

Kotut 'masterminded' Goldenberg

By RICHARD MUNGUTI

HZ GROUP of companies of Nicholas Biwott owes Trade Bank and the Deposit Protection Fund (DPF) Sh1.3 billion, the Commission was told while former Central Bank of Kenya (CBK) Governor Erick Kotut was accused of being the mastermind of the goldenberg scam.

Kotut developed his flower farm company Karen Roses through a loan obtained from the collapsed Pan African Bank. Kotut who denied being the mastermind of the goldenberg scam could not disclose how much money he received from the bank. He said it was small money slightly over Sh 1 million.

Post Bank Credit (PBC) collapsed after funding the 1992 general elections through operatives dubbed Youth for Kenya 1992 (YK'92).

Biwott's companies never contributed any monies towards the construction of the upmarket prestigious Yaya Centre but relied on a Sh 500 million advanced by TB.

The commission heard that DPF lost both Yaya Centre and Sh 600 million advanced to TB to bail it out from a financial quagmire. Kotut said that the law should take its course and recover these funds from these properties.

Commissioners Justice Samuel Bosire, Nzamba Kitonga and Peter Le Pelley directed that a full list of those who benefited from funds from the collapsed PBC through YK'92 be availed to them. The funds were linked to the pre-shipment exports finance scheme which was grossly abused by the then politically correct banks.

DPF Lawyer Cecil Miller will team up with Lawyer Dr Githu Muigai for Treasury ex-PS Dr Wilfred Karuga Koinange and the assisting counsel to prepare a whole list of who received what from PBC under the guise of YK'92.

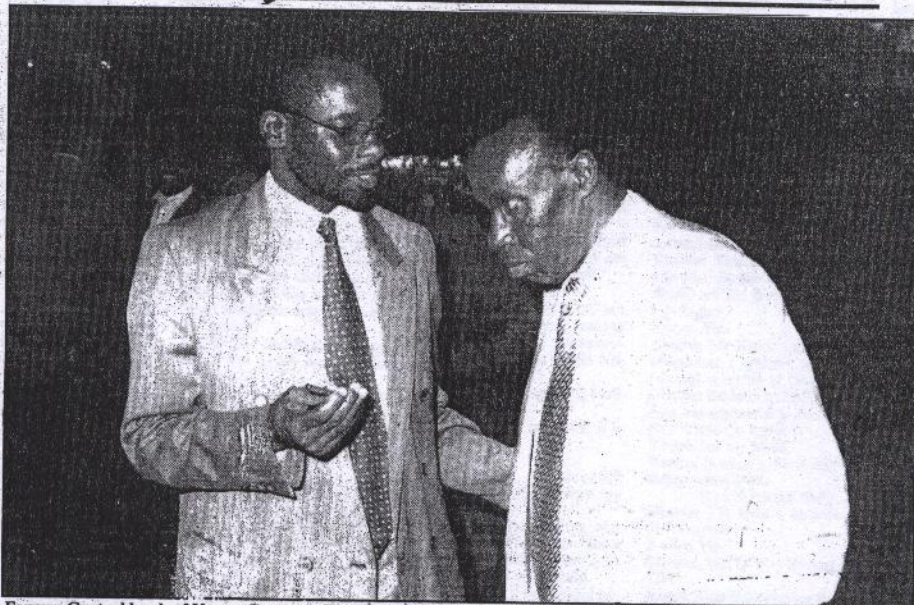
The Justice Bosire led Commission heard that the Directors of TB Noor Kassam and Mr Reyner fled the Country following fraudulent deals through the pre-export shipment finance scheme. Kassam fled to Canada and police are still hunting for him.

Kotut said that over Sh 5 billion disappeared from TB through this scheme and when Police zeroed on them they fled. An International warrant of arrest exists in respect of the duo. The commission heard that businessman Kamlesh Pattni may have been involved in the construction of Yaya Centre through his appointee Mr N S Srikanth.

PBC also transacted Sh 2.2 billion through this fraudulent scheme which was abused by the exporters under the guise they were sponsoring local companies to earn foreign exchange.

Mr Srikanth who was involved in almost all the transactions of Goldenberg International Limited (GIL) and its related Companies including

Biwott firms owes banks Sh1.3 b over Yaya Centre construction



Former Central bank of Kenya Governor Erick Kotut (right) listens to his lawyer Okoth Oriema after giving evidence. — File Picture

China Trade Agencies, Panther Investment Limited and also H Z Group.

Kotut was cross-examined by Miller and Dr Muigai. Kitonga: Mr Miller.

Miller: Thank you my lords. I wish to introduce some documents known as opening questionnaires for PBC which is now in liquidation my lords and it is relating for GIL's related Company called as China Trade Agencies (CTA). The purpose of this document my lords is to show a further linkage to GIL to Yaya Centre.

Kitonga: The document for CTA is exhibit 138 H and the other one for Panther Investments Limited (PIL) is exhibit 138 I.

Miller: Most obliged my lords. Mr Kotut do you have the exhibit 138 H?

Kotut: Yes my lords. Miller: Mr Kotut you recall yesterday in the evidence we managed to indicate via exhibit 79 that there is a gentleman called N.S.Srikanth who appears in various related GIL related companies. You recall that?

Kotut: Yes my lords. Miller: You also recall that this same gentleman is the same one who is signatory for accounts at Exchange Bank Limited (EBL) for H Z Group Ltd?

Kotut: Yes my lords.

Miller: And you also recall that H Z Group are the ones who received the sum of Sh600 million from DPF via TB. Do you recall that?

Kotut: He appears to be in doubt.

Miller: I will repeat that. You recall that HZ Ltd received Sh600 million from TB and various other people?

Kotut: My lords I think TB received Sh300 million.

Miller: You are saying Sh300 million and not Sh600 million. We will come to that later. And now if you look at exhibit 138H that relates to PBC you can see

the company by the name CTA?

Kotut: Yes my lords.

Miller: Have you heard of the company before?

Kotut: I think I heard about it when Melville Smith was giving details of various accounts. Miller: Okay and do you recall what he said in connection to this company?

Kotut: No my lords.

Miller: Okay. Are you aware that CTA is one of the companies in which Pattni was a shareholder/Director?

Kotut: It is possible my lords.

Miller: Of course you are not aware of that. Then I put it to you that CTA is company associated to Pattni. Now if you look at this document, I will take you to first page and see its registrations.

Kotut: Yes.

Miller: You see list of three people as Directors - Desai?

Kotut: Yes.

Miller: And A O Mwasame?

Kotut: Yes.

Miller: Did you know by any chance that Mwasame was a Driver of Kamlesh Pattni?

Kotut: No I do not know my lords.

Miller: Okay. Now go to page 3 (He reads) In 1992 were you a Governor of CBK?

Kotut: Yes my lords.

Miller: An account was opened in respect of CTA and signatories can you read the names?

Kotut: (He reads) and N S Srikanth. He reads several other companies where Srikanth is a signatory.

Miller: When you are the Governor of CBK what do you do with such a revelation what do you make out about such a person?

Kotut: He is a director of those companies.

Miller: He shows him several other signature cards... which common name appears in all?

Kotut: Mr Srikanth.

It appears Srikanth was involved in the running of CTA which GIL related?

Kotut: Yes my lord.

Miller: That is good Sir. Lets go to exhibit 138I. What is the name again their Sir?

Kotut: Panther Investments Limited (PIL).

Miller: Have you heard of PIL? Kotut: Yes my lords I heard again through Mr Smith.

Miller: Okay do you recall who were the Directors of PIL?

No my lords. I don't recall.

Miller: Are you sure you have never heard about the directors of this company?

Kotut: No I cannot recall my lords.

Miller: You have never heard that this company is associated to Philip Moi?

Kotut: Probably... (He keeps quiet) then Juma Kiplenge for Philip Moi objects to the question.

Kiplenge: The witness has

given his answer and it is not proper for my learned friend to give evidence from the bar.

Miller: My lords I will continue. So you say you are not aware who the directors and shareholders of PIL were?

Kotut: No my lords.

Miller: Okay. Now you can see the directors are listed as Messrs Desai and Mwasame?

Kotut: Yes my lords.

Miller: Now the next do you see the name of N S Srikanth?

Kotut: Yes my lords.

Miller: You see that they are the ones who were technically running the account?

Kotut: Yes.

Miller: Would call Srikanth a key player in the whole scenario, given what you have seen now?

Kotut: It looks so my lords.

Miller: It looks he is the key player

Kotut: It looks so in terms of the appearance in these documents.

Miller: Okay and now I will ask you when you were involved in these discussions at DPF 1992 did you know of his existence?

Kotut: No my lords.

Miller: Not at all. And you want to tell this commission that you came to about his existence through this inquiry?

Kotut: Yes my lords.

Miller: Are you aware who built the Yaya Centre?

Kotut: I could not be definite my lords but I believe it was LZ Engineering Ltd.

Miller: L Z, did H Z have an hand in it?

Kotut: I would not know my lords. I would not know the difference between LZ and H Z.

Miller: By the time the H Z Group were going to surrender the Yaya Centre to TB did you bother to find out who the original ownership was?

Kotut: No my lords. Discussions about the ownership of the property were discussions between Trade Bank and the borrower. It was not between DPF and HZ or LZ.

Miller: Well you know that the Yaya Centre was built through a loan facility which you have indicated in a minute that was none-performing at TB. Correct?

Kotut: Yes my lords. I cannot remember TB or Pan African Bank (PAB) whatever.

Miller: I will refer you to the minutes of DPF. You remember them?

Kotut: Yes.

Miller: If you look at minute number 51 paragraph 2. I just read for you... Trade Bank after reports in the media about its association with as former Cabinet Minister the bank was owed over Sh 500 million by H Z Group of Companies and the loans were not performing. You remember stating so at this meeting?

Kotut: Yes my lords.

Miller: What I am asking you Sir is when you stated this were you aware how the Sh 500 had arisen?

Kotut: I would not recall now my lords what the circumstances were. The important thing we were doing my lords was recovery. And we were recovering from whichever party had borrowed from TB.

Miller: I will straight to the point. Now that you have know Mr Srikanth is inter-linked with GIL companies owned by Kamlesh Pattni and you now know that H Z Ltd has Srikanth there would you now rule out the involvement of Pattni ob-

Turn to Page 3

Affordable
Wedding
Rings & Cards
With
unique Designs
In Gold / Silver Available at:
NAGIN PATTNI
FOR PERFECT JEWELRY
RIVERROAD, NEAR FIRE STATION. TEL: 228296 NRB.
KAUNDA STKY, NEAR HOOTERS. TEL: 229099 NRB.

➤ Kotut accused of being mastermind of goldenberg saga.

➤ Kotut obtained a loan from the collapsed PAB to finance his flower project.

➤ PBC collapsed for funding 1992 general election. Commission demand list of beneficiaries.

➤ Kassam and Reyner former directors of TB fled Kenya after a loss of over Sh5 billion through the pre-export finance scheme.

scam, Koinange's lawyer claims

From Page 2

taining the loan facility for H Z Ltd?

Kotut: I would not rule out because I do not know how the loan was obtained my lords.

Miller: Okay. But you cannot rule out that since Srikanth was his nominee he could have been involved in obtaining the facility for the construction of Yaya Centre?

Kotut: Again I would not know whether they were involved in the construction or not.

Miller: But you wouldn't rule it out?

Kotut: I wouldn't rule out.

Miller: You now know the recipient of the money from TB. Do you now know who received the money released by DPF to TB? Correct? You now who ultimate beneficiaries were?

Kotut: I know whose accounts were credited. But the actual person I do not know.

Miller: Yes that's fine. That is better for we know who accounts were credited. Yes, correct?

Kotut: Yes my lords.

Miller: Do you now know the Sh 600 million was never recovered?

Kotut: Yes.

Miller: You also now that the security for Yaya Centre was never recovered. It got lost on DPF. You now know that?

Kotut: I know that the security issue is what became a legal complication and eventually... (Interrupted by Miller)

Miller: Do not go into the issue of mortgage. The question is very simple. Based on what

we discussed yesterday you now know that Yaya Centre which was meant to be a security handed over in exchange for a loan facility has gone?

Kotut: Yes my lords.

Miller: So the building has gone and the money has gone. Correct?

Kotut: That is correct my lord.

Now as the former Governor of CBK under whose watch this building money disappeared, what did you do as far as recovery of the same is concerned?

Kotut: The position in this my lords is that something wrong happened and continues to persist and that really is something which cannot persist forever in the sense that if a borrower released some security for borrowing. It is completely inequitable for that borrower to recover the security and keep the money at the same time. That is inequitable. I am not able to understand my lords is how a Court can allow such an inequitable situation to persist. But I am not a lawyer so I really cannot commend further than that. But as a lay person, it looks for me completely inequitable for a borrower to be given such a security and be allowed to keep the loan he had borrowed.

Miller: Fine now that is a good position. The issue is these recoverable. As a Governor would you recommend that they be recovered?

Kotut: My lords I would recommend that action be taken to correct that equitable situation. And I am sure the law does not permit such an inequitable situation like that, although I am not a lawyer. I am sure the law must adjudicate matters on a fair basis. And the courts are supposed also to be adjudicating on a fair basis.

Miller: Now if you look at minute 51 there is an overdraft position of Sh 500 million correct? There is an overdraft position of Sh 500 million by H Z Group of Companies at the TB?

Kotut: Yes.

Miller: Is that correct Sir?

Kotut: Yes.

Miller: And that is what led to this scenario you are trying to explain?

Kotut: Correct.

Miller: Now my question is when we talk about the Sh600 million are we factoring the Sh500 million was made an issue as the figure that was non-performing?

Kotut: The Sh600 million my lords was given against the charge.

Miller: I understand you Sir the Sh600 million was given against the charge. That is fine. So the Sh600 million is gone, isn't?

Kotut: Yes my lords.

Miller: So my question to you is what was the total loss if already there was Sh500 million which was as you said was already not performing. Is it not Sh600 million plus Sh500 million?

Kotut: No my lords. Because they say Sh 300 to PAB and Sh300 million to TB is one from DPF.

Miller: We are together there Sir. My only issue is this problem was raised by what you re-

ferred in minutes as non-performing loan of Sh500 million. Which means already Sh 500 million had left TB and was not being repaid.

Kotut: My lords I know what the lawyer is saying.

Miller: But it is simple mathematics in the sense that if I borrow a million shillings and I do not repay the bank has lost Sh1 million.

Kotut: And what about the security?

Miller: But it got lost.

Kotut: But it is the one which was exchanged for the money.

Miller: But it ultimately got lost.

Bosire: The Sh600 million which you loaned TB did not include the Sh500 million?

Kotut: No my lords.

Bosire: It did not. If it did not and we know for a fact that the Sh600 million was not recovered. Then it means the Sh 500 million is also due?

Kotut: I am not so sure my lords because...

Bosire: You do not know it is due?

Kotut: Yeah.

Bosire: Was it repaid?

Kotut: Probably it was my lords because...

Bosire: No we are dealing with a specific. Do you know for a fact whether that Sh 500 million whether it was repaid.

Kotut: I think it was repaid because it was to deal with transfer of property.

Bosire: But the transfer of property failed. If the property failed was the loan revised? Are we together. The property was supposed to cover the Sh500

million.

Kotut: Yes. The Sh600 million was released for two banks TB and PAB.

Bosire: Agreed. Who owed the Sh500 million?

Kotut: Trade Bank.

Bosire: TB owed the Sh 500 million?

Kotut: No Trade Bank customer.

Bosire: Who was the customer?

Kotut: I think it was H Z Group.

Bosire: HZ. Alright. So LZ or HZ Group did not repay the loan did they?

Kotut: They would say they surrendered the property.

Bosire: The initial property was lost. So the initial loan of Sh500 million is still outstanding. Right?

Kotut: Yes.

Bosire: Mr Kotut you are an accountant I am not. So what counsel is trying to find out is whether the loan of Sh600 million was supposed to cover the Sh500 million was it?

Kotut: No my lords.

Bosire: It wasn't. So it was an independent loan.

By a different body.

Bosire: TB lent a customer Sh500 million?

Kotut: Yes.

Bosire: And DPF is lending to TB?

Kotut: That is correct my lords.

Bosire: Alright eventually what happened the Sh 600 million was lent to TB got lost and is not recoverable. Let me say it has not been recovered yet, correct?

Kotut: Yes

Bosire: From Trade Bank. Alright. And the money owing to TB by H Z Sh 500 million has not been recovered. The Sh 500 million owing to TB by a customer called H Z.

Kotut: That is correct my lords.

Bosire: DPF is the one in charge of TB and many other banks. Is it? You were the governor so you should tell us.

Kotut: DPF was to provide a security.

Bosire: So can I summarise it this way. The amount of Sh500 million owed to TB is still outstanding?

Kotut: Yes my lords.

Bosire: And the Sh600 million owed to DPF is still outstanding?

Kotut: That is correct my lords.

Bosire: So the total outstanding amount is Sh1.1 billion?

Kotut: Yes.

If the Sh500 million was not repaid add another Sh200 million that was there before.

Bosire: Mm

Miller: For the construction.

Bosire: So Sh1.3 billion is still outstanding whether to DPF or Trade Bank.

Kotut: Yes my lords.

Bosire: If it has not been paid?

Kotut: Yes my lords.

Are you alright now?

Miller: My lords I am so very grateful.

Kotut could not state who released the Sh 200 million earlier advanced to HZ Group as the amount was ratified by a DPF board in October, 1992. He denied it was he who authorised the loan to HZ Group. Hearing continues today.

AGRICULTURAL FINANCE CORPORATION

TELEPHONE: 333733/
34/35/36/37
TELEX NO. 22649



DEVELOPMENT HOUSE,
MOI AVENUE,
P. O. BOX 30367
00100, NAIROBI, GPO

PUBLIC NOTICE

EXTENTION OFFER FOR GRANTING OF INTEREST CONCESSIONS TO FARMERS WITH LOAN ARREARS

Following numerous requests from our clients for extension of the offer for concessions against accumulated interest on outstanding loans, the Agricultural Finance Corporation has accepted to extend the offer period from **4th January, 2004 to 31st May, 2004**. The Corporation therefore wishes to invite applications from any interested borrowers who wish to take advantage of this offer to regularise their accounts.

Applications will be considered subject to the same terms and conditions as earlier announced. These are:

- 1.0 The concessions will be granted only against accumulated interest. Principal loan amounts, administrative fees and costs are repayable in full.
- 2.0 The amount of concession to be granted will be based on the previous performance of the account.
- 3.0 The applications will be considered on a "without prejudice" basis.
- 4.0 The offer has been extended to **May 31st, 2004**. Thereafter the Corporation shall re-commence collections of all loans outstanding in accordance with the existing loan agreements.
- 5.0 The concessions will be granted to borrowers who wish to make full and final settlement of their account. Failure to comply will render the concession null and void and the status of the account reverts back to the original position.

Borrowers who wish to take advantage of the offer are invited to submit their written requests for consideration. All requests should be addressed to the **Managing Director** and be either hand-delivered to respective Branch offices or through the post.

NB: Borrowers are advised to note that the extension of offer period applies only to those farmers who had not submitted their applications for consideration. Any offers already granted remain valid and must be honoured as per the terms and conditions stipulated therein.

OMUREMBE IYADI
MANAGING DIRECTOR
AGRICULTURAL FINANCE CORPORATION

12TH MARCH, 2004

REPUBLIC OF KENYA



MINISTRY OF PLANNING AND NATIONAL DEVELOPMENT PUBLIC NOTICE

PUBLIC HEARINGS OF SECTOR WORKING GROUP REPORTS

As part of the preparations of the 2004 National Budget, the Ministries of Finance; and Planning and National Development in conjunction with other Ministries are announcing that there will be **Public Hearings of the Sector Reports**. The hearings will run continuously from **15th - 17th March, 2004** at the Amphitheatre in the Kenyatta International Conference Centre.

The Sector reports are to be presented as follows: Fiscal Strategy Paper (FSP); Public Administration; Public Safety, Law and Order; Agriculture and Rural Development; Human Resource Development; Physical Infrastructure; Trade, Tourism and Industry; Information, Communications and Technology; and, Monitoring and Evaluation. These reports are a result of consultations that have been going on in Government together with stakeholders in preparation for the 2004 Medium Term Expenditure Framework (MTEF) Budget.

The main objective of the hearings is to solicit views of the public so as to firm up the priorities to be captured in the MTEF Budget and to ensure that the Economic Recovery Strategy priorities are the basis of national resource allocation. The hearings will be officially launched by **Hon. Daudi Mwiraria, Minister for Finance and Hon. Prof. Peter Anyang' Nyong'o, Minister for Planning and National Development**. Registration begins 30 minutes earlier; all stakeholders are requested to be seated 5 minutes before the times shown in the schedule below:

PROGRAMME FOR SECTOR HEARINGS

	SECTOR	TIME
Day 1: 15th March, 2004	Official Opening	08.15 a.m. - 8.30 a.m.
	Fiscal Strategy Paper	08.30a.m. - 10.00 a.m.
	Public Administration	11.00a.m. - 1.00p.m.
	Public Safety, Law and Order	2.30p.m. - 4.30 p.m.
Day 2: 16th March, 2004	Agriculture and Rural Development	8.30a.m. - 10.00 a.m.
	Human Resource Development	11.00a.m. - 1.00 p.m.
	Physical Infrastructure	2.30p.m. - 4.30 p.m.
Day 3: 17th March, 2004	Trade, Tourism and Industry	8.30a.m. - 10.00 a.m.
	Information, Communication & Technology	11.00a.m. - 1.00 p.m.
	Monitoring and Evaluation	2.30p.m. - 4.30 p.m.

Advance registration can be communicated to: MTEF Secretariat on Tel: 338111, Ext. 33210 or 33178 or Email: psplanning@treasury.go.ke