs 1.5 Billion was earmarked for procurement of reagents and test Kits. The amount has been received in full. Kshs. 88.9 Million has been used to Pay for clearing charges for ABBOT Real time Cov2 Test kits & Reagents/Clearing Charges and Kshs. 480.96 Million have been committed-
 - b. Kshs 300 Million has been received in full for procurement of locally produced re-usable facemasks. This is being done in collaboration with the Kenya National Chamber of Commerce. No payment had been made against this amount-
 - c. Kshs 77.77 Million had been received for procurement of PCR Tests & Extraction Kits for Covid -19. This is a partial payment against a total allocated amount of Kshs 88.9 Million. Kshs. 70.704 Million has been used to pay for PCR Tests & Extraction Kits for Covid -19 fully delivered to KEMSA warehouses. Kshs 7.070 Million was for payment of KEMSA's 10% Management fees.
 - d. Kshs 304.16 Million is to settle payments for HPTs delivered in full under the World Bank Funded Transforming Health Systems for Universal Health Care Program. This was a partial payment from the allocated total amount of Kshs 758.69 Million. This amount has been used to settle supplier's payments who have fully delivered

commodities as contracted. A second request of Kshs 148.6 Million has been forwarded to the Ministry of Health for settlement of further suppliers' payments.

56. KEMSA received donations on behalf of the Ministry of Health for warehousing awaiting instructions for Distribution. The following COVID-19 Donations were received in KEMSA warehouses from various organizations:

- i. Jack Ma
- ii. Jack Ma through African Union
- iii. World Health Organization
- iv. Ministry of Foreign Affairs through MoH
- v. Chinese Embassy in Kenya
- vi. Clinton Health Access Initiative
- vii. United Nations Environment Programme
- viii. Islamic Relief Organization
- ix. Government of Kenya Consignment
- x. Government of India
- xi. LOREAL through MoH
- xii. International Committee of Red Cross
- xiii. United Nations Development Programme
- xiv. Astrazeneca Corporation
- xv. THS-World Bank-MoH through UNICEF
- xvi. China Meheco Corporation
- xvii. Slovakia Republic
- xviii. Consortium Led by Stanbic Bank
- xix. Egyptian Embassy
- xx. Korean Embassy
- xxi. Qatar Embassy

57. Subsequently, the donations had been distributed to various facilities.

58. Contrary to the Office of the Auditor General report to the Parliament that UHC funds were used to settle Covid-19 HPTs, the Board wishes to clarify that there were no UHC funds used

to settle Covid-19 HPTs. (Attached UHC Utilization report as at 31st October 2020 - Appendix 7a and Letter to the Permanent Secretary by the Ag. CEO - Appendix 7b)

59. KEMSA had written to the Cabinet Secretary with a request to be allowed to sell the Covid-19 HPTs at the prevailing market prices.

Further evidence submitted in writing

60. Through his affidavit to the Committee dated 14th April 2021, Sen. Kembi Gitura denied claims from Dr. Jonah Manjari that he influenced award of supplies tender to M/S Wallabis Ventures Limited. He further denied an assertion by Dr. Manjari that Dr. Manjari had constantly briefed him (as the Chairman of KEMSA Board) on the preparedness of KEMSA management to confront Covid-19 pandemic between mid-March and Mid-June 2020.
61. Through his affidavit to the Committee dated 22nd April 2021, Mr. Joel Gesuka Onsare who was a KEMSA a Board Member, denied claims from Dr. Jonah Manjari that he influenced award of a tender to Villa Surgical and Equipment Ltd.

2.3 SUBMISSIONS BY THEN KEMSA OFFICIALS

2.3.1 SUBMISSION BY SUSPENDED CHIEF EXECUTIVE OFFICER

Dr. Jonah Manjari, the suspended Chief Executive Officer of KEMSA appeared before the Committee on 18th November, 2020, 25th November, 2020 and 31st March, 2021 to adduce evidence the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

62. KEMSA embraced Not-For-Profit self-sustaining commercial business model where the county health facilities would order and pay for their medical commodities on a demand driven supply system. It allows the Authority to run a self-sustainable supply system. KEMSA Capital Budget and Procurements of medical commodities have been driven by Demand-Supply approach, hence a revolving fund model. KEMSA Capital entails both EMMS and UHC HPTs.

63. The business model mandated KEMSA to use the funds realized from sale of medical commodities to replenish its stocks. Utilization of KEMSA Capital procurement Budget was guided by the Public Finance Management Act, 2012 and the standard operating procedures of the Authority.
64. During the UHC scale up, KEMSA was to use existing framework contracts with existing suppliers to call down UHC HPTs that were to be drawn by counties and National Referral hospitals. UHC HPTs commodities were considered as normal stock items to be procured and sold under the KEMSA Capital revolving medical fund.
65. The Ministry's budget for UHC HPTs was as described below. This budget was to facilitate replenishment of HPTs procured under KEMSA Capital; that were immediately available for distribution to counties, HPTs whose deliveries was on going, HPTs that were called down in December 2019 and January 2020 and procurement of Maternity, Basic Equipment and Laboratory essentials medical supplies. This budget was based on the cash flow projection submitted by KEMSA to the Ministry as follows;

Description	AMOUNT IN KSHS
Maternity, Basic Equipment and Laboratory essentials medical supplier	4,526,840,328
UHC-HPTs -Immediately available for distribution to counties	2,756,682,278
UHC-HPT-Whose deliveries was on going	2,682,852,853
UHC-HPT- That were called down in December 2019 and January 2020	1,802,997,659
TOTAL BUDGET	11,769,373,118

66. To facilitate procurement of these HPTs and call downs, additional budget was loaded under ~~KEMSA Capital creating created budgetary space for creation of LPOs under KEMSA Capital.~~
67. HPTs for use in fight against the Covid-19 pandemic were charged to the available budget under KEMSA Capital as approved by the Accounting officer. These commodities were considered as normal stock items to be procured and sold under the KEMSA Capital revolving medical fund.
68. The procurement of COVID-19 items was undertaken on an emergency basis by way of direct procurement in line with the Public Procurement and Asset Disposal Act (PPADA) 2015 Section 103 (2) (b) (c) and Section 69 (1) (2). “Pursuant to Section 103(1) of the PPADA 2015, a procuring entity may use Direct Procurement as allowed under subsection (2) as long as the purpose is not to avoid competition.
69. Section 69(2) of the Public Procurement and Asset Disposal Act (PPADA) 2015 provides for retrospective approvals of procurements in response to an urgent need.”Urgent need” is defined as follows;
- “the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable”.
70. Prospective suppliers wishing to supply the various items under Covid-19, submitted letters of intent indicating that they wished to supply KEMSA with HPT’s. The intent letters indicated the item description, quantities, estimated delivery date and price.
71. The suppliers were required to submit samples that were evaluated by the technical personnel to ascertain conformance to the technical specifications. Once samples were found responsive, the suppliers were issued with commitment letters indicating item description, quantities and delivery date.
72. After the suppliers delivered the goods, a request to initiate procurement process from Commercial Directorate approved by Chief Executive Officer was forwarded to the

procurement department. Procurement department prepared and issued a tender document to the supplier with a deadline for submission.

73. The Chief Executive Officer appointed an ad hoc evaluation committee pursuant to section 46 of the Act to undertake evaluation and negotiate with the supplier. The evaluation committee prepared minutes of the negotiation and an evaluation report with recommendations. Purchase Orders were raised on the basis of the negotiated prices. Copies of the approved purchase orders were sent to the warehouse to facilitate receipt of goods in the ERP.
74. The evaluation report and the minutes were forwarded to the Director Procurement who prepared professional opinion to the Chief Executive Officer for award.
75. Upon approval of the award recommendations, procurement department sent out notification letters to the suppliers. Subsequently, the suppliers submitted acceptance letters. Procurement department prepared contracts and forwarded them to the legal department for verification and signing.
76. Use of Retrospective Direct Procurement Method was therefore not irregular since it was provided for under section 69(2) of the PPADA 2015.
77. The Solicitor General issued an advisory on procurement procedures applicable to urgent purchases to deal with COVID-19. The advisory reiterated the following; -
78. To address the necessary emergency purchases, procuring entities may take advantage of the DIRECT Procurement mode of Procurement whose essential attributes are highlighted hereunder:
79. Pursuant to Article 227 of the Constitution, Parliament enacted the Public Procurement and Assets Disposal Act 2015 (the Act), which provides the procedures for efficient public procurement and for assets disposal by public entities.

80. Section 92 of the Act set out various methods of procurement, with section 91 (1) setting out open tendering as the preferred procurement method. However, section 92 does recognize other methods of procurement including direct procurement.
81. In the case of covid-19 related procurement, procurement of masks and related items/equipment to address COVID-19 qualifies as “urgent need” as provided for under section 103 (b) and (c) above. The term is defined under section 2(1) of the Public Procurement and Asset Disposal Act, as follows:
- ‘the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable.’*
82. COVID-19 posed an actual threat to public health and therefore procurement of masks and related items/equipment to assist in containing the virus qualifies as an urgent need.
83. Procuring entities could also take advantage of section 103 (e) which permits the DIRECT procurement of goods, works or services provided by a public entity provided that the acquisition price is fair and reasonable and compares well with known prices of goods, works or services in the circumstances.
84. For all firms, after issuance of commitment letter, the procurement process would start immediately. However, some companies would deliver immediately whereas others took time depending with their capability; but the procurement processes started immediately for both in a Retrospective manner.
85. The issue of payment varied depending with the processing of documents from warehouse to finance. Some suppliers delayed in submission of documents which KEMSA didn't have direct control.
86. The CEO stated that a Commitment letter was recognized by PPDA 2015 in line with Section 69 sub section 2 which provides that

(2) No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made except on procurements in response to an urgent need.

87. The Price was determined by scarcity of the commodities in the market bearing in mind the lockdown all over the world, especially Kenya's major import countries (China and India). Further, even the private sector i.e hospitals like Aga Khan were procuring at a higher price hence occasioning scarcity.
88. Dr. Manjari denied an accusation that he directed backdating of a commitment letter to Shop 'N' Buy from 5th May 2020 to 30th April 2020. He averred that the Intent letter for Shop N' Buy Limited was dated 29th April, 2020 and was received the same date. A commitment letter was issued on 30th April, 2020. The request for extension dated 19th May, 2020 was received the same date and an extension letter was issued 20th May,2020. For Leon Interior & Design, an intent letter dated 28th April, 2020 was received on the same date and a commitment letter was issued on 30th April,2020
89. The period of delivery was determined by the intent letter submitted and that the date of delivery was within the province of the procurement department to determine once commitment letters had been issued.
90. He did not know for how long the Covid-19 Pandemic outbreak could last. Secondly, even in countries all over the world that were hit first, it had lasted over four months so KEMSA was just preparing for the unknown.
91. Most of the companies that supplied Covid-19 HPTs were on KEMSA's prequalified list for the supplier of commodities. Procurement department communicated to them enquiring whether they were capable of supplying. They responded with an intent to do so. The other processes followed thereafter.
92. Some of the prequalified suppliers had no commodities or the capacity to supply like Amiken which was to supply N95 masks had nothing in stock. Nairobi Enterprises Limited could not be able to meet the demand.

93. Samples were inspected prior to issuing commitment letters by QA. The same was forwarded to Warehouse then subsequently goods would be inspected by inspection and acceptance committee
94. He regularly briefed the Chairman of the KEMSA Board, Sen. Kembi Gitura, on the KEMSA management's preparedness with procurement of Covid-19 pandemic PPEs.
95. To further buttress his assertion that most Members of the KEMSA Board were regularly but informally briefed of the preparedness of KEMSA Management in procurement of PPEs, he accused Sen. Kembi Gitura and Joel Gesuka Onsare of influencing award of the tender to Wallabis Ventures limited and Villa Surgical & Equipment Limited.
96. Dr. Manjari denied being influenced in the decisions he made during the procurement of Covid-19 pandemic related items
97. Dr. Manjari cast doubt on the authenticity of the memo from the Director of Procurement to all directors and copied to him dated 24th April 2020. He supported this assertion by indicating that the said memo was never sent to him; it appeared to have been backdated and written on the wrong letter head as it was written on the official KEMSA letter head and printed on size A4 yellow conqueror paper instead on the memo letter head which is usually on a plain A4 paper; was ever stamped as "received" once it reached the CEO's office; did not bear the CEO's comments on the action to taken; was strange for the director of procurement to wrote to all directors and managers and choose to copy the CEO. The usual scenario would have been that he writes a memo to the CEO and copy all the others or write to CEO and who will in turn communicate to all the others.
98. Dr. Manjari denied accusations that he ignored professional pieces of advice given to him by both the directors of commercial services and the procurement.
99. Dr. Mnajari accused Mr. Charles Juma and Pamela Kaburu for colluding to accuse him falsely indicating that the two had a personal relationship.

100. Dr. Manjari averred that for any payment to be effected, the director of finance should be involved in one way or another i.e he supervised the preparation of vouchers, was the custodian of cheques and had to approve EFT.
101. He averred that the Board meeting of 19th March 2020 approved commencement of procurement of Covid-19 pandemic related items.
102. Dr. Manjari insisted on the existence of a market survey upon which prices of supplied items during the covid-19 pandemic were priced. He produced a one page document in this regard.

2.3.2 SUBMISSION BY THE SUSPENDED DIRECTOR OF PROCUREMENT, MR. CHARLES JUMA

Mr. Charles Juma, the suspended Procurement Director at KEMSA appeared before the Committee on 1st December, 2020 and 24th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

103. The Public Procurement and Regulatory Authority issued a PPRA CIRCULAR NO. 02/220 dated 27th March 2020 on the subject Preventive Measures for handling of Procurement Activities for Procuring entities due to Corona Virus (COVID-19).
104. Further, the Solicitor General issued an advisory to Ministries, Departments and Agencies (MDAs) on Procurement procedure applicable to urgent purchases to deal with COVID-19 dated 17th April 2020.
105. In view of the above circular and advisory, he provided four advisories/ opinions to the Management with regard to COVID-19 Emergency Direct Procurement.
106. The first Internal Memo addressed to the Directors, Managers and copied to the CEO with the subject; Emergency Procurement of Covid-19 HPT'S through Direct Procurement dated

24th April 2020³. In this Memo, he reiterated to the deliberations and resolutions of the ~~Director's Meeting with the Chief Executive Officer held on 21st April, 2020 that the~~ Commitment Letters issued as of 21st April, 2020 amounting to **Ksh. 3,996,636,560** which was substantial and that the meeting had agreed to stop issuing new commitment letters. The memo was to prompt the management to take caution of its expenditure and ensure the procurement of Covid-19 HPT's under KEMSA capital did not exceed the approved 2019/2020 budget. Further the memo outlined the procedures to be followed while undertaking Emergency Direct Procurement.

107. On 15th May, 2020, he prepared a second internal Memo addressed to the CEO and four Directors on the subject "Professional Opinion on Covid-19 HPTs Emergency Procurement through Direct Procurement" to the Chief Executive Officer and four Directors.⁴ In this Memo he indicated that they had adequate stocks of twelve (12) items as per Page 2 of the Memo under item 3. That the commitment letters issued as of this date amounted to **Kshs. 5,324,481,200** against a total budget of **Kshs. 4,655,709,000**. The commitment letters had exceeded the total annual budget available by **Kshs. 668,772,200**.
108. The budget allocated for procurement of HPT's had therefore been exhausted. That any procurement above the approved budget would be a breach of the Public Procurement and Asset Disposal Act (PPADA) 2015.
109. He advised that they put on hold any new procurement for the Covid-19 items listed in the Memo. Further, that the Ministry of Health and any other authority letters will be processed as par the allocated budget. He also advised that Development Partners Procurement of Covid-19 HPT's would be processed based on Authorities received. That any Emergency Direct Procurement having commitment letters issued above the allocated budget would require a re-allocation of funds by the Finance Department to enable their processing.
110. On 4th June 2020, he wrote a third internal Memo addressed to the CEO and copied to four Directors on the subject "Advisory on COVID-19 HPTs Emergency Procurement through

³ A memo by the Director of Procurement to all directors and managers and copied to CEO dated 24th April 2020

⁴ A memo from the director of procurement dated 15th may 2020 stating that issued commitment letters had burst the approved budget

Direct Procurement”⁵. That as of this date, the commitment letters issued under KEMSA Capital amounted to **Kshs. 7,699,260,500** against a budget of **Kshs. 4,655,709,000**. This had exceeded the approved budget by **Kshs. 3,060,950,000**. In this Memo, he recommended as follows;

- a. With regard to commitment letters with a deficit budget of **Ksh.3,060,950,000** that funds/budget to meet this resultant expenditure be availed or these procurements be deferred to financial year 2020/2021.
 - b. That Commitment Letter issued to KILIG Limited should be cancelled/revoked with immediate effect as this procurement did not meet the threshold of the Public Procurement and Asset Disposal Act, 2015. That any continuation of fulfilment of that commitment letter would amount to a breach of PPADA 2015.
 - c. That there should be no more issuing of commitment letters to prospective suppliers. Any procurement anticipated should be planned for and carried out in accordance to the PPADA 2015 through open tendering.
 - d. That Quality Assurance Department should be advised to stop any further evaluation of any samples, as this was giving prospective suppliers false impression that they were still carrying out emergency procurement.
 - e. That Procurement Department would only retrospectively process procurement of commitment letters in its custody.
111. On 29th June 2020, he wrote a fourth Memo addressed to the CEO with the subject “Emergency Procurement of Complete PPE Kits Covid-19 (Corona Virus) Preparedness” reiterating the contents of his memo of dated 4th June 2020, that the emergency procurement with KILIG Limited should be shelved. The CEO agreed with this recommendation and a cancellation letter issued on on 30th June 2020.

⁵ Memo from director of procurement dated 4th June 2020 further caution on bursting of approved budget

112. The procurement of COVID-19 items was undertaken on an emergency basis by way of ~~direct procurement in line with the Public Procurement and Asset Disposal Act (PPADA) 2015 Section 103 (2) (b) (c) and Section 69 (1) (2).~~
113. “Pursuant to Section 103(1) of the PPADA 2015, a procuring entity may use Direct Procurement as allowed under subsection (2) as long as the purpose is not to avoid competition.
114. Section 69(2) of the Public Procurement and Asset Disposal Act (PPADA) 2015 provides for retrospective approvals of procurement in response to an urgent need.
115. Prospective suppliers who sought to supply the various items under Covid-19, submitted letters of intent indicating that they wished to supply KEMSA with HPT’s.
116. The intent letters indicated the item description, quantities, estimated delivery date and price. The suppliers were required to submit samples that were evaluated by the technical personnel to ascertain conformance to the technical specifications. Once samples were found responsive, the suppliers were issued with commitment letters indicating item description, quantities and delivery date.
117. After the suppliers delivered the goods, a request to initiate procurement process from Commercial Directorate approved by Chief Executive Officer was forwarded to the procurement department. Procurement department prepared and issued a tender document to the supplier with a deadline for submission.
118. The Chief Executive Officer appointed an ad hoc evaluation committee pursuant to section 46 of the Act to undertake evaluation and negotiate with the supplier. The evaluation committee prepared minutes of the negotiation and an evaluation report with recommendations. Purchase Orders were raised on the basis of the negotiated prices. Copies of the approved purchase orders were sent to the warehouse to facilitate receipt of goods in the ERP.
119. The evaluation report and the minutes were forwarded to the Director Procurement who prepared professional opinion to the Chief Executive Officer for award. Upon approval of

the award recommendations, procurement department sent out notification letters to the suppliers. Subsequently, the suppliers submitted acceptance letters. Procurement department prepared contracts and forwarded them to the legal department for verification and signing.

120. Use of Retrospective Direct Procurement Method was therefore not irregular as it was provided for under section 69(2) of the PPADA 2015.
121. The Solicitor General issued an advisory on procurement procedures applicable to urgent purchases to deal with COVID-19. The advisory reiterated the following; -
122. To address the necessary emergency purchases, procuring entities may take advantage of the Direct Procurement mode of Procurement.
123. The outbreak of Covid-19 was an emergency and there had not been a budget and procurement plan for procurement of items for the management of the pandemic. As a consequence, KEMSA used the budget that had been approved for the Procurement of Health Products and Technologies (HPTS) for the Financial year 2019/2020 in procurement of the Covid-19 items as approved by the Accounting Officer.
124. Section 103(2)(b), (c) of the Public Procurement and Asset Disposal Act, (PPADA) 2015 allows an Accounting Officer to use Direct Procurement in case of urgent need such as emergency, contingencies, etc.
125. Section 69(2) of the PPADA waives all formal processes with respect to procurement of urgent needs and empowers an Accounting Officer to procure the urgent needs and approve the procurement retrospectively.
126. COVID-19 items having been procured under Section 103(2)(b),(c) of the PPADA, Section 69(2) of the PPADA waived the planning and budgeting processes.
127. Given that Covid-19 procurement was emergency procurement, there had not been a procurement plan for this procurement. The procurement was undertaken using the approved budget for Health Products and Technologies (HPTS) for the Financial year 2019/2020. However, the procurement exceeded the budget.

128. The commitment letters were issued to firms which expressed willingness to supply the ~~COVID19 products within the given time period. At this point the experience was not~~ assessed. Due to urgency of COVID19 products, the CR12 were requested at the time of signing the contracts after goods had been delivered, therefore the registration status could not be known prior to delivery of COVID19 Products.
129. Variation in procurement methods for Covid-19 HPTs by KEMSA – Following the outbreak of COVID-19 and the declaration of the first positive case by the Government in March 2020, there was an urgent need to procure commodities (N95 Masks, Surgical Masks, PPEs, Infra-red Thermometers, Surgical Gloves, Protective Boots, Ventilators, etc) for use in the management of the pandemic.
130. Upon declaration of COVID 19 as a pandemic, the Accounting Officer directed procurement department to initiate procurement of multifarious protection requirements. Procurement department advised that the requirements be procured vide Direct Procurement method under 103(2)(b)(c) of the Public Procurement and Asset Disposal Act, 2015 (the PPADA).
131. However, Nairobi Enterprises Limited and Harleys Limited insisted on formal contracts in the form of Purchase Orders. The ground and procedure for Direct Procurement method with respect to the two suppliers changed from Section 103(2)(b),(c) and 69(2) of the PPADA to Section 103(2)(a) and 104 of the PPADA. Accordingly, KMESA issued tender documents to them, they responded by submitting tenders and the Accounting Officer appointed an Evaluation Committee for purposes of negotiation of the prices. Head of Procurement prepared a professional opinion and the Accounting Officer awarded the tenders to the two suppliers as per the negotiation reports. Thereafter, procurement department issued Purchase Orders as per the award decision.
132. On the use of commitment letter in tendering process, Mr. Juma averred save for Section 69(2) of the PPADA, the PPADA did not prescribe an elaborate procedure and instruments for procurement of urgent needs such COVID 19 requirements. However, Commitment Letters were recognised and applicable in Kenya by virtue of Section 3(g) of the PPADA which provides that “public entities shall be guided by the principles governing the procurement profession, international norms.” This resonated with Article 2(5) of the

Constitution of Kenya, 2010 which provides that “the general rules of international law shall form part of the law of Kenya.”

133. KEMSA therefore turned to and used the best practice of Commitment Letters by international public entities such as the United Nations, the World Bank, and the International Monetary Fund.
134. Commitment letters allowed KEMSA to secure the scarce items that were available in the market. The commitment letters were issued as authorization to the suppliers to deliver the goods before the procurement process. Without the commitment letters, the lengthy public procurement processes and procedures would have left the public exposed as the private sector which has fast and responsive procurement processes and procedures would have mopped the items from the market and or hoarded the same.
135. On Price determination, Mr. Juma averred that following the outbreak of COVID-19, supply chain systems were disrupted due to lockdown in key source countries namely; China and India. There was unprecedented demand for commodities. This coupled with lack of flights and inconsistent shipping schedules led to demand outstripping supply occasioning an escalation of prices. At the time KEMSA undertook emergency procurement, prices of COVID-19 commodities had sky rocketed. The suppliers KEMSA engaged requested to supply at prices that were way above what KEMSA could pay. KEMSA took the initiative to standardize the prices.
136. Section 69(2) of the PPADA waives all tendering processes and procedures. To avoid abuse and over pricing by suppliers, KEMSA management capped among others PPE prices at Kshs. 9,000.00 per kit, and for face masks at Kshs. 4,500.00 per pack of 50 pcs. The average market price for a PPE kit was Kshs. 12,000.00 and masks were retailing at an average price of Kshs. 6,000.00.
137. On the Period of supplying goods and amount of goods to be supplied, Mr. Juma informed the Committee that KEMSA demanded ex warehouse. The lead time was thereafter determined by the location of the suppliers’ warehouse/factory. KEMSA allowed most of the suppliers to deliver within a period of two weeks to one month However, this lead time was

not possible to achieve due to suspension of passenger aircrafts hence limited cargo space, ~~shipping structures such isolation of goods, source countries' lockdowns and export~~ restrictions and bans. Consequently, most of the suppliers were unable to meet KEMSA timelines and were constrained to seek time extensions pursuant Section 139(2)(a) of the PPADA which were granted by the Accounting Officer.

138. KEMSA was procuring COVID 19 items for the entire country in preparedness for the expected infections as informed by the Ministry of Health projection of 10,000 cases by April, 2020. The Accounting Officer directed that KEMSA procured as much as would be sufficient to cater for the expected infections and also for prevention. So KEMSA commitment and uptake was based on the suppliers' capacity as indicated in their respective Letters of Intent or subsequent Letters of Intent.
139. The suppliers were issued with commitment letters which indicated the quantities to supply. A few suppliers who completed deliveries and had extra stock requested additional supply through intent letters which were approved by the Accounting Officer.
140. On initiation of Procurement Process, Mr. Juma informed the Committee that the KEMSA mandate was to procure, warehouse and distribute HPTs on behalf of the Government. On the onset of COVID-19, KEMSA was requested to distribute various COVID-19 products to Government Health facilities and institutions. Since most of the COVID-19 products were not KEMSA stock items, as per their mandate, KEMSA carried out procurement of these items based on various requisitions approved by the Accounting Officer.

2.3.3 SUBMISSION BY THE SUSPENDED DIRECTOR OF COMMERCIAL SERVICES

Mr. Eliud Muriithi, the suspended Director of Commercial Services at KEMSA appeared before the Committee on 1st December, 2020 and 24th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

141. Based on his designation as a Director, Commercial Services, his specific roles included (a) overseeing sales and marketing; (b) developing marketing opportunities; and (c) overseeing the establishment and growth of strategic partnerships with stakeholders. In so doing, his overarching role was to facilitate satisfactory customer experience. Other general roles included identifying revenue-generating opportunities for KEMSA, as well as managing key client relationships, in line with KEMSA's overall mandate.
142. As a public entity within the meaning of the Public Procurement and Asset Disposal Act ("PPADA"), KEMSA is required to undertake its procurement within the provisions of the said Act. The PPADA requires all procuring entities to establish a functioning procurement unit to manage procurement and asset disposal processes. KEMSA had a fully functional procurement department as required by the PPADA and all procurement processes were domiciled within that department. The Director Commercial Services, had no active involvement in procurement processes.
143. Regarding the method of procurement adopted by the Procurement Department during the — COVID-19 crisis, the Commercial Services Directorate would only be involved at the tail end after the commitment letters had been issued, goods delivered to the warehouse and quality verification confirmed by the Quality Assurance Department. The Procurement Directorate would then consolidate a list of deliveries made as confirmed by the Operations Directorate and prepare some requisitions for the Director of Commercial Services's signature. He never had any prior involvement or visibility of the specific steps taken in relation to the procurement processes. At the time, he understood from the Procurement Department, which was the competent unit to advise on procurement matters, that the procedure adopted was allowed by the PPADA where the procurement relates to direct procurement of emergency supplies.
144. In performing his roles during the global health crisis, he at all times acted in accordance with the law, observing the applicable values, best practices developed over time and in good faith doing his part towards the overall objective of saving lives. It was on this understanding that he endeavored to share his thoughts whenever he felt that there were issues of concern

or misunderstanding that required clarification. Some of the concerns raised towards streamlining the handling of the crisis included:

- a) questions on the procurement processes adopted which were not within his docket but he sought to understand;
 - b) suggestions towards avoiding multiple brands of Alcohol Hand Rub 500ml which would present operational challenges;
 - c) advice against the procurement of coveralls and surgical masks from MEDS at the point when the existing supply met KEMSA's demands; and
 - d) advise towards changing prices of health-related products based on customer feedback and improved availability of COVID-19 related products due to opening up of source markets and local manufacturing.
145. These interventions, input and thoughts were offered in good faith towards the betterment of KEMSA's delivery of its mandate amidst the extraordinary and challenging circumstances.
146. For the avoidance of any doubt, he stated that the Commercial Directorate was not involved in any of the following:
- a. identification of suppliers and issuance of commitment letters;
 - b. tender evaluation and negotiation of prices;
 - c. formalities of receiving deliveries, cross checking quantities, quality assurance and development of the delivery schedule;
 - d. warehousing and distribution of COVID-19 HPTs donations; and
 - e. Procurement processes and approvals.
147. As per the normal practice across the public sector, he understood these to be matters to be dealt with between the procurement department and the Accounting Officer within any procuring entity.

148. The Special Audit Report did not find any irregularities on the part of the Commercial Directorate. The anomalies pointed out in relation to procurement processes, the utilization of Universal Health Coverage and Capital Budget to fund COVID-19 related procurements were items not within the purview of the Commercial Directorate's role.
149. At the onset of the crisis, KEMSA participated in several meetings with the Ministry of Health and other stakeholders wherein KEMSA was requested to prepare and take proactive steps to ensure appropriate supply of COVID- 19 related health products in order to meet the existing needs and to cater for uncertain future demand. This coupled with high demand for PPEs from the Ministry, counties, referral hospitals and other government entities necessitated urgent procurement at KEMSA. The modalities of handling the specific procurement processes were wholly handled by the Procurement Directorate which was mandated to do so.
150. A status report was prepared by Procurement Directorate and was only forwarded to him for onward transmission to the Principal Secretary, Susan Mochache as requested.
151. He further recalled that following the meeting held on 6th April 2020, which was convened to review MoH procurement, he shared with PS Mochache a rationalised list of health-related products and quantities. The rationalised list had also been sent to him by the Procurement Directorate for onward submission to the Ministry.
152. His attendance of the meeting held on 6th April 2020 was on the request of the CEO and in the normal course of his official duties. He was accompanied by the Procurement Manager, Mary Kitaka who presented the status report for discussion with PS. Mochache and other technical officers from the Ministry.
153. During the said meeting, the Ministry stated that the available budget for phase one procurement of health-related products was Kshs. 758 Million. It was at this meeting that the list of products and quantities was discussed and reviewed and KEMSA was requested by the Ministry to rationalize the list to be in tune with the available budget. KEMSA was advised that further instruction on how to proceed with phase two procurement would soon follow.

154. The Commercial Directorate was not involved in price determination during the procurement phase.

155. The Market Surveys conducted by the Commercial Services Directorate were for purposes of selling of the items and not their procurement. The prices were capped with reference to market prices to avoid overpricing by suppliers

156. While he believed that no adverse Committee Observations or recommendations were made against the Commercial Directorate or himself, he stated that he was prepared to provide any further clarification as the Committee may require.

2.3.4 SUBMISSION BY THE SECRETARY TO THE PROCUREMENT DIRECTOR, KEMSA

Ms. Pamela Kaburu, Personal Assistant to the Procurement Director at KEMSA appeared before the Committee on 8th December, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The Committee was briefed as follows:

157. During the procurement of COVID-19 health commodities, her role as the Personal Assistant to the Director of Procurement was to draft commitment letters to suppliers who expressed interest to supply Personal Protective Equipment and any other medical commodity for response and management of COVI-19 as instructed.

158. Once the draft letters were signed by the Chief Executive Officer, her role was to dispatch to the respective suppliers through email and telephone communication where necessary.

159. Further, she stated that not all commitment letters were drafted at the Director of Procurement's office. She provided to the Committee a file of commitment letters that were drafted and dispatched through the Director of Procurement's office.

160. She confirmed to the Committee having been instructed by Dr. Jonah Manjari to back date a letter for Shop 'N' Buy from 5th May 2020 to 30th April 2020.

161. She informed the Committee that it was normal for a memo in KEMSA to be written on a letter head as was the case in the Memo from the Director of Procurement to other directors dated 24th April 2020. She confirmed that the said memo was authentic.

162. Ms. Kaburu informed the Committee that both delivery dates of all supplies and duration of extension were determined by the Chief Executive Officer.

2.3.5 SUBMISSION BY THE DIRECTOR OF FINANCE AND STRATEGY

163. Through his written submission to the Committee, that was forwarded by the Ag. CEO of KEMSA in his letter dated 8th April 2021, Mr. Waiganjo Karanja (Director Finance and Strategy) averred as follows:⁶

164. That payments at KEMSA is a two-step process (a) Voucher processing and (b) payments documents signing.

165. Voucher processing is a five step multilevel electronic process in the ERP and must pass through the Finance Director's ERP profile, who then forwards to the CEO for approval and subsequent generation of payment voucher.

166. Though the finance Director did not sign the following Covid-19 payments, these payments were in line with the approved signing mandate of the KEMSA Board:

No.	PAYEE	AMOUNT (Kshs)
1.	Dominion Supplies Limited	35,700,000
2.	Hacksson Mediparm Suppliers	765,000
3.	Panim Holding	550,000

⁶ Written Submission by Mr. Karanja Waiganjo, Director of Finance and Strategy

167. That the KEMSA CEO, Dr. Manjari refused to take the advice given. Such pieces of advice includes:

- a. The KEMSA Director's meeting held on 21st April 2020 in which the director of Finance advised that the available budget was Kshs 4.6 billion against commitments issued of Kshs 5.493 billion. In the said meeting, it was resolved that further commitments should be stopped until reconciliation between the commitments and the available funds was done. However, the CEO disregarded this advice and continued issuing commitment letters.
- b. The CEO issues an Internal memo to the Director of Commercial Services, Director of Finance and Strategy and Finance Manager dated 12th May 2020 directing charge of procured Covid -19 items on the KEMSA Capital budgets despite having been advised on absence of budget.
- c. On 2nd June 2020, the Director of Finance issued a memo advising that the available funds were Kshs 4.8 billion against commitments of Kshs 5.3 billion and advised seeking funds from the Ministry of Health. The CEO ignored this advise and instead directly wrote to the National Treasury seeking for funds.
- d. Without consulting the director of Finance and Strategy, the CEO wrote a letter to the PS, Ministry of Health dated 6th August 2020 on how to finance covid-19 and non covid HPTs.
- e. The Finance Director advised against use of Kshs 4.385 billion UHC funds when the CEO had instructed its usage for covid-19 procurements. The advise from the Director was that the mother ministry should authorize such usage. Since the Ministry of Health did not respond to the CEO's request to use such UHC Funds for covid-19 procurements that money was not used.
- f. The CEO directed that the Covid-19 payments should not be subjected to aging analysis despite the existence of a policy for payments on or after 90th day. He ordered that the Cheques be taken to him for signing.

2.4 SUBMISSION BY THE MINISTRY OF HEALTH

2.4.1 SUBMISSION BY THE PRINCIPAL SECRETARY, MINISTRY OF HEALTH

Ms. Susan Mochache, the Principal Secretary for Health, accompanied by Dr. Kepha Ombadho, Mr. Benson Murimi and Mr. Liti Wamina from the Ministry of Health appeared before the Committee on 17th November, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

Ms. Susan Mochache submitted that -

168. The Laboratory and Resource Mobilization Teams of the National Task Force on Corona Virus Preparedness and Response met on 18th March, 2020 where a decision was made to procure commodities for COVID-19 response.

169. Subsequently, the Ministry of Health wrote a letter Ref. MOH/ADM/1/1/2 dated 18th March, 2020 to KEMSA conveying the decision of procuring the following commodities/:

- i. 25,000 Personal Protective Equipment;
- ii. 10,000 pieces of N95 masks
- iii. 6,000 laboratory sample collection and transportation consumable kits.

170. During the said meeting, it was further decided that additional 6,000 laboratory test kits, laboratory supplies and reagents be procured. The Ministry of Health wrote to KEMSA vide letter Ref No. MOH/ADM/1/A Vol. II conveying the decision to procure an additional 6,000 laboratory test kits, laboratory supplies and reagents.

171. The National Emergency Response Committee on COVID-19 met on 21st March, 2020 where a decision was made to urgently procure 30 ventilators, universal disposable tubing and accessories. The ventilators were each approximated to cost Kshs. 3,000,000. The Ministry of Health wrote to KEMSA vide letter Ref No. MOH/DC/9/1/33 conveying the decision of the NERC meeting.

172. KEMSA sent an email to the Ministry of Health on 1st April, 2020 which indicated that the Authority had entered into supplies commitments of Kshs. 2,184,998,962.20 of which goods worth Kshs. 149,075,296 had been delivered. The document supplied by KEMSA contained details on the commodities to be procured, the suppliers, quantities and prices.
173. Following a meeting held at the Ministry of Health headquarters on 6th April, 2020, KEMSA was asked to rationalize the budget to align it with the available budget of Kshs. 758,690,583.25.
174. KEMSA via an email dated 7th April, 2020 rationalized the budget by scaling down the procurement budget to match the Ministry's budget ceiling of Kshs. 758,690,583.25. The document submitted by KEMSA once again contained details on the commodities to be procured, the suppliers and prices.
175. On 15th April, 2020, the Principal Secretary wrote to the CEO KEMSA approving procurement of goods worth Kshs. 758,690,583.25 under the World Bank funded THS-UCP project. The items to be procured were identified and approved by KEMSA via the email on 7th April, 2020. The approval granted by the Principal Secretary was in relation to the budget ceiling of Kshs. 758,690,583.25 since KEMSA had earlier made commitment worth Kshs. 2,184,998,962.20.
176. The National Treasury wrote to the Ministry of Health vide letter Ref. No. RES/1081/19/01 'B' (53) dated 22nd June 2020 in response to a request by KEMSA for budgetary support for emergency COVID-19 supplies. The National Treasury observed that in consultation with stakeholders, KEMSA had mobilized emergency supplies worth Kshs. 5,140,943,000 for which it was seeking budgetary assistance.
177. The letter from the National Treasury observed that KEMSA had made commitments without confirmation of availability of budget. Further, the letter noted that the Authority had written directly to the National Treasury and bypassed the Ministry of Health. The Ministry advised that there was no scope for additional funding and that the Authority should utilize the available funding in the FY 2019/20 budget.

178. The Ministry of Health wrote to KEMSA vide letter Ref. No MOH/FIN/1/A Vol. III (94) dated 2nd July, 2020 informing the Authority that the funds requested could not be provided due to unavailability of any scope for additional funding. KEMSA was reminded to follow due process in seeking funds by ensuring all communication go through the Accounting Officer.
179. The Principal Secretary, Ministry of Health wrote to the Ag. CEO KEMSA on 27th August, 2020 seeking clarification on allegations of directing KEMSA to procure COVID-19 supplies. The letter has not been responded to.
180. The Principal Secretary denied any loss of COVID-19 donations given to the country and indicated a willingness to provide further information on the matter. The Ministry of Health has a donations register and all the donations provided are continuously distributed and have been useful in management of the pandemic considering the budgetary limits.

2.4.2 SUBMISSION BY THE DIRECTOR GENERAL, MINISTRY OF HEALTH

Dr. Patrick Amoth, the Ag. Director General, Ministry of Health, accompanied by Dr. Simon Kibai (Ag. Director, Health Standards), Dr. Warfa Osman (Ag. Director, Health Sector Coordination) and Dr. Joel Gondi (Technical Advisor to the Director General) appeared before the Committee on 2nd December, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The Committee was briefed as follows:

181. The World Health Organization (WHO) was informed of a cluster of Pneumonia of unknown cause detected in Wuhan City, Hubei Province of the Peoples Republic of China on the 31st December 2019 and subsequently this outbreak was confirmed as a new type of Corona Virus, 2019 (COVID-19) which has since spread out to become a pandemic with global confirmed cases standing at 60,264,241 with 1,420,306 deaths reported as at 27th November, 2020.
182. The first case was reported in Kenya on the 13th March 2020 as an imported case and so far the outbreak had evolved into a community-wide transmission with total detected cases

standing at 80,102 cases, with recoveries at 53,526 persons and 1,427 deaths reported as 26th November, 2020. ~~The pandemic had had serious economic and health impact with a heavy~~ strain on the health system including financial, material and even human resources for health needs. This includes deaths of health care providers on the line of duty, as of the date of the meeting the Country had lost 31 health care workers to the disease.

183. The roles of the Office of the Director General as outlined in Section 17 (a) to (I) the Health Act 2017 applied at all times during both normal and emergency situations. With the COVID-19 outbreak in China declared, with potential of global spread, Kenya, like the others, moved to preparedness and pre-positioning for outbreak response as underlined in section 17 (c, d, and e). This was further scaled up when the first case was reported on 13th March 2020. The National Emergency Response Committee was initiated at all levels with all relevant Ministries and Government agencies both expected and required to discharge their various roles according to their respective mandates. These multi-agency responses involved almost all the MOH and her Semi-Autonomous Agencies (SAGA's) according to their core mandates namely: KEMRI (testing and research); KMTC (training, isolation centers); KEMSA (essential commodity procurement and distribution) based on each agency's core mandate and the applicable laws and regulations. KEMSA's role wasn't exempt from these statutory laws and regulations.
184. As the technical advisor to both Government and the Cabinet Secretary as provided under the Health Act 2017, his office interacted with all the SAGAs within the Ministry of Health and other related Government agencies on technical issues. This was a continuing relationship which existed even prior to the COVID-19 pandemic.
185. During this pandemic, the office of the Director-General for Health had had a few correspondences with KEMSA related to essential medical commodities. These communications by the Office of the Director-General were merely letters of enquiry on routine information and did not constitute an order for procurement of specific items. The office of the DG has no mandate to direct operations at KEMSA and therefore cannot be purport to have such powers.

186. The Ag. Director-General for Health had corresponded with KEMSA relating to essential medical commodities. These communications by the Office of the Director-General were routine information and did not constitute an order for procurement of specific items.
187. Various individuals and companies had visited the Director General's office seeking to supply health products and technologies and such requests were referred to the Procurement Department of the Ministry of Health. The Ag. Director General denied exerting undue influence in procurement of COVID-19 HPTs.
188. KEMSA did not ask for the technical input of the Ag. Director General, Ministry of Health in preparing its response to the COVID-19 pandemic. The stocks bought by KEMSA were way beyond what was required.
189. There were guidelines for utilization of UHC and conditional grants. Such funds could not be utilized for procurement outside of their original framework without authorization from the Ministry of Health and a 'no objection' from the National Treasury.
190. The Director General was at Jomo Kenyatta International Airport in his capacity at the Ministry and he personally received donations from Jack Ma Foundation. The consignment was thereafter handled by the relevant government agencies.

2.4.3 SUBMISSION BY THE CABINET SECRETARY, MINISTRY OF HEALTH

Sen. Mutahi Kagwe, EGH, the Cabinet Secretary, Ministry of Health, accompanied by Ms. Rose Mudibo (Director, Communications); Ms. Mary Mwandime (Chairperson, KEMSA Board); Mr. Edward Njoroge (Ag. Chief Executive Offer, KEMSA); Dr. Josephat Mbura (MoH- KEMSA Reforms); Bernard Kuria (MoH, Senior State Counsel), John Kaluochi (MoH- KEMSA Reforms Implementation Committee) and Vivian Mboga (MoH- Parliamentary Business Team) appeared before the Committee on 27th July, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

Under oath, the Cabinet Secretary briefed the Committee as follows⁷:

Specific Guidelines the Ministry of Health Offered KEMSA on how to contain Covid-19 pandemic

191. In line with Section 15 of the Health Act 2017, the Ministry of Health put in place requisite preparedness measures to prevent the introduction of Covid-19 cases into Kenya and published National 2019 Novel Corona Virus Contingence (Readiness and Early Response Plan).
192. The National Emergency Response Committee (NERC), chaired by the Cabinet Secretary for Health, was formed by the President to enhance emergency preparedness in the country.
193. KEMSA's operations are guided by the laws and policies in place at all times while undertaking its mandate. At no time between February and June 2020 did KEMSA seek policy guidance on procurement of covid-19 commodities since the existing laws were sufficient to guide KEMSA accordingly.

Specific Oversight Role the Ministry of Health Played over KEMSA, especially on the operations of the Board, in addressing Covid-19 pandemic between February and June 2020

194. The Ministry of Health oversees the KEMSA Board through participation in Board meetings.
195. Between February and June 2020, KEMSA Board held four Special Board Meetings. In all these meetings, at no time did the matter on procurement of Covid-19 Medical Supplies was discussed. This therefore means that the Board and Ministry of Health was bypassed in the procurements for the Kshs 7.6 billion worth of Medical Supplies.
196. The Ministry of Health was not aware of the extent of procurement done by KEMSA until the matter was raised by the National Treasury vide its letter Ref: RES 1081/19/10 'B' (35)

⁷ Submission by the Cabinet Secretary, Ministry of Health dated 27th July 2021.

dated 22nd June 2020. Subsequently, the Ministry wrote to KEMSA vide a letter Ref:MOH/DC/9/1/33 of 27th August, 2020 raising concerns shared by the National Treasury of bypassing the Ministry of Health in seeking for funds which were already committed without the requisite approval and informed that there were no funds available as indicated by the National Treasury and urging full compliance of the attendant laws.

197. Upon revelation of the issues at KEMSA, the Ministry in liaison with Development partners of Health of Kenya (DPHK) set up the KEMSA Immediate Action Plan and Medium-Term Reforms Working Committee to identify and recommend solutions to the challenges affecting the distribution of Covid-19 relayed commodities and other operational issues at KEMSA. A report was produced that is under implementation currently.

198. On⁸ 21st January 2021, a KEMSA Reforms Committee comprising of representatives from the Ministry of Health, DPHK, KEMSA and Pharmacy and Poisons Board was constituted to implement the recommended reforms.

Stock take results

199. A stock take of the procured items by KEMSA was undertaken under the witness of by the officers from the EACC. The Estimated loss was Kshs. 1,976,966,419.70 arrived at using market prices of PPEs at August 2020.

Cabinet memos on Disposal of PPEs

200. The Ministry of Health presented two Cabinet memos, which could not be disclosed until declassified. Such Memos included:

- Request for assistance and support towards measures to mitigate KEMSA liabilities for financial year 2019/2020 presented in November 2020; and
- Request for approval to dispose Covid -19 commodities at KEMSA presented in June 2021

Cabinet Resolutions on Disposal of PPEs

⁸ Covid-19 Response HPPT Stock Verification Report dated May 2021

201. In the NDICC meeting on 27th July 2021, the Cabinet directed disposal of the PPEs to avoid loss through expiries.

Advisories from Government Agencies on Disposal of PPEs

202. The EACC; ODPP and the Solicitor General gave advisories on disposal of PPEs held at KEMSA warehouses. However, these advisories (especially cabinet memos), being classified documents, cannot be shared until declassified.

Implementation Status of KEMSA Immediate Action Plan and Medium – Term Reform Working Committee

203. KEMSA reform Implementation Committee was formed in February 2021 to guide implementation of the recommendations and provide oversight. Reforms were being undertaken on the following Key departments at KEMSA:

- Finance, Governance and Risk
- Procurement and Regulatory
- Warehousing & Logistics Management
- Donations and Tax Exemption
- Information Communications & Technology and Systems

204. Following EACC advise to the Chairman of the KEMSA Board in its letter Ref: EACC.6/14/4(44) and dated 13th August 2020, the CEO Dr. Jonah Manjari, Commercial Director Mr. Eliud Mureithi and Procurement Director Mr. Charles Juma were suspended to pave way for investigations.

205. The KEMSA Board was working closely with the management in pursuing administrative action for all staff who may have mishandled procurement of PPEs during the Covid-19 pandemic.

2.5 SUBMISSION BY THE SOLICITOR GENERAL

Mr. Kennedy Ogeto, the Solicitor General, accompanied by Mr. Kennedy Wabwire (Legal Advisor) appeared before the Committee to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The Committee was briefed as follows:

206. The Solicitor General issued general guidelines on urgent Covid-19 procurement to Ministries, Departments and Agencies. In the said guidelines, he advised that the procurement was to be carried out subject to provisions of Section 103 of the Public Procurement and Assets Disposal Act (2015).
207. Section 104 of the Public Procurement and Asset Disposal Act 2015 provides for the procedures to be followed including the form of tender documents, tender evaluation and approvals as well as contract signing.
208. There was no provision in the Procurement Act and Regulations that recognizes commitment letters as valid documents to be used in the procurement process.
209. Regulation 22 of the PPDA Regulations (2006) provides approvals needed before commencing a procurement process including purchase requisition from user department approved by the Head of Department, relevant information including estimated market value of goods and availability of funds.
210. Further investigations needed to be carried out by the DCI and EACC on the procurement process of Covid-19 supplies by KEMSA.
211. The law provided a remedy of *quantum meruit* in instances where a contract did not exist or could not be performed. The doctrine sought to provide reasonable payment for work done even in instances where there was non-compliance with the law. This is to ensure none of the parties to such a transaction benefits at the expense of the other.

2.6 SUBMISSION BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Ms. Pamela Opiyo, the Ag. Director General of the Public Procurement Regulatory Authority accompanied by Mr. Thomas Otieno (Manager, Complaints, Investigations, Enforcement and Debarment) appeared before the Committee on 8th December, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The Committee was briefed as follows:

212. Use of Direct Procurement - A review of the procurement processes of KEMSA through the Authority's investigation established that all the Covid-19 related procurements were processed through Direct Procurement as per Section 1.6.21 of the OAG's Special Audit Report. However, there was no evidence that KEMSA did not have systematic and structured way of conducting its procurement activities.
213. Urgency of Procurement as per Section 103 and 104 (c) of the Public Procurement & Asset Disposal Act, 2015 - KEMSA used direct procurement pursuant to Section 103 (2) (b) and (c) of the Act. However, PPRA noted that some of the deliveries were made one month after issuance of commitment letters while others have not been delivered to date casting doubt on the justification of the urgency. For instance, tender No. KEMSA/DP83/2019/2020 for the supply of Oxygen cylinders whose contract was dated 11th May, 2020 while the bidder was required to supply by 3rd of August, 2020 which was four (4) months from date of contract signing.
214. Use of retrospective Direct Procurement method without putting in place systems and procedures to guide the use of the procurement method - There was no method of procurement in the Public Procurement and Asset Disposal Act, 2015 known as Retrospective Direct Procurement. Sections 103 and 104 of the Act provide for Direct Procurement as an alternative method of procurement and the procedure for its use respectively.
215. Section 69 (2) only provides for retrospective approval of procurement and only where applicable. It states that *"No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made except on procurements in response to an urgent need"* Section 45 (1) applies to all procurement related decisions within the framework of the public procurement and asset disposal proceeding. This Section provides that for the purpose of ensuring that the accounting officer's decisions are made in a systematic and structured way, an accounting officer shall establish systems and procedures to facilitate decision making for procurement and asset disposal.

216. Initiation of Procurement Process - The procurements process commenced through letters of intent from suppliers and the Public Entity responded to the letters of intents by issuing commitment letters to the suppliers informing them that the Government of Kenya, on a strategic partnership to supply KEMSA with COVID-19 health products and technologies, had identified them.
217. Regulation 22 of the Public Procurement and Disposal Regulation, 2006 and as a good procurement practice, initiation of procurement is supposed to originate from the user department and not intent of a supplier as was the case with KEMSA
218. There were also instances where user requisitions from Mr. Eliud Muriithi Director Commercial Services and Ms. Jackline Mainye were used as basis for initiating some of the procurement process. Some of the user requisitions were retrospectively prepared after the commitment letters had been issued by the CEO to the respective suppliers.
219. Commitment letters did not contain clear specifications despite deliveries being based on the letters. In view of the above, the PPRA noted that letters from MOH, intent letters from suppliers and commitment letters from the CEO to the suppliers determined the procurement proceedings for the subject tenders. The product specifications provided by the Public Entity to guide the bidders were notably not objective. Further, there was no evidence of qualification criteria used to identify suppliers as strategic partners by Government of Kenya through KEMSA.
220. Identification of Suppliers - The product specifications provided by the KEMSA to guide the bidders were notably not competitively generated. Further, there was no evidence of qualification criteria for the suppliers identified as strategic partners by Government of Kenya through KEMSA.
221. Inspection of Samples - Interviews with the members of Inspection and Acceptance Committee revealed that the Inspection of the deliveries was conducted after the retrospective procurement process was completed. Consequently, the justification for direct procurement and retrospective approvals were negated.

222. Lack of budget for procurement of COVID-19 HPTS - Although commitments letters do not fall under the statutorily prescribed procurement documents under the Second Schedule of the PPDR, 2006, the PPRA's finding was that KEMSA procured COVID19 related items in the excess of Ksh. 4,672,097,608.00 and USD. 5,449,482.00.
223. Section 53(8) states that *'the accounting officer not to commence any procurement proceedings until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget'*. However, being an urgent procurement, the Procuring Entity should have anchored the approval of their budgets and the resultant procurement plans in Sec.69 (2) of the Act. The provisions of Sec.53 (5) could also have been redressed by Sec.69 (2) of the Act if the Public Entity had stuck to Sec. 104 of the Act in the execution of its procurements under the Covid-19 pandemic.
224. Lack of a Market Survey - The PPRA established that there was no evidence provided to show that the negotiated prices were guided by a market survey as provided in Regulation 8 (3) (z) of PPDR 2006 which states that among the functions of a procuring unit includes to — “carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee”.
225. Excess procurement of COVID-19 HPTs – Mr. Eliud Muriithi, the Director of Commercial Services (DCS) through unreferenced memo dated 18th March, 2020 requested the CEO to approve procurement of 100,000 N95 masks despite letter Ref. MOH/ADM/1/1/2 dated 18th March,2020 from Susan N. Mochache (the PS) requesting urgent procurement of 10,000 N95 pieces of masks. This was contrary to Section 53(3) of the PPADA, 2015 which states that ‘any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under the Act.’
226. Pursuant to Section 3 (h) and 53 (3) of the PPADA, 2015, failure to ensure value for money in its procurement activities and procuring items in excess of the necessary requirements of an Entity's needs constitutes an offence. Thus, pursuant to Section 38 (1) (c) of PPADA, 2015, there was need for further investigation into the matter to determine culpability..

227. Delivery of the Procured COVID-19 HPTs - The Authority's investigation established that there was no evidence that the delivered COVID- 19 related health products were received vide Counter Receipt Vouchers S.13/Goods Received Note and distributed vide the Counter Issuing Vouchers S. 11/Issuing Vouchers.
228. Further to that, vide letter Ref. No. PPRA/INV/105/VOL. I (26) dated 1st September, 2020, the PPRA investigators visited the KEMSA's Embakasi Warehouse on 3rd and 8th September, 2020 to verify and ascertain the level of compliance on Stores Management pursuant to Part XIII of PPADA, 2015. However, Valentine Tindi, Acting Warehouse Manager denied the investigators access to the relevant documents. This contravened the provisions of Section 176 (1) (m) of the Act. This matter was reported to the EACC for investigation.
229. Violations of PPADA, 2015 by Suppliers - Pursuant to Section 72 of the PPADA, 2015, contractors, suppliers and consultants have a duty to comply with the Act and attendant Regulations. Any violation constitutes an offence punishable under the procurement law. As such, further investigation into the procurement activities by other investigative agencies was — recommended by the Authority vide the investigation report.

Taking cognizant of the above, the Authority made the following recommendations:

230. There was need for further investigations into the processes through which the subject tenders were initiated by the KEMSA
231. There was need for investigations of the receiving and distribution of all the COVID-19 related goods by KEMSA specifically the Warehouse Management at Embakasi Warehouse.
232. There was need for investigations in the remaining twenty-three (23) COVID19 related tenders which were not submitted by KEMSA to PPRA.
233. Further interrogation into the issuance of the commitment letters by the CEO was necessary.
234. The Authority recommended that the Public Procurement and Asset Disposal Act, 2015 be amended for clarity on how the procedure for retrospective approval should be executed by public procuring entities in Kenya.

235. The Authority further recommended an amendment of Section 104 to provide a procedure ~~for the implementation of Section 103 (2) (b & c) of the Public Procurement and Asset Disposal Act, 2015.~~

236. The Public Entity should ensure that the stock records were updated urgently to address the variances in the records.

237. The Enterprise Resource Planning (ERP) system that was utilized by the Public Entity should be aligned to procurement processes.

2.7 SUBMISSION BY KENYA REVENUE AUTHORITY

Mr. Githii Mburu, the Commissioner General of the Kenya Revenue Authority, accompanied by Ms. Rispah Simiyu (Commissioner, Domestic Taxes), Ms. Pamela Ahago (Ag. Commissioner, Customs), Mr. Cyrell Wagunda (Deputy Commissioner, Investigations), Ms. Grace Wandera (Deputy Commissioner, Communication) and Mr. Andrew Osiang (Chief Manager, Communication) appeared before the Committee on 17th February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The Committee was briefed as follows:

238. The Report⁹ had three parts indicating the different tax status of suppliers of Covid-19 goods to KEMSA.

239. A number of companies declared the supplies they made to KEMSA and paid relevant VAT.

240. A section of the companies declared supplies that were tax exempt.

241. Most of the companies did not declare to the Revenue Authority any supplies made to KEMSA.

⁹ Report of KRA to the PIC dated 17th February 2021

2.8 SUBMISSION BY THE BUSINESS REGISTRATION SERVICES

Mr. Kenneth Gathuma, the Chief Executive Officer of Business Registration Services appeared before the Committee on 25th January, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The committee was briefed as follows:

242. He provided all the CR12s requested by the Committee.
243. Kilig Ltd, was incorporated on 22nd January 2020 and with Zhu Jinping and Willbroad Gatei Gachoka as directors, each with one ordinary share. The company was registered with registration No PVT-Y2U967Z. The registered office of the company was situated at Methodist Ministries Centre, Oloitokitok Road P.O Box 6077-00200 City Square.
244. The company was transferred to Collins Bush Wanjala on 15th April 2020.
245. Single shareholding is allowed by the companies Act, 2015, therefore it wasn't irregular for the company to be transferred to a single shareholder.
246. It is normal for ownership of a company to change many times as witnessed with the changes that had occurred in ownership of KILIG Ltd. In addition, the changes in ownership are not monitored since it's allowed by law.
247. There is no restriction on foreigners registering companies as it was initially restricted to not more than 30% ownership. However, under the Companies Act, 2015 this restriction was reversed. The only due diligence conducted by the Registrar of companies even for foreigners is verification and validation of the details of the person registering the company.
248. The only vetting done through security agencies is for registration of security companies and companies limited by guarantee.
249. Ivy Minyow Otieno is the current single shareholder of KILIG ltd.

2.9 SUBMISSIONS BY SUPPLIERS OF COVID-19 HPTs TO KEMSA

The Committee received evidence from suppliers of Covid-19 HPTs to KEMSA. The Committee identified companies that were given business of more than Kshs 80 million and those that had been flagged out in the Special Audit Report to adduce evidence.

2.9.1 SUBMISSION BY KILIG LIMITED

Ms. Ivy Minyow, Director of Kilig Limited appeared before the Committee on 10th December, 2020 and 10th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The witness was placed under oath.

250. Kilig Limited was incorporated on 22nd January 2020. The Company did not supply medical equipment to KEMSA prior to March 2020;
251. The Company learnt of the shortage in supplies of PPE Kits when national reports at the onset of the Covid-19 pandemic in Kenya reflected the Republic's need to build up its stock owing to the global inadequacies and competition in acquiring supplies. The Company wrote its letter of intent to supply KEMSA on this basis.
252. The Company expressed interest in supply of PPEs to KEMSA via letter dated 6th April 2020.
253. KEMSA issued Kilig Limited with two Commitment Letters to supply Covid-19 pandemic on 9th April 2020 and 23rd April 2020
254. The first Commitment letter was issued on 9th April 2020 and unfairly cancelled by letter dated 20th April 2020 citing failure to deliver on agreed timeline despite the Commitment Letter granting 15 days for delivery of the items; and the Second Commitment letter was issued on 23rd April 2020.
255. The Company did not issue KEMSA with any invoices and KEMSA did not issue LPOs for procurement of Covid-19 pandemic related items. The above-stated Second Commitment letter was cancelled, vide cancellation letter dated 30th June 2020, obstructing delivery of the

requested supply of quantities of PPEs within the given timelines and resultantly the procurement process did not commence; and

256. The Company did not receive any money for the supply of KEMSA Covid-19 pandemic related items by virtue of hindrance of delivery of requested supply of PPEs as halted by the said cancellation letter of 30th June 2020.
 257. Kilig Ltd had delivered 1000 pieces of PPEs and was not intending to invoice KEMSA for their payment.
 258. Ms. Ivy averred that KILIG had made substantial financial commitments in importing the 450,000 PPEs for supply to KEMSA and that such PPEs were in various warehouses awaiting delivery to KEMSA.
 259. Ms. Ivy informed the Committee that prior to her current position as a sole director of Kilig Ltd, she acted for the promoters of the company and helped incorporate it; a role she did without monetary consideration.
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260. Ms. Ivy lifted the Corporate veil of Kilig limited and highlighted the historical shareholding of the company. She confirmed that the initial shareholders of Kilig Ltd were Mr. Willbroad Gatei Gachoka and Zhu Jiping who, in mid-April 2020, transferred their shareholding to Mr. Collins Bush Wanjala. She confirmed to the Committee that she acquired full ownership of Kilig Ltd on 6th May 2020 at a consideration of Kshs. 10,000.
 261. Ms. Ivy refuted the audit observation that Kilig Limited had supplied KEMSA goods worth Kshs. 9M claiming that Kilig Ltd had only delivered 1000 samples of PPEs and had not invoiced KEMSA for payment. She averred that Kilig Ltd would not be raising any invoice regarding the delivered samples.
 262. On both the identity banks accounts and signatories, Ms. Ivy Minyow's oral evidence to the Committee disclosed that the Company operated banks accounts in both Equity and KCB. She undertook to provide the identity of the signatories to Kilig account in writing.

263. Ms. Ivy accused the Office of the Auditor-General for failure to afford her company an opportunity to be heard and make its representations before compiling the Special Audit Report contrary to fair administrative action principles envisaged under Section 4 (3) of the Fair Administrative Action Act thus denying and infringing on the Company's constitutional right to fair administrative action.

264. Ms. Ivy confirmed to the Committee that if KEMSA continued to refuse taking delivery of PPEs from Kilig Ltd, then Kilig would have no option but to sue KEMSA for breaching a contractual obligation on the strength of the commitment letters issued.

2.9.2 SUBMISSION BY KOMTEL KENYA LTD

Through her written submission to the Committee dated 2nd March 2021,¹⁰ Sylvia Kamunyu, Managing Director of Komtel Kenya Ltd submitted the following to the Committee:

265. Komtel Kenya Limited was incorporated on 10th October 2014.

266. Prior to March 2020, Komtel Kenya Limited had not supplied KEMSA with any equipment.

267. The company learned that KEMSA was looking for suppliers of PPEs through her sister company that had prior engagement with KEMSA.

268. Komtel Kenya Limited was given commitment letters on 8th, 14th and 17th April 2020 to supply Surgical 3 Ply Face Mask with Ear Lop CVD (20,000 pieces) and KN95 Respiratory Face Mask COV (190,000 pieces). All these were to be supplied immediately.

269. The company was invited to bid through a letter from KEMSA in a letter dated 20th May 2020; which it duly did.

270. On 12th June 2020, KEMSA notified Komtel Kenya Limited of award of a tender to supply items worth Kshs. 223 million. This notification was signed by Charles Juma on behalf of the Chief Executive Officer of KEMSA.

271. Tender contract of Kshs. 223 million was signed on 15th June 2020

272. The purchase order was issued on 4th June 2020 of Kshs. 223 million. On 16th June 2020, an invoice of Kshs 223 million was done comprising of the 3 ply Face Masks of Kshs 90 million and KN95 Face Masks of Kshs 133 million.

¹⁰ Witten submission to the Committee by Komtel Kenya Ltd dated 2nd March 2021

273. All the goods items were delivered to KEMSA on 24th April; 25th April; 28th April, 5th May, 9th May, 21st May, and 22nd May 2020.

274. Prices were arrived at after negotiations (KN95 Respiratory Face Mask at Kshs 700 per unit while Surgical Face Mask 3 ply Ear Loop Kshs. 4,500 per a pack of 50).

275. The items Komtel Kenya Limited supplied to KEMSA were imported and duty exempt by dint of Legal Notice No. EAC/99/2020 of 30th June 2020.

276. Komtel Kenya Limited had been paid Kshs. 223 million for the suppliers it did to KEMSA.

2.9.3 SUBMISSION BY SHOP N' BUY LIMITED

Mr. James Cheluley, the Director of Shop N' Buy Limited appeared before the Committee on 24th February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

277. Shop N' Buy Limited was incorporated on 14th February, 2020. Mr. James Cheluley is the sole Director.

278. Prior to March 2020, Shop N' Buy Limited had not supplied medical equipment to KEMSA.

279. Being a new company, Shop 'N' Buy had neither done her Annual General Meeting nor had her accounts audited.

280. Mr. Cheluley confirmed to the Committee that at the time of getting a commitment letter from KEMSA, Shop 'N' Buy had KShs. 7 million in the account.

281. The company learnt that KEMSA was seeking for suppliers of Covid-19 related items through their clients who they sold to and in turn supplied KEMSA.

282. He averred that he did an Intent letter to KEMSA to supply at Kshs. 9500 per PPE. The goods worth Kshs 1,030, 000,000 were delivered but have not been paid for by KEMSA as at the time of his appearance before the Committee.

283. On the collection of commitment letter from KEMSA, Mr. James Cheluley averred that he went to KEMSA offices on either 6th and 7th May 2020 and collected the commitment letter dated 30th April 2020.

284. Mr. James Cheluley confirmed that he imported almost 60% of the products he supplied to KEMSA.

285. Mr. Cheluley confirmed to the Committee that he had delivered goods to KEMSA.

286. Mr. Cheluley informed the Committee that his supplies to KEMSA were partly financed by his savings and from different sources including Elute ventures, cucuchic ltd (where he was one of the directors), joint account by James Boinnet, Celine Poland; Carrier Logistics ltd and Tekwise Ltd. Cucu chic is owned by James Cheluley.

287. Mr. James averred that some of the companies that supplied his company with PPEs such as Tekwise had already sued him for not paying them.

288. Mr. James informed the Committee that apart from KEMSA, he had supplied PPEs to other state corporations such as LAPSET, KeNHA, KURA, Rivatex, Maasai Technical Institute, Spine Hospital, National Housing Corporation, Nanyuki Water Corporation. Most of the supplies to these entities were paid for after deliveries. Unlike KEMSA, there was request for quotations in Shop 'N' Buy's engagement with these entities.

2.9.4 SUBMISSION BY ASZURE COMMERCIAL SERVICES LIMITED

Ms. Zubeida Nyamlondo Ngobi, the Director of Azure Commercial Services Limited appeared before the Committee on 17th February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

289. Azure Commercial Services Limited was incorporated on 9th February 2017. It has two directors each owning 500 shares.

290. Aszure Commercial Services was engaged in general supplies business. It was registered as a supplier of building materials to Kenya Railways Corporation.
291. The Company had not supplied medical equipment to KEMSA prior to the Covid-19 supplies but stated that it was prequalified to supply furniture to the Authority.
292. The witnesses averred that she saw it on news from the CS for Health that there was scarcity of Personal Protective Equipment though she did not provide any evidence to corroborate her claim.
293. Aszure Commercial Services' supplies to KEMSA was financed by the First Community Bank; a loan that was guaranteed by Mr. Halkhe Waqo.
294. Ms. Zubeda informed the Committee that the Aszure Commercial Services maintained a bank account with the First Community Bank whose signatories, at the point receipt of payments from KEMSA, were Mr. Halakhe Waqo, Phanice Adhigo Onditi and herself.
295. The witness confirmed to the Committee that Aszure Commercial Services supplied PPEs to KEMSA worth Kshs 347,515, 000. Deliveries were done and payment duly made.
296. Ms. Zubeda conformed to the Committee that Dorothy Undwa Omogi and Stanley Kithia Rimberere were once a director of Aszure Commercial Services but had since resigned.
297. The witness informed the Committee that the PPEs she Aszure Commercial Services supplied to KEMSA was locally sourced.
298. Despite the witness confirming to the Committee that Aszure Commercial Services had audited accounts, there was no evidence to support this assertion.

2.9.5 SUBMISSION BY MR. HALAKHE WAQO

Mr. Halakhe Waqo appeared before the Committee to adduce evidence on the Special Audit Report on 19th March, 2021 Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

299. He was not a shareholder, proprietor or director of Aszure Commercial Services or in the past.

300. The Aszure Commercial Services was introduced to him by an officer of First Community Bank in the last week of April 2020 and thereafter approached by its Directors who had secured an order to supply KN95 masks.

301. Mr. Halakhe averred that he was approached to engage in a partnership for financial and resource mobilization in order to enable Aszure Commercial Services to successfully supply the referenced items.

302. The witness indicated to the Committee that Aszure Commercial Services then approached its bank to raise funds through a loan facility. The company and the witness both bank at First Community Bank and therefore the bank was comfortable with the witness guaranteeing and providing securities. The witness provided guarantee and securities (title deeds) to cover the bank loan.

303. The bank engaged, in the process of confirming the authenticity of the order from KEMSA, both in writing and oral confirmation. The bank also committed to make the payment to KEMSA in writing.

304. At the process of the loan processing, the bank advised that the witness becomes an additional signatory to the accounts of Aszure Commercial Services in order to strengthen the guarantee and security of their money. The loan was then processed accordingly with the bank funding the project amount to the value whole consignment of the supplied items.

305. It was Mr. Halakhe's evidence that once the goods were delivered to KEMSA, Aszure Commercial Services furnished the witness with copies of the delivery documents.

306. Mr. Halakhe averred that payments were made in the months of June and July, 2020. The bank then effected the recovery of the loan amount as per the agreement and the security documents released back to the witness.

307. As the project came to an end, the engagement and partnership between Aszure Commercial Services and the witness was dissolved as it was project-based. This was done in August 2020.

308. Mr. Halakhe informed the Committee that he was never a signatory or associated with any other company that had supplied KEMSA with Covid-19 items.

309. Mr. Halakhe confirmed to the Committee that he never put in a bid for supply of Covid-19 items to KEMSA as a person or through any company associated with him and had no contractual obligation with KEMSA.

2.9.6 SUBMISSIONS BY LA MIGUELA HOLDINGS

Mr. James Njuguna, the Director of La Miguela Holdings Limited appeared before the Committee on 10th December, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

The Committee was briefed as follows:

310. La Miguela Holdings Limited was incorporated on 21st March 2014

311. The company had not supplied medical equipment to KEMSA prior to March 2020. However, the company made other supplies and services on matters of safety. The company tendered for other services as follows:

- i. For quotation number KEMSA-RFQ05-2019/2020- consultancy services for fire safety audit in all KEMSA premises (attached are supporting documents. Page No: 6-18)
- ii. Notification for request for quotation number KEMSA/OPQ80/2019-2020 procurement of trash bins with wheels and metal pedals 100litres. (Attached are supporting documents. Page No: 19-23)
- iii. LPO for fire audit at Sunflag (LPO NUMBER 826611) which we did (attached are supporting documents. Page No: 24 and 25)

312. Being a pandemic and in all media houses, it was from public domain that he learned that KEMSA was seeking for suppliers of Covid-19 pandemic related items. Therefore, the

company enquired about the same at the reception desk of KEMSA when an officer from the company had gone to do a follow up on the Sunflag Fire Audit on the 2nd April 2020 upon which information on application was offered.

313. The company researched on costs of PPEs in several countries and settled to import a sample from South Korea. This is because La Miguela had traded previously with them on a safety product called Needle Smelter, therefore it was easier to get a quote from them within the shortest time possible.
314. However, due to difficulties in importation he took the sample to Iconic Healthcare Ltd, a local supplier, which agreed to sell the same kit having managed to match the sample from South Korea
315. The Company had attached copies all of the Intent Letters it wrote to KEMSA. They include a request for supply of complete PPE Kit dated 20th April 2020 - Number of P.P.E requested was 20,000pcs.
316. The company was given commitment Letters to supply complete PPE Kits dated 21st April 2020 worth Kshs. 180 million and an extension of the same commitment letter.

The company was not given invoices for the supplies that it had made. These were to be issued after completion of deliveries.
317. Upon completion of delivery, the accounts office advised the company to wait until it was done with the stock taking and closing the year. This was not done due to the investigations that arose and therefore La Miguela was still waiting for the negotiations and the LPO.
318. La Miguela holdings had not received any payment from KEMSA for the deliveries it made.
319. Mr. Njuguna confirmed to the Committee that commitment letters are not provided for in the PPAD Act of 2015. He further confirmed that he was issued with a commitment letter way before delivering a sample of PPE to KEMSA.

320. Mr. Njuguna tendered an affidavit to the Committee from his co-director of La Miguela concurring with his averments to the Committee.¹¹

2.9.7 SUBMISSIONS BY MEGASCOPE HEALTHCARE LIMITED

Mr. Richard Ngatia, the Director, Megascope Healthcare accompanied by Ms. Dorothy Okello (Chief Administrator) and Ms. Irene Mwangi (Head of Sales and Marketing) appeared before the Committee on 26th January, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

He briefed the Committee as follows:

321. Megascope Healthcare (K) Ltd had been a medical Supplier since the company was registered on 25th July, 2002. The company had been prequalified as a supplier to KEMSA from year 2009 for supply of consumables, medical equipments, laboratory items and non-pharmaceutical commodities.
322. The company knew about the supplies of Covid-19 related items to KEMSA after the secretary to the procurement director at KEMSA called Megascope sales department to inquire on availability of a list of items. Due to the nature of items required, Mr. Ngatia called Mr. Charles Juma, the Procurement Director at KEMSA for clarification. Mr. Juma invited him for a meeting with his team where Mr. Ngatia was provided with descriptions and specifications of what was needed. Thereafter, Megascope wrote to KEMSA on what was available, what they could source for and submitted samples.
323. Upon establishing that Megascope had the capacity to deliver on Covid-19 items, it submitted intent letters for delivery of various items. Megascope wrote a total of five letters of intent and received seven commitment letters from KEMSA. The initial letter of intent by Megascope was done on 17th March, 2020 and received its Commitment letter on 19th March, 2020.
324. For subsequent supplies, Megascope was called by different people including KEMSA CEO, Procurement Director and other officers in the procurement department.

¹¹ An affidavit from Jane Wairumu Njoroge dated 17th December 2020

325. Mr. Ngatia informed the Committee that he had never participated in such a procurement process before that was done on the reverse.

326. Megascoppe supplied various entities including Nongovernmental organizations, private hospitals and County Governments that had sponsorship.

327. Megascoppe had been paid Kshs 184,005,000 while Kshs 972 Million was pending.

2.9.8 SUBMISSION BY CROWN HEALTHCARE LIMITED

Mr. Shilen Thakerar – Chief Executive Officer of Crown Health healthcare Limited accompanied by Mr. Brian Situma Legal Counsel and Francis Muthiani COO appeared before the Committee on 10th December, 2020 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

He briefed the Committee as follows:

328. Crown Limited was incorporated on 6th March 1998.

329. Some of the former staff of Crown Healthcare were now Members of Parliament that include Hon Stephen Mule among others.

330. The company indicated that it has been a regular supplier of Medical Equipment and Consumables to KEMSA prior to March 2020.

331. The company informed the Committee that KEMSA called the Company seeking to know if they had ventilators and sterile surgical gloves at their warehouse for supply to the KEMSA.

332. The company informed the committee that it did not do any intent letters to the KEMSA, rather it responded to the oral requests from Pamela Kaburu, the Secretary of Mr. Charles Juma (Director Procurement) of KEMSA with an email acknowledging their stock availability for DP73 and an official quote for DP25.

333. The first commitment letter was given on 21st March, 2020 and on 21st May, 2020 a purchase order was given to crown healthcare. The supply was done on the basis of a commitment letter.

334. The company had 50% market share for ventilators and was only able to supply four ventilators to KEMSA that were installed at Kenyatta National Hospital from Crown Health Care after KEMSA issued the company with a commitment letter.
335. Crown Healthcare also supplied ventilators to Coast General Hospital and Nairobi west hospital.
336. The witness indicated that the supply of ventilators was done on 27th March, 2020
337. The witness averred that the Auditor General had confirmed that 98% of items supplied by the suppliers were still at the KEMSA Warehouse.
338. Letter dated 26th March from KEMSA referring to a tender number and LPO that was post-dated and or issued in May meaning that the tender process was complete two months away and in advance. The levels of irregularities were many.
339. Mr. Shilen informed the Committee that his company had not been paid for the supply of ventilators to KEMSA and installed at Kenyatta Hospital.
340. The witness indicated that there was a verbal request from KEMSA to deliver gloves sterile surgical.
341. On the supply of gloves, the witness indicated that his company received one commitment letter dated 24th March 2020 worthy forty million one hundred and forty-five shillings.
342. Mr. Shilen averred that the issued Commitment had no price and the company sent a quotation letter dated 26th March 2020.
343. It was Mr. Shilen's evidence that on 3rd of April 2020, KEMSA gave out the price of gloves.
344. He averred that on 22nd of April 2020, Mr. Charles Juma wrote to the company awarding them the tender, the company confirmed the award and thereafter the purchase order was signed.

345. He confirmed to the Committee that his company did not invoice for the supplies until deliveries were done.

346. The witness concluded his testimony by informing the committee that his company had not been paid for deliveries made to KEMSA.

2.8.9 SUBMISSION BY NORTHLINK GCS LIMITED

Mr. Ahmed S. Takoy, the Director of NorthlinkGSC Limited appeared before the Committee on 28th January, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

He briefed the Committee as follows:

347. Northlink Limited was incorporated on 5th May 2008. The company did civil and electrical work and general supply including non-pharmaceutical materials.

348. The company had dealt in non-pharmaceutical supplies for the last two years and that it had had business with Manderu County.

349. He confirmed to the Committee that Northlink had never supplied KEMSA before the Covid-19 pandemic.

350. He averred that he was aware that KEMSA was the procuring institution for the government in light of the pandemic. The Director decided to go to KEMSA and express his intention to supply surgical masks, N95 Masks and PPE'S to KEMSA.

351. At the KEMSA procurement office, the Director met an officer who referred him to the Commercial Manager, Mr. Eliud Mureithi, who advised him to prepare an intent letter and to deliver it with the company's profile to the Managing Director.

352. The Director informed the Committee that he delivered the company profile and the sample of the surgical masks to the secretary of the Chief Executive Officer. He however did not deliver the N95 Masks and PPE samples to KEMSA.

353. He confirmed to the Committee that he submitted a letter of intent on 14th April, 2020 expressing the intention to supply 3 ply surgical masks, N95 masks and Personal protective equipment.
354. The Director indicated that the company was given commitment Letters to supply N95 Masks with a filter and 3 ply surgical masks vide a letter dated 14th April, 2020 signed by Dr. Jonah Manjari.
355. Another commitment letter was given on 16th April, 2020.
356. The Director informed the Committee that he negotiated with KEMSA and thereafter signed the minutes of the negotiations. The said negotiations were done after delivery of the items.
357. He confirmed to the Committee that he supplied the goods on the basis of the commitment letter given to him by KEMSA.
358. The Director indicated that he delivered the goods on 30th of April 2020 and spent money on purchasing the items as well as the logistical issues involved and in his view being paid for goods in June 2020 that were delivered in April was undue delay.
359. The director of Northlink Limited confirmed to the Committee that KEMSA paid his company Kshs, 135,000,000 on 29th June 2020.

2.9.10 SUBMISSION BY MERAKY HEALTHCARE LIMITED

Dr. Naomi Wairimu Njuki, the Director of Meraky Healthcare Limited accompanied Mr. Peter Gicheha Kamau (Legal Counsel) and Legal Ms. Judith Yatich (Legal Assistant) appeared before the Committee on 28th January, 2021 at adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the KEMSA.

Dr. Wairimu briefed the Committee as follows:

360. Meraky Healthcare Limited was registered on 2nd January, 2013. The directors and shareholders of the company were Ms. Naomi Wairimu Njuki with 700 shares and Mr. James Mbogo Njenga with 300 shares.

361. The company's key product line is oncology personal protection products and oncology medication.

362. The witnesses averred that their company was prequalified by KEMSA as a supplier of pharmaceuticals and medical devices though could not provide evidence to support this assertion. They have received requests for quotation from KEMSA. In addition, the company had participated in several tenders by KEMSA but had not won any bid.

363. The Company knew about supplies of covid-19 related items after inquiring from Kenyatta National Hospital where the first covid-19 patients were receiving treatment. The enquiry was due to the fact that the company's key products used in cancer treatment including PPEs, N95 Masks, Gloves and Scrubs were similar to the items required during the Covid-19 pandemic. It was informed by Kenyatta National Hospital that the supplies were being received from KEMSA.

364. The company introduced itself to KEMSA on 8th April 2020, by delivering an introduction letter indicating the products the company could supply, company profile and provided samples. The introduction letter was addressed to KEMSA CEO and was received at the reception of the CEO's office and the samples reviewed by quality control team that was stationed in a boardroom.

365. The company was called for a commitment letter the following day on 9th April, 2020 for the supply of 200,000 KN95 face masks to be supplied within 15 days (by 24th April, 2020).

366. After receiving the commitment letter, the company approached a financial institution that KEMSA had partnered with in case suppliers needed financial assistance. Meraky was given a confirmation letter from KEMSA addressed to the financial institution on 17th April 2020.

367. By the deadline date to supply on 24th April, 2020, Meraky had only managed to supply 8,140 pieces of KN95 facemasks. On the same date 24th April, 2020, Meraky requested for an extension of the deadline to enable them supply the remaining quantity. The extension was granted by KEMSA through a second commitment letter dated 4th May, 2020. The balance was supplied to KEMSA on 6th May, 2020.

368. Prior to supplying KEMSA, the company had done business with other institutions including Kenyatta University Hospital where it had supplied goods worth Kshs. 5 Million in year 2019. The company had previously not done business to the magnitude of KEMSA Covid-19 supplies.
369. Meraky Healthcare's supplies to KEMSA were locally sourced.
370. The Company invoiced KEMSA on 29th May, 2020 and was paid on 1st July, 2020 the entire amount of Kshs 140,000,000.00. The director followed up with the finance department for payments since the financial year was coming to a close.

2.9.11 SUBMISSION BY SET LIFE MEDICAL SOLUTIONS

Mr. James Ndungu, the Director of SetLife Medical Solutions Limited appeared before the Committee to adduce evidence on 16th February, 2021 the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

371. Set Life Medical Solutions Limited was incorporated as a limited liability company on 16th September, 2011 with Mr. James Ndungu and Ms. Anne Karanja as directors and shareholders of the Company.
372. The Company has a running contract with KEMSA being Contract No. KEMSA/OIT07/2018-2020 for the Supply of Non-Pharmaceuticals dated 22nd March, 2019 pursuant to a notification of award dated 28th February, 2019 following successful bid submission. The Company was further issued with an Addendum to Contract dated 26th July, 2019 following a notification by KEMSA dated 2nd July, 2019.
373. The Contract was to run for two years with effect from 19th March, 2019 to 18th March, 2021. This contract was for the provision of theatre boots antistatic – sizes 9 and 10 which had been supplied by the Company as per Purchase Orders Nos. 821291 (dated 8th April,

2019); 821852 (dated 31st May, 2019) 822663 and 822664 (all dated 8th August, 2019) issued by KEMSA.

374. On 23rd March, 2020, the Company received a letter from KEMSA requesting it to supply the available quantities of mentioned commodities (Theatre Boots Antistatic Sizes 7, 8, 11, 9 and 10) in response to the Covid-19 emergency. Since the Company was already supplying sizes 9 and 10 under the existing contract, the letter indicated that the items will be procured through call down / call off from existing frame work contracts while the procurement process for the other items was to commence immediately.
375. On 26th March, 2020, KEMSA wrote to the Company inviting the Company to submit a bid for the Supply of Theatre Boots Antistatic as per the bid document for Direct Procurement attached to that letter from KEMSA. The letter indicated that part of the funds set aside for use in procurement of medical commodities during the financial year 2019/2020 would be used to cover eligible payments under the contract for supply of theatre boots antistatic.
376. The Company accordingly placed its bid within the timelines and was notified of the acceptance of its bid through a letter dated 22nd April, 2020 and promptly responded through a letter of acceptance dated 22nd April, 2020. The Company was made to play its part towards enhancing the supply of the requested items and negotiate its price downwards to between Kshs 1,339.20 to Kshs 1,392.21 per pair from Kshs 1,501.00 to Kshs. 1,518.00 under the existing contract.
377. The Company received a letter from KEMSA dated 30th March, 2020 requesting the Company to supply additional boots and sign an addendum to the Contract. The addendum was signed on 3rd April, 2020.
378. The contract for the direct procurement being Contract No. KEMSA/DP66/2019-2020 for supply of theatre boots antistatic was signed on 24th April, 2020.
379. Between 6th April, 2020 and 9th April, 2020, KEMSA issued nine purchase orders for the supply of theatre boots as specifically set out in the respective purchase orders.

380. All the invoices raised as against the purchase orders for amounts aggregating to a sum of Kshs. 48,592,428.25 was paid by KEMSA, all the items having been delivered to KEMSA by the Company.

2.9.12 SUBMISSION BY PETREL AGENCIES LIMITED

Ms. Lucy Mutema, the Managing Director of Petrel Agencies accompanied by Mr. James Mutema (Director) appeared before the Committee on 16th February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witnesses were placed under oath.

The Committee was briefed as follows:

381. Petrel Agencies was incorporated on 21st November, 2006. The company supplies Non-pharmaceutical products to KEMSA.
382. The company was pre-qualified to supply non-pharmaceutical products at KEMSA and had been supplying KEMSA since 2013.
383. Having supplied KEMSA for a number of years, the Managing Director routinely visited KEMSA and made a visit to KEMSA in March 2020 where she found a crowd. Upon enquiring whether a tender opening was taking place, she was notified that the crowd was seeking tender to supply Covid-19 items.
384. The Managing Director visited the Director of Procurement's office where she was notified that to supply the Covid-19 materials, a company needed to send samples for evaluation and approval before writing an intent letter to the CEO for consideration.
385. On various dates, the company delivered samples which were approved after which they wrote intent letters and were issued with commitment letters.
386. The company wrote four intent letters dated 27th March, 2020 (nitrile gloves), 14th April, 2020 (infrared thermometers), 20th and 27th April, 2020 (surgical masks).

387. KEMSA issued four commitment letters dated 30th March, 2020 (nitrile gloves), 15th April, 2020 (infrared thermometers), 21st and 29th April, 2020 (surgical masks). All these commitment letters had no prices. Prices were agreed after delivery of goods.
388. KEMSA issued five LPOs (No.s 825908, 826086, 826264, 826276, & 826473) totaling Kshs. 124,795,000. Deliveries were made on various dates between 2nd April, 2020 to 5th May, 2020.
389. Payment to Petrel Agencies were made on various dates between 9th June, 2020 and 6th August, 2020.
390. The company sourced nitrile gloves locally but imported the rest of the goods via DHL and paid the relevant taxes.
391. The witnesses confirmed to the Committee that this was the first time they witnessed use of commitment letters in the government procurement process.

2.9.13 SUBMISSION BY MELDIAN ENTERPRISES LIMITED

Mr. Joel Ndegwa, the Managing Director of Meldian Enterprises Limited (formerly Accenture Kenya Ltd) appeared before the Committee on 23rd February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee made the following preliminary observations:

392. Mr. Joel Ndegwa was one of the co-directors of the company alongside Ms. Lydia Kariuki who was indisposed. Mr. Ndegwa provided a power of attorney from her fellow director authorizing him to represent the Company in the Committee proceedings..
393. The Company was registered on 25th March, 2017 as Accenture (Kenya) Limited. The company was reportedly informed by KEMSA that they had been deregistered due to similarities in name with another company. The company changed name to Meldian

Enterprises Limited. Evidence on change of name by the Business Registration Services was tendered.

394. The Company had not supplied medical equipment to KEMSA prior to the Covid-19 supplies. It was however prequalified by KEMSA in 2019 to supply non-pharmaceuticals and had been participating in tenders at KEMSA.
395. The company started selling COVID-19 materials since demand was high and supply was low. The company was selling Covid-19 material to numerous buyers and upon inquiry, the company learnt that these buyers were supplying to KEMSA.
396. The company sent an employee, Ms. Margaret Murage, to gather more information at KEMSA offices and upon arrival, the receptionist directed her to the procurement office.
397. Upon expressing intent to supply Covid-19 material, the company was asked to draft an Expression of Interest to stand a chance to supply.
398. Mr. Ndegwa averred that his company had previously supplied electrical equipment to Nakuru County Assembly.
399. It was Mr. Ndegwa's evidence that his supplies to KEMSA were locally sourced. He further indicated that his supplies to KEMSA were financed through borrowing and personal savings. He tendered evidence of financing agreements from various sources.
400. The witness informed the Committee that on 26th June 2020, he was paid Kshs. 117M out of a total of Kshs. 225M and that KEMSA owes him Kshs. 118M.
401. The witness confirmed to the Committee that prior to KEMSA business, his company had a turnover of Kshs. 20M. Evidence of the company's audited accounts were produced before the Committee.

2.9.14 SUBMISSION BY BENNETS VENTURES LIMITED

Ms. Molly Cheruto, the Director of Bennets Ventures Limited accompanied by Mr. Abraham Kiplagat (Manager) appeared before the Committee on 26th February, 2021 to adduce

evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witnesses were placed under oath.

The Committee was briefed as follows:

402. The Bennets Ventures Limited was incorporated on 13th September, 2018. Ms. Molly Cheruto is the sole Director of the company and signatory to its account.
403. Prior to March 2020, Bennets Ventures Limited had not supplied medical equipment to KEMSA.
404. The company learnt that KEMSA was seeking for suppliers of Covid-19 related items through enquiries from the public and other vendors who sought large quantities of facemasks to supply to KEMSA.
405. Bennets wrote an intent letter on 15th April, 2020 and submitted it with samples of facemasks.
406. KEMSA responded with a commitment letter on 29th April, 2020 to supply 40,000 packets of 3-ply facemasks that was picked from KEMSA's director of Procurement office following a call from Pamela Kaburu. Molly informed the Committee that it is only through prayers that she was able to get the tender.
407. She got her supplies locally. Some of her suppliers were Shop 'N' Buy. She never imported them.
408. The witnesses confirmed that she had supplied PPEs to KAA, Kenya Medical Practitioners and Dentist Union, and Nursing council during the covid -19 pandemic period.
409. Ms. Molly confirmed to the Committee that Bennet Ventures Limited had since been paid all the full amount Kshs. 180M through RTGs to Middle East Bank at Kilimani Branch. She further confirmed that Molly Cheruto of Bennets Ventures and James Cheluley of Shop 'N' Buy were the signatories to this account. The Witness informed the Committee that James

Cheluley requested to be a signatory having supplied Bennets Ventures Limited PPEs on credit. Shop 'N' Buy was to get Kshs. 160M from the transaction

- 410. The witness confirmed that she had never been invited to KEMSA for open tender bidding.
- 411. Ms. Molly confirmed to the Committee that in the year 2018, Bennets Ventures Limited's turnover was less than kshs 1M while 2019 it was less than kshs 10m.
- 412. Ms. Molly confirmed that she indeed supplied PPEs to KEMSA.

2.9.15 SUBMISSION BY NAIROBI ENTERPRISES LIMITED

Mr. Rajan Dhanani, the Director of Nairobi Enterprises Limited appeared before the Committee on 26th February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

- 413. Nairobi Enterprises Limited was incorporated on 16th August, 1984.
- 414. Prior to March 2020, Nairobi Enterprises had been supplying medical equipment to KEMSA. The company manufactured face masks and sanitizers and had been selling locally as well as exporting to other countries.
- 415. The company learnt that KEMSA was seeking for suppliers of Covid-19 related items through a phone call to their company by KEMSA officials.
- 416. Nairobi Enterprise Limited wrote an intent letter on 28th February, 2020 following the phone call from KEMSA and indicated intent to supply 2 million pieces of surgical face masks.
- 417. KEMSA responded with a commitment letter on 2nd March, 2020 to supply 40,000 packets of 50 pieces 3-ply facemasks.

418. A second commitment letter was sent by the company to supply 100,000 bottles of sanitizers. KEMSA responded with a commitment letter on 26th March, 2020 to supply 150,000 bottles of sanitizer.
419. KEMSA had paid the company only Kshs. 80 million and that there was a balance of Kshs. 120 million that remained unpaid,
420. NEL offered 3 ply face mask at Kshs. 2080 when others were selling higher. Even at this low price, the company had to raise a credit note to KEMSA when the VAT was reduced from 16% to 14%.
421. NEL insisted on the proper procurement process from KEMSA and even got a sample voucher receipt.
422. NEL employee over 240 people.
423. NEL was paid Kshs 80 million. There is a balance of Kshs 120 million.

2.9.16 SUBMISSION BY BRIEMA GRAIN STORES LIMITED

Mr. Abdighafar Ali, the Director of Briema Grain Stores Limited accompanied by Mr. Hassan Ali appeared before the Committee on 26th February, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witnesses were placed under oath.

The Committee was briefed as follows:

424. The Company was incorporated on 31st January, 2019.
425. Prior to March 2020, Briema Grain Stores Limited had not supplied any medical equipment to KEMSA. It had been supplying grains prior to march 2020.
426. The company learnt that KEMSA was seeking for suppliers of Covid-19 through the media to mitigate the spread of the pandemic in the country.

427. Briema Grain Stores wrote an intent letter on 21st April, 2020.
428. KEMSA responded with a commitment letter on 28th April, 2020 to supply 200,000 K95 masks. The Authority further issued a second commitment letter dated 4th May, 2020 for supply of 6000 packets of Surgical masks.
429. It supplied goods worth Kshs. 167M and duly paid. The director could not produce audited accounts to show the financial capacity of the company.

2.9.17 SUBMISSION BY LEON INTERIOR AND DECO

Ms. Elizabeth Kimeiywa, the Director of Leon Interior Deco & Design appeared before the Committee on 2nd March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

430. Leon Interiors and Deco is a business name that was registered on 5th October, 2012.
431. The witnesses averred that she is the sole trader. Initially, her business name had two directors but unfortunately one passed away necessitating her being a sole shareholder.
432. Prior to March 2020, Leon Interiors Deco & Design had not supplied medical equipment to KEMSA or any other company.
433. The witness averred that having a nursing background and aware that the country was in need of PPEs, she went to KEMSA looking for business Leon Interior Design & Deco noted the prevailing situation in the country that required supply of Covid-19 related materials the high demand for masks and other PPE'S materials. The Director, having a medical background thought that KEMSA would have a need for these medical supplies. The Director confirmed to the Committee that her company was not initially prequalified to supply medical supplies to KEMSA and had never bided to supply anything to KEMSA.

434. The witness stated that they were many prospective suppliers who went to KEMSA and met the receptionist whom she expressed her desire to supply masks and she was asked to send their samples to KEMSA's Embakasi office for verification.
435. Eunice averred that in May 2020, she went to KEMSA, met the receptionist, confirmed to her having Masks to supply, she was then told to take a sample of the mask to Embakasi warehouse for quality check. She however said that she did not know the name of the receptionist who she met at KEMSA.
436. She did a letter of intent on 6th May 2020.
437. The commitment letter issued to her firm from KEMSA was dated 30th April 2020.
438. The witness informed the Committee that Eunice Kiumi was incorporated as a signatory to her firm's account through which the proceeds from KEMSA was paid to safeguard her finances having financed the business.
439. The witness confirmed that on 29th June 2020, she her firm was paid all its Kshs 42.5M. ABSA did not however request for minutes allowing inclusion of Eunice Linda as a signatory – which the committee found strange.
440. The witness informed the Committee that it was through prayer that she managed to get business from KEMSA.

2.9.18 SUBMISSION BY DUKE AGENCIES LIMITED

Ms. Elizabeth Seret, the Director of Duke Agencies appeared before the Committee on 2nd March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

441. The Company was incorporated on 21st August, 2008. It is engaged in the supply of medical equipment and construction materials.

442. Prior to March 2020, Duke Agencies had not supplied medical equipment to KEMSA but had participated unsuccessfully in previous tenders.
443. Duke Agencies learnt of the intent by KEMSA to purchase items relating to the Covid-19 pandemic through the media. The Director cited press briefings by the CS, Health on the intent to purchase Covid-19 related items to assist in the fight against the pandemic.
444. The company took 3 samples to the KEMSA office for testing where one sample failed the quality test while two samples passed the test.
445. The Company wrote two intent letters dated 27th April, 2020. The first letter intending to supply 10,000 PPE kits was received at KEMSA on 27th April and the second letter intending to supply 20,000 PPE kits was received at KEMSA on 5th May, 2020.
446. The commitment letter issued to the Company from KEMSA for supply of 20,000 PPE kits was dated 5th May, 2020.
447. KEMSA wrote to Duke Agencies on 27th May, 2020 inviting the company to submit a bid for supply of PPE (Tender No. KEMSA/DP149/2019-2020) on or before 29th May, 2020. The letter stated that the date of negotiation will be communicated after bid submission.
448. On 3rd June, Duke Agencies got an LPO from KEMSA for supply of 20,000 PPE kits at Kshs. 9,000 per kit for a total of Kshs. 180,000,000.
449. On 10th June, 2020, KEMSA notified Duke Agencies that the company had been awarded a tender to supply 20,000 PPE Kits at Kshs. 9,000 per kit. The letter stated that a contract would be signed within seven days.
450. The supplies Duke did to KEMSA was sourced locally from the Chinese which the witness could not identify to the committee.
451. MS. Elizabeth averred that Duke Agencies had audited accounts but did not produce evidence to support her assertion.

452. On why intent letters did to KEMSA did not bear Duke agencies' letter head, the director informed the Committee that the copies had run out and the machine that could print new ones had broken down.

453. It was paid Kshs 180 million on 26th June 2020

2.9.19 SUBMISSION BY GLADLAB SUPPLIES LIMITED

Ms. Gladys Muthoni Thumi, the Director of Gladlab Supplies Limited appeared before the Committee on 10th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

454. Gladlab Supplies limited was incorporated on 30th March, 2015.
455. Prior to March 2020, Gladlab Supplies Limited had supplied medical equipment to KEMSA through the AGPO framework. The company entered into a framework contract with KEMSA (No.KEMSA/ONT00-7/2017-2019 Supply of Non-Pharmaceuticals – Surgical Catheters & Gloves).
456. Upon signing the framework contract with KEMSA, Gladlab Supplies Limited was supposed to supply latex gloves.
457. As per the letter from Ms. Caroline Gichinga on behalf of the KEMSA's Chief Executive Officer, Gladlab was supposed to provide a response as to whether the company was able to supply by 29th October, 2018. The company replied through a letter dated 29th October, 2018 indicating that it was able to supply gloves as requested by KEMSA.
458. On 12th November, 2018, KEMSA wrote to Gladlab Supplies Limited through the letter reference No. KEMSA/PROC/ONT07/2017-2019 notifying Gladlab of the TENDER NO KEMSA/ONT07/2017-2019.
459. Paragraph I{e} of the framework contract provides that;

“This contract shall lapse by 28th October, 2020 unless otherwise extended”

460. The framework contract was never extended and it lapsed on 28th October, 2020.
461. As a director of Gladlab Supplies Limited, the witness learnt that KEMSA was seeking for supplies of Covid-19 related items through their clients. Gladlab Supplies Limited sold various items related to the medical field including gloves and masks to various individuals and institutions. After the Covid-19 pandemic started, the witness noticed that certain items were selling quite fast and enquired from some of her clients what had caused the surge in the interest. Gladlab was informed that numerous individuals were buying masks and other medical supplies.
462. Gladlab also got to learn that KEMSA was seeking suppliers of masks and the company decided to visit KEMSA offices to make enquiries since there was already in place the framework contract between Gladlab Supplies Limited and KEMSA.
463. On 8th April, 2020 Gladlab wrote to KEMSA’s Chief Executive Officer {CEO} indicating interest in supplying surgical face mask ear loop at the price of K.shs. 95 per piece. Following discussions with senior officials of KEMSA it was felt that the price of K.shs. 95 per piece might be a little high and the company was requested if it was possible to supply at a cheaper price. Gladlab called suppliers from India and got an indication that they would get surgical masks at a price that would enable supply to KEMSA with masks at the price of 30 USD per box of 50 pieces of surgical masks. The company wrote a letter dated 9th April, 2020 indicating as much.
464. On 9th April, 2020, the CEO of KEMSA wrote a letter to Gladlab Supplies Limited requesting it to supply **30,000** packs of surgical face mask ear loop with each pack containing **50** pieces. The said letter indicated in part that;
465. “Please note that your supplies will be accepted using a delivery note as the other documents shall follow to facilitate payment.”

466. On 10th April, 2020, she wrote a letter to KEMSA indicating that Gladlab Supplies Limited was willing to supply the surgical masks as requested through the letter dated 9th April, 2020.
467. On 14th April, 2020, she again wrote to KEMSA indicating that Gladlab Supplies Limited would not be in a position to supply surgical face masks at the price of 30 USD per box of 50 pieces. This was informed by the fact that India, which was the source of the cheaper surgical masks had stopped exports of various items including surgical face masks in order to cater for its citizenry. She indicated that Gladlab would have to revert to the previous price of K.shs. 95 per piece and this was accepted by KEMSA.
468. Since it was not possible to source surgical face masks from India, Gladlab was only left with the option of sourcing the masks from China at a price that was higher than what suppliers in India would have been willing to accept for the same product.
469. Ms. Muthoni confirmed that she supplied goods worth Kshs. 135 million; which she was paid on 26th June 2020.
470. Ms. Muthoni averred that she imported her supplies to KEMSA from China, declared them to KRA and paid taxes.
471. The witness confirmed to the Committee that never before had she participated in a tender initiated by way of intent and commitment letters.

2.9.20 SUBMISSION BY ANGELICA MEDICAL SUPPLIES LIMITED

Ms. Mary Wanja Matu, the Executive Director of Angelica Medical Supplies Limited accompanied by Mr. Nicholas Gitonga (Chief Executive Officer) and Mr. Daniel Njuguna (Director, Operations) appeared before the Committee on 10th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witnesses were placed under oath.

The Committee was briefed as follows:

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472. The Company was incorporated on 20th January, 2003
473. The company has had ‘over two decades’ of engagements with KEMSA and other similar regional bodies.
474. The company sent out multiple letters to various healthcare providers and stores they work with regarding availability of Covid-19 items.
475. Angelica Medical Supplies wrote four intent letters (dated 23rd March, 30th March, 3rd April and 16th April, 2020 indicating availability of various Covid-19 HPTs including Personal Protective Equipment, Ventilators and Infrared Thermometers among others.
476. KEMSA issued four Commitment letters to Angelica dated 25th March, 2020 (Pulse Oxygenators, Syringe Pumps, Infusion Pumps and Patient Monitors) 1st April, 2020 (Ventilators), 7th April, 2020 (Thermometers) and 16th April, 2020 and (Personal Protective Equipment).
477. The witnesses confirmed to the Committee that it could have been tidier to do request for quotations.
478. KEMSA cancelled delivery of 18,000 PPE per a letter dated 12th May, 2020 citing failure to deliver the goods within the stipulated timeline.
479. The witnesses averred that they supplied KEMSA goods during the Covid-19 pandemic and were paid kshs.339,516,000.
480. The witness informed the Committee that they delivered their supplies in KEMSA’s Embakasi warehouse.
481. They indicated that final prices of goods supplied were agreed in a formal meeting, whose minutes were taken and could be availed to the Committee for perusal.

2.9.21 SUBMISSION BY HARLEYS LIMITED

Ms. Rupen Haria, the Director of Harleys Limited accompanied by Mr. Peter Ogonda (Tenders Manager) appeared before the Committee on 12th March, 2021 to adduce evidence

Authority.

The witnesses were placed under oath.

The Committee was briefed as follows:

482. The Company was incorporated on 9th November 1953.
483. The company had supplied equipment to KEMSA before the Covid-19 pandemic. Harleys supplied 13 packs of dressing trolleys in July, 2019 with a call down to supply more trolleys in 2020.
484. The company received a call from KEMSA enquiring whether they could supply Covid-19 pandemic related items.
485. Harley's learned of KEMSA business after getting a call from Edward Buluma inquiring supply for gloves, surgical masks on 24th of March 2020. Harley's gave the quantities and verbally but was asked to write to KEMSA on 25th March 2020.
-
486. On 1st April 2020, Geoffrey Mumelo wrote an email asking for supply and attaching a tender document in the said email. Tender was dated 1st April and closed on 2nd April 2020. Harley's did the tender and the submitted to KEMSA. There was a sample receipt voucher issued – it should be noted that in all other supplier, there was no such document presented to the committee.
487. There was negotiation meeting whose minutes were taken.
488. There was a notification of award receipt on 29th of April 2020 for 4000 pieces (Kshs.15 per glove).
489. The contract was signed on 11th May 2020.
490. They were issued with an LPO of USD 60,000, then there was a purchase order. Harley's supplied before the LPO due to pressure from KEMSA (Edward Buluma) to supply on the

strength of a commitment- Harley's had to seek the legal opinion to supply before the supplying.

491. There is a tender between KNH and KEMSA in which KEMSA requested Harley's to supply but Harley's refused on account of absence of LPO and contract. The goods that the Harley's was to supply are still with Harley's.

2.9.22 SUBMISSION BY VILA SURGICAL AND EQUIPMENT LIMITED

Ms. Neema Mugambi, the Director of Villa Surgical and Equipment Limited accompanied by Ms. Silvia Karwira (General Manager) appeared before the Committee on 12th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witnesses were placed under oath.

The Committee was briefed as follows:

492. The Company was incorporated on 4th March, 2009.
493. The company had not supplied KEMSA before but has participated in tenders unsuccessfully.
494. Had supplied to other entities including Nairobi County Government, Pumwani Maternity Hospital and Kenya Red Cross.
495. She went to KEMSA to seek for business when the Covid-19 pandemic broke out. She visited KEMSA and Kenyatta National Hospital seeking to supply masks.
496. She wrote an intent letter to KEMSA dated 20th April, 2020 indicating willingness to supply surgical masks, Infrared thermometers, Digital Sanitizing Dispenser and KN95 facemasks.
497. KEMSA issued a commitment letter to Villa Surgical on 29th April, 2020 for supply of 30,000 packs of 50 surgical face masks and 10,000 KN95 facemasks.
498. The witnesses confirmed to the Committee that indeed they delivered their supplies to KEMSA's Embakasi Warehouse. They further confirmed to the Committee that prior to

receipt of a commitment letter, they delivered a sample and were issued with a sample receipt voucher, which voucher was not tabled to the Committee even after numerous requests for the same.

499. Through her affidavit to the Committee dated 28th April 2021, Ms. Mugambi denied an accusation from Dr. Jonah Manjari that Joel Onsare Gesuka (former board member of KEMSA) helped secure her business to supply masks to KEMSA.¹²
500. The witnesses confirmed that they supplied masks to KEMSA worth Kshs. 135 million; which they were duly paid for.
501. The witnesses informed the Committee that their supplies to KEMSA were locally sourced and one such suppliers happened to be a Chinese whose contacts were tendered before the Committee.
502. On whether Villa surgical Equipment had capacity to supply, the directors averred that since the company had a turnover of Kshs 100 million in the previous financial years, it was capable of supplying masks to KEMSA. Further, the company had supplied both Kenyatta National Hospital and Pumwani Maternity Hospital on previous occasions.

2.9.23 SUBMISSION BY OMAERA PHARMACEUTICALS LIMITED

Ms. Dorcas Njoroge, the Director of Omaera appeared before the Committee on 12th March, 2021 to adduce evidence the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

503. Omaera Pharmaceuticals was incorporated on 9th August 1995.
504. The company has supplied equipment to KEMSA before the Covid-19 procurement and still continues to supply to date.

¹² An affidavit to the Committee from Mugambi dated 28th April 2021

505. The company received an email from KEMSA's Procurement Department (Ms. Rolline Njoki) dated 29th April, 2020 inviting them to bid for supply of Infrared thermometers.
506. The company bid for the tender and was awarded the tender to supply 5,000 Infrared thermometers at a unit price of Kshs. 10,000.
507. It supplied goods worth Ksh. 50 million and were paid for the same.
508. All declarations to KRA were made and taxes paid accordingly.

2.9.24 SUBMISSION BY CARESHA HEALTHCARE SOLUTIONS LIMITED

Ms. Carolyne Kitur, the Director of Caresha Healthcare Solutions Limited appeared before the Committee on 12th March, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows:

509. The Company was incorporated on 22nd June, 2018.
510. The company had not supplied goods to KEMSA prior to the Covid-19 pandemic but had unsuccessfully taken part in a tender to supply condom dispensers in May, 2019.
511. The Director went to KEMSA to inquire about supply of Covid-19 material following the outbreak of the pandemic. Following inquiries at the reception, the Director was asked to provide an intent letter and samples of goods that they intended to supply.
512. The Director wrote to KEMSA on 16th April, 2020 expressing intent to supply 1,000,000 pieces of surgical masks at Kshs. 95 per piece, 1,000 infrared thermometers at Kshs. 16,000 per piece and 200 googles at 700 per piece.
513. KEMSA wrote a commitment letter dated 17th April, 2020 inviting Caresha Ltd. to deliver 1,000 packs of 50 masks immediately and 20,000 packs within 14 days.
514. Both intent and commitment letters had no prices.

515. Kitur got the goods she supplied to KEMSA from a Chinese based at the Nexgen Apartment in Mombasa Road, details of the company was tabled – Binoti Investments Ltd – BINOTINVESTMENTLIMITED@GMAIL.COM

516. She supplied to KEMSA at Kshs. 4500 per piece – this is the same price which everyone was supplying.

517. She was paid Kshs.94.5 million for her supplies to KEMSA.

518. The witness averred that after payment of her supplies to KRA, she paid taxes due to KRA. There was however no evidence adduced before the Committee to support this assertion.

2.9.25 SUBMISSION BY MR. JOEL ONSARE GESUKA, KEMSA BOARD MEMBER

Thorough his affidavit dated 21st April 2021, Mr. Joel Gesuka Onsare averred:¹³

519. That he was one on Non-Executive Directors of Kenya Medical Supplies Authority.

520. That he was not a director or an employee of Villa Surgical and Equipment and has never been involved in supply of medical equipment.

521. That contrary to the allegation from Dr. Jonah Manjari that he influenced award of commitment letters to Villa Surgical and Equipment, he had neither tools nor means to influence award of commitment letters to any suppliers.

522. That save for the KEMSA Board meetings of 19th March 2020 and 11th June 2020, he did not go to KEMSA offices or interact with anybody to influence award of any tender.

2.9.26 SUBMISSION BY BELL INDUSTRIES LIMITED

Thorough his affidavit dated 27th April 2021, Mr. Titus Kirea Ibui, a director of the Bell Industries Limited averred:¹⁴

523. That Bell Industries Limited was incorporated in 1991 as Bell Chemical Limited but changed its name to Bell Industries Limited in the year 2000.

¹³ Affidavit by Mr. Joel Onsare Gesuka (KEMSA Board Member) dated 21st April 2021

¹⁴ Affidavit by Bell Industries Limited dated 27th April 2021

524. That he was not a director or an employee Bell Industries.
525. That Bell Industries Limited had been prequalified by KEMSA since 2017 as a supplier. Despite several bids during the period, the company had never succeeded prior to March 2020.
526. That in March 2020, the company representative visited KEMSA and sought for an opportunity to supply PPEs to KEMSA. He was advised to do an intent letter which the company duly did on 28th April 2020 to supply 15,000 PPEs kits at Kshs. 9,000 each and 5,000 infrared Thermometers at a cost of Kshs 12,000 each. A sample of the said items was submitted in the same day in writing.
527. That on 22nd March 2020, KEMSA issued a commitment letter to Bell Industries Limited to supply all the goods in the intent letter.
528. That deliveries were made on the commitment letter given and invoiced accordingly on 26th June 2020. The invoice was based on the negotiated price of Kshs. 8,975 per PPE and totaling up to Kshs. 134, 625,000. LPO was issued on 27th June 2020, a contract No. KEMSA/DP173/2019-2020 FOR SUPPLY OF PERSONAL PROTECTIVE EQUIPMENT (PPE KITS ON EMERGENCY BASIS dated 30th June 2020 was duly executed.
529. That Bell industries executed the CONTRACT NO. KEMSA/DP169/2019-2020 FOR SUPPLY INFRA-RED THERMOMETERS dated 10th August 2020 with the supply of 5000 Infra-Red Thermometers at a negotiated cost of Kshs. 8,500. The total sum executed in this item being Kshs. 42,500,000

That Bell Industries Limited had been paid for all her deliveries to KEMSA.

2.9.27 SUBMISSION BY WILLBROAD GATEI GACHOKA

Mr. Willbroad Gatei Gachoka appeared before the Committee on 29th April, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows¹⁵:

530. That he was one of the promoters of Kilig Ltd alongside Mr. Zhu Jinping that incorporated the company on 22nd January 2020.
531. That during his directorship, on 6th April 2020, Kilig Ltd did an intent letter to KEMSA offering to supply 450,000 PPEs. This offer was accepted by KEMSA and subsequently issued a commitment letter dated 9th April 2020 to supply PPEs within 15 days.
532. That on 17th April 2020, Mr. Willbroad Gatei and his co-director (Mr. Zhu Jinping) resigned from Kilig and all their shareholding transferred to Mr. Collins Bush Wanjala, in fulfillment of the company's financing partners (Mr. Wanjala's clients) in order to protect the parties' interests.
533. That, Mr. Wanjala's clients experienced stalemates in securing the financing for acquisition of the PPEs kits and the result the company engaged various stakeholders towards fulfilment of delivery of PPE Kits
-
534. That the stakeholders sought protection of their claims in the transaction in the form of a professional undertaking.
535. That Messrs Ivy Minyow, Advocate was nominated to issue the professional undertaking and in ensuring that the stakes of all the existing and any future stakeholders was safeguarded, complete control of the company (without any beneficial ownership) was assumed by relinquishment of shares and directorship from Mr. Wanajala to Messrs. Ivy Minyow, Advocates on 6th May 2020.
536. That Kilig Ltd entered an agreement for supply of PPEs kits with Entec Technology Ltd (Entec).
537. That Kilig Ltd opened an account with Equity Bank in which Mr. Chen Chao (Director at Entec) was made a signatory to protect its interests. Further, Hon. David Murathe was

¹⁵ Affidavit by Mr. Willbroad Gatei Gachoka dated 21st April 2021

requested to be an account signatory in order to guarantee payment of Entec after the expected payment by KEMSA to Kilig Limited on finalization of the Procurement process.

538. That KEMSA cancelled the Commitment letter it issued to Kilig ltd and with this cancellation, the intended procurement never commenced. Since no procurement commenced, Hon. David Murathe was removed as a signatory of Kilig ltd account at Equity.

539. The company had not supplied goods to KEMSA prior to the Covid-19 pandemic.

2.9.28 SUBMISSION BY HON. DAVID WAKAIRU MURATHE

Mr. David Wakairu Murathe appeared before the Committee on 29th April, 2021 to adduce evidence on the Special Audit Report on Utilization of Covid-19 Funds by the Kenya Medical Supplies Authority.

The witness was placed under oath.

The Committee was briefed as follows¹⁶:

540. That he knew both Mr. Zhu Jinping and Mr. Chen Chao, who were the promoters of Kilig ltd.

541. That he was aware that Kilig ltd was incorporated by the promoters named above and secured a commitment letter to supply KEMSA 450,000 PPEs

542. That he was aware that Kilig ltd limited engaged financiers to fund supply of PPEs to KEMSA but these financiers faced financial delays.

543. That he has never been a director or a shareholder of Kilig ltd.

544. That he only became a signatory to Kilig Ltd account held at KCB upon request from Entec Technology Ltd to guarantee that it will paid for the supply of PPEs to KEMSA.

¹⁶ Affidavit by David Wakairu Murathe dated 21st April 2021

545. ¹⁷That upon cancellation of the commitment letter to Kilig Ltd by KEMSA and considering that the procurement process had not commenced, he ceased being a signatory of Kilig Ltd account at Equity Bank effective 5th August 2020.

546. Mr. Murathe tabled a letter from KCB bank dated 14th April 2020¹⁸ and addressed to the Directors of Kilig limited and attention to Mr. Collins Bush Wanjala indicating the Bank's willingness to extend letters of credit to the Overseas Supplier subject to the Board approval. The intention of tabling this letter was to show that even before shareholdings was transferred to Mr. Collins Wanjala on 17th April 2020, he was involved in the business dealings of Kilig Ltd and therefore cannot plead innocence.

547. That signatories to Kilig Ltd at KCB would prove that they were people connected to the Deputy President.

2.9.29 SUBMISSION BY MR. CHEN CHAO, DIRECTOR AT ENTEC TECHNOLOFY

Through his affidavit to the Committee dated 21st April 2021, Mr. Chen Chao averred as follows:

The Committee was briefed as follows¹⁹:

548. That he knew Mr. Willbroad Gatei and Hon. David Murathe and that the two knew each other and that David Murathe was a respectable high-standing member of society in Kenya.

549. That in June 2020, he was approached by Willbroad Gatei and Ivy Minyow approached him to finance supply of PPEs to KEMSA indicating that they had a commitment letter to supply 450,000 PPEs.

550. That on 16th June, 2020, Entec Technology ltd and Kilig Ltd entered into a sale agreement to provide financing and supply of PPEs. In the said agreement, an Escrow account was to be opened to receive payments from KEMSA and transfer the due payment to Entec's account directly. Since the matter of escrow account did not materialize, Kilig Ltd opened and account and put him as one of the mandatory signatories.

¹⁷ Affidavit to the Committee by Mr. Chen Chao dated 21st April 2021

¹⁸ Letter from KCB Bank dated 14th April 2020 and addressed to Kilig Ltd directors (attention to Mr. Collins)

¹⁹ Affidavit by Mr. Willbroad Gatei Gachoka dated 21st April 2021

551. That in order to further safeguard and guarantee Entec's receivables under the supply contract and protect Entec's investment, he requested Hon. David Murathe to be a guarantor for this transaction by being a mandatory signatory together with the Kilig limited in Equity Bank.

552. That on 30th June 2020, KEMSA cancelled the commitment letter issued to Kilig ltd. This is after he had already sent part of the supplies to Kenya. As a result, his company was facing losses of up to USD 2 million.

2.9.30 SUBMISSION BY EQUITY BANK

Though his letter to the Committee dated 1st April 2021, Mr. Gerald Warui, Managing Director, Equity Bank Limited apprised the Committee as follow:²⁰

553. That Kilig Ltd approached Equity Bank on 19th and 25th June 2020 requesting for banking services. Four accounts were accordingly opened with 2 being KES while the remaining being USD accounts.

554. That Account operation mandate for bank account numbers 10802798844277 and 1080279884272 was "Any Two to sign" that is, Eunice Wanjiru Kiumi or John Kiumi Wambugu with Ms. Ivy Onyango as a mandatory signatory.

555. That account operation mandate for Bank account numbers 810279895257 and 0810279895271 was "Three to Sign" that is, Ivy Minyow Onyango, Willbroad Gatei Gachoka with Mr. David Wakairu Murathe and Mr. Chen Chao as mandatory signatories.

556. That all the relevant documents relating to bank opening were provided i.e company KRA PIN; copies of directors' Identity Cards; Company Board Resolutions; certificate of Incorporation of the Company and filled account opening forms.

2.9.31 SUBMISSION BY MR. COLLINS BUSH WANJALA

Through his affidavit to the Committee dated 15th April 2021,²¹ Mr. Collins Bush Wanjala averred as follows:

²⁰ Equity Bank's submission to the Committee in a letter Re:EBK/LIT/081/31-2021 and dated 1st April 2021

²¹ Affidavit of Collins Bush Wanjala to the Committee dated 15th April 2021

557. That his involvement in Kilig was purely on client advocate basis. He did not however ~~disclose the identity of his client.~~
558. On 14th April 2020, he was instructed by his client to undertake due diligence for a possible funding of PPE supplies to KEMSA. His client had been approached by Mr. Willbroad Gatei Gachoka.
559. That for financing to happen, it was agreed that he becomes the soles shareholding of Kilig ltd. Share transfer was effected on 17th April 2020 having been lodged with the Business Registrar on 16th April 2020.
560. That conducted and concluded his due diligence on Kilig ltd on 28th April 2020. His opinion of the exercise was that the he was denied material documents by Mr. Gachoka, the entire transaction to supply KEMSA PPE was irredeemable with gaps and therefore should be abandoned.
561. That on 5th May 2020, his client instructed him to transfer the shareholding of Kilig ltd to Willbroad Gachoka and resign as directors. This decision was communicated to Mr. Gachoka on 6th May 2020 through his advocate Ms. Ivy Onyango. The subsequent advise from Mr. Gachoka was that transfer of shareholding be done to Ms. Ivy Minyow Onyango; which was duly dome and effected on 12th May 2020 by the BRS.
562. That no payment was made to parties as this was not a purchase transaction.

2.9.32 SUBMISSION BY ZIWALA LTD

Through her affidavit to the Committee dated 23rd April 2021, Kathleen Kihanya (executive director of Ziwala limited) averred as follows:²²

563. That she was the Executive Director of Ziwala limited and duly authorized and well versed with facts and issues of the company's business with KEMSA.
564. That Ziwala limited was incorporated on 6th November 2014 and that prior to March 2020, the company had been supplying KEMSA medical items. She gave an example of supply

²² Affidavit to the Committee by Ziwala ltd dated 26th April 2021

of soluset for fluids which the company supplied in 2018 under tender number KEMSA/ONT01/2017-2019.

565. That in March 2020 and with the onset of covid-19 pandemic and being a regular supplier of KEMSA, the company inquired about the supply of PPEs.
566. That the company delivered samples of KN95 facemasks to KEMSA for inspection, did an intent letters on 27th April 2020 NS 4th May 2020 to supply 30,000 and 120,000 KN95 facemasks respectively. The Company was issued with commitment letters on 28th April 2020 to supply 30,000 KN95 facemasks and 14th May 2020 to supply 120,000 KN95 face masks
567. That in the two cases, the company filled tender documents and received notification of awards on 4th June and 30th June 2020 from KEMSA which the company duly accepted.
568. That the company held price negotiation meetings with KEMSA upon which the contract was executed.
569. That deliveries of 30,000 KN95 facemasks was done on 5th May 2020 and acknowledgement provided; its Local Purchase Order given on 18th May 2020; its invoice issued on 27th May 2020 and payment for the same of Kshs. 21 million done on 1st July 2021.
570. That deliveries of 120,000 KN95 facemarks was done on 4th and 15th June 2020 and acknowledgement provided ; its Local Purchase Order given on 29th June 2020; its invoice issued and payment for the same of Kshs. 84 million done on 3rd July 2021.
571. That the each unit of KN95 face mask was supplied at Kshs. 700.

2.9.33 SUBMISSION BY PURMA HOLDINGS LIMITED

Through her affidavit to the Committee dated 12th February 2021, Mary Wambui Mungai (director of Purma Holdings limited) averred as follows:²³

²³ Affidavit to the Committee by Purma Holdings ltd dated 12th February 2021

572. That Purma Holdings Limited was incorporated on 13th February 1996 to undertake the ~~business of general supplies.~~

573. That prior to March 2020, the company had not supplied KEMSA with medical equipment.

574. That on 27th April 2020, the company sent a quotation to KEMSA for the supply of PPEs each at Kshs.9000; KN95 Respiratory Face Masks each at Kshs.98 and surgical Face mask 3 ply Ear Loop each Kshs. 8000. Samples of the same was forwarded in the same day.

575. That on 28th April 2020, KEMSA issued the Company with a commitment letter to supply 6000 surgical face masks Ear loop in packs of 50s by 4th May 2020; 5000 pieces of KN95 Face Masks by 4th May 2020 and 10,000 PPE to be supplied by 8th May 2020.

576. That the KN95 face mask and surgical masks were delivered in time, inspected by the QA and accepted in writing.

577. That the company could not meet the timeline to supply 10,000 PPEs by 8th May 2020 but sought and was granted extension to supply them by 13th May 2020. Further extension was sought due to the delay of clearance at JKIA to 16th May 2020. All the remaining PPEs were delivered by 15th May 2020.

578. In all the supplies made, the company was invited to bid; which it did. Awards were made; accepted; signed; Invoiced; LPOs given and payments made.

579. That payment for the supply of 5000 pieces of KN95 Respiratory Face Mask and 6000 Surgical Face mark 3 ply Ear loop of Kshs. 30.5 million was done. Further Kshs. 90 million was paid for the supply of PPEs.

2.9.34 SUBMISSION BY EVERYWHERE DISTRIBUTORS LIMITED

Through her affidavit to the Committee dated 26th January 2021, Bedan Gituku (director of Everywhere Distributors limited) averred as follows:²⁴

²⁴ Affidavit to the Committee by Everywhere Distributors ltd dated 12th February 2021

580. That failed to appear before the Committee in December 2020 since was indisposed; a communication he made to the Clerk of the National Assembly on 8th December 2020. Further he failed to appear before the Committee since he was out of Nairobi on health grounds.
581. That Everywhere Distributors ltd is a local company that had never done business with KEMSA prior to March 2020.
582. That on 4th April 2020, he did an intent letter to supply KEMSA with PPEs which request was acceded and a commitment letter given on 20th April 2020 albeit to supply smaller quantities than what had been requested for in the intent letter.
583. That he imported his supplies to KEMSA from China.
584. That due to the demand of similar commodities in China and logistical challenges, the Company did not supply as per the timeline. It however sought and was granted extension of 11 days through letters of 4th may and 5th May 2020 respectively. This deadline was not made prompting further request for extension on 11th May 2020. A final extension was granted on 14th May 2020.
585. That the company did deliveries to KEMSA in two batches: 29th May and 3rd June 2020. The items supplied included Protection Googles, Face Shields and Particulate respiratory N95 and PPEs. However, since PPEs were not complete, further procurements were made and the final batch delivered to KEMSA on 17th June 2020.
586. That the company received an invitation to bid on 24th June 2020; negotiated for the price on 26th June 2020; accepted the contract on 30th June 2020 and signed it in the same day; invoiced KEMSA on 30th June 2020 reflecting new reduced price after negotiation and LPOs received for the goods supplied.

2.9.35 SUBMISSION BY REGAL FREIGHTERS

Through his affidavit to the Committee dated 9th April 2021, Issa Aden (Managing Partner, Regal Freighters) averred as follows:²⁵

587. That the firm's business name was registered on 3rd July 2019.
588. That the firm did an intent letter to KEMSA on 16th April 2020 indicating the products it had and requesting to supply covid-19 pandemic related items.
589. That on 21st April 2021, it was given a commitment letter by KEMSA to supply 3,000,000 Surgical Face Masks within 10 days.
590. That the company supplied 3,000,000 Surgical Face Masks within the required timelines in three batches (27th, 29th and 30th April 2020) and delivery notes were duly provided.
591. That the requisite quality checks were done by KEMSA Q.A Department.
592. That the company was given tender documents and submitted them to KEMSA on 9th May 2020 which was executed on 27th May 2020.
593. That the Company imported its supplies from China.
594. That each pack of 50 face masks was supplied at Kshs. 4,500. This price was negotiated from Kshs. 4,750 in a meeting between KEMSA officials and Regal Freighters officials of 12th May 2020.
595. That on 29th June 2020, the company was paid Kshs. 270m for the supply it did to KEMSA

2.9.36 SUBMISSION BY NONOPAY LIMITED

Through his affidavit to the Committee, Ahmed Rahim Mohamed (Director, Nonopay limited) averred as follows:²⁶

²⁵ Affidavit to the Committee by Regal Freighters dated 9th April 2021

²⁶ Affidavit to the Committee by Nanopay limited dated 25th January 2021

596. That Nonopay ltd was a limited liability company that was incorporated and registered on 22nd August 2019.
597. That prior to March 2020, the company had not done any business with KEMSA.
598. That in March 2020, Xiamen Probtain Nowoven Inc appointed Nonopay ltd as its agent to supply PPEs within the East Africa region.
599. That information from the Kenyan media indicated that KEMSA wanted PPEs and therefore expressed interest being a businessman.
600. That on 14th April 2020, Nanopay ltd did an intent letter to KEMSA to supply PPEs (50,000 pieces of KN95 face masks) and delivered to the CEO's Office. That Nanopay limited attached a sample in the intent letter.
601. That the samples attached were taken to Pharmacy and Poisons Board and issued with Medical Device Certificate Serial Number 3d9e314d1aec5d4681f05ef58c75e67 and Registration number MD/2020/1123. The pharmacy and Poisons Board gave Nonopay a license to import.
602. That upon inspection of the samples attached in the intent letter of 14th April 2020, KEMSA gave Nonopay ltd a commitment letter dated 15th April 2020 to supply 50,000 KN95 face masks within a period of six weeks. This commitment letter was collected from KEMSA's procurement office.
603. That on 6th May 2020, 40,000 out of 50,000 face masks arrived at the. These were supplied to KEMSA on 13th May 2020 and acknowledgement note from KEMSA receiving the supplies at the Embakasi Warehouse provided.
604. That negotiations on the price between Nonopay ltd and KEMSA happened on 22nd June 2020 at the KEMSA procurement officers and minutes were taken.
605. That Nonopay Limited was given an LPO on 29th June 2020.
606. That Nonopay invoiced KEMSA on 30th June 2020 and a contract given.

607. That Nonopay ltd imported the PPEs from (40,000 from China and 10,000 from Germany and paid duties for imported items.

608. On 6th August 2020, Nanopay ltd was paid Kshs. 34,979,000. This was contrary to the audit observation that the company was paid Kshs.349, 790,000.

2.9.37 SUBMISSION BY MASON AUSTIN LIMITED

During his appearance before the Committee, Mr. John Kiumi, the Director of Mason Austin Limited briefed the Committee as follows:

609. Mason Austin Limited is a company incorporated in May 2014 primarily to ake and supply furniture.

610. With the unprecedented and unexpected onset of Covid-19 pandemic, businesses world over were severely hit and many were forced to rethink their operations or shut down. Furniture sales went down tremendously as organizations asked their staff to work from home. Similarly, peoples purchasing power went down due to wage cuts, reduced income and massive job losses.

611. In a bid to survive, the company ventured into the Personal Protective Clothing field in early April, 2020. The company applied for and obtained KEBS certification in May 2020 and started by making reusable cloth masks and gradually moved to making surgical gowns, aprons, scrubs and coveralls under the AUSTSAFE brand.

612. Mason Austin supplies various customers including hospitals, individuals providing homecare to Covid-19 patients, medical professionals and firms supplying to their various clients in the public and private medical sector.

613. In the course of doing the PPE business, Kilig Limited approached Mason Austin in early June 2020 through Ms. Ivy Minyow who identified herself as the Managing Director, asking for supply of PPE kits based on a tender they had with KEMSA. Mason Austi enquired at KEMSA and confirmed the commitment letter provided to Kilig Ltd. was genuine.

614. Mason Austin agreed to supply the PPEs since they were already making coverass and had even supplied PPE kits to other customers. The proposed agreement was that the company would supply Kilig with upto a maximum of 50,000 kits and Kilig would pay once they received payment from KEMSA.
615. Kiiig Ltd issued Mason Austin Ltd with an LPO which the latter intended to take to their bank to source for financing. This arrangement was because Kilig had stated that the order was big and they were yet to secure financing from their bank. As security for the payment, Kilig Ltd proposed that they would open an account with Equity Bank and have Mason Austin Directors as joint signatories. Mason Austin would then sign a Joint Venture agreement with the account details and proceed with the transaction thereafter.
616. The Directors of Mason Austin met with Ms. Ivy Minyow at Equity Bank, Mombasa Road branch and opened account no. 1080279884277 which the former presumed to be the only three signatories to the account. The understanding was that the funds would be paid through this account to secure the payment.
617. Towards the end of June/early July, Mason Austin learned that KEMSA had cancelled the tender to Kilig Ltd. Mason Austin had not supplied anything to Kilig and did not expect to receive any money. The company closed the account as the purpose for which it was opened never took off.
618. The Directors of Mason Austin Limited have no interest in Kilig Ltd. and had never interacted with the company prior to this proposed transaction.

2.9.38 SUBMISSION BY DOMINION SUPPLIES (K) LIMITED

Through his affidavit to the Committee dated 9th April 2021, Director (Dominion Supplies Limited) averred as follows:

619. Dominion Supplies (K) Ltd was incorporated on 18th June, 2007. The company has been supplying KEMSA since 2011.
620. Prior to March 2021, the Company has supplied KEMSA with Safety boxes, IV fluids, patient uniforms, laboratory chemicals and laboratory consumables.

621. Dominion Ltd. learned that KEMSA was seeking for suppliers of Covid-19 pandemic related items when they received a call from KEMSA's procurement department inquiring on whether the company is in a position to supply such items.
622. The company forwarded letters of intent to KEMSA with regard to the supply of Covid-19 pandemic related items and received letters of commitment from KEMSA.
623. The company received invoices and local purchase orders (LPO's) for procurement of Covid-19 pandemic related items.
624. Dominion Ltd has been paid the sum of Kshs. 198,000,000 by KEMSA for the supply of Covid-19 related items.

2.9.39 SUBMISSION BY WALLABIES VENTURES LTD

Through her affidavit to the Committee dated 22nd April 2021, Dr. Catherine Wanjiku Ndungu (Director, Wallabis Ventures Limited) averred as follows:

625. Wallabies Ventures Limited was incorporated in 2017 with Dr. Catherine Wanjiku Ndungu holding 700 shares and Mr. James Njenga holding 300 shares.
626. The company engaged KEMSA in supply of Personal Protective Equipment to fight the Covid-19 pandemic.
627. On 9th October 2020, Dr. Catherine Ndungu's house was raided by officers from the Ethics and Anti-Corruption Commission (EACC) accompanied by armed policemen and took away documents and electronic equipment for investigations.
628. Dr. Catherine Ndungu recorded statements with EACC regarding Wallabies Ventures' dealings with KEMSA in regards to the Covid-19 supply undertaken by the company. She provided details of how the company secured the tender to supply KEMSA.
629. Due to the raid by EACC, the co-Director was left with no documents regarding the supply to KEMSA.

630. Dr. Ndungu stated that she does not know Sen. Kembi Gitura and has never met him, nor did he assist the company to secure supplies tender with KEMSA.

2.9.40 SUBMISSION BY MEDILIFE BIOLOGICALS LIMITED

M/s Medilife Biologicals Limited through a written submission by Mr. Atul Srivastava dated 2nd March, 2021 briefed the Committee as follows:

631. M/s Medilife Biologicals Limited (formerly Medi Life Pharmaceuticals Ltd) was incorporated on 7th January 2017 to supply health products and technologies (HPTs) in Kenya and the region. The company changed name on 31st January 2019.

632. M/s Medilife is legally compliant to regulatory requirements as provided for in various statutes including tax compliance and Pharmacy and Poisons Board.

633. The company has supplied KEMSA before the Covid-19 pandemic. For instance, on 27th August 2018 and 14th December 2018, M/s Medilife Biologicals Limited entered into a framework contract for supply of various pharmaceuticals among other supplies.

634. M/s Medilife was pre-qualified to supply KEMSA in the 2019/20 financial year and got to know of the needs of the Authority at the time of the pandemic.

635. The company wrote an intent letter to KEMSA on 24th April, 2020 communicating the intention of partnering with the Authority in sourcing of COVID-19 HPTs.

636. KEMSA issued a commitment letter to the company on 28th April, 2020 requesting for supply of 1,000,000 3 ply face mask, 200,000 KN95 face mask and 20,000 face shields.

637. The commitment letter indicated that the procurement process would commence immediately and deliveries would be accepted using delivery notes while LPOs and tender documents would follow to facilitate payments. This was the first such procurement process the company has taken part in.

638. M/s Medilife has not received any LPO or invoice for the supplies to KEMSA as per the commitment letter dated 28th April, 2020. The deliveries were made in four batches between 11th and 22nd May, 2020 as follows:

- i. 500,000 3 ply face masks on 11th May, 2020;
- ii. 400,000 3 ply face mask and 24,250 KN95 face masks on 18th May, 2020;
- iii. 100,000 3 ply face masks and 25,750 KN95 face masks on 20th May, 2020;
- iv. 150,000 KN95 face masks on 22nd May, 2020.

639. M/s Medilife Biologicals Limited has not received any payment for these deliveries supplied to KEMSA. The company has not received any LPO, framework contracts and tender documents for the supplies.

2.9.41 SUBMISSION BY DEEKAY RELIEF LIMITED

Submission by Mr. Manpreet Kohli

Through his affidavit to the Committee dated 15th June 2021, Mr. Manpreet Singh Kohli (Director, Deekay Relief Limited) averred as follows:

640. Deekay Relief Limited was incorporated in United Kingdom on 19 November 2018 under company number 11684131. Mr. Manpreet Singh Kohli is the sole Director and shareholder at the company.
641. Prior to March 2020, the company never had any dealings with Kenya Medical Supplies Authority and had never applied for or prequalified to be a supplier at KEMSA.
642. Deekay Relief Limited got information from the media and it was ‘common knowledge’ that KEMSA were short of PPE kits to combat the pandemic. Mr. Manpreet therefore asked a Mr. Gideon Simiyu, an agent, to inquire whether the company could supply the PPE kits to KEMSA.
643. Mr. Gideon Simiyu informed Mr. Kohli that upon inquiry, he was told to provide samples to KEMSA for assessment and approval to establish whether they meet the required standard.

644. The Director appointed Mr. Gideon Simiyu as an agent to help in delivering the kits to KEMSA. After delivery of the samples, Deekay Relief received an email on 25th March, 2020 from the CEO of KEMSA confirming receipt and acceptance of samples.
645. The KEMSA CEO asked the company to proceed and deliver 20,000 kits of PPE within 7 days at KEMSA warehouse in Embakasi. The CEO stated that being an emergency procurement the contract and LPO would be signed at a later date.
646. Mr. Manpreet Kohli wrote to the KEMSA CEO informing him that being an international company, they would only accept payment in Dollars or Sterling pounds and not Kenya shillings.
647. KEMSA negotiated a price with the agent and settled at a rate of USD 85 per kit.
648. Deekay Relief was issued with commitment letter from KEMSA dated 21st April, 2020 requesting the company to supply 20,000 PPE kits. These were delivered in two batches of 10,000 kits within ten days from date of issue.
649. Through the agent, Deekay Relief Ltd. supplied the PPE kits to KEMSA in two batches. The first delivery was done on 30th April, 2020. The second batch was delivered late but an extension was sought from KEMSA.
650. After supply and delivery of the PPE kits, the company through the agent signed tender documents and the contracts as earlier on agreed.
651. The company was further issued with a purchase order of the items supplied, the price per unit and amount payable to the company.
652. Deekay Relief Limited was paid a total of USD 1,700,000 being the sum total of the 20,000 PPE kits supplied to the Authority at a rate of USD 85 per pair.

Submission by Mr. Gideon Simiyu

During his appearance before the Committee on 16th June, 2021, Mr. Gideon Simiyu (Agent, Deekay Relief Limited) averred as follows:

653. In March 2020, Mr. Gideon Simiyu was approached by Mr. Manpreet Kohli, the Director of ~~Deeay Relief Limited, a United Kingdom Company to inquire from Kenya Medical Supplies Authority~~ whether the company can supply PPE kits needed to combat the pandemic as he had heard there was a shortage of PPE kits.
654. Upon enquiry from the procurement department, Mr. Simiyu was told to provide samples to KEMSA for assessment and approval to establish whether the same would meet required standards. The sample was received by Mr. Simiyu for onward transmission to the Authority.
655. Mr. Simiyu was acting as an agent of Deekay Relief Ltd. and had a letter from the company appointing him to act as one.
656. After delivery of the samples to KEMSA, an email was sent on 25th March 2020 from the CEO of KEMSA confirming receipt and acceptance of the samples. In this email, the company was asked to deliver 20,000 kits of PPE within 7 days to the KEMSA warehouse in Embakasi.
657. The CEO stated that being an emergency procurement, the contract and LPO would be signed at a later date.
658. The Director wrote to the KEMSA CEO informing him that being an international company, they would only accept payment in Dollars or Sterling pounds and not Kenya shillings.
659. KEMSA negotiated a price with the agent and settled at a rate of USD 85 per kit.
660. Deekay Relief was issued with commitment letter from KEMSA dated 21st April, 2020 requesting the company to supply 20,000 PPE kits. These were delivered in two batches of 10,000 kits within ten days from date of issue.
661. Through the agent, Deekay Relief Ltd. supplied the PPE kits to KEMSA in two batches. The first delivery was done on 30th April, 2020. The second batch was delivered late but an extension was sought from KEMSA.

662. After supply and delivery of the PPE kits, the company through the agent signed tender documents and the contracts as earlier on agreed.
663. The company was further issued with a purchase order of the items supplied, the price per unit and amount payable to the company.
664. Deekay Relief Limited was paid a total of USD 1,700,000 being the sum total of the 20,000 PPE kits supplied to the Authority at a rate of USD 85 per pair.

2.9.42 GEOKIM SUPPLIES COMPANY LIMITED

Through his written submission to the Committee dated 5th May, 2021, Mr. George Kimuuri Theuri (Director, Geokim Supplies Company Limited) averred as follows:

665. Geokim Supplies Company Limited was incorporated on 8th April, 2008 with Mr. George Kimuri Theuri as the sole Director and shareholder.
666. The company has supplied medical equipment to KEMSA prior to March 2020. On 10th April, 2019 Geokim Supplies entered into a framework contract with KEMSA (No. KEMSA OIT10/2018-2020 Supply of Public Health Commodities).
667. On 9th April, 2020, the Director got a call from KEMSA's procurement department since the company had a framework contract and was instructed to write a letter expressing interest to supply surgical masks.
668. On 14th April, the company wrote to the KEMSA CEO offering to supply 3 ply dace masks at Kshs. 95 per piece. The company indicated ability to supply one million masks.
669. Geokim received a commitment letter from KEMSA dated 15th April, 2020 for supply of 20,000 packs of 50 surgical masks by 30th April, 2020. The company failed to deliver within the stated timeline and were granted an extension by KEMSA.
670. The Director was invited for a meeting at KEMSA offices where the price of the masks was renegotiated to Kshs. 4,500 per box of 50. The company was required to do a quotation dated 7th May 2020 and KEMSA through Mr. Charles Juma responded on 14th May, 2020 confirming contract award for supply of the masks.

671. On 6th May 2020, Geokim Supplies delivered 20,000 pack of 50 surgical face masks to the KEMSA warehouse in Embakasi.

672. Geokim Supplies Company Limited was paid the sum of Kshs. 90,000,000 by KEMSA for the supply of the masks.

2.9.43 SUBMISSION BY DUTCARE HOLDINGS LIMITED

Through his written submission to the Committee dated 4th May, 2021, Mr. Gibbson Kigen (Director, Dutchcare Holdings Limited) averred as follows:

673. Dutchcare Holdings Limited was previously named Jo and Joe Contractors and General Supplies Limited having been incorporated on 1st November, 2013. The name was changed to Dutchcare Holdings Limited on 18th January, 2019.

674. The company was a pre-qualified supplier of KEMSA before March 2020. When the pandemic broke out, the company knew KEMSA would be the agency that procured medical supplies on behalf of government.

675. On 22nd April, 2020 while collecting a notification letter for supply of label printers, the company established that KEMSA was urgently procuring medical commodities under emergency procurement.

676. On 23rd April, 2020 the company wrote an intent letter to supply KEMSA with 10,000 PPE kits and 9,190 face shields. KEMSA issued the company with a commitment letter for supply of the goods.

677. When delivering the intent letter, KEMSA officials emphasized that being an emergency procurement, goods would be delivered first and payment would follow.

678. The company sourced the goods on credit from a Chinese based supplier. The first batch of 8898 kits was delivered on 25th April, 2020. The second batch of 1102 kits and 9190 face shields was delivered on 28th April, 2020.

679. Prior to supply of the goods, Dutchcare Holdings Ltd. had submitted samples to KEMSA and some of the samples did not meet the quality standards and were rejected.

680. The company held two meetings where price was negotiated for the deliveries made. On 12th May, 2020 the price was agreed at Kshs. 9,000 per PPE kit and Kshs. 500 per face shield.
681. A contract for the goods supplied was signed between the company and KEMSA on 3rd June, 2020 and the company was paid Kshs. 94,595,000 on 30th June, 2020.

2.9.44 SUBMISSION BY VISROM COMPANY LIMITED

Through his affidavit to the Committee dated 23rd July, 2021,²⁷ Mr. Samuel Karanji Kimani (Director, Visrom Company Limited) averred as follows:

682. That, Visrom Company Limited was incorporated on 15th April 2011 with Samuel Karanji Kimani and Nathan Wahoro Kimani as directors.
683. That, prior to March 2020, Visrom Company Limited supplied KEMSA medical equipment following a competitive prequalification and notification dated 5th December 2018 and a contract dated 6th February 2019, purchase orders dated 12th February 2019 and 20th March 2019.
684. Visrom Company Limited did an intent letter to KEMSA dated 21st April 2020 to supply 3-Ply Surgical Face Masks indicating that it has 100,000 in its warehouses and had ordered 1,000,000 masks that would be available within 14 days.
685. That KEMSA responded to the intent letter on 29th April, 2020 issuing a commitment letter of to supply 20,000 pieces of Surgical Face Masks 3 Ply Earloop. This was to be delivered by Friday 8th May 2020
686. That, on 15th June 2020, KEMSA informed Visrom Company Limited of notification of award and on the same day, Visrom Company Limited responded to accept the award and Purchase Order issued on 3rd June 2020 and an invoice dated 8th June 2020.

²⁷ Affidavit from Visrom Co limited dated 23rd July 2021

2.10.0 SUBMISSION BY SELECTED GOVERNMENT AGENCIES THAT BOUGHT COVID-19 ITEMS

687. The Committee requested some government agencies that had purchased Covid-19 items for information relating to the prices and the procurement processes they went through while purchasing covid-19 items form comparison with what KEMSA did. The Kenya Red Cross; the Kenya Covid-19 Taskforce; the Kenya Airports Authority and Kenya Rural Roads Authority obliged to the Committee's request.

2.10.1 SUBMISSION BY COVID-19 TASK FORCE

688. Thorough her submission to the Committee dated 16th February 2021, Ms. K. W. Kihara, Secretary to the Task force Fund Board submitted thus:²⁸

689. That the Fund Board purchased the following PPE items with attendant costs:

- Surgical Face Masks at Kshs 5 per unit
- Medical Scrubs at Kshs 400 per unit
- Medical Coveralls at Kshs 650 per unit
- Face Shields at Kshs 90 per unit
- KN-95 Face Masks at Kshs 40 per unit
- Medical Googles at Kshs 200 per unit
- Medical Apron at Kshs 12 per unit

2.10.2 SUBMISSION BY KENYA AIRPORTS AUTHORITY (KAA)

690. Thorough his submission to the Committee dated 8th April 2021, Mr. Alex Gitari, Managing Director of the Kenya Airports Authority submitted thus:²⁹

691. That purchased a number of items to shield her employees against Corona Virus such as hand sanitizers, ordinary face masks, hand held thermal guns; hand sanitizer dispensers, face shields, surgical face masks and decontaminants.

²⁸ Submission by Covid-19 Task force Fund dated 16th February 2021

²⁹ Submission by the KAA dated 8th April 2021

692. That apart from purchases from the KEMRI and KEMSA in which it used direct procurement, KAA requested for quotations from other suppliers.

693. Such purchases happened as early as mid-march 2020.

2.10.3 SUBMISSION BY KENYA RED CROSS

694. Through his submission to the Committee dated 22nd February 2021, Dr. Asha Mohamed, Secretary General of the Kenya Red Cross submitted that the Kenya Red cross locally purchased the following items in the Months of April and May 2020 to address the covid-19 pandemic:³⁰

No	ITEM DISCRIPTION	UNIT PRICE (USD)	QUANTITY
1.	Disposable protective Medical Coverall	6.55	137.62
2.	Disposable Medical Gown size M	4.55	
3.	Disposable Medical gown Size L	4.55	
4.	Mask KN95/FFP2/N95	3.21	1250
5.	Protective Medical Face Shield/Googles	9.26	48.54
6.	Disposable Latex Gloves (100 pcs)	39	
7.	Disposable Shoes Covers (1 pair)	0.89	
8.	Surgical face Masks 3 ply	0.89	

³⁰ Submission by Kenya Red cross dates 22nd February 2021

2.10.4 SUBMISSION BY KENYA RURAL ROADS AUTHORITY (KURA)

695. Thorough his submission to the Committee dated 12th March 2021, Eng. Silas Kinoti, Director General of the Kenya Rural Roads Authority thus:³¹

696. That KURA procured covid-19 pandemic related items by using a request for quotation procurement method.

697. That the supply Chain Department floated quotations from the list of prequalified companies for competitive bidding.

698. That the budget for procurement of the said items was confirmed before engagement in the procurement exercise.

699. That appropriate requisitions were raised by the respective department.

700. That direct procurement was only used while procuring from the KEMRI (being a government entity).

701. That goods were delivered and inspected by an appointed Adhoc Committee before payments were made.

702. That the withheld VAT was remitted to Kenya Revenue Authority as required.

703. That among the items that were procured were the 5000 pcs of Face Masks from Shop 'N' Buy on 23rd April 2020 at a cost of Kshs 550,000 inclusive of VAT. This indicates that one Face Mask was being sold at Kshs 110.

704. That on 18th August 2020, KURA procured 1140 3 ply Re-Usable Face Masks from Jook International Company Limited at a unit cost of Kshs 600.

705. That on 21st August 2021, KURA purchased hand sanitizers at a Kshs 350 per 500ml bottle from KEMRI.

³¹ Submission by KURA dated 12th March 2021

2.10.5 SUBMISSION BY KENYA MEDICAL PRACTITIONERS AND DENTIST CONCIL

706. Thorough his submission to the Committee dated 16th March 2021, Daniel Yumbya, Chief Executive Officer of the Kenya Medical Practitioners and Dentist Council averred thus:³²

707. That the Council procured Surgical Masks and N95 Respiratory Masks during the Covid 19 period.

708. That the Council went through the following procurement process:

- Need identification: raising of a requisition by the administrative department
- Request for quotations from registered suppliers
- Conduct of a market survey
- Opening and evaluation of quotation
- Issuance of a professional opinion by the Head of Procurement Department
- Award
- LPO issued
- Receipt of goods
- Submission of Invoices, Delivery notes and requisitions to Finance Department
- Payments

709. That a packet of 50 pieces of surgical masks was procured at Kshs 4,500 from Bennets Ventres Limited

2.10.6 SUBMISSION BY KENYA NATIONAL HIGHWAYS AUTHORITY

710. Thorough his submission to the Committee dated 126th March 2021, Eng. Peter Mundinia, Director General of the Kenya National Highways Authority averred thus:³³

711. That the authority purchased PPEs to protect its employees.

712. That most of the PPEs were purchased through low value cash for those that had a total cost of less than Kshs 20,000. Others were purchased through direct procurement and request for quotations.

³² Submission by the Kenya Medical Practitioners and Dentist Council dated 16th March 2021

³³ Submission by the Kenya National Highways Authority dated 12th March 2021

713. That a Packet of 50 pieces of Protective face Masks that KeNHA bought on 27th March 2020 from Shop 'N' Buy was going for Kshs 3000. The same was purchased from M/s Nes Polypack ltd at Kshs 850 on 5th August 2020.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND FINDINGS

The Committee made the following observations and findings:

3.1.0 KEMSA MANAGEMENT

3.1.1 Budget Management for Covid-19 related expenditure

714. The Management of KEMSA failed to adhere to relevant public finance management laws in budgeting and incurring expenditure for procurement of Covid-19 HPTs. The Authority exceeded the approved budgets and irregularly utilized Universal Health Coverage (UHC) funds to purchase Covid-19 HPTs.

715. KEMSA incurred a total of Kshs. 8,388,872,706 towards procurement of Covid-19 related items as follows:

	Source of funds	Name of project	Approved Covid-19 Budget (Kshs)	Amount incurred (Kshs)	Amounts Paid (Kshs)
1	KEMSA Universal Health Care (UHC) & KEMSA Capital Budget	Universal Health Care (UHC) & KEMSA Capital budget	0	7,632,068,588	4,712,869,916
2	World Bank	1 CERC- Transforming Health Systems Project (THS)	758,690,583	304,160,118	304,160,118

3	World Bank	2 Kenya		452,644,000	
		COVID-19 Emergency Response Project (CHERP)	454,840,000		0
				8,388,872,706	5,017,030,043

716. The Committee established that during the financial year 2019/2020, the Board of KEMSA approved a total capital budget of Kshs. 4,655,709,000 (Kshs. 2,935,424,524 for pharmaceutical commodities and Kshs. 1,720,284,476 for non-pharmaceutical commodities) to finance capital operations at KEMSA. The Ministry of Health allocated an amount of Kshs. 13,047,073,119 to KEMSA to finance Universal Health Care Coverage (UHC) of which Kshs. 8,520,232,791 was disbursed to the Authority and the rest deferred to the next financial year. A further, amount of Kshs. 333,470,873 was disbursed by Ministry of Health to KEMSA for payment of Tax on USAID procured HPTs.

717. The Ministry of Health approved a total of Kshs. 758,690,583.25 from the World Bank financing to be used by KEMSA for procurement of commodities that were identified by the Laboratory and Resource Mobilization Teams of the National Task Force on Corona Virus Preparedness and Response during a meeting of 18th March, 2020. These items, as communicated by the Ministry of Health letters to KEMSA (Ref. MOH/ADM/1/1/2 and Ref No. MOH/ADM/1/A Vol. II) dated 18th March, 2020 included:

- i. 25,000 Personal Protective Equipment;
- ii. 10,000 pieces of N95 masks;
- iii. 6,000 laboratory sample collection and transportation consumable kits;
- iv. 6,000 laboratory test kits, laboratory supplies and reagents.

718. Despite the communication by the MoH on the available budget and the priority items to be procured, KEMSA Management entered into supplies commitments of Kshs. 2,184,998,962.20 of which goods worth Kshs. 149,075,296 had been delivered as per an email sent to the MoH on 1st April, 2020. The document supplied by KEMSA contained details on the commodities to be procured, the suppliers, quantities and prices.
719. Following a meeting held at the Ministry of Health headquarters on 6th April, 2020, KEMSA was asked to rationalize the budget to align it with the available budget of Kshs. 758,690,583.25. KEMSA via an email dated 7th April, 2020 rationalized the budget by scaling down the procurement budget to match the Ministry's budget ceiling of Kshs. 758,690,583.25. The document submitted by KEMSA once again contained details on the commodities to be procured, the suppliers and prices. They however misled the Ministry that they had scaled down.
720. On 15th April, 2020, the Principal Secretary wrote to the CEO KEMSA approving procurement of goods worth Kshs. 758,690,583.25 under the World Bank funded THS-UCP project. The items to be procured had identified and approved by KEMSA via the email on 7th April, 2020. The approval granted by the Principal Secretary was in relation to the budget ceiling of Kshs. 758,690,583.25 since KEMSA had earlier made commitment worth Kshs. 2,184,998,962.20.
721. KEMSA proceeded to issue commitment letters despite the instruction by the Principal Secretary to procure goods within the available budget of Kshs. 758,690,583.25. As per an internal memo from the Director of Procurement to the Chief Executive Officer dated 24th April, 2020, the Authority had issued commitment letters amounting to Kshs. 3,996,636,560. This was an increase of Kshs. 1,811,637,598 from the commitments issued by 1st April, 2020.
722. The Authority had proceeded to repeatedly issue commitment letters for procurement of COVID-19 HPTs despite the directive by the PS, Health to procure within budget. The Authority increased the value of commitment letters from Kshs. 2,184,998,962.20 on 1st April, 2020 to Kshs. 3,996,636,560 by 24th April and further to Kshs. 5,140,943,000 by 2nd June, 2020.

723. The CEO of KEMSA wrote to the National Treasury via letter Ref. ~~KEMSA/CEO/CS/TNT/2020/063~~ dated ~~2nd June, 2020~~ seeking budgetary support amounting to Kshs. 5,140,943,000 for commitment letters issued for supply of COVID-19 material. The National Treasury noted that KEMSA had bypassed the Ministry of Health in writing directly to Treasury and that the requested funds were not available in letter dated 22nd June 2020.
724. In addition, the procurement director through a memo dated 4th June, 2020, noted that the commitment letters amounted to Kshs. 7,699,260,500.00 against an approved budget of Kshs 4,655,709,000.00 for procurement of HPT'S under KEMSA capital budget for financial year 2019/2020. He noted that this had exceeded the approved budget by Kshs. 3,043,551,500.00. He further stated that the procurement department would only retrospectively process emergency direct procurement to the tune of Kshs 4,638,310,500.00 while commitment letters amounting to Kshs 3,060,950,000.00 did not have a budget line hence could not be processed.
725. The Accounting officer and management of KEMSA engaged in a procurement without an approved Budget contrary to Section 53 (5) of the PP&ADA, 2015 which requires procurement planning to be integrated with budgetary process.
726. The Committee observed that on 12th June 2020, the Chief Executive Officer of KEMSA, Dr. Jonah Manjari, requested the Principal Secretary (PS), Ministry of Health for approval to utilize UHC funds to pay for expenses incurred on emergency procurements for Covid-19 related procurements. This request was declined by the PS in her letter referenced MOH / FIN/1/4 VOL III (77).
727. Despite the lack of approval to re-allocate the UHC Funds to purchase Covid-19 HPTs, the Chairman of the Board of KEMSA, wrote to the Cabinet Secretary for the Ministry of Health in a letter Referenced KEMSA/CEO/ADM/2020/115 dated 20th August, 2020, indicating that KEMSA had utilized the Universal Health Coverage Budget (UHC) to fund COVID -19 related procurements. In the said letter, KEMSA Board wanted to sell at a loss. There was no Board resolution authorizing the Chairman to write to the National Treasury.

728. Despite this letter, both KEMSA management and the Chairman of the Board denied having spent UHC funds for Covid-19 related procurements; an assertion that was contrary to the Committee's observations.

3.1.2 Irregularities in the Procurement Process for Covid-19 HPTs

729. The Committee observed that KEMSA Management had flouted various procurement laws and regulations in procuring Covid-19 HPTs. These include use of retrospective Direct Procurement method without putting in place systems and procedures to guide the use of the procurement method, initiation of procurement by suppliers and not the user department, arbitrary identification of suppliers (others not prequalified), amount of goods to supply and delivery dates and lack of inspection of samples delivered by suppliers. The Authority lacked the budget for procurement of COVID-19 HPTs and failed to conduct a market survey and therefore ended up procuring excess COVID-19 HPTs at exorbitant prices. The table below provides a list of all the suppliers indicating whether they were prequalified.

Name of Supplier	Prequalified	Amount of Business done with KEMSA (Kshs.)	Delivery Status	Delivery date	Paid Amount by KEMSA (Kshs.)
ABSA Chemicals	Yes	21,000,000.00	Delivered	5/14/2020	21,000,000.00
Accenture Kenya Limited	Yes	225,000,000.00	Delivered	5/7/2020	117,000,000.00
AGI	No	21,000,000.00	Delivered	5/8/2020	-
Amiken Ltd	Yes	375,000.00	Delivered	4/23/2020	-
Angelica Medical Supplies Ltd	Yes	310,480,000.00	Delivered	4/23/2020 4/30/2020	339,516,000.00
Antarc Healthcare	Yes	7,350,000.00	Delivered	Immediate	7,070,000.00
Armick Limited	No	19,600,000.00	Delivered	5/19/2020	28,800,000.00
Aromakare Ltd	No	20,000,000.00	Delivered	4/30/2020	19,800,000.00
Aszure Commercial Services Ltd	No	350,000,000.00	Delivered	5/14/2020	347,515,000.00
Bell Industries Ltd	Yes	185,000,000.00	Delivered	5/26/2020	134,625,000.00
Beyond Holdings	Yes	432,000.00	Delivered	4/14/2020	-
Briema Grains Stores	Yes	140,000,000.00	Delivered	5/8/2020	167,000,000.00

Name of Supplier	Prequalified	Amount of Business done with KEMSA (Kshs.)	Delivery Status	Delivery date	Paid Amount by KEMSA (Kshs.)
Caperina Enterprises Ltd	Yes	45,000,000.00	Delivered	5/4/2020	45,000,000.00
Caresha Healthcare Solutions Limited	No	94,500,000.00	Delivered	5/1/2020	94,500,000.00
Climate Evolution Africa Ltd	Yes	540,000.00	Delivered	4/16/2020	-
Crown Healthcare	Yes	46,620,000.00	Delivered	Immediate	-
Dawa Ltd	No	14,000,000.00	Delivered	4/3/2020	-
Deekay Relief Limited	No	180,000,000.00	Delivered	4/21/2020	182,835,000.00
Dominion Supplies (K) Ltd	Yes	174,000,000.00	Delivered	4/21/2020	170,700,000.00
Duke Agencies Ltd	Yes	180,000,000.00	Delivered	5/26/2020	180,000,000.00
Dutch Care Holdings Ltd	No	94,595,000.00	Delivered	4/28/2020	94,595,000.00
Ecotech East Africa Ltd	Yes	20,000,000.00	Delivered	5/14/2020	19,600,000.00
Edumart Enterprises Ltd	Yes	51,921,000.00	Delivered	4/20/2020	51,921,000.00
Encarter Diagnostics Ltd	No	980,000.00	Delivered	Immediate	-
Escobar Kenya Limited	Yes	33,750,000.00	Delivered	4/30/2020	33,750,000.00
Everywhere Distributors Ltd	No	114,000,000.00	Delivered	6/11/2020 6/12/2020 5/12/2020	114,266,578.00
Firsthand Group	Yes	135,000.00	Delivered	4/14/2020	-
Geokim Supplies Company Ltd	Yes	90,000,000.00	Delivered	4/30/2020	90,000,000.00
Gladlab Supplies Ltd	No	135,000,000.00	Delivered	4/30/2020	135,000,000.00
Hamethyst Limited	No	2,700,000.00	Delivered	4/17/2020	2,652,632.00
Harleys Limited	Yes	6,360,000.00	Delivered	Immediate	6,476,754.00
JKUAT	Yes	19,600,000.00	Delivered	4/22/2020	19,400,000.00
KEMRI	No	9,180,000.00	Delivered	6/24/2020	-

Name of Supplier	Prequalified	Amount of Business done with KEMSA (Kshs.)	Delivery Status	Delivery date	Paid Amount by KEMSA (Kshs.)
Kobian Kenya Ltd	Yes	102,600.00	Delivered	4/30/2020	-
Komtel Kenya Ltd	Yes	200,000,000.00	Delivered	Immediate 4/29/2020	223,000,000.00
La Miguella Holdings Ltd	Yes	180,000,000.00	Delivered	5/12/2020	-
Laboratory & Allied Ltd	No	11,088,000.00	Delivered	4/17/2020	6,951,716.00
Lightup Africa	Yes	35,000,000.00	Delivered	Immediate 5/29/2020	34,650,000.00
Medilife Biologicals	No	150,000,000.00	Delivered	5/25/2020 5/14/2020	-
Medisystem Supply & Services Ltd	No	129,600.00	Delivered	Immediate	-
MEDS	No	4,902,156.00	Delivered	Immediate	-
Megascope Healthcare (K) Ltd	Yes	1,103,500,000.00	Delivered	4/30/2020 4/30/2020 4/31/2020 7/15/2020 4/14/2020 4/30/2020 4/30/2020 4/27/2020	56,500,000.00
Meraky Health Care	Yes	140,000,000.00	Delivered	4/27/2020	140,000,000.00
Nairobi Enterprises Ltd	Yes	83,219,004.00	Delivered	Immediate	16,701,115.00
Nanopay Limited	No	35,000,000.00	Delivered	5/13/2020	34,979,000.00
Neitor Solutions Ltd	No	12,500,000.00	Delivered	Immediate	13,750,000.00
NEL	No	50,000,000.00	Delivered	4/30/2020	-
Nhajol Enterprises	Yes	18,000,000.00	Delivered	4/20/2020	18,000,000.00
Northlink GSC Limited	No	135,000,000.00	Delivered	5/2/2020	135,000,000.00
Omaera Pharmaceuticals	Yes	50,000,000.00	Delivered	Immediate	49,122,807.00
Panim Holdings	Yes	500,000.00	Delivered	Immediate	550,000.00
Pasaiba Tournaline	Yes	4,560,000.00	Delivered	3/6/2020	-

Name of Supplier	Prequalified	Amount of Business done with KEMSA (Kshs.)	Delivery Status	Delivery date	Paid Amount by KEMSA (Kshs.)
Petrel Agencies Ltd	Yes	4,297,000.00	Delivered	Immediate 4/27/2020	124,795,000.00
Protetta Holdings Ltd	Yes	73,500,000.00	Delivered	Immediate	42,000,000.00
Purma Holdings Ltd	Yes	93,500,000.00	Delivered	5/8/2020	120,500,000.00
Regal Pharmaceuticals Ltd	No	2,520,000.00	Delivered	4/27/2020	2,304,000.00
Sagana Holdings Limited	Yes	22,342,500.00	Delivered	4/29/2020	21,846,000.00
Setlife Medical Solutions Ltd	No	18,402,428.25	Delivered	Immediate	-
Shop N Buy Ltd	No	970,000,000.00	Delivered	5/20/2020	-
Sky Light Chemicals Ltd	No	18,800,000.00	Delivered	4/6/2020 5/21/2020	-
Teleflex Medical Technologies Ltd	Yes	45,600,000.00	Delivered	4/14/2020 Immediate	45,600,000.00
Thermosystems E.A. Ltd	Yes	6,285,000.00	Delivered	6/12/2020	-
Tradesoft Ltd	yes	5,548,500.00	Delivered	4/14/2020	5,548,500.00
TrippleAge Investments Ltd	Yes	14,000,000.00	Delivered	5/20/2020	-
Tronz Ventures Limited	Yes	31,730,000.00	Delivered	4/9/2020 4/20/2020	31,484,386.00
Tropical Twin Investment Ltd	No	4,200,000.00	Delivered	Immediate	3,960,000.00
Villa Surgical & Equipment Limited	Yes	7,000,000.00	Delivered	5/8/2020	142,000,000.00
Wallabis Ventures Limited	Yes	119,500,000.00	Delivered	5/4/2020 4/27/2020	142,000,000.00
Ziwala Ltd	No	105,000,000.00	Delivered	5/8/2020 5/30/2020	105,000,000.00
Bennets Ventures Limited	Yes	180,000,000	Delivered	4/30/2020	180,000,000.00
Leon Interiors Deco & Designs	Yes	42,500,000	Delivered	6/12/2020	42,500,000.00

Name of Supplier	Prequalified	Amount of Business done with KEMSA (Kshs.)	Delivery Status	Delivery date	Paid Amount by KEMSA (Kshs.)
Murray and Sons Ventures Limited	Yes	45,000,000	Delivered		45,000,000.00
Ohiyo Company Limited	No	67,500,000	Delivered		67,500,000.00
Regal Freighters	No	270,000,000	Delivered	27 th , 28 th and 29 th April 2020	270,000,000.00
Remyhill Company Limited	No	15,750,000	Delivered		15,750,000.00
Set Life Solutions Limited	No	44,089,428	Delivered	Various dates	44,089,428.00
Visrom Company Limited	Yes	90,000,000	Delivered	8 th & 18 th May 2020	90,000,000.00
Cirem Contractors Limited	Yes	18,000,000	Delivered		18,000,000.00
Hakksson Medpharm Suppliers Limited	No	765,000	Delivered		765,000.00
TOTAL					3,939,265,488.00

730. KEMSA used Direct Procurement method to source for COVID-19 HPTs whereby commitment letters were issued to suppliers and then the procurement process followed after deliveries were made. Use of commitment letters is not provided for in the Procurement law; a fact that was admitted by all the suppliers that appeared before the Committee including the Solicitor General and the PPRA.

731. The Committee observed that the Management of KEMSA commenced procurement of COVID-19 related items on 18th March, 2020 using retrospective Direct Procurement method without putting in place systems and procedures to guide the use of retrospective Direct Procurement contrary to Section 69 (2) and Section 45 (1) of the PPADA, 2015. Section 69 (2) of the Public Procurement and Asset Disposal Act, 2015 allow the use of retrospective Direct Procurement method, under circumstances of urgency, on condition that

this method is properly approved by the Accounting Officer (requisitions were not done, ~~there was no prior approved budget, overshoot of budget, and irregular use of direct procurement~~). While the approval was sought by the Director of Procurement and approved by Accounting Officer, this occurred retrospectively.

732. Section 45 (1) of the PPADA, 2015 requires that, for the purpose of ensuring that the Accounting Officer's decisions are made in a systematic and structured way, an Accounting Officer, shall establish systems and procedures to facilitate decision making for procurement and asset disposal.
733. On 24th April, 2020, the Director of Procurement at KEMSA issued an internal memo to all Heads of Departments, outlining the procedures to be followed in procuring COVID-19 related items. The memo, required that, prospective suppliers were to submit letters of intent to supply goods to KEMSA, provide a sample that would be evaluated for conformity to the required technical specifications and that the procurement be within the approved budget. By this point, KEMSA had issued commitment letters worth Kshs. 3,996,636,560. This was therefore a retrospective attempt to sanitize the procurement.
734. KEMSA Management commenced procurement without sufficient funds to meet the obligations of the resulting contract which was in contravention of Section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015). Section 43 (b) of the Public Finance Management Regulations (PFMR), 2015 also requires Accounting Officers to ensure public funds are only utilized for the purpose to which they were appropriated.
735. The Chief Executive Officer for KEMSA approved a Procurement Plan totaling to Kshs. 5,096,027,600 for COVID-19 Health Products and Technologies (HPT's) to be funded using KEMSA capital budget. This amount was higher than the available capital budget. Though the procurement plan indicated that the procurements were to be funded by KEMSA capital budget, there was no approved budget allocation for Covid-19 related procurements in both the KEMSA Capital Budget and the Universal Health Coverage (UHC) Budget.
736. There was no evidence that KEMSA contacted and exhausted existing prequalified suppliers to engage in supply of COVID-19 items. Further, there was no advertisement or notification to all prospective suppliers. Section 55 of PPADA, 2015 provides for eligibility criteria for

bidders of contracts in procurement whose contravention leads to automatic disqualification. KEMSA failed to conduct any financial or technical evaluation or background check of the suppliers including verification of tax compliance status. All suppliers including those who had not been prequalified were only required to submit letters of intent indicating item description, quantities, estimated delivery date, and were given commitment letters to supply Covid-19 HPTs.

737. The Authority contracted firms that had that had been in existence for less than one year to supply Covid-19 HPTs. Such companies could not therefore be deemed to have the necessary qualification and experience in supply of specialized medical equipment/products. The table below shows a list of suppliers and their dates of registration.

No	Name of the Company	Date of Registration
1.	Light up Africa Limited	28 th March 2014
2.	Nairobi Enterprises Limited	16 th August 1984
3.	Aromakare Limited	23 rd Sep 2016
4.	Aszure Commercial Services Limited	9 th Feb 2017
5.	Bennetts Ventures Limited	13 th Sep 2018
6.	Salgad Investment Limited	21 st Nov 2013
7.	Ohiyo Company Limited	23 rd Nov 2018
8.	Gladlab Supplies Limited	30 th March 2015
9.	Komtel Kenya Limited	10 th Oct 2014
10.	Sagana Holdings Limited	4 th Nov 2014
11.	Dominion Supplies (K) Limited	18 th June 2007
12.	Petrel Agencies Limited	21 st Nov 2006
13.	Trade Soft Limited	3 rd May 2017
14.	Hamethyst Limited	3 rd May 2017
15.	Firsthand Group Limited	4 th Nov 2016
16.	Remyhill Company Limited	23 rd July 2012
17.	Murray and Sons Venture Limited	24 th Jan 2012
18.	Geokim Supplies Company Limited	4 th Aug 2008
19.	Visrom Company Limited	15 th April 2011
20.	Escobar Kenya Limited	1 st July 2014
21.	Northlink GSC Limited	5 th May 2008
22.	Cirem Contractors Limited	7 th Jan 2015
23.	Leon Interior Deco and Designs	5 th Oct 2012
24.	Caresha Healthcare Solutions Limited	22 nd June 2018
25.	Teleflex medical technologies Limited	3 rd Dec 2017
26.	Pasaiba Tourmaline Limited	4 th Sep 2012
27.	Climate Evolution Africa	12 th Sep 2012

28.	Medlife Biologicals	7 th Jan 2017
29.	Encartar Diagnostics Limited	12 th March 2008
30.	Shop 'N' Buy Limited	14 th Feb 2020
31.	LA Miguela Holdings Limited	21 st March 2014
32.	Nhajol Enterprises	17 th Dec 2012
33.	Dutch care Holdings Limited	30 th Oct 2013
34.	Protetta Holdings Limited	18 th Nov 2013
35.	Laboratory and allied Limited	10 th Nov 1970
36.	Regal Pharmaceutical Limited	26 th March 1981
37.	Medi-system supplies and services limited	4 th Sept 2008
38.	Beyond Holdings Limited	23 rd March 2015
39.	Armick Limited	13 th Oct 2000
40.	Edumart Enterprises Limited	15 th Nov 2011
41.	Regal Freighters Limited	18 th April 2018
42.	Villa Surgical and Equipments Limited	4 th March 2009
43.	Wallabis Ventures Limited	15 th April 2011
44.	Caperina Enterprises Limited	13 th Jan 2006
45.	Meraky Healthcare Limited	2 nd Jan 2013
46.	Absa Chemical Limited	18 th Feb 2019
47.	Tronz Ventures Limited	11 th June 2015
48.	Tripple Age Investment Limited	12 th Sept 2013
49.	Thermosystems East Africa Limited	13 th July 2009
50.	Ziwala Limited	6 th Nov 2014
51.	Briema Grains stores Limited	31 st Jan 2019
52.	Eveywhere Distributers Limited	15 th march 2007
53.	Nanopy Limited	22 nd Aug 2019
54.	Megascope Healthare (K) Limited	25 th July 2002
55.	Accenture Kenya Limited	13 th Oct 2006
56.	Meldian Enterprises Limited	25 th March 2017
57.	Accenture Limited	29 th March 2019
58.	Deekay Relief Limited	19 th Nov 2012
59.	Angelica Medical Supplies Limited	20 th Jan 2003
60.	Duke Agencies Limited	21 st August 2008
61.	Purma Holdings Limited	13 th Feb 1996
62.	Bell Industries Limited	26 th Aug 1991
63.	Meditest Diagnostic Services Limited	14 th April 2016
64.	Crown Healthcare Solutions Limited	6 th March 1998
65.	Sky light Chemicals Limited	5 th Feb 2008
66.	Dawa Limited	5 th Aug 2004
67.	Omaera Pharmaceuticals Limited	9 th Aug 1995
68.	Neitor Solutions Limited	11 th May 2018
69.	Panim Holdings Limited	6 th July 2016
70.	Tropical Twin Investment Limited	16 th Nov 2015
71.	Antarc Healthcare Limited	9 th May 2016

72.	Harleys Limited	9 th Nov 1953
73.	Kobian (Kenya) Limited	13 th Feb 1979
74.	Set Life Medical Solution Limited	16 th Sept 2011
75.	Kilig Limited	22 nd Jan 2020
76.	Haksson Medpharm Suppliers	5 th July 2016
77.	Echotech East Africa Limited	15 th Nov 2011
78.	Meds Company	28 th Oct 2010
79.	Kemri	
80.	JKUAT Enterprises Limited	8 th Oct 2002
81.	Amiken Limited	8 th June 1988
82.	Masson Austin	May 2014
83.	Lab and Allied Limited	
84.	Pasaiba Tourmaline Limited	
85.	Medi System Supply Services	
86.	Cirem Contractors Limited	
87.	Abysinia Iron & Steel limited	
88.	Trade Soft limited	
89.	Beyond Holdings Limited	
90.	Maray & Sons Ventures Limited	
91.	F & S Scientific Limited	
92.	Zebra Investments	
93.	Bed Limited	
94.	Shona EPZ	

Source: Business Registration Services

738. KEMSA failed to conduct market survey to establish the market rates that they intended to procure and sell. Section 103 (e) of PPADA, 2015 provides that direct procurement can be used for the acquisition of goods, works or services by a public entity provided that the acquisition price is fair and reasonable and compares well with known prices of goods, works or services in the circumstances. Regulation 8 (3) (z) of PPRD, 2006 states that among the functions of a procuring unit includes to “carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee. The Committee noted that KEMSA did not conduct any market survey as a basis of price negotiation.
739. The Authority settled on a pre-determined price for 3-ply masks (Kshs. 4500 per box of 50), (KN95) and personal protective equipment (Kshs. 9000 per kit) and proceeded to buy at these amount even in instances where suppliers quoted lower amounts like Ms. Gladlab Lit that was willing to supply the 3 ply masks at 30 dollars. Even though Dr. Manjari claimed that there was a market survey done, the Committee was of the view that one page document that

was done and shared on email by Jackyline Mainye could not meet an objective criteria of a market survey. ~~Example of Companies that quoted less but were not given business were Regal Freighters and Masson Austin.~~

740. Commitment letters were not part of legally recognised documents in procurement process as provided for in the PPDA, 2015. Section 104 of PPADA, 2015 stipulates the procedure which an accounting officer of a procuring entity should adhere to in relation to direct procurement, specifically section 104 (a) states that the Accounting Officer should issue a tender document which shall be the basis of tender preparation by tenderer and subsequent negotiations. Commitment letters do not fall under the statutorily prescribed procurement documents under the second schedule of the PPDR, 2006. All suppliers of COVID-19 items were issued with Commitment letters signed by the CEO which are not stipulated within the PPADA, 2015 as part of legitimate tender documents. On 4th June, 2020, through a memo, the Director Procurement noted that commitment letters amounted to Kshs. 7,699,260,500.00.
741. KEMSA management's claim that commitment letters were provided in international procurement legal instruments which form part of the laws of Kenya by dint of Articles 2(5) and 2(6) of the Constitution, the management could neither identify specific provisions of the said legal instruments prescribing for commitment letters nor indicate whether Kenya had ratified them.
742. There was variance in the procurement processes where some entities like Harleys and Nairobi enterprises Limited refused a commitment letter from KEMSA and insisted on use of the procurement processes outlined in the Procurement Act (2015). The Committee noted that there were inconsistencies in how the procurement process was done by KEMSA in total disregard of the law, where some companies were referred to some form of bidding and others were just given the commitment letter based on their letters of intent. The fact that KEMSA followed due process of procurement law in dealing with the two companies, is proof that KEMSA knew what the law demanded of them but instead they deliberately disregarded the law when dealing with some entities.

743. The Committee observed that KEMSA did not carry out a needs assessment to establish the demand for Covid-19 HPTs. All evidence points to a well-choreographed supplier-driven procurement that was initiated through intent letters from suppliers and initiation of procurement process without planning and budgeting. The use of direct procurement under the pretext of urgency could not be justified when 97% of the HPTs procured were still lying at KEMSA Warehouses at the time of the audit. The procurements were conducted to benefit other parties to the detriment of the Kenyan taxpayer.
744. All these violations of law were brazenly committed by KEMSA Management despite clear guidelines issued by the Solicitor General and the Public Procurement Regulatory Authority with regards to emergency procurement of Covid-19 HPTs by public agencies. The Solicitor General issued on 17th April 2020 general guidelines on urgent Covid-19 procurement to Ministries, Departments and Agencies.
745. The procurement was to be carried out subject to provisions of Section 103 of the Public Procurement and Assets Disposal Act (2015). The advisory by the Solicitor General further cited the need to comply with Section 104 of the Act which provides procedures to be followed including the form of tender documents, tender evaluation and approvals as well as contract signing. Regulation 22 of the PPDA Regulations (2006) provides approvals needed before commencing a procurement process including purchase requisition from user department approved by the Head of Department, relevant information including estimated market value of goods and availability of funds.
746. KEMSA management deliberately misconceived the clear meaning of the law in Section 69(2) of the PPADA, by undertaking retrospective direct procurement without a basis in law despite having received an advisory opinion from PPRA. Further PPRA informed the committee that pursuant to Regulation No 90(1b) of the Public Procurement and Asset Disposal Regulation, KEMSA failed to notify the PPRA of the use of direct procurement method.
747. The table below indicates some of the procurement irregularities committed by KEMSA Management and the managerial responsibility:

	Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
1	Utilization of Universal Health Coverage (UHC) and Capital Budget to fund COVID-19 related procurements without authority of the Board, and MOH.	Sections 6(2) (a) and(b), of the KEMSA Act, Section 68 (1) of the Public Financial Management Act, 2012 that requires Accounting Officers to ensure resources within their entities are used in a lawful and authorized, effective, efficient, economical and transparent manner.	7,632,068,588	The Board, the Chief Executive Officer (KEMSA Act, Section (8) (3) (c) (ii) and (iii)) of KEMSA.
2	Use of procurement methods unknown to the existing laws.	Sections 69 (2), 103 and 104 (C) of the Public Procurement & Asset Disposal Act, 2015. Section 68 (1) (2) (e) of PFMA. The laws requires among others approvals to procedures properly dated, documented and filed except in response to procurement for urgent needs.	8,388,872,706	The Chief Executive Officer, Procurement Director, Finance Director of KEMSA

	Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
	Use of Commitment letters to confer contractual obligations contrary to the law	Section 68(1) (2) (e) of PFMA		
	Failure to approve the procurement plan during the pandemic.	Section 6 (1), (2) (a) of the KEMSA Act, where the board shall have all powers necessary for the proper performance of the Authority.		The Board.
3	Commencing COVID-19 related procurement processes without approved budgets.	Article 227 (1) of the Constitution, Section 45 (3) and 53 (8) of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) Section 6(2) (a) and (b) of the KEMSA Act, that requires Accounting Officers of Procuring Entities not to commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are	7,780,281,788	The Board, the Chief Executive Officer, the Procurement and Finance Directors of KEMSA

	Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
		reflected in its approved budget estimates.		
4	Failure to integrate COVID-19 related procurement plan to the budget process.	Section 53 (5) of the Procurement and Asset Disposal Act, 2015 that requires procurement planning to be integrated to budgeting process.	7,780,281,788	The Board, and the Chief Executive Officer of KEMSA.
5	Inefficient stock management procedures exposing KEMSA to value for money risk.	Article 227 (1) of the Constitution, Section 45 of PPDA and Paragraph 139 (2) of the Public Finance Management Regulations, 2015, Section 19(1) (a), (b) (c) and (f) of KEMSA Act. The law requires accounting officers to ensure that processes and procedures are in place for effective, efficient, economical and transparent use of government assets.	6,346,784,383	The Board, the Chief Executive Officer, Procurement Director, the Director Commercial Services of KEMSA

	Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
6.	Failure to ensure procurements under KEMSA Capital Budget were guided by adequate market survey.	Article 227 (1) of the Constitution, Section 45 of PPDA and Paragraph 139 (2) of the Public Finance Management Regulations, 2015, Section 19(1) (a), (b) (c) and (f) of KEMSA Act. requires accounting officers to ensure that processes and procedures are in place for effective, efficient, economical and transparent use of government assets.		The Board, the Chief Executive Officer, Procurement Director, the Director Commercial Services of KEMSA
7	Awarding contracts to private companies without putting in place systems and procedures in accordance with the law.	Article 227 (1) of the Constitution, Section 45 of PPDA and regulation 139(2) of the Public Finance Management Regulations, 2015.		Chief Executive Officer, and Procurement Director of KEMSA and Finance Director.
8.	Failure to notify the Cabinet Secretary on any arising matter	Section 68 (2)(f)		The CEO, KEMSA

3.2 SPECIFIC OBSERVATIONS ON KEMSA SUPPLIERS

The Committee received evidence from suppliers of Covid-19 HPTs to KEMSA. The Committee identified a sample number of suppliers that did business of more than Ksh 80 million to adduce evidence. Further, the criteria for identifying the suppliers included the highest value of supplies made, the date of delivery, companies that were prequalified suppliers, companies that had been paid for deliveries and companies whose payments were outstanding. The Committee also received evidence from the companies which had been flagged in the Special Audit Report for various reasons.

748. With the exception of a few companies like Harleys Limited and Nairobi Enterprises Limited, the suppliers of Covid-19 HPTs were in violation of the PPDA 2015 by entering into a procurement with a public entity using commitment letters. Commitment letters are not part of legal documents in procurement process as provided for in the PPDA, 2015. Section 104 of PPADA, 2015 stipulates the procedure which an accounting officer of a procuring entity should adhere to in relation to direct procurement, specifically section 104 (a) states that the Accounting officer should issue a tender document which shall be the basis of tender preparation by tenderer and subsequent negotiations.

749. Harleys Limited and Nairobi Enterprises Limited refused to participate in the procurement of Covid-19 HPTs on the basis of commitment letters issued by KEMSA. This forced the Authority to supply the two companies with tender documents as stipulated in Section 104 of the PPDA, documents that were duly filled before the companies supplied commodities to KEMSA. The fact that the two companies were able to make KEMSA comply with the Procurement law despite claims of urgency by the Authority is an indictment of KEMSA's procurement processes and proof that the Authority could have complied with the law if it so wished.

750. M/s Gladlab supplies Ltd submitted a letter of intent dated 8th April 2020 for supply of Surgical Face Masks at a price of Ksh 95 per piece. On 9th April 2020 they submitted another letter to supply the face masks at a price of USD 30 per box of 50's. A commitment letter was issued to them to supply 30,000 packs of 50's. After delivery, they were issued with a tender document which they completed and returned. They quoted a new price of Ksh 4,750 per box

of 50's in the tender document. The Negotiation committee then negotiated the price to Ksh 4,500 per box of 50's.

751. The intent letters done and commitment letters given had no price indications in them. These were left for negotiations after delivery. One wonders the basis upon which commitments were done.

752. Commitment letters could not be regarded as valid contracts as claimed by KEMSA. A valid contract can only exist after the requirements of Section 135 of the Public Procurement and Disposal Act 2015 have been made; contract signed by both the supplier and the accounting officer.

753. Very few suppliers were given sample receipt vouchers by KEMSA upon submission of their samples for testing. It was only Harley's, Nairobi Enterprise Limited and Omaera Pharmaceuticals that could produce evidence of sample receipt vouchers.

3.3 COMMITTEE OBSERVATIONS ON THE MANAGEMENT OF KEMSA

754. From the submissions of management of KEMSA, the Committee observed that –

- 1) The total approved KEMSA budget for the financial year 2020/21 was Kshs. 4,655,709,000.
- 2) Management denied use of UHC Funds to purchase Covid19 items despite the Board Chairman of KEMSA writing to PS Health on 20th August 2020 indicating that the Authority had utilized UHC Funds to purchase Covid19 items without necessary approval from the Board or the Ministry.
- 3) It was not possible for the Committee to establish whether KEMSA Management utilized UHC Funds. When the KEMSA Management appeared before the Committee, it verbally confirmed usage of UHC Funds only to retract later in writing that it did not use. Equally, the Chairman of the KEMSA Board's letter to the Cabinet Secretary dated 20th August 2020 confirmed that KEMSA used UHC Funds; he verbally retracted when he appeared before the Committee.

- 4) The Principal Secretary for Health wrote to KEMSA CEO on 11th August, 2020 with ~~instructions not to utilize UHC Funds for payment of Covid-19 Supplies.~~
- 5) The only amount that KEMSA got an approval from the Principal Secretary to purchase Covid items was Kshs. 758,000,000 which was from World Bank.
- 6) Despite demand driven supply system used by KEMSA, there was no order for Covid19 medical supplies from Counties. As a result, 97% of the Covid19 supplies purchased by KEMSA were still at warehouses at the time of audit. Even after the meeting of 21st April 2020, the KEMSA proceeded to issue Commitment letters worth Kshs 4.1 billion.
- 7) Despite the Ag. CEO confirming KEMSA having prequalified suppliers, it proceeded to receive letters of intent from suppliers not prequalified.
- 8) Commitment letters were irregularly issued before the accounting officer put in place systems and procedures to guide the use of retrospective direct procurement contrary to Section 69 (2) of the PPDA Act, 2015.
- 9) There was no advertisement, request for proposals or call for quotations from the companies that supplied Covid material to KEMSA. There was no public notification that KEMSA would be purchasing Covid supplies hence raising questions on how ‘unsolicited’ letters of intent to supply goods were issued by the companies.
- 10) No market survey was conducted to establish the market rates for the equipment to be supplied. The alleged market survey was pre-planned negotiated prices.
- 11) There was no market survey, needs assessment nor demand by Counties to establish the equipment and items that KEMSA would need to procure. This indicates that KEMSA over procured without an objective assessment and forecasting of the existing demand for the products.
- 12) By the time KEMSA developed and issued guidelines on use of Direct Retrospective Procurement method on 24th April 2020, the Authority had issued commitment letters amounting to Kshs. 3,996,636,560.

- 13) KEMSA did not have the funding to pay outstanding amounts to suppliers for goods delivered.
- 14) Management confirmed that the total acquisition of Covid19 stock was valued at Kshs. 7,632,068,588 out of which stock valued at Kshs. 6,279,531,019 was still lying in KEMSA warehouses. If the Stock in the KEMSA warehouse was to be sold at current market prices would realize Kshs. 4,008,523,203 resulting in a loss of Kshs. 2,338,261,175.
- 15) No technical or financial evaluation was carried to determine the capacity of the companies that supplied Covid-19 material. The commitment letters were issued based on the company's stated ability to supply the required items.
- 16) The Authority received instructions on which items to purchase for the World Bank Funding. The amounts spent by the Authority from the World Bank Funds were accounted for as per meetings between the Authority and the lender.
- 17) The some companies were paid within 5 days of while bills in respect of others are pending to date for insisting on the right procurement procedure to be followed. The explanation offered on documentation delay was not satisfactory considering that all the documents highlighted above were to come from KEMSA.
- 18) Though KEMSA management averred that it was the policy of KEMSA to pay AGPO within 30 days, the Committee received evidence that several companies were paid without going through quality assurance. These shows that some companies were given preferential treatment in processing of payment.
- 19) KEMSA bought goods worth Kshs. 7.6 billion yet by the time of audit, 97% of the purchased goods were still lying in the warehouses meaning that the procurement did not meet the criteria of "urgent need" as defined in Section 2 of the PPDA.
- 20) Most companies were not given sample receipt voucher to show that they submitted samples. Harley's Ltd, Omaera Pharmaceuticals and Nairobi Enterprise Limited was able to show such a voucher. In the absence of sample receipt vouchers, it is not easy to confirm whether such samples were indeed submitted and passed the QA. Further, goods may have

been delivered before samples were submitted and passed through QA. Letters done by Dr. Aduda of QA to suppliers informing them that their samples had passed QA test were done way after deliveries had been made. This was a clear validation exercise of an irregular process.

- 21) On negotiations for the price, it was inconceivable that all companies ended up negotiating a similar price. Some intent letters from suppliers and all Commitment letters from KEMSA Management had no price indication. Mr. Wanyonyi and Buluma confirmed that it was unprecedented that negotiations with all companies could return a similar price across the board. The Ag. CEO averred that KEMSA had minutes on all negotiations done by ad hoc committees constituted from various departments. But even if there were such minutes, it was not possible for all the negotiations to return a similar price. This was a case of a clear predetermined price.
- 22) Despite the knowledge that the Stock at the stores was not moving due to absence of demand, KEMSA management nonetheless continued to issue commitment letters amounting to willful commission of a culpable offence.
- 23) There was no market survey done prior to engagement in direct procurement. A one page document from Jackline Mainye cannot qualify as a market survey. Though Dr. Manjari insisted on the existence of a market survey, both the Corporation Secretary (Mr. Wanonyi) and Manager of Procurement (Mr. Buluma) had a contrary view.
- 24) Though there was evidence from KEMSA supporting its assertion that it reported direct procurement to PPRA, the Director General of PPRA could not confirm this assertion at the time of compiling this report.
- 25) On the budget, KEMSA had a budget of Kshs. 4.6 billion but it was overshoot to Kshs. 7.6 billion in violation of the applicable law. There was no evidence that the director of Finance and Strategy advised management of this unlawful expenditure apart from the Execom meeting of 20th April 2020 and the later memo by the director of Procurement. The director of Finance may have therefore abdicated his role in budget management.

- 26) The Director of Finance & Strategy and the suspended CEO issued letters to financial institutions after 20th April 2020 confirming KEMSA had contracted companies to supply PPEs despite the resolution of the Directors' meeting of 20th April 2020 stopping further procurement. There was no enforceable contract for the Covid-19 procurement contemplated in Section 135 of PPAD 2015.
- 27) The Director of Finance & Strategy confirmed that he was a signatory to payments together with the CEO and the Commercial Director.
- 28) Upon scrutiny of the contracts, the Committee established that the Head of Legal Services witnessed and executed all the impugned contracts without duly considering the validity of the same. This omission amounts to professional negligence and abuse of his office.

3.4 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF THE KEMSA BOARD.

755. From the submissions of KEMSA Board, the Committee observed that -

- 1) The Committee notes that paragraph 2 of the schedule of the KEMSA Act prescribes a minimum period the Board can meet in a financial year. The maximum number of sittings in a financial year is not provided for thereby allowing the Board to meet as many times as possible to provide guidance to the Authority. However, the Committee established that the Board met only twice on 19th March 2020 and 11th June 2020 to deliberate on its preparedness for covid-19 pandemic. There was no evidence that the Board considered the financial obligations of the Authority for the procurement of covid-19 related supplies. The Board therefore failed to offer leadership and oversight to management during a pandemic and, without a doubt, abdicated its role.
- 2) The accusations and counter-accusations that reigned within members of the Board during the months of March and April 2020 is a manifestation of the fact that the Board was dysfunctional during the period that the pandemic first occurred and hence could not provide leadership at a time of need.

- 3) Under the applicable law it was unlawful to overshoot the budget, the Board abdicated its ~~duty to protect the Budget and to request for additional funding from the exchequer through~~ the MOH as the case may be had it provided proper leadership to the management.
- 4) The Committee made a determination that KEMSA used UHC funds contrary to the law. This is based on the Special Audit Report, and the letter by the Chairman of the Board to the Cabinet Secretary MOH dated August 20th, 2020. Moreover, the procurement plan for financial year 2019/2020 did not have provision for purchase of Covid-19 supplies.
- 5) The chairman of the Board exceeded his powers under the applicable law by writing to the Cabinet Secretary without the relevant resolution of the Board. His letter is therefore irregular and unprocedural.
- 6) Once KEMSA supplies medical goods and equipment to Counties from UHC funding, the amount received is converted to KEMSA Capital Funds. Part of the amounts utilized by KEMSA to purchase Covid-19 material were from such funding.

3.5 COMMITTEE OBSERVATIONS FROM SUBMISSION OF THE SUSPENDED CEO OF KEMSA

756. From the submissions of Dr. Jonah Manjari, the suspended CEO, KEMSA, the Committee observed that -

- 1) The suspended CEO confirmed that KEMSA had engaged companies that had not been prequalified to supply COVID-19 HPTs.
- 2) The Commitment letters were irregularly issued before the accounting officer put in place systems and procedures to guide the use of retrospective direct procurement contrary to Section 69 (2) and 45(1) of the PPDA Act, 2015. The CEO confirmed receiving guidelines on tendering from the Solicitor General on 17th April 2020 while the memo on guidelines on retrospective procurement were issued on 24th April 2020. However, procurements had been done before such guidelines were issued which was an illegality from management.

- 3) No technical or financial evaluation was carried to determine the capacity of the companies that supplied Covid-19 material. The commitment letters were issued based on the company's stated ability to supply the required items.
- 4) Though the suspended CEO contended that KEMSA did not utilize UHC Funds to procure COVID-19 HPTs, the Committee ascertained that UHC funds were unlawfully utilized as shown in the letter from the Chairman of the Board to the Cabinet Secretary dated 20th August 2020 and as affirmed by the Special Audit Report.
- 5) KEMSA had to seek authority from the Principal Secretary, Health before transferring funds from the UHC account to the KEMSA Capital revolving medical fund. Though the suspended CEO stated that there was approval to transfer funds from the UHC Fund to the KEMSA Capital fund, the Committee found out that there was no such approval.
- 6) The KEMSA Management overshot the budget for the FY 2019/2020. It was erroneous for the CEO to rely on the President's speech of 27th April, 2020 which allegedly directed the counties to buy Covid 19 HPTS using UHC funds. By this point in time, KEMSA had issued commitment letters amounting to Kshs. 3,996,636,560.
- 7) Further the CEO's reliance on the Chairman's advice to Management to prepare adequately for COVID-19 as per resolution of a Board meeting held on 19th March, 2020, which meeting did not give an approval to purchase covid related materials and cannot therefore be an excuse to break the law.
- 8) There were no guidelines put in place before the procurement method was determined. The guidelines were put in place on 24th April, 2020 after the procurement process had begun.
- 9) The Committee determined that the document dated could not deemed to be a market survey as conceived by Section 3(Z) of the 2006 PPAD Regulations (2006). The document is a mere email from the head Sales and Marketing, to the Director Procurement forwarding a list of market prices. The prices in the said email were the exact replica of the purported negotiated prices. The Committee therefore found that the prices were actually pre-determined.

- 10) The Letter from the PS, Health dated 15th April 2020 approved an initial amount of ~~Kshs.758M and a subsequent expenditure of Kshs. 300M respectively. The Committee~~ found no justification for the overspend by the CEO. The CEO'S claim that he was asked to procure either by the National Covid-19 Taskforce or the PS Health was unfounded.
- 11) The Committee established that the suspended CEO's claim that the Minutes of the KEMSA Board meeting held on 19th March, 2020 had been edited to be false since he was by law the secretary to the Board.
- 12) The Committee established that KEMSA's directors meeting held on 21st April 2020 ordered a stoppage for the issuance of commitment letters. Despite this, the Committee found evidence to the effect that the CEO continued issuing commitment letters in violation of both the Director's directive and the law.
- 13) The Committee established that commitment letters to suppliers who did not deliver within the specified timelines were void *ab initio*. There was no justification of renewing the said letters when the suppliers failed to deliver within the stipulated time.
- 14) The Committee found the memo by Director of Procurement dated 24th April, 2020 as authentic. The memo contained guidelines which the Agency ought to have followed during procurement. Although the suspended CEO disowned the memo as fake, there was overwhelming evidence to the contrary. The existence of this memo was confirmed by all the other directors and the Secretary of the Director Procurement.
- 15) The Committee adjudged that there were no prices ascribed to the commitment letters thus exposing the Agency to huge financial commitments and compromise.
- 16) The Committee made a finding that the CEO was both negligent and incompetent in execution of his mandate. Faced with a pandemic, and nascent issues requiring policy directives by the Board, the Committee noted that the CEO neither requested for any Board meeting nor did he bring the matter to the attention of the Cabinet Secretary as is required by law.

3.6 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF THE DIRECTOR PROCUREMENT

757. From the submissions of the Director Procurement, KEMSA, the Committee observed that -

- 1) The advisories or opinions of the suspended Director of Procurement issued to the Management with regard to COVID-19 Emergency Direct Procurement were *post facto*, being therefore of no value. At best, they were clear admission of actions and omissions of negligence and violation of the law within the Agency as far as procurement was concerned. Further, the Committee noted that even after the said advisories or opinions, the management continued to fragrantly issue commitment letters which is a further manifestation of deliberate violation of the law.
- 2) Although the suspended Director of Procurement cited coercion from the suspended CEO to prepare commitment letters, the Committee found no evidence to substantiate the allegation.
- 3) The commitment letters or letters of intent to KILIG and eight other firms were prepared in the CEO's office without involvement of Procurement Department. However, evidence adduced by those companies points to the fact that the companies received their commitment letters from the Procurement Office. Further, there was an allegation of commitment letter to Shop 'N' Buy allegedly backdated from the CEO's Office. The Committee notes that the authorship of the commitment letters, intent letters or any fraud committed thereby should be subject of further investigation.
- 4) The Director of Procurement was aware of the existence of a circular from the Solicitor General dated 17th April, 2020 on handling procurement of COVID-29 HPTs. The director of procurement knowingly disregarded the clear guidelines of the Solicitor General in that circular.
- 5) The Director of Procurement made claims of threats to his person from some powerful but unspecified quarters. However, he confirmed that he did not report the claims of threats to

the police or any other relevant agency. The Committee notes that this is a serious allegation which should form the basis of an immediate investigation.

- 6) The procurement law envisages guidelines and objective criteria in all forms of procurement including direct procurement. In the absence of guidelines conceived under Section 41 of the PPADA, 2015 there was no basis upon which suppliers were evaluated. Thus the director of Procurement by giving out supplies without any objective criteria abdicated his duty as a professional procurement officer.
- 7) KEMSA issued commitment letters amounting to Kshs. 7,780,281,788 on Covid-19 related procurements yet there was no budgetary allocation for the same contrary to section 53 (8) of the PPADA, 2015 which prohibits public officers from initiating procurement proceedings without approved budgets.
- 8) Contracts in respect of some suppliers namely Nairobi Enterprises and Harleys followed the due process of direct procurement as envisaged in the applicable??. The fact that the procurement department followed the law in respect to these procurements is a validation of the fact that the director of procurement knew the correct law applicable but chose to do otherwise.
- 9) Unlike other state corporations which operated under similar pandemic conditions, KEMSA did not issue any public advertisement to identify suitable suppliers for purchase of Covid-19 HPTs. The Committee received evidence from witnesses some of whom claimed to have sought divine intervention in order to get the business , others were called on telephone or otherwise walked in to the agency offices and were fortunate to get supplies. The Committee notes that such state of affairs was most probably caused by the absence of fair, equitable, transparent, competitive and cost effective procurement method.
- 10) The Committee observed that no due diligence was undertaken by KEMSA on companies that were not pre-qualified for supply of goods.

- 11) The suspended Procurement Director relied on the exigencies of a pandemic but that notwithstanding, he confirmed he did not seek the advice of either the Attorney General or the PPRA before undertaking the procurement of Covid-19 HPTs.
- 12) The KEMSA management capped the prices of three items i.e PPE at Kshs. 9,000 per kit, Surgical Face Masks at Kshs. 4,500 per pack of 50s and KN95 masks at Kshs 700. Suppliers were each paid the maximum price despite claims by KEMSA that the prices were negotiated. The capping confirms that the prices were not negotiated but rather predetermined.

3.7 COMMITTEE OBSERVATIONS FROM SUBMISSIONS OF ELIUD MUREITHI, SUSPENDED DIRECTOR OF COMMERCIAL SERVICES

758. From the submissions of Mr. Eliud Mureithi, the Committee observed that -

- 1) The suspended Director of Commercial Services advised the halting of procurement on account of lack of budget in his email OF 22nd April 2020 to the Director of Procurement. However by this time, Commitment letters issued amounted to Kshs 3, 996,636,560, which was a substantial figure almost equaling the KEMSA Capital.
- 2) The suspended Directors of Procurement and Commercial Services jointly advised the suspended CEO on the lack of budget for COVID-19 procurement; an advise the CEO refused indicating that funds would be availed for the purchases. However the committee noted that the said advice was done verbally.
- 3) All commitment letters were signed by the suspended CEO however the Committee noted that this was done in full awareness of the entire management team.
- 4) Mr. Mureithi was delegated by the CEO, albeit verbally, to attend meetings on COVID-19 response at the Ministry of Health and the emails he wrote to the PS were copied to the CEO and the KEMSA Chairman.

- 5) The suspended Director cited an email of 6th April 2020 in which the Ministry of Health ~~said the ceiling for World Bank funds to be utilized for COVID-19 procurement was Kshs. 758 million.~~
- 6) An email from the suspended director of procurement to the suspended Director of Commercial Services and copied to Dr. Jonah Manjari with an advisory memo dated 24th April 2020 was authentic.
- 7) After 6th April 2020, Mr. Eliud Mureithi confirmed signing requisitions from KNH and Kenyatta University. He however confirmed that prior to 6th April 2020 he had refused to sign requisition of Kshs. 2.3 Bn.
- 8) The Director Commercial Services confirmed seeing all the memos by Mr. Charles Juma that had been tabled before the Committee by the suspended Procurement Director.
- 9) Mr. Eliud Mureithi denied being aware of refusal by the suspended CEO to cancel some letters this was in contravention to the submission by the Director Procurement.
- 10) The procurement was not initiated by the user department as required in law. This was confirmed by the suspended Director of Commercial Services that some of the requisitions were done after the procurement process had begun.
- 11) The Director Commercial Services confirmed making requisition after the resolution of Director's meeting dated 21st April, 2020 where it was agreed that requisition will only be raised for Covid HPTs delivered at KEMSA warehouse. The requisition done on 22nd May, 2020 for surgical masks, KN95 face mask and PPE was worth Kshs. 962,550,000 while one done on 15th June, 2020 was worth Kshs. 153,979,000.
- 12) The requisitions done by the Director of Commercial Services had pricing component yet the commitment letters issued did not have prices of the Covid HPTs. This exposed the Authority to losses as they could not sell the goods at prices higher than what they purchased for. The requisition done after the issuance of commitment letters were essentially to rubberstamp the process; a view of the suspended of director of commercial services.

- 13) There was a pricing committee at KEMSA which came up with prices for selling the Covid HPTs. The suspended Director of Commercial services was a member of the Committee.
- 14) The witness stated that he refused to sign off on procurement documents worth Kshs. 2.3B which saved the Authority from potential losses. However, this refusal was done way later on 17th July 2020 when most of the commitments had been done.
- 15) The witness submitted copies of emails dated 31st March, 22nd April and 24th April, 2020 where he advised on halt of Covid-19 purchase as well as avoidance of buying multiple brands of Covid-19 HPTs. The CEO was not copied in these emails.
- 16) The witness averred that the CEO usurped his power when the former issued commitment letters without the input of the user department after July 2020.

3.8 COMMITTEE OBSERVATIONS FROM MS. PAMELA KABURU

759. From the submissions of Ms. Pamela Kaburu, the Committee observed that -

- 1) The commitment letters were drafted at the Director of Procurement's office but some were drafted at the CEO's office.
- 2) Ms. Pamela Kaburu corroborated Mr. Charles Juma's statement that the CEO requested for a template of the commitment letters upon which he instructed drafting of some commitment letters from his office
- 3) The Committee could not confirm the alleged instructions from the suspended CEO to Ms. Pamela Kaburu to backdate the letter for Shop N' Buy Ltd drafted on 5th May, 2020 to 30th April, 2020, this is subject to further investigations.
- 4) The CEO arbitrarily decided on the duration in which the supplies were to be delivered by the suppliers.

5) The CEO also arbitrarily extended the duration of supply for companies that failed to meet the original dates of supply in the commitment letters.

6) Ms. Pamela prepared daily reports on the deliveries supplied to KEMSA based on information from the Warehouse.

3.9 COMMITTEE OBSERVATIONS FROM THE SUBMISSION OF THE CEO, BUSINESS REGISTRATION SERVICES

760. From the submissions of CEO, Business Registration Services, the Committee observed that:-

- 1) All the companies that did business with KEMSA during the Covid -19 pandemic were registered.
- 2) The law does not make it obligatory for a foreign company to have a Kenyan director. This poses a considerable risk of foreign companies of questionable reputation dealing with state corporations thereby exposing Agencies to security and financial threats.
- 3) The Committee observed that Parliament should consider suitable amendments to the Companies Act in a bid to ensure that Agencies have a process through which due diligence can be conducted from the BRS as part of technical evaluation of Companies during procurement.

3.10 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF KILIG LTD, MR. GATEI, MR. CHAO, MR. MURATHE, KCB, EQUITY BANK AND MR. WANJALA

761. From the submissions of Aszure Commercial Services Ltd, the Committee observed that -

- 1) Ms. Ivy Minyow Advocate was the sole Director of the Company. She further stated that she took over Directorship of the Company on 6th May 2020.
- 2) The promoters of the company and who later became its inaugural directors were Messrs. Willbroad Gatei Gachoka and Zhu Jin Ping after incorporation on 22nd January 2020. On

17th April, 2020, Mr. Collins Bush Wanjala became the sole shareholder of the Company which in turn changed hands to Ivy Minyow Onyango as the sole director on 6th May 2020. However, information relating to any consideration in the transfer of shareholding was not clear. At one point, Mr. Ivy averred that that she had purchased the company from Collins Bush Wanjala at a consideration of Kshs 10000, an assertion that Collins Bush Wanjala refuted. One wonders how a firm that has been awarded commitment letters to supply 450,000 PPEs could be sold at a paltry Kshs 10,000.

- 3) Ms. Ivy Onyango was the incorporating advocate of the promoters, though she was unable to provide evidence that her legal services were lawfully retained and paid for. Although the registrar of business registration was unable to confirm a matter of fact that she presented the company's documents for registration, she explained that due to the available digital application services the fact that she rendered professional service was not captured in the documents lodged.
- 4) Kilig Ltd had been given a commitment letter to supply 450,000 PPEs. However, the Committee observed that the procurement did not crystalize into an enforceable contract. In any case, according to the Special Audit Report, KEMSA had already settled on a predetermined buying price of Kshs. 9000 per PPE. On this basis, Kilig Ltd made a demand for Kshs 9 Million for 1000 samples.
- 5) Upon a letter of intent by Kilig Ltd on 6th April, 2020, KEMSA issued a commitment letter on 9th April 2020 on the specifications of the intent letter dated 6th April, 2020. According to the intent letter it was clear that deliveries could be made upon a firm order from KEMSA. The Committee found no evidence that KEMSA made that order. Therefore in law, the letter of intent was nothing but an invitation to treat.
- 6) The Committee observed that KEMSA issued a cancellation letter to Kilig Limited dated 20th April citing the company's failure to deliver on the agreed timeline. The commitment letter provided for a delivery timeline of 15 days from 9th April, 2020, setting the deadline for 24th April, 2020. There being no delivery on time or at all, parties did not consummate the contract, making the same voidable.

- 7) The Committee observed that KEMSA wrote a subsequent letter to Kilig Ltd for reasons ~~not explained either by the Agency or Kilig Ltd revising timeline for delivery to various~~ dates in July 2020. The commitment letter which was subsequently re-issued was cancelled before any delivery was made. The Committee determined that the transaction between the Agency and Kilig Ltd never matured to an enforceable contract.
- 8) The Committee observed that, Kilig Limited delivered 1000 samples to KEMSA for testing on 2nd June, 2020. Ms. Ivy Onyango stated to the Committee that it was not the intention of Kilig Ltd to invoice KEMSA for payment of the delivered samples but upon perusal of evidence from KEMSA, it transpired that Ms. Ivy misled the Committee on fact as Kilig Ltd indeed wrote to KEMSA on 21st February 2021 demanding payment.
- 9) According to tax records held by Kenya Revenue Authority, Kilig Limited had not updated its details on the iTax. The company stated that they filled Import Declaration Forms for the COVID-19 HPTs that they imported into the country.
- 10) In accordance Standing Order 90 of the National Assembly Hon. Raphael Bitta Sauti Wanjala, MP declared his personal interest by stating that Mr. Collins Bush Wanjala is his son; which declaration was accepted by the Chairperson of the Committee.
- 11) At the point of incorporation of Kilig Ltd, Ms. Ivy was acting as an individual attorney but was not registered under a law firm. Kilig Ltd was registered under e-citizen platform. On the e-citizen platform, advocate details are not required hence the reason why her name as an advocate could not be found in the Business Register Services.
- 12) Ms. Ivy Minyow acknowledged drafting the letters of instruction to open the company for the signature of Mr. Willbroad Gachoka and Mr. Zhu Jinping. The documents have similar appearance and bear similar content and dates.
- 13) Though Ms. Ivy indicated that she was on retainer agreement with her clients, Mr. Willbroad Gachoka and Mr. Zhu Jinping; and that she had not been paid to date for legal services offered under this agreement, there was no evidence to show that she was working under such arrangements.

14) Though Ms. Ivy averred that Kilig Limited entered into joint venture agreements with a number of companies for supply of Covid-19 HPTs including M/S Entech Limited for supply of PPEs, she did not place any document before the Committee to buttress her assertion except a sale agreement between Entec and Kilig Ltd that was submitted by Mr. Willbroad Gachoka.

15) Kilig Limited's accounts at Equity Bank were opened on 19th and 25th June 2020 ostensibly to receive the proceeds of supply of PPEs to KEMSA. Of curious is the inclusion of Hon. David Murathe as a signatory to the account in what was stated as to secure guarantee and secure payment from KEMSA after supply of PPEs. It was not clear to the Committee the powers or influence Mr. Murethe wielded to an extent that he can be enjoined as a signatory to an account he had no beneficial interest in.

16) In all the documents availed to the Committee by the BRS, the name of Ivy Minyow appears from 6th May 2020 where she accepts her nomination by Collins Bush as the shareholder of Kilig Ltd. However, names of other advocates appeared in a bundle of documents prior to May 6th 2020 yet Ms. Ivy's name did not appear despite her claiming to be the advocate acting on behalf of the shareholders.

17) There was no any contractual engagement between KEMSA and Kilig Ltd envisaged in Section 135 of the Public Procurement and Disposal Act 2015. Therefore Kilig Ltd's threat to sue KEMSA for breach of contract on the strength of a commitment letter cannot be sustained.

18) Ms. Ivy's conduct before the Committee was unbecoming. She reneged on her undertaking, on oath, to provide bank details of Kilig Ltd; she misled the Committee that Kilig Ltd had not requested payment of samples delivered to KEMSA; misled the Committee that she bought Kilig Ltd at a consideration of Kshs 10,000 and finally refused to disclose the signatories to Kilig Ltd account.

19) KCB's letter to the Kilig Ltd directors and on attention to Mr. Collins Bush Wanjala dated 14th April 2020 assuring Kilig Directors that the Bank would issue letters of credit to overseas suppliers of PPEs points to a previous engagement with Mr. Collins Bush

Wanjala. As much as transfer of shareholding of Kilig Ltd to Collins Bush Wanjala was effected on 17th April 2020.

20) Evidence from Joshua Oigara, CBS and Group Chief Executive Officer of KCB to the Committee dated 18th March 2021³⁴ confirmed that indeed Kilig Ltd held account number 1273153731 at KCB Upper Hill Platinum Branch. This account was opened by Mr. Collins Bush Wanjala on 21st April 2020 as a sole director of Kilig Limited and who also doubled up as a sole signatory but was closed on 29th July 2020 when the bank could not reach Collins to clarify negative media reports about Kilig Ltd. Though the bank indicated in the said letter that its letter to Kilig Ltd of 14th April 2020 was in response to the customer's verbal inquiry.

21) It was not clear to the Committee why Kilig Ltd had constantly changed ownership in its short life without consideration and having won a multibillion tender from KEMSA. It was incorporated on 22nd January 2020 with Mr. Willbroad Gatei Gachoka and Mr. Zhu Jinping as its directors. On 17th April 2020, its shareholding was transferred to Mr. Collins Bush Wanjala who in turn transferred it to Ms. Ivy Minyow Onyango on 12th May 2020.

3.12 COMMITTEE OBSERVATIONS FROM ASZURE COMMERCIAL SERVICES LTD.

762. From the submissions of Aszure Commercial Services Ltd, the Committee observed that -

- 1) Aszure Commercial Services Ltd was engaged in general supply of goods and had never supplied medical equipment before the pandemic. Therefore it could have passed through the technical evaluation stage had proper procurement process been followed.
- 2) Though company was registered at Kenya Railways as a supplier of construction of materials, it had not done any supplies on this so far.

³⁴ Letter from KCB to the Committee dated 18th May 2021.

- 3) Prior to the Covid-19 pandemic, the company had not done any business with KEMSA. By a letter dated 29th July 2019 and Ref KEMSA/PQ/A/2019 from KEMSA, Aszure Commercial Services was notified of its registration as a supplier at KEMSA.
- 4) Having no capacity to finance its supplies to KEMSA, First Community Bank financed her business to a tune of Kshs. 347, 515,000.
- 5) At the point of financing from First Community Bank, the signatories to the account were Phanice Adhigo Onditi, Zubedan Nyamlondo Ngobi and HalakheWaqo. HalakheWaqo was allegedly brought on board as a signatory to the Company's account so as to provide security for the loan secured from the bank.
- 6) The Commitment letter to aszure commercial services dated 17th April 2020 was picked form the director of procurement office. It is the same of that Ms. Zubeda delivered her sample to.
- 7) Though the witnesses averred that the sample she took to KEMSA was sourced locally and that the goods Aszure Commercial Services supplied to KEMSA were imported on its behalf by a third party, there was no evidence to corroborate this assertion.
- 8) Aszure Commercial Services failed to supply the goods within the required timelines and the witness wrote to KEMSA requesting for extension. She could not however provide the alleged letter she did and the extension received.
- 9) Dorothy Undwa Omogi and Stanley Kithia Rimbere were once directors of Aszure Commercial Services but had since left the company.
- 10) Despite indicating that Aszure Commercial Services had audited accounts and that she could provide them to the Committee, Ms. Zubeda failed to provide them despite several reminders in writing to do so.

3.13 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF MR. HALAKHE WAQO

763. From the submissions of Mr. Halake Wako , the Committee observed that -

- 1) Mr. Waqo was approached by Aszure to engage in a partnership for financial mobilization in order to enable the company to successfully supply the referenced items. He provided security, which included Title Deeds for two parcels of land (in Nairobi and Isiolo), for the loan advanced to Aszure Commercial Services.
- 2) In order to safeguard his property Mr. Waqo was made a signatory to Aszure Commercial Services, The decision was communicated to the bank vide a letter dated 15th May, 2020.
- 3) The engagement and partnership between Aszure Commercial Services and Mr. Waqo was dissolved after the delivery was made to KEMSA and the amount paid to Aszure.

3.14 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY LA MIGUELA HOLDINGS

764. From the submissions of La Miguela Holdings , the Committee observed that -

- 1) M/s La Miguela Holdings did not submit any business profile to KEMSA prior to being given commitment letter.
- 2) M/s La Miguela took 2 months to deliver the goods to KEMSA therefore defeating the reliance on urgency to procure even though an extension to supply was granted.
- 3) The Company supplied goods worth Kshs. 180 million relying on Commitment letters not known in the PPAD 2015.

3.15 COMMITTEE OBSERVATIONS FROM SUBMISSIONS OF CROWN HEALTHCARE LIMITED

765. From the submissions of Crown Health Limited, the Committee observed that –

- 1) The Company was doing business with KEMSA before and supplied goods worth Kshs. 52 million on the basis of a committee letter.
- 2) This was a supply driven purchased as opposed by the demand driven purchases. This is so because it was the suppliers that did intent letters and not the KEMSA asking suppliers to supply.
- 3) Commitment letters were irregularly relied on the procurement as they are not provided in the PPAD 2015.

3.16 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF NORTHLINK GSC LIMITED

766. From the submissions of Mr. Takoy of Northlink Gsc Limited, the Committee observed that-

- 1) Northlink Gsc Limited did not submit samples of the N95 masks and PPE's to KEMSA. It was irregular for the Company to be given commitment letters before submission of samples. One wonders the basis upon which the evaluation was done to confirm that the company had capacity to supply.
- 2) Northlink GSC Limited being a new supplier was not subjected to any financial or technical evaluation prior to supplying items to KEMSA.
- 3) Northlink was not given an opportunity to supply PPE'S simply because the company's quotation for the same was Kshs. 4,500 as opposed to the Kshs. 9000.
- 4) Northlink supplied goods worth Kshs. 135 million and was paid on 29th June 2020.
- 5) There is doubt as to whether there was negotiations of process considering that all suppliers negotiated for the same price; all similar Covid-19 items delivered to KEMSA were of the same price despite subjecting suppliers to negotiations.
- 6) It was not clear the criteria KEMSA was using in payment of suppliers. For instance, Northlink was paid for supply of PPEs in less than one month, yet companies that were

already prequalified by KEMSA and constantly supply to KEMSA were yet to be paid to date.

- 7) Mr. Takoy confirmed that Commitment letters are not legal documents provided in the PPAD 2015.
- 8) Northlink GSC Limited, through its intent letter dated 14th April, 2020, quoted an amount of Kshs 4,590 for supply of personal protective equipment (sterile and non-sterile). The company was not awarded the tender and KEMSA ended up paying for them from elsewhere at Kshs 9,000 for PPE Kit.

3.16 COMMITTEE OBSERVATIONS FROM SUBMISSIONS FROM MERAKY HEALTHCARE LTD

767. From the submissions of Meraky Healthcare Ltd, the committee observed that -

- 1) The basis that KEMSA used to assign Meraky Healthcare Ltd to Supply 200,000 KN95 face masks was unclear since the company had not done any prior business with KEMSA. The introduction letter by Meraky Healthcare had neither indicated the quantities they could manage or evidence of discussions on quantities to be supplied.
- 2) Meraky Health care sourced for their supplies to KEMSA locally. This means that the covid-19 items were available locally and at cheaper prices.
- 3) The company was given a commitment letter on 9th April, 2020 for the supply of 200,000 KN95 face masks to be supplied within 15 days but only managed to supply 8,140 pieces of KN95 facemasks. An extension was granted by KEMSA through a second commitment letter dated 4th May, 2020 with the rest of the goods supplied to KEMSA on 6th May, 2020.
- 4) After receiving the commitment letter, the company approached a financial institution that KEMSA had partnered with in case suppliers needed financial assistance. Meraky was given a confirmation letter from KEMSA addressed to the financial institution on 17th April 2020.

- 5) The Company invoiced KEMSA on 29th May, 2020 and was paid on 1st July, 2020 the entire amount of Kshs 140,000,000.00. There were suppliers who supplied even before Meraky Healthcare but had not been paid. The company's payment was processed relatively faster than other suppliers.

3.18 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS FROM SET LIFE MEDICAL SOLUTIONS

768. From the submissions of Set Life Medical Solutions Limited, the Committee observed that -

- 1) Set Life Medical Solutions Limited was incorporated as a limited liability company on 16th September, 2011.
- 2) The Company had a running contract with KEMSA No. KEMSA/OIT07/2018-2020 for the Supply of Non-Pharmaceuticals dated 22nd March, 2019 with an Addendum to Contract dated 26th July, 2019. The Contract ran for two years with effect from 19th March, 2019 to 18th March, 2021. This contract was for the provision of theatre boots antistatic.
- 3) Though there was contract of 2 years, Set life had already exhausted the quantities of 294 prior to covid – 19 pandemic. There it could not rely on this contract for the supply of PPEs during the Covid-19 pandemic.
- 4) On 23rd March, 2020, the Company received a letter from KEMSA requesting it to supply the available quantities of mentioned commodities (Theatre Boots Antistatic Sizes 7, 8, 11, 9 and 10) in response to the Covid-19 emergency. The letter indicated that the items will be procured through call down / call off from existing frame work contracts while the procurement process for the other items was to commence immediately.
- 5) On 26th March, 2020, KEMSA wrote to the Company inviting the Company to submit a bid for the Supply of Theatre Boots Antistatic with a bid document for Direct Procurement attached to that letter. The Company placed its bid and was notified of the acceptance of its bid through a letter dated 22nd April, 2020, responding through a letter of acceptance dated 22nd April, 2020.

- 6) Negotiations were carried out between KEMSA and the company with the price reduced to between Kshs 1,339.20 to Kshs 1,392.21 per pair from Kshs 1,501.00 to Kshs. 1,518.00 under the existing contract.
- 7) The Company received a letter from KEMSA dated 30th March, 2020 requesting the Company to supply additional boots and sign an addendum to the Contract. The addendum was signed on 3rd April, 2020.
- 8) The contract for the direct procurement being Contract No. KEMSA/DP66/2019-2020 for supply of theatre boots antistatic was signed on 24th April, 2020.
- 9) Between 6th April, 2020 and 9th April, 2020, KEMSA issued nine purchase orders for the supply of theatre boots as specifically set out in the respective purchase orders.
- 10) Set life Medical Solutions' pre-covid 19 contract with KEMSA was for the supply of 294 but ended up supplying 33,510 items under the covid -19 supplies – this is against section 139 of public procurement law on variation.
- 11) All the invoices raised as against the purchase orders for amounts aggregating to a sum of Kshs. 48,592,428.25 was paid by KEMSA.

3.19 COMMITTEE OBSERVATIONS FROM SUBMISSION BY PETREL AGENCIES LIMITED

769. From the submissions of Petrel Agencies Limited, the Committee observed that -

- 1) The company was pre-qualified to supply non-pharmaceutical products at KEMSA and had supplied KEMSA since 2013.
- 2) The company secured a commitment letter to supply PPEs to KEMSA after her managing director's visit to KEMSA in March 2020. This was after delivery of samples to KEMSA.
- 3) The company wrote four intent letters dated 27th March, 2020 (nitrile gloves), 14th April, 2020 (infrared thermometers), 20th and 27th April, 2020 (surgical masks).

- 4) KEMSA issued four commitment letters dated 30th March, 2020 (nitrile gloves), 15th April, 2020 (infrared thermometers), 21st and 29th April, 2020 (surgical masks). All these commitment letters did not indicate the prices of goods to be supplied which was strange and would present serious problems were there to be disagreements on the price during negotiations.
- 5) KEMSA issued five LPOs (NO.s 825908, 826086, 826264, 826276, & 826473) totaling Kshs. 124,795,000. Deliveries were made on various dates between 2nd April, 2020 to 5th May, 2020.
- 6) Payment to Petrel Agencies were made on various dates between 9th June, 2020 and 6th August, 2020.
- 7) The company sourced nitrile gloves locally but imported the rest of the goods via DHL and paid the relevant taxes.

3.20 COMMITTEE OBSERVATIONS FROM SUBMISSION BY MELDIAN ENTERPRISES LIMITED

770. From the submissions of Meldian Enterprises Limited, the Committee observed that -

- 1) The company was incorporated on 25th March 2017 as Accenture Kenya ltd. The name was however changed second time when KEMSA did a search and found that the name had been deregistered.
- 2) The company did not import COVID-19 supplies but sourced the equipment locally.
- 3) The Expression of Interest by Accenture Kenya Limited was delivered on 10th April 2020. By this point, KEMSA Management had issued an internal memo indicating that the Authority had received supplies which exceeded the budgetary allocation.
- 4) The company did not deliver the full specification of items as per the timeline provided in the commitment letters from KEMSA and sought an extension to supply the equipment.

- 5) Having a turnover of Kshs. 20M in 2019, the Committee could not understand how the ~~company qualified financially to supply goods worth Ksh. 225 Million to KEMSA.~~
- 6) Meldian Enterprises supplied a PPE to KEMSA at Kshs. 9000 per kit (he had offered 9500 initially) and that all the items supplied to KEMSA was clearly labelled and can be identified.

3.21 COMMITTEE OBSERVATIONS FROM SUBMISSION BY BENNETS VENTURES LIMITED

771. From the submissions of Bennets Ventures Limited, the Committee observed that -

- 1) The company was not pre-qualified at KEMSA.
- 2) Bennets Ventures Limited had never supplied goods to KEMSA prior to march 2020. It had however supplied PPE to Kenya Airports Authority, KMPDU, Nursing Council and other private entities.
- 3) It found out that KEMSA was procuring large quantities of PPE through enquiries from other companies who were supplying to KEMSA.
- 4) Its intent letter of 15th April, 2020 was rewarded with a commitment letter on 29th April, 2020 for supply of 40,000 packets of 3-ply facemasks.
- 5) The commitment letters to Bennets were issued after the KEMSA Directors' meeting of 21st April, 2020 where a resolution was reached to stop the issuance of commitment letters due to the substantial amounts already issued (Kshs. 3,996,636,560).
- 6) After delivering 40,000 packets of 3-ply facemasks on 29th April 2020 and 8th May 2020, the company was paid Kshs. 180,000,000.
- 7) The company has not declared any VAT or Import Duty with the Kenya Revenue Authority for the goods supplied to KEMSA.

- 8) Bennets Ventures sourced goods on credit from Shop N' Buy Limited who were enjoined as signatories to Bennets' bank account at Middle East Bank. This arrangement was allegedly reached without being formally written. Of the proceeds received from KEMSA, Kshs. 160,000,000 was paid to Shop 'N' Buy for supplying Bennets Ventures limited goods which it in turn supplied to KEMSA.
- 9) The company had a turnover of less than Kshs. 1,000,000 in 2018 and in 2019, the turnover increased but was not more than Kshs. 10,000,000. This could not qualify the company financially for award of the commitment letter had financial evaluation been done.

3.22 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY NAIROBI ENTERPRISES LIMITED

772. From the submissions of Nairobi Enterprise Limited, the Committee observed that -

- 1) Nairobi Enterprise Limited was incorporated on 16th August, 1984 and the company has been supplying medical equipment to KEMSA. The company manufactures face masks and sanitizers and have been selling locally as well as exporting to other countries.
- 2) Nairobi Enterprise Limited wrote an intent letter on 28th February, 2020 following a phone call from KEMSA and indicated intent to supply 2 million pieces of surgical face masks.
- 3) KEMSA responded with a commitment letter on 2nd March, 2020 to supply 40,000 packets of 50 pieces 3-ply facemasks at a quoted a price of \$20 (Kshs. 2,080) per packet of masks.
- 4) KEMSA issued a commitment letter to NEL but the company insisted on tendering before supplying the masks. The Director indicated unwillingness to supply face masks to KEMSA without an LPO.
- 5) KEMSA initiated a procurement process with Nairobi Enterprises Limited (Tender No. KEMSA/DP20/2019-2020 for Surgical Masks) where the company was invited to submit a bid. KEMSA shared tender documents with the company including Tender Registration documents.

- 6) KEMSA initiated a procurement process with Nairobi Enterprises Limited (Tender No. ~~KEMSA/DP30/2019-2020 for Supply of Alcohol based Sanitizers~~) where the company was invited to submit a bid. KEMSA shared tender documents with the company including Tender Registration documents.
- 7) A contract for the sanitizer tender was signed between KEMSA and NEL on 18th August, 2020. The contract price was \$46,000 of which it had not been paid.
- 8) Unlike the procurement with other companies that supplies Covid-19 material to KEMSA, NEL underwent procurement process including price negotiation before supplying KEMSA. This includes supplying a sample that was received and a sample receipt voucher provided.
- 9) The company had only been paid Kshs. 8,000,000 with an outstanding balance of Kshs. 120,000,000.
- 10) The company has paid VAT and other relevant taxes despite the lack of payment on their supplies to KEMSA.

3.23 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY BRIEMA GRAIN STORES LIMITED

773. From the submissions of Briema Grain Stores Limited, the Committee observed that -

- 1) The Company was incorporated on 31st January, 2019 and had not supplied any medical equipment to KEMSA prior to the pandemic.
- 2) Briema Grain Stores wrote an intent letter on 21st April, 2020 and KEMSA responded with a commitment letter on 28th April, 2020 to supply 200,000 K95 masks. The Authority further issued a second commitment letter dated 4th May, 2020 for supply of 6000 packets of Surgical masks.
- 3) Both commitment letters to Briema Grain Stores were issued after the KEMSA Directors' meeting of 21st April, 2020 where a resolution was reached to stop the issuance of commitment letters due to the substantial amounts already issued (Kshs. 3,996,636,560).

- 4) Briema Grain Stores was paid Kshs. 167,000,000 for supply of K95 face masks (Kshs. 140,000,000) and Surgical masks (Kshs. 27,000,000).
- 5) Even though there was an averment that Briema Grain Stores had a turnover of Kshs. 20 million in the 2019 and Kshs. 70 million in 2020-21, there was no evidence of audited financial statements to support this assertion.
- 6) The KN95 masks were reportedly delivered on 8th May, 2020 though there was no evidence to show delivery. The surgical masks were reportedly delivered on 11th May, 2020 but no evidence was provided to confirm delivery.

3.24 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY LEON INTERIOR AND DECO

774. From the submissions of Leon Interior Design & Deco Limited, the Committee observed that -

- 1) Leon Interior Design & Deco is a business name that was registered on 22nd June 2018 with Molly Cheruto as the sole trader.
- 2) This company had no previous experience of supplying PPEs to KEMSA and therefore should not have qualified to supply had both technical and financial evaluation been done prior to award.
- 3) The commitment letter to Leon Interior & Design from KEMSA predated the intent letter by six days. The Director could not explain this discrepancy.
- 4) The commitment letters to Leon Interior and Deco was issued after the KEMSA Directors' meeting of 21st April, 2020 where a resolution was reached to stop the issuance of commitment letters due to the substantial amounts already issued (Kshs. 3,996,636,560).
- 5) The intent letter dated 6th May was signed by Ms. Lynda Keitany, an employee of Leon Interior & Deco Design and Ms. Eunice Kiumi for Mason Austin Limited. Ms. Eunice Kiumi is reportedly a Director at Mason Austin Limited, a company that also deals with interior design.

- 6) Leon Interior did not have funds to meet the order from KEMSA. It sought for funds ~~totaling Kshs. 30,000,000 from a company known as Mason Austin Limited in order to~~ supply the order to KEMSA.
- 7) The invoice for the supply was dated 12th June, 2020 and payment was made on 29th June, 2020.
- 8) On 29th June 2020, Leon was paid for all the supplies it did to KEMSA of Kshs 42.5 million to its account at ABSA. It was strange that Eunice Linda was one of the signatories to this account but the bank did not request for minutes of a resolution to include her as a signatory.

3.25 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY DUKE AGENCIES LIMITED

775. From the submissions of Duke Agencies Limited, the Committee observed that -

- 1) Duke Agencies was incorporated on 21st August 2008 and has been involved in the supply of construction materials and medical equipment.
- 2) Considering that Duke Agencies had earlier supplied Kajiado County with goods worth Kshs. 80 million, it had the financial capacity to supply goods worth Kshs. 180 million to KEMSA, which it supplied.
- 3) Duke Agencies business with KEMSA during the Covid -19 pandemic was premised on intent letters and commitment letters; documents not recognized under the Public Procurement and Asset Disposal Act 2015.
- 4) Duke Agencies supplied 20,000 PPE kits at Kshs. 9,000 per kit for a total of Kshs. 180,000,000. Though it was indicated that there was a negotiation for the price, a negotiation that yields same price for all the suppliers was suspect.
- 5) KEMSA's commitment letter to Duke Agencies was issued after the KEMSA Directors' meeting of 21st April, 2020 where a resolution was reached to stop the issuance of commitment letters due to the substantial amounts already issued (Kshs. 3,996,636,560).

- 6) The company had different letter heads for each of their documents with no explanation raising doubts on the veracity of the document. The witness averred that she had run out of letter heads at the point of doing her commitment letters and that her machines had broken down hence the reason why intent letters did not have the company letter heads
- 7) Though the witness confirmed that her company had been audited; she failed to provide the said audit reports to support her assertion.
- 8) Duke Agencies was paid for all its deliveries on 26th June 2020 having done her invoice on 12th June 2020. The account that the money was paid to is held at I&M Bank, Westlands branch.
- 9) There was an inconsistency on Duke Agencies' delivery – Ms. Elizabeth claimed to have delivered on 15th May 2020 but stamped 'received' by KEMSA on 14th June 2020. The Committee could therefore not ascertain the correct dates the deliveries were made.
- 10) Duke Agencies did not supply as per the timelines but was given extension. The witness however failed to provide permission to extend supply timelines
- 11) The deliveries were received and stamped "quality assurance not done". Even though the Duke Agencies confirmed to the Committee that the goods had passed a quality assessment, they did not table any evidence to support this assertion.
- 12) Though the witnesses averred that she bought goods from a Chinese and that some of the goods were paid in cash; she could not divulge the identity of the Chinese, mode of payment and their contacts. So the Committee could not conform the veracity of this averment.

3.26 COMMITTEE OBSERVATIONS FROM SUBMISSIONS FROM GLADLAB SUPPLIES LIMITED.

776. From the submissions of Gladlab Supplies Limited, the Committee observed that -

- 1) Gladlab Supplies Limited was given a commitment letter and contract amount for ~~TENDER NO KEMSA/ONT07/2017-2019 valued at \$848,233.44. This value was changed~~ to Kshs. 135,000,000.
- 2) Though Gladlab offered to supply at USD 30 per box of 50 pieces; which was Kshs. 3,183 at the then exchange rate upon which the commitment letter issued was based and acceptance letter from Gladlab Supplies Limited. Gladlab Supplies Limited however supplied at Kshs. 4,500 ostensibly due to the ban of importation from India. It is not clear how and which law Gladlab Supplies Limited used to revert to supply at Kshs. 4500. Though Gladlab Supplies Limited wrote to Kemsas on 14th April 2020 indicating reverting to Kshs. 95 per mask, there was no letter from KEMSA indicating consent. The reversion letter of 14th April 2020 repudiated the commitment letter to supply at USD 30 per box of 50 pieces and therefore that contract could not be relied on. Ms. Muthoni indicated that she was given verbal acceptance in a meeting between Ms. Muthoni, Juma, Eliud and Manjari)- no evidence to show there was such a meeting. Out of this, there was a variation from Kshs 95M to 135M, which is higher than the percentage allowed in section 139 of PPAD, 2015.
- 3) The tender notification No. KEMSA/DP136/2019-2020 was communicated via a letter from Mr. Charles Juma dated 4th June, 2020.
- 4) The contract for the supply of the masks was signed on 8th June, 2020.
- 5) The purchase order for supply of the goods was issued by KEMSA on 22nd May, 2020 which predated the signing of the contract.
- 6) Gladlab Solutions Limited did supply any state agency during the covid -19 pandemic period.
- 7) Gladlab Solutions Limited was paid Kshs. 135,000,000 on 26th June 2020. The supply was under AGPO framework and payment was made within a month.
- 8) Gladlab Solution Limited's supplies to KEMSA was imported from china, a declaration to KRA was made and taxes paid.

2.27 COMMITTEE OBSERVATIONS FROM SUBMISSION BY ANGELICA MEDICAL SUPPLIES

777. From the submissions of Angelica Medical Supplies Limited, the Committee observed that:

- 1) There was no agreement between Angelica Medical Supplies and KEMSA on the price of the Covid-19 supplies before delivery of the goods.
- 2) The company engaged with KEMSA on negotiation to determine the price of the Covid-19 HPTs. KEMSA took minutes of the negotiation; which minutes were not produced before the committee for verification.
- 3) The company was paid a total of Kshs. 339,516,000 for supply of Covid-19 HPTs.
- 4) Angelical medical supplies had been supplying to Counties, MTRH, KNH and KEMSA and therefore had both the technical and financial capacity to supply KEMSA even though no proper tendering process was done.
- 5) Angelica has been supplying KEMSA the items they supplied during the covid -19 pandemic before under the same price regime
- 6) The procurement was based on the intent letters and commitment letters. Ms. Matu confirmed that it could have been easier to request for quotations; which never happened
- 7) Angelica Medical Supplies supplied to the other private companies.
- 8) Angelica Medical Supplies wrote four intent letters (dated 23rd March, 30th March, 3rd April and 16th April, 2020 indicating availability of various Covid-19 HPTs including Personal Protective Equipment, Ventilators and Infrared Thermometers among others.
- 9) KEMSA issued for Commitment letters to Angelica dated 25th March, 2020 (Pulse Oxygenators, Syringe Pumps, Infusion Pumps and Patient Monitors) 1st April, 2020 (Ventilators), 7th April, 2020 (Thermometers) and 16th April, 2020 and (Personal Protective Equipment).

10) Commitment letters had no price; they were agreed during the negotiations. Had negotiations failed at that moment, the Director stated they could have taken their goods.

11) Deliveries to KEMSA being stamped 'received but not checked by QA' indicating that Quality Assurance was not done prior to acceptance. It was not clear why the role the acceptance committee played.

12) It was further noted that all deliveries were done before an inspection and evaluation letter of the samples submitted. It is not clear what could have happened had the samples failed to meet the required specifications.

3.28 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY HARLEY'S LIMITED

778. From the submissions of Harleys Limited, the Committee observed that -

- 1) Harleys Limited was incorporated in 1953 and had been in the business of supply of Medical Equipment ever since.
- 2) Harleys Limited is one of the few suppliers that went through the normal procurement process when it supplied KEMSA covid-19 related items.
- 3) Harleys Limited received a call from KEMSA (Mr. Edward Buluma) on 24th March, 2020 who enquired whether the company could supply gloves to the Authority.
- 4) The company wrote to KEMSA on 25th March indicating that they could supply 4,500 packs of 50 masks at USD 16 per pack.
- 5) KEMSA wrote an email to Harleys dated 1st April, 2020 inviting the company to submit a bid for supply of the masks and attached bid documents with a deadline of 2nd April, 2020.
- 6) Harleys submitted a bid on 2nd April, 2020 that included filled tender documents, tax compliance certificate, certificate of incorporation, business permits, tax certificates. The quick turnaround time indicates that KEMSA could have subjected the other suppliers to a similar tender process and conducted due diligence.

- 7) The company delivered samples to KEMSA together with the bid documents and received a sample delivery voucher from the Authority. It should be noted that very few suppliers were given sample receipt vouchers.
- 8) KEMSA entered into negotiations with Harleys Limited on 7th April, 2020 and the company agreed to supply 4000 packs of 50 masks at USD 15 per pack.
- 9) Harleys Limited was right by refusing to supply PPEs to KEMSA on the strength of a commitment letter.
- 10) KEMSA further engaged Harleys Limited to supply 'Patient Light Examination' machines via a commitment letter dated 26th March, 2020. No tender was advertised for the supply of the equipment and Harleys had not sent an intent letter to supply the machines.
- 11) The commitment letter sent by KEMSA cited a tender awarded to Harleys Limited for supply of 'Patient Examination Light' machines to Kenyatta National Hospital (Tender KNH/T/DP/05/2019-2020) through an open tender on 3rd March, 2020.
- 12) Harleys Limited requested for an LPO and a contract for the supply of the equipment but KEMSA did not respond. The company refused to supply without these documents despite having procured the Patient Examination Light following the engagement with KEMSA. The equipment is still being held in the company's stores.
- 13) The Patient Examination Light machines are not emergency equipment to be used in the fight against the Covid-19 pandemic.
- 14) The company supplied masks worth USD 60,000 with an invoice dated 30th April, 2020 and received payment on 11th August, 2020.

3.29 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY VILA SURGICAL AND EQUIPMENT LIMITED

779. From the submissions of Villa Surgical and Equipment Limited, the Committee observed that -

- 1) Villa Surgical and Equipment Limited was incorporated on 4th March 2009 and has been ~~doing general supplies ever since. It had however not supplied KEMSA prior to march~~ 2020.
- 2) The company indicated that they had been pre-qualified to supply goods by KEMSA but could not provide evidence of prequalification.
- 3) The Company's averment that it delivered samples to KEMSA prior to supply PPEs was not supported by sample receipt voucher.
- 4) KEMSA invited Villa Surgical to bid for supply of 10,000 KN95 facemasks at a rate of Kshs. 700 per mask vide a letter dated 29th May, 2020. The company was issued with a tender notification (Tender No. KEMSA/DP147/2019-2020) on 17th June, 2020.
- 5) The company was further invited to bid for supply of surgical facemasks vide a letter dated 9th June, 2020. The company was issued with a tender notification (Tender No. KEMSA/DP162/2019-2020) on 18th June, 2020. Villa Surgical was asked to supply 30,000 packs of 50 Surgical masks at Kshs. 4,500 for a total of Kshs. 135,000,000.
- 6) Villa Surgical supplied KN95 facemasks and Surgical facemasks to KEMSA warehouse on 23rd May, 2020 as per the quantity in the commitment letter. This was before issuance of a 'Purchase Order' on 9th June, 2020 and tender notification on 17th June, 2020.
- 7) The invoice for supply of 10,000 KN95 facemasks at Kshs. 700 per mask was raised by Villa Surgical on 18th June, 2020 while the invoice for supply of 30,000 surgical facemasks was raised on 26th June, 2020 at a rate of Kshs. 4,500 per pack of 50.
- 8) KEMSA capped surgical facemasks at Kshs. 4,500 per pack of 50; a fact that was confirmed by the directors of Villa Surgical and Equipment. Therefore any form of negotiations that ensued afterwards was meant to tick the boxes and sanitize an already irregular process.
- 9) Villa Surgical and Equipment did not supply PPEs as per the required timelines but had sought and granted extension.

- 10) The delivery of KN95 masks was done prior to submission of a bid or tender negotiations. The company was issued with a tender notification (Tender No. KEMSA/DP147/2019-2020) on 17th June, 2020.
- 11) The contracts for the supply of KN95 masks (KEMSA/DP147/2019-2020) and surgical facemasks (KEMSA/DP162/2019-2020) were both signed on 22nd June, 2020.
- 12) The invoice for supply of KN95 facemasks worth Kshs. 7,000,000 was raised by Villa Surgical Ltd. on 18th June, 2020 and received at KEMSA on 22nd June, 2020. The invoice for supply of surgical masks worth Kshs. 135,000,000 was raised on 26th June, 2020 and received at KEMSA on the same day.
- 13) Villa Surgical Limited received payment for the supplies on 1st July, 2020.
- 14) The company stated that they partly imported the masks and sourced the rest locally; suppliers whose identity was disclosed.
- 15) On the allegation by Dr. Manjari that Mr. Joel Gesuka Onsare (a former board member of KEMSA) had influenced award of a contract to Villa Surgical and Equipment, both Villa Surgical and Equipment and Mr. Onsare denied this allegation. The Committee was not able to verify the truthfulness of this allegation.
- 16) Despite indication to the Committee that the Company had audited accounts and had financial capacity to supply PPEs to KEMSA to a tune of KShs. 142 million, Ms. Mugambi failed to submit audited financial statements of the company to support her claim. In their absence, the Committee was unable to verify the financial capacity of Villa Surgical and Equipment and its suitability to engage in business with KEMSA.

3.30 COMMITTEE OBSERVATIONS FROM SUBMISSIONS BY OMAERA PHARMACEUTICALS LIMITED

780. From the submissions of Omaera pharmaceuticals Limited, the Committee observed that -
- 1) The company was incorporated on 9th August 1995 and had been involved in supply of medical equipment ever since.

- 2) It is one of the companies that followed due process during the procurement of covid-19 related items by KEMSA.
- 3) Omaera pharmaceuticals was a pre-qualified supplier of medical equipment to KEMSA. The company had supplied equipment to KEMSA before the Covid-19 procurement and still continues to supply to date.
- 4) The company received an email from KEMSA's Procurement Department on 29th April, 2020 inviting them to bid for supply of Infrared thermometers. The company bid for the tender and was awarded the tender to supply 5,000 Infrared thermometers at a unit price of Kshs. 10,000.
- 5) Omaera Pharmaceuticals raised an invoice for the supplies on 16th June, 2020 and was paid Kshs. 50 million in August 2020.

3.31 COMMITTEE OBSERVATIONS FROM SUBMISSION BY CARESHA HEALTHCARE SOLUTIONS LIMITED

781. From the submissions of Caresha Healthcare Solutions Limited, the Committee observed that -
- 1) Caresha Healthcare Solutions was prequalified by KEMSA.
 - 2) Caresha Healthcare Solutions Limited did not receive Sample Receipt Voucher when delivering the samples to KEMSA. So the Committee could not ascertain whether it delivered samples before being given a commitment
 - 3) Caresha supplied 1,000 packs of 50 masks on 22nd April, 2020 and delivered the rest of the 20,000 packs on various dates between 29th April, 2020 and 10th May, 2020. the company sourced the goods locally from Bonoti Investments Limited; a company based in Mombasa Road of email address binotinvestmentlimited@gmail.com.
 - 4) The Commitment letters given to Caresha Healthcare did not have prices.

- 5) Caresha received a Purchase Order from KEMSA on 3rd June, 2020 for supply of 21,000 packs of 50 masks for a total of Kshs. 94,500,000.
- 6) Caresha submitted their invoice to KEMSA on 9th June, 2020 and received payment for the supplies on 27th June, 2020.

3.32 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF SHOP N'BUY LTD

782. From the submissions of Shop N' Buy Limited, the Committee observed that -

- 1) The company was registered on 14th February, 2020 by an agent, Ms. Judith Muluki, on behalf of Mr. James Cheluley and was solely owned by one James Cheluley.
- 2) The company had bank accounts at Diamond Trust Bank and Middle East Bank. Mr. Chelluley deposited Kshs. 7,000,000 at incorporation. He further deposited amounts totaling to Kshs. 57,000,000 from his personal accounts.
- 3) Contrary to the averment of the company that it had been filing monthly returns with Kenya Revenue Authority, the Director General of KRA indicated that the company had not declared any VAT or Import Duty on supplies to KEMSA.
- 4) Shop N' Buy Ltd supplied Covid-19 related items to their clients who in turn supplied KEMSA. These clients include Trade and Shop Ltd., Bennets Ventures and Edumart Limited, among others.
- 5) Shop N' Buy Limited had supplied covid -19 related items to various State Corporations including KENHA, KURA, LAPSSET, NHC, Rivatex and Spinal Injury Hospital.
- 6) Shop N' Buy Ltd. supplied goods worth Kshs. 1,030,000,000 to KEMSA for which it has not received payment.
- 7) Mr. James Cheluley was a Director at Elite Ventures (Minority Co-Director: Sarah Bartojo) and Kuku Chic Ltd (Co-Director: Caroline Chelagat). Funding for the Covid-19 supplies

to KEMSA was sought from these two companies as well as a personal joint account registered to Mr. James Cheluley, Mr. Collins Boimmet and Ms. Celine Poland.

- 8) Shop N' Buy Limited sourced the Covid-19 supplies from Techwis Limited and Career Logistics Limited. Techwise had since sued Shop N' Buy Ltd. for failure to pay \$170,000,000 due for Covid-19 supplies.
- 9) The company allegedly imported 60% of the Covid-19 material supplied to KEMSA. Despite this, Shop 'N' Buy only declared taxes worth Kshs. 687,562. Import duty declared by the company was worth Kshs. 10,007,591. It was surprising to note that imports worth more than Kshs. 600 million could yield such paltry taxes.
- 10) There were allegations that the commitment letter to Shop N' Buy dated 29th April, 2020 was backdated from 5th May 2020 on instruction of Dr. Manjari. This allegation was denied by Mr. Chellueley by indicating that he collected the commitment letter from KEMSA (dated 30th April, 2020) on or about 6th or 7th May, 2020. He further stated that the second letter was allegedly collected by a Mr. Peter despite the commitment letter indicating that it was collected by a Mr. AJS.
- 11) The commitment letter to Shop N' Buy Limited was issued after the KEMSA Directors' meeting of 21st April, 2020 where a resolution was reached to stop the issuance of commitment letters due to the substantial amounts already issued (Kshs. 3,996,636,560).

783. Shop 'N' Buy has not paid its suppliers for deliveries it made to KEMSA to date.

3.33 COMMITTEE OBSERVATIONS FROM BELL INDUSTRIES LIMITED

784. From the submissions of Bell Industries Limited, the Committee observed that -

- 1) The company was incorporated in 1993 as Bell Chemical Industries but changed its name to Bell Industries Limited in the year 2000.
- 2) The Company supplied 15,000 PPEs and 5,000 Infrared Thermometers to KEMSA during the Covid-19 Pandemic following intent letters done on 28th April 2020.

- 3) It should be noted that these intent letters were done and commitment letters issued thereafter way after a KEMSA management meeting of 21st April 2020 that resolved to suspend and cancel procurements since there was no budget. It appears that the CEO failed to implement this resolution.
- 4) Unlike many other suppliers, Bell Industries' intent letters had prices indicated for the goods it sought to supply. Further, it supplied PPEs at a slightly lower price (Kshs. 8975) than what the others were supplying at (Kshs. 9000). This could indicate that there was some form of price negotiations.
- 5) The witness could not divulge information on the source of his supplies to KEMSA and whether he paid taxes to KRA or not.
- 6) The Company had been paid Kshs. 134,625,000 for supplying PPE but was yet to be paid Kshs. 42,500,000 for supply of infrared Thermometers.

3.34 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF REGAL — REIGHTERS

785. From the submissions of Regal Freighters, the Committee observed that -

- 1) That the firm's business name was registered on 3rd July 2019.
- 2) That on 21st April 2021, it was given a commitment letter by KEMSA to supply 3,000,000 Surgical Face Masks within 10 days. This was the same date that the Management of KEMSA had met and recommended suspension of further procurements due to exhaustion of the budget.
- 3) The Commitment letter issued to Regal Freighters did not indicate the price of a packet of 50 face masks. This was left for negotiations that was later done on 12th May 2020. In the said negotiation meeting, the price of 50 packet of facemasks was reduced from Regal Freighters' quote of Kshs. 4,750 to Kshs. 4,500. It should be noted that this is the price that other suppliers supplied KEMSA on.

- 4) Regal Freighters supplied the required face masks within the stipulated timelines in the ~~Commitment letter in three batches (27th, 29th and 30th April 2020) and delivery notes were~~ duly provided.
- 5) Though Regal averred that the requisite quality checks were done by KEMSA Q.A Department, it did not place any document before the Committee to support this assertion.
- 6) Though Regal Freighters was paid Kshs. 270 million on 29th June 2020 for the supply it did to KEMSA, there was no indication that it paid taxes to KRA.
- 7) From the documents submitted to the Committee, Regal Freighters imported its supplies from China. Evidence from the Director General of KRA indicated that Regal Freighters had not declared such importation and had not paid requisite taxes. Further, there was no evidence to show that declaration to KRA on importation was done.

3.35 COMMITTEE OBSERVATIONS FROM THE SUBMISSION OF NANOPAY LIMITED

786. From the submissions of Nanopay Ltd, the Committee observed that -

- 1) Nanopay Ltd was a limited liability company that was incorporated and registered on 22nd August 2019.
- 2) It is one of the companies that was flagged in the Special Audit Report in paragraph 1.6.40 to have been given a contract by KEMSA and paid Kshs. 349, 790, 000 when it was a few months old. Contrary to this observation that Nanopay was paid Kshs. 349,790,000, evidence from Nanopay limited and KEMSA indicated that Nonopay limited was paid Ksh. 34,790,000. This error was admitted by the Auditor General in her communication to the Committee through her letter Ref. C.897X/(41) dated 1st February 2021.³⁵
- 3) Nanopay was the only supplier that had her sample approved by the Pharmacy and Poisons Board and issued with Medical Device Certificate Serial Number

³⁵ OAG letter to the Committee dated 1st February 2021 communicating an error in the Special Audit Report regarding Nanopay Limited

3d9e314d1aec5d4681f05ef58c75e67 and Registration number MD/2020/1123. The pharmacy and Poisons Board gave Nanopay a license to import. This confirms the quality imported was standard.

- 4) That Nonopay ltd imported the PPEs from (40,000 from China and 10,000 from Germany and paid duties for imported items.

3.36 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF VISROM COMPANY LIMITED

787. From the submissions of Visrom Company Limited, the Committee observed that -

- 1) Visrom Company Limited was incorporated on 15th April 2011.
- 2) Prior to March 2020, Visrom Company Limited had supplied KEMSA with Medical Equipment (Mid Upper Arm Circumference Tape in 2018.
- 3) Visrom Company Limited was prequalified with KEMSA to supply Medical Equipment as at March 2020.
- 4) On 21st April, 2020, Visrom Company Limited did an intent letter to supply 3-ply surgical face mask indicating that it had 100,000 pieces in her warehouse and that another 1,000,000 pieces could be available within 14 days. However, this intent letter neither indicated the quantities that Visrom Company Limited sought to supply nor the price at which it was to supply them.
- 5) On 29th April, 2020, KEMSA issued Visrom Company Limited a commitment letter to supply 20,000 surgical face mask 3-ply earloop by 8th May 2020. It was further indicated that failure to adhere to the timelines would invalidate the Commitment letter. Further, there was no indication as to the price of each mask. It was therefore surprising that one can supply goods for which he does not know the price
- 6) Of the 20,000 pieces, only 6680 pieces were delivered on time i.e by 8th May 2020. The last batch of the supplies was done on 18th May 2020. Given that there was no evidence as to whether Visrom Company Limited sought and was granted extension to supply surgical

facemasks by KEMSA, it was not clear why KEMSA did not adhere to the terms of supply and cancel the Commitment letter.

- 7) There was no evidence whether Visrom Company Limited submitted a sample for testing before supply. This raises valid questions on the quality of masks supplied.
- 8) Visrom Company Limited invoiced KEMSA Kshs. 90,000,000 on 8th June 2020 for supply of 20,000 Surgical 3 Ply Face Mask with Earloop at Kshs 4500 per unit. There was no evidence placed before the Committee to show how the price of Kshs 4500 was arrived at.

3.37 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF THE SOLICITOR GENERAL

788. From the submissions of The Solicitor General, the Committee observed that -

- 1) The Solicitor General issued guidelines to Ministries, Departments and Agencies to guide urgent procurements envisaged under Section 103 of the Public Procurement and Asset Disposal Act 2015 during the covid-19 pandemic.
- 2) All procurements, during the pandemic, emergency or during normalcy, should conform to the law; this includes suppliers and consultants by dint of Section 72 of the Public Procurement and Asset Disposal Act 2015.
- 3) In instances where the law is alleged or suspected to have been broken during procurement, the DCI and EACC would be called upon to investigate the alleged improprieties in the KEMSA procurement of Covid-19 pandemic related items
- 4) The law provided a remedy of *quantum meruit* in instances where a contract does not exist or could not be performed. The doctrine sought to provide reasonable payment for work done even in instances where there was non-compliance with the law. This is to ensure none of the parties to such a transaction benefits at the expense of the other.
- 5) There was need to form a multi-agency team comprising of among others, the Office of the Auditor General, Office of Attorney General, Public Procurement Regulatory Authority

and Treasury to look into the whole procurement process with a view of analyzing the amount payable to KEMSA suppliers based on the doctrine of *quantum meruit*.

- 6) In the event a provision of the law was not clear during procurement, the Procuring Entity was at liberty to consult the Office of the Attorney General for guidance.

3.38 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF THE CABINET SECRETARY OF HEALTH

789. From the submissions of Cabinet Secretary for Health, Hon. Mutahi Kagwe, EGH, the Committee observed that -

- 1) The Office of the Cabinet Secretary did not formally engage the KEMSA Board between February and June 2020. It was not clear whether the PS representative at the KEMSA Board ever prepared briefs to the Ministry on the happening at KEMSA. The then Board Member representing the Ministry of Health was still serving in the KEMSA Board, ostensibly to provide institutional memory.
- 2) The Cabinet, in a meeting of 27th July 2021, directed disposal of PPEs lying at KEMSA warehouse. This would occasion a loss of Kshs. 1,976, 419.70.
- 3) Though the Cabinet Secretary indicated that the prices KEMSA bought PPEs between February and June 2020 was competitive, evidence from other state Corporations such as KURA and KAA among others indicated purchases of PPEs at lower prices.
- 4) Though the Cabinet Secretary indicated that the Ministry of Health caused reduction of prices of PPEs from Kshs 9000 to Kshs 4300 in the months of June and July 2020, there was no evidence of such an engagement with the manufacturers.
- 5) The KEMSA Board never met between the months February and June 2020 to guide the KEMSA management on preparation and confronting the Covid – 19 pandemic.
- 6) The Cabinet Secretary confirmed to the Committee that investigations on suspended KEMSA officials was still underway. It was however curious that most of KEMSA

officials were still in office as investigations were under way. Further, the then Chairman of the Board was moved to Chair another State Corporation.

- 7) The Cabinet Secretary informed the Committee that the Ministry of Health is working on legislative proposals to address the challenges affecting health sector. However, the CS could not divulge the specifics.
- 8) The CS confirmed that KEMSA had paid suppliers for the supply of Covid-19 related supplies amounting to Kshs 4,712,869,916. He further indicated that the Ministry of Health would not request funding from the National Treasury but will sell the available stocks and use the realized funds to pay for the pending supplies of Kshs 2,919,834,570.
- 9) The Cabinet Secretary denied allegations that he had influenced procurement process at KEMSA.

3.39 COMMITTEE OBSERVATIONS FROM THE SUBMISSIONS OF OTHER GOVERNMENT AGENCIES THAT BOUGHT COVID-19 ITEMS

790. From the submissions of government agencies that purchased COVID 19 items, the Committee observed that -

- 1) Analysis of a number of government agencies including the Covid -19 Task Force, Kenya Airports Authority, Kenya National Highways Authority, Kenya Medical Practitioners and Dentist Council, and the Kenya Red cross that bought covid-19 related items between March and June 2020 did so at a much lower price than KEMSA as indicated in the table below even when the quantities they were buying were much less.

No	ITEM DESCRIPTION	KEMSA Kshs	RED CROSS Kshs	COVID -19 FUND Kshs	KURA (Kshs)	CAA (Kshs)	KMDPC (Kshs)	KeNHA (Kshs)
1.	KN 95 Face Mask	700	Shs. 800 (April)	40	N/A	N/A	N/A	N/A

			Shs. 450 (April)					
2.	Surgical mask disposable 3 ply Ear - Loop	90	Shs 60 (March)	5	110	94	90	60
			Shs.100 (April)		Shop N Buy	Kemsa	Bennets ventures ltd	Shop N Buy
			37.62 (April)		23/04/20	15/05/2020	17/04/2020	18/03/2020 27/03/2020
3	Personal Protective Equipment (PPE)	9,000	Not provided	Not provided		8,750		
						Kemsa		
						26/06/20		
4	Protective Body Suit							4,000
								Shop N Buy
								6/04/2020

2) Had KEMSA purchased the COVID 19 items using the prices that the other government agencies were buying at, it could have saved substantial resources as indicated in the table below.

Comparative prices for personal protective equipment between Kemsa and other entities

ITEM DESCRIPTION	KEMSA Kshs	COVID -19 FUND Kshs	OFFER BY NORTHLINK GSC LTD Kshs
Personal Protective Equipment (371,970 pieces)	@ 9,000 * 371,970 pieces	@	@ 4,590 * 371,970 pieces
Total cost	3,347,730,000.00		1,707,342,300.00

Comparative prices for KN95 facemasks between Kemsa and other entities

ITEM DESCRIPTION	KEMSA Kshs	RED CROSS Kshs	RED CROSS Kshs	COVID -19 FUND Kshs
KN 95 Face Mask 1,836,400 pieces	@ 700 * 1,836,400 Pieces	@ 800 (April) * 1,836,400	@ 450 (April) * 1,836,400 pieces	@ 40 * 1,836,400 pieces

Total cost	1,285,480,000.	1,469,120,000	826,380,000	73,456,000
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Comparative prices for Surgical mask disposable between Kemsa and other entities

ITEM DESCRIPTION	KEMSA Kshs	COVID -19 FUND Kshs	Red cross Kshs	OFFER BY NAIROBI ENTERPRISES LTD Kshs
Surgical mask disposable 3 ply Ear-loop (21,717,600 @ 90) (2,000,000@ 41.61) (Total pieces 23,717,600)	(@ 90 * 21,717,600 pieces) = 1,954,584,000 + (@41.61 * 2,000,000 pieces) = 83,219,004	@ 5 * 23,717,600 pieces	Average of 60+100+37.62= 65.87 @65.87*23,717,600 pieces	@ 41.61 * 23,717,600 pieces
Total cost	2,037,,803,004.00	118,588,600.00	1,562,278,312.00	986,889,336.00

CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATIONS

The Committee made the following Recommendations:

1. A multi-agency team comprising of among others, the Office of the Auditor General, Office of Attorney General, Public Procurement Regulatory Authority and Treasury under the leadership of the Ministry of Health to look into the whole procurement process of the KN95, Face Masks and Surgical Masks between March and July 2020 with a view to analyzing the amount payable to KEMSA suppliers based on the doctrine of *quantum meruit*. All suppliers that may have supplied KEMSA at a price higher than that determined price(s) should refund the Government of Kenya the excess payment made to them within a month of such price determination.
2. The EACC should investigate the KEMSA Board on the role it played during the procurement of the Covid-19 related items with a view to preferring charges against it either severally or individually for abdicating their responsibilities under Section 15(1) of the State Corporations Act that calls upon the board to be responsible for the proper management of the affairs of a state corporation and accountable for the moneys, the financial business and the management of a state corporation.
3. The EACC should investigate the alleged interference of Sen. Kembi Gitura and Mr. Joel Gesuka Onsare, the then KEMSA Board members, on the award of Commitment letters to both Wallabis Ventres Limited and Villa Surgical Supplies and Equipment Limited respectively with a view to preferring charges against them for violating the Public Officers and Ethics Act.
4. The EACC should investigate with a view to preferring charges against the suspended CEO of KEMSA, Dr. Jonah Manjari, for the following:
 - i. signing commitment letters, an instrument not recognised in law

- ii. ignoring the advice of the KEMSA Director's meeting of 21st April 2020 that ~~resolved to suspend/ and or cancel further procurements due to lack of budgets~~
- iii. procuring Covid-19 pandemic related items without a procurement plan, market survey and budgets
- iv. failure to regularly and formally update the Board of KEMSA on the on the preparedness of KEMSA Management in procurement of Covid-19 pandemic related items
- v. Failure to initiate procurements through requisitions contrary to Section 73 of the PPADA 2015
- vi. failure to demand conduct due diligence on suppliers prior to issuance of commitment letters considering that some suppliers that were given commitment were not prequalified by KEMSA.

5. The EACC should investigate, with a view to preferring charges against the Director of Procurement, Mr. Charles Juma, for:

- i. not advising the CEO on the necessity to put in place Procedures of conducting retrospective direct procurement prior to procuring Covid-19 pandemic related items.
- ii. drafting commitment letters while aware that there was no procurement plan, market survey and budgets to undertake such procurements
- iii. failure to advise the KEMSA CEO, in time, to authorize issuance of commitment letters for lack of procurement plan, budget and market survey.
- iv. Failure to conduct due diligence on suppliers prior to issuance of commitment letters considering that some suppliers that were given commitment were not prequalified by KEMSA.
- v. Failure to initiate procurements through requisitions contrary to Section 73 of the PPADA 2015
- vi. Allowing receipt of goods that had not had not passed through Quality Assurance.

6. The EACC should investigate the Director of Finance and Strategy, Mr. Waiganjo Karanja, on whether he abdicated his duty as the head of a finance function.

7. The EACC should investigate the KEMSA head of legal department, Mr. Ferdinand Wanyonyi, on whether he discharged his duty as a legal advisor to the CEO during the procurement of the impugned covid –19 pandemic related items and prefer charges against him if he may have abdicated his role.
8. The EACC should investigate the top KEMSA management on how it processed payment to some suppliers. The companies, such as Harleys Limited and Nairobi Enterprises Limited, that insisted in following the procurement law were left out in the payment.
9. The EACC should investigate, with a view to preferring charges against, persons who alleged backdated the commitment letters issued to Shop ‘N’ Buy in the period 30th April 2020 to 5th May 2020.
10. The Departmental Committee on Finance and National Planning should commence amendments to the Public Procurement and Asset Disposal Act 2015 to provide for the procedure to be followed during the Retrospective Direct Procurement.
11. The Director General of the Kenya Revenue Authority (KRA) should investigate whether all the suppliers that supplied KEMSA Covid-19 pandemic related items had declared and paid taxes due to KRA. In the event that there were those that failed to declare and pay taxes, the KRA should commence appropriate legal actions against them.
12. The State Corporations Act, Chapter 446 be amended to provide that Director Generals/ Chief Executive Officers of State Corporations should not serve in acting capacity for a period exceeding six months.

Signed



Date.....

22/09/2021

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)



THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 22 SEP 2021

DAY:

Wednesday

TABLED
BY:

Chair, P/c
Hon - Abdulsameed Nassir, MP

CLERK-AT
THE-TABLE:

Maimah Hanjra

KENYA NATIONAL ASSEMBLY

PUBLIC INVESTMENTS COMMITTEE


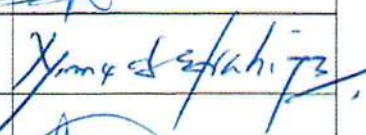



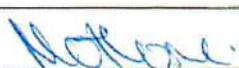


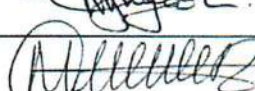
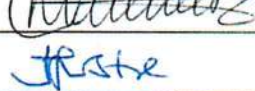
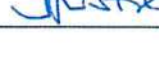

ADOPTION LIST: The Report of the Public Investments Committee on Utilization of Covid -19 Funds by the Kenya Medical Supplies Authority (KEMSA)

DATE:

19/08/2021

TIME

10:53 AM

	NAME	SIGNATURE
1.	The Hon. Abdullswamad Shariff Nassir, MP (Chairman)	
2.	The Hon. Ahmed Abdisalan Ibrahim, MP (Vice-Chairman)	
3.	The Hon. Raphael Bitta Sauti Wanjala, MP	
4.	The Hon. Julius Kibiwott Melly, MP	
5.	The Hon. Mishi Mboko, MP	
6.	The Hon. Tom Joseph Kajwang, MP	
7.	The Hon. Babu Owino Paul Ongili, MP	
8.	The Hon. Esther Muthoni Passaris, MP	
9.	The Hon. James Kamau Githua Wamacukuru, M.P	
10.	Hon. Kandie Kpyegon Joshua, MP	
11.	The Hon. Mary Wamaua Njoroge, MP	
12.	The Hon. Mathias Nyamabe Robi, MP	
13.	The Hon. Mohamed Hire Garane, M.P.	
14.	The Hon. Omar Mohamed Maalim Hassan, MP	
15.	The Hon. Paul Kahindi Katana, MP	
16.	The Hon. Rahab Mukami Wachira, MP	
17.	The Hon. Rashid Kassim Amin, MP	
18.	The Hon. Teddy Mwambire, MP	
19.	The Hon. Thuku Zachary Kwenya, M.P	

Committee Clerk 

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