

## GOLDENBERG INQUIRY DAY 156

## Businessman with Biwott links deeply

By MUGO NJERU  
and MUGUMO MUNENE

A businessman who played a key role in former Cabinet minister Nicholas Biwott's businesses in the early 1990s was deeply involved in two of the most notorious Goldenberg International sister companies.

It emerged yesterday at the Goldenberg inquiry that Mr N.S. Srikanth was also a signatory to Panther Investments Limited which has since turned out to belong to one of retired President Moi's son, Philip, and business tycoon Kamlesh Pattni.

Panther Investment Limited has in the past featured prominently in all manner of fraudulent schemes in which Central Bank was manipulated leading to loss of billions of shillings.

It even claimed pre-export finance amounting to millions — which was supposed to be for locally manufactured goods — for purportedly exporting pangas, slathers and livestock to Britain.

Mr Srikanth was also a signatory to China Trade Agencies Limited which is yet another of Mr Pattni's companies which received millions of shillings from Central Bank through various schemes.

The evidence came during the inquiry's 156th day of sitting during the cross-examination of former governor of the Central Bank of Kenya Mr Eric Kotut by the lawyer for the Deposit Protection Fund, Mr Cecil Miller.

Mr Kotut told the commission that he could not rule out the involvement of Mr Pattni through Mr Srikanth in the construction of the showcase Yaya Centre, Nairobi, which is largely associated with Mr Biwott.

Mr Srikanth is also listed as a signatory to HZ Group which obtained the millions from the DPF and Trade Bank Limited to construct the building.

The evidence came as commission chairman Samuel Bosire issued a last warning for those who had been served with adverse notices to respond to them by Friday next week failing which they should not blame the commission.

It is understood that Mr Biwott has not sent in his lawyers to the inquiry as is the practice even after he and his company HZ Company Limited were served with such notices last month.

Following are excerpts of yesterday's proceedings.

**Kuria:** May it please my lord commissioners, appearances as before and Mr Kotut is here with us ready for further cross-examination.

**Bosire:** Before we proceed with the cross-examination of Mr Kotut, sometimes last month, under our instructions the joint secretaries issued notices to various adversely mentioned persons and we expected their response by March 24. A few have responded. At this time we do not want to indicate what we intend to do thereafter except to extend another moratorium for another week so that those affected can respond latest by Friday next week and thereafter we will assume that you do

**T**he Judicial Commission of Inquiry into the Goldenberg Affair was set up to investigate allegations of irregular payment of billions of shillings in export compensation to Goldenberg International and associated companies in the early 1990s.



It is investigating whether any gold and diamond jewellery was processed through Customs as required, whether any export remittances were made to CBK and if so, how much.

It is also investigating how Central Bank paid out Sh13.5 billion (\$210 million) to Exchange Bank, a bank linked to Goldenberg.

The Commission is investigating

## THE COMMISSION



Bosire, Kitonga and Le Pelley

how the Government accepted and implemented a proposal to award export compensation for gold and diamond jewellery under the Local Manufactures Export Compensation Act.

The inquiry team was appointed by President Kibaki on February 24, 2003, more than ten years after the contentious export compensation scheme was withdrawn by the Treasury. The President's action

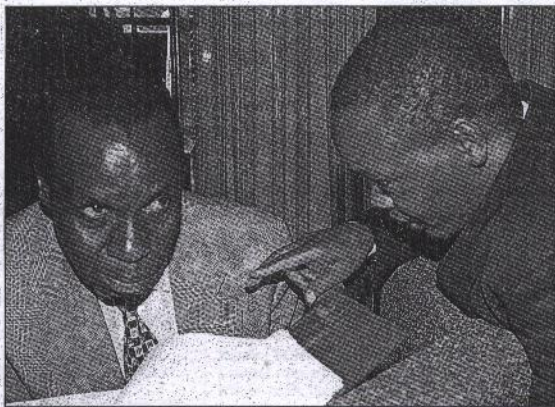
spelt a closure to dozens of Goldenberg-related cases that had been running in the courts for years without producing a conviction.

Hearings began on March 14, last year and have been going on at the Kenyatta International Conference Centre under the chairmanship of Court of Appeal judge Samuel Bosire.

Senior Counsel Nzamba Kitonga is the vice-chairman and fellow Senior Counsel Peter Le Pelley is a commissioner.

The joint secretaries are Mr William Ouko and Mr George Kegoro.

The commission's lead counsel is Dr John Khaminwa while other assisting counsel are Dr Gibson Kamau Kuria, Mr Waweru Gatonye and Ms Dorcas Oduor.



Photo/Peter Karuri

**Mr Eric Kotut, a former Central Bank governor (left), consults with Mr Juma Kiplenge, who is appearing for Mr Philip Moi, during yesterday's hearing at the Goldenberg Commission of Inquiry.**

not want to respond one way or the other or you do not want to act at all in line with the notices issued. So I wanted to make this clear that those with notices are duty bound to act on them failing which you should not blame us later on.

(Dr Githu Muigai applied to appear for former Central Bank official Mr Wanjia Onesmus which was granted. Mr Okoth Oriema for Mr Kotut also applied to have his client allowed access to documents with the CBK and the commission secretariat which will help him in his testimony which was also allowed.)

**Miller:** My lords I would like to introduce two documents at this stage. These are what are called opening question-

naire for Post Bank Credit which is now in liquidation my lords and it is related to Goldenberg associated company called China Trade Agencies (K) Limited. My lords the purpose of this document is to show a further linkage of Goldenberg International to the Yaya Centre which will be apparent as soon as that is done. The other document is a similar one and relates to a company called Panther Investments limited. Mr Kotut, you remember yesterday that we indicated that there is a gentleman called N.S. Srikanth who appears in various Goldenberg related companies, do you recall that?

**Miller:** You also recall that this gentleman is the same one who is a signatory for HZ accounts at Exchange Bank?

**Kotut:** Yes my lords.

**Miller:** And you also recall that HZ Limited is the one which received Sh600 million from the Deposit Protection Fund via the Trade Bank Limited?

**Kotut:** Yes my lords.

**Miller:** Have you heard about this company called China Agencies Limited?

**Kotut:** I think I heard about it when Mr Smith was giving details of these accounts.

**Miller:** And do you recall what he said about this company?

**Kotut:** No my lords.

**Miller:** Are you aware that China Agencies is one of the companies in which Mr Kamlesh Pattni was a director and shareholder?

**Kotut:** It is possible my lords.

**Miller:** Now if you look at the document, there are two names Mr U.M. Desai and A.O. Mwasame as directors. Are you aware that Mr Mwasame was Mr Pattni's driver?

**Kotut:** Yes I have heard that my lords.

**Miller:** On the same document, you see that in the resolution it is stated that "we hereby resolve that an account or accounts be opened with Post Bank Credit Limited and that the bank is hereby authorised to honour cheques, orders, bills of exchange and promissory notes expressed to be drawn, signed, accepted or made by or on behalf of the company, drawn upon or addressed to or payable to the said bank, whether the account or accounts of the company are in credit or in debit or may thereby be overdrawn provided that the same are signed jointly by Mr H.R. Yadavalli and Mr N.S. Srikanth. As the governor of the Central Bank of Kenya, when you find a resolution of this nature what would you say is the position of a gentleman like Srikanth in a company like this?"

**Kotut:** I would say that he was an influential person my lords.

**Miller:** So this is an additional company

in which Mr Srikanth was involved in the running?

**Kotut:** Yes my lords.

**Miller:** Now lets us go to the document on Panther Investments Limited. I will not take you through everything but have you ever heard about this company?

**Kotut:** Yes and again my lords I heard it through Mr Smith.

**Miller:** Do you recall who the directors were of Panther Investments Limited?

**Kotut:** I don't recall that my lords.

**Miller:** You never heard that this company is associated with Mr Philip Moi?

**Kiplenge:** My lords since the witness has given his answer, I think it is not proper for my learned friend to suggest names and secondly we cross-examined earlier to dispute the ownership and so I think it is not proper for this witness to be given evidence from the bar.

**Miller:** My lords I will continue. If you have said you do not know who the directors of the company were but you can see the directors are listed as Mr U.M. Desai and A.O. Mwasame?

**Kotut:** Yes my lords.

**Miller:** On the same document, do you see the name of Mr Srikanth there?

**Kotut:** Yes my lords.

**Miller:** What is it supposed to be doing there?

**Kotut:** Technically he was running the company with Mr H.R. Yadavalli.

**Miller:** If we go to page 3 of the document you see that the same Mr Srikanth is listed as a director of the company, is that correct?

**Kotut:** Yes my lords.

**Miller:** Does it surprise you that Mr Srikanth features yet again in Goldenberg companies?

**Kotut:** No. It does not surprise me because I can see his names appearing in the documents.

**Miller:** But does it surprise you that this man appears in almost every company that we have seen in relation to the

## YESTERDAY'S HIGHLIGHTS

Yaya Centre, Grand Regency linked to Goldenberg money should be seized

Commission's seven-day ultimatum to those adversely mentioned to respond

Was YK'92 funded with money from collapsed Post Bank Credit?

Biwott linkman to Goldenberg scandal was a signatory to Pattni accounts

He is linked to Phillip Moi's Panther Investments Limited

## Yaya Centre and Pattni hotel may be seized over taxpayers money

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commission, mandate it to recommend the recovery of assets that may have been acquired with wealth gotten from Goldenberg International.

The Yaya Centre complex was developed by HZ & Company, a firm associated with Mr Biwott, with Sh500 million obtained from Trade Bank.

Since the huge loan was non-performing, the inquiry heard, Trade Bank was faced with imminent collapse and it turned to Central Bank for an overdraft.

It was then that the governor of Central Bank approached the board of the Deposit Protection Fund (DPF) — a wing of CBK established to insure small depositors from the effects of collapsing banks — and asked them to advance money to Trade Bank.

The DPF was to receive Yaya Centre as a charge for the Sh600 million loan.

As it turned out, DPF lost the charge to Yaya Centre and has never recovered the Sh600 million.

The details emerged yesterday as former CBK governor Eric Kotut was being cross-examined for the second day

by DPF lawyer Cecil Miller. Mr Kotut was by virtue of his position as governor, doubling as the chairman of the DPF board of directors.

**Miller:** You know that the Sh600 million was never recovered, correct?

**Kotut:** It has never been recovered my lords.

**Miller:** And you also know that the security for the Yaya Centre was never recovered and was lost at the DPF?

**Kotut:** Yes my lords.

**Miller:** So you know that the building is gone and the money is gone?

**Kotut:** Yes my lords.

**Miller:** As the governor of the Central Bank of Kenya under whose watch this building and money disappeared, what is your position as far as recovery of the same is concerned?

**Kotut:** My position my lords is that something drastically wrong happened and continues to persist. That, really cannot continue forever in the sense that if a borrower uses some security for the borrowing, it is completely inequitable for that borrower to recover the security and keep the money at the same time. What I am not able to understand my lords is how a court of law can allow

such an inequitable situation to persist.

**Miller:** That is a good position. Would you recommend that these things be recovered?

**Kotut:** I would recommend that action be taken to correct this inequitable position and I believe that the law does not permit such things. Even if I am not a lawyer I know the law is supposed to be adjudicating matters on a fair basis.

On the Grand Regency Hotel, Mr Kotut conceded that it was built with funds from the Central Bank, money which has never been repaid to date.