

Biwott firms 'received cash from GIL'

By RICHARD MUNGUTI
COMPANIES owned by Kenya South Member of Parliament Nicholas Biwott received monies from Goldenberg International Limited (GIL) through business transactions while Mr Erick Kotut found himself in problems for failing to adhere to directives from Treasury to ensure that export compensation was paid only for exports. Deposit Protection Fund (DPF) established through lawyer Cecil Miller that HZ Group of Companies and received Sh78,461,588 for acquisition and sales of Foreign Bearer Certificates (Forex-Cs).

Cheques for this transaction were signed by GIL's director Kamlesh Pattni. The money was paid through Exchange Bank Limited (EBL) through KSKP account number 100038. Kotut said that it is clear from the evidence that HZ Group of Companies received money from Goldenberg related transactions. He also admitted that DPF lost huge sums of money through the collapsed Trade Bank Limited (TB).

Kotut told Commission Chairman Justice Samuel Bosire, his vice Nzamba Kitonga and Commissioner Peter Le Pelley that the DPF money should be recovered because those who received it are known and have never repaid.

Assisting Counsel Dr Gibson Kamau Kuria said Mr Biwott is expected to explain how he received Sh1.3 billion through his companies from TB and the collapsed Pan African Bank Limited (PAB).

Kotut, a former Central Bank of Kenya (CBK) Governor, was directed by Treasury Permanent Secretary to ensure that before any payment to GIL was made he should ensure that foreign exchange had been received.

GIL had been allowed in 1990 by Education Minister Prof George Saitoti then Vice President and Minister for Finance to export gold and diamonds then earn a special export compensation of 35 per cent.

GIL had assured Treasury that it would earn the country US\$ 50 million from these exports. Kotut never reported back to Treasury that GIL had delivered this foreign exchange.

In a bid to defeat his own policy Kotut directed CBK officers not to question the source of foreign exchange declared by GIL.

Kuria: May it please my lordships the appearances are as before. Mr Kotut is ready for cross-examination.

Kitonga: We remind you of your oath Mr Kotut.
Kotut: Yes, my lords.
Kitonga: How long do you think you will take Mr Miller?
Miller: My lords not very long.

I think I will be done probably about 15 minutes. The only thing is that my lords I was given some homework yesterday and I am happy to report that I have actually done it. Perhaps my lordships will allow me to explain that before cross-examination.

Kitonga: You may proceed.
Miller: Most obliged. My lords in terms of addressing the issue I would like to introduce an exhibit which will help carry the point. I have made enough copies for every one. (They are passed over to commissioners and assisting).

Lawyer Saadia Effendy for Biwott and his group of companies interjected.

Effendy: My lords I would also like to have an opportunity to clarify on an issue raised yesterday. I will wait for an indication from the commission when to clarify those issues. Most obliged.

Kitonga: Proceed.
Miller: My lords the main issue yesterday was to look whether Yaya Centre is linked to the Goldenberg inquiry or Goldenberg matter: That point was raised by learned Commissioner Mr Peter Le Pelley. And I would like to address that issue by referring you to the expanded terms of reference of July 29, 2003. And more particularly my lord F and R.

... My lords let me proceed. My lords I will refer the expanded terms dated 29/7/2003. My lords for purposes I will be referring to exhibits 79 A, 82 and 81B.

Kitonga: Proceed.

Miller: My lords if I may refer to the new terms of reference and in particular F and R and I shall read... To inquire into allegations that under the CBK rediscounting facility for pre-export bills of exchange, various amounts fraudulently paid out of CBK by the EBL, Kenya Commercial Bank Limited (KCB), National Bank of Kenya Limited (NBK), Delphis Bank Limited (DBL), Trust Bank Limited (TBL), TB and any other Commercial Bank to GIL and any other party occasioning loss to the CBK. Now my lords as far as I am concerned and you are aware that I represent TBL and TB.

... Now ground R says to inquire into and to investigate any other matter that is incidental to or connected with the foregoing terms of reference. Now my lords I did look at the English Dictionary in terms of the definition of the word incidental and it is... Basically casual, random, by the way meaning anything that can be casually been said to be related to or connected to as a by the way should be looked into in relation to the above mentioned terms of reference. Now my lords you are aware so far by the evidence presented to you, pre-shipment was an issue that affected TB and so did cheque kitting which affected PAB. Now it is our submission my lord that as a result of these two a liquidity crisis did arise caused by those two things and a few others that will become apparent as the inquiry continues.

... Now it is our submission that the former Governor Mr Kotut did in relation to the liquidity crisis at TB is that he instituted investigations as a result of the evidence presented to him.

suit of the release of the Sh600 million was as follows:-

Part of the Sh600 million which went to PAB was supposed to secure a charge on Yaya Centre. What happened my lords is that the money was paid to certain individuals and companies. As we know so far the security of course was supposed to be charged to TB and the security was lost...

Now my lords the next item of this is that the Sh500 million none performing loan at TB was not paid. A further Sh600 million went and another sum of Sh200 million also went to TB and then the security.

Now my lords what is even more disturbing is that the negotiations which were done by Mr Kotut as given in evidence so far is in exhibit 138D related to the release of the Yaya by H Z Limited. My lords you will recall in exhibit 79 which was represented by Mr Melville Smith HZ Limited was cited as a GIL associated company.

Now my lords what is even more astounding which has also come in evidence is that H Z Limited has one Mr N.S Srikanth who is a signatory of the following accounts GIL account number 10001, Durley House, International Trade Consortium (ITC), Panther Investment Limited (PIL), China Trading Agencies (CTA) and also Foreign Exchange Manager at EBL.

Effendy: My lords I believe my learned friend is bringing up issues that were brought up in cross-examination about a week and half ago where he mentioned each of these parties. He seems to be bringing them up all together now.

Bosire: Let him finish.

Miller: Thank you my lord. So far we have Srikanth in the HZ Limited and the five other companies apart from the Goldenberg itself. Srikanth is involved in sixth major Goldenberg related companies. Now my lords lets look at exhibit 79 A page 3 my lords. My lords if you look at account number 100038 that is a KSKP account. Then my lord I want you now to look at exhibit 82 page 11. You will see cheque payments to Esmail & Esmail from EBL in liquidation between 1992 and 1993 from GIL accounts to accounts with advocates.

... My lords I would like to request you to look on 8/2/93 you will see payments to Esmail & Esmail Advocates with a payment of Sh19,500,000 and please note the account from the bank is a KSKP account 100038. You will also notice there is another payment of Sh19,586,547.90 and then you notice another payment of Sh19,654,863 and another payment of Sh19,721,178. This amounts to Sh78,461,588.96. Now my lords note that and now please to exhibit 81B page 81.

... On page 81 of exhibit 81B. These are the documents that have been accepted as evidence before you brought by Mr Smith. (They are cheques for the above amounts paid to Esmail & Esmail Advocates. They are all signed by Pattni).

Miller: Now where did these money end up my lords that is the issue. And now I will refer to the exhibit that I produced this morning. Perhaps you can give it a number.
Bosire: You are still addressing us.

Bosire: So far I have understood you.

Miller: I am so happy my lord. I am so happy my lord. I hope I have done my homework well enough my lord commissioner.

Bosire: Yes.

Miller: I would like to point out I hope my lord commissioner Mr Le Pelley is also satisfied.

Le Pelley: There are two issues on pre-export shipment and DPF. I do not know why you are asking this witness.

Miller: My lords he was the Governor at the time when the pre-shipment scheme was going on. He was the Governor when he realised the scheme was being abused my lord. And he was the Governor when he commenced investigations against Mr Noor Kassam and Rayner who quickly disappeared. So it is necessary to lay out with him which is already done my lords.

... He has also said in cross-examination that pre-shipment is one of the problems which caused a liquidity problem at TB. Now on the issue a liquidator will come and he would now tie up the whole evidence in terms of pre-shipment, how much is lost, because my lords you recall I deed ask him how much is lost during the pre-shipment and he said he was not aware.

But my lords I hope I have satisfied you in terms of the link that was the key issue yesterday.

Bosire: I know where you are coming from.

Miller: Yes my lords.

Bosire: I know where you are going.

Miller: My lords I am very much obliged. I need also know whether we are walking together.

Effendy: My lords may have a chance to respond to this as I indicated this morning.

Bosire: Mm

Miller: My lords may I finish with this exhibit and thereafter she can have the opportunity to respond.

Bosire: What I am trying to avoid

Miller: Yes my lords

Bosire: Are submissions in the middle.

Miller: I do understand my lords but I was forced to do that by virtue of the homework I was given to do my lords

Bosire: Yes. It was to make us understand what you are saying.

Miller: Yes my lords.

Bosire: Not to justify or to say we agree with you or we don't agree with you.

Miller: I understand.

Bosire: Once we understand you then we shall ask her to respond. The reason we did ask you is because we did not understand where he was coming from and where he was going.

Effendy: I understand.

Bosire: And we have understood him and now I see where he is going.

Miller: My lord chairman I am so happy to hear that My lords I request that I read this final paragraph to ensure that you see completely.

Bosire: You mean I don't see (laughter from the public gallery). Okoth Oriema for Kotut asked the commission to direct that counsel be given the new exhibit.

Bosire: Let him put it to the witness.

Miller: My lord how do you want to go with the witness. Can I put it directly to him?

Bosire: You can put it directly by telling him look at this docu-

Miller: Most obliged. Mr Kotut do you remember where we stopped yesterday?

Kotut: Unless you remind me I can't remember.

Miller: Now you remember we mentioned this letter and you said you had never seen it before?

Kotut: Yes my lords.

Miller: You also confirmed that it talked about the denial of the transfer of shares?

Kotut: Yes my lords.

Miller: Now in the document in front of you now from Esmail & Esmail Advocates. It is a letter from Esmail & Esmail Advocates have you seen it?

Kotut: Yes my lords.

Can you confirm to whom it is addressed?

Kotut: My lords it is addressed to Assisting Counsel Goldenberg Commission of Inquiry.

Miller: And can you tell of the date of the letter?

Kotut: The date of the letter my lords is 16/9/2003.

Miller: And can you confirm who has written the letter?

Kotut: The letter my lords is written by Esmail & Esmail Advocates.

Miller: That is fine. Would now kindly read the letter.

Kotut: My lords the letter reads... We refer to the writer's meeting with Dr John Khaminwa and Ms Dorcas Oduor regarding payments by us in the years 1992 and 1993 from Exchange Bank Limited/ Kamlesh. As advised we confirm as follows

1) On 24th December 1992 we received on behalf of Mr J.C Kulei a cheque for Sh10 million drawn on Exchange Bank Limited, this amount was paid out by us on 14/1/1993 in accordance with his instructions.

... Lawyer Gikundo for Kulei stood and opposed saying on the basis of it advocate client confidentiality. He opposed its reading.

But Justice Bosire overruled him saying there was nothing confidential about it saying it was fresh evidence for clarification which they demanded as commissioners. Bosire said what was being clarified is establishment of a link between HZ Group and Goldenberg. He said the commission has some fluid connections which can touch on any matter. He said the document was not covered under the secrets classification. He directed Kotut to proceed reading.

2) (Kotut reads on)... On 20th January 1993 we received on behalf of Kamlesh Pattni a cheque for Sh16 million on EBL, this amount was refunded to Kamlesh Pattni on 20/4/1993 as the purchase in respect of which it was paid did not materialise in the manner anticipated.

Miller: I request you read slowly that is the key issue.

Kotut: 3- We received four cheques totalling Sh78,461,588.00 all draw on EBL which were paid on February 8, 15, 22 and March 1, 1993. The amount was received by us pursuant to a transaction between our client HZ & Company Limited and EBL for acquisition and sale of Forex-Cs. Sh78 million represented premium for Forex-Cs and Sh461,588 was for interest. The total amount was duly paid out by us in accordance with the instructions of said client.

Do not hesitate to contact the writer in the event you require

Kotut: Yes my lords.

Miller: Can you look at the second column that reads Esmail & Esmail Advocates?

Kotut: Yes my lords.

Miller: Can you see four cheque payments?

Kotut: Yes my lords.

Kotut: Yes my lords.

Miller: What is the total amount for those cheque payments?

Kotut: The total amount is Sh78,461,588.96.

Miller: Now can you confirm that is the total amount that is exhibit 138U paragraph 3?

Kotut: Yes my lords.

Bosire: Can you question the cents?

Kotut: Except for the 96 cents.

Miller: Except for the cents. Can you now look at exhibit 81 B. Do not close exhibit 81 page 11.

Kotut: Yes my lords.

Miller: Go to page 81 sir, are you there sir?

Kotut: Yes

Miller: Confirm that there is a cheque there dated February 1993?

Kotut: Yes my lords.

Miller: Paid out to who?

Kotut: It is paid out to Esmail & Esmail Advocates my lords.

Miller: For how much?

Kotut: For Sh19,500,000.

Miller: Is that the same as the one on page 11 of exhibit 81B.

Kotut: Miller referred to three other payments to Esmail & Esmail and confirmed by Kotut where all cheques were signed by Pattni.

Miller: Now could then confirm after reading those exhibits where do the amounts end up going to?

Kotut: Read paragraph 3 of 138U. Let me read it for you... (He reads of receipt of cheques by Esmail & Esmail for H Z Group of Companies). Where did the money go to?

Kotut: From this my lords I am not able to tell because it says the amount was duly paid up by us in accordance with instructions of said client.

Miller: Okay who was the client?

Kotut: The client was HZ and Company Ltd.

Miller: Precisely. What normally happened when somebody dealt with Forex-Cs. What did this mean?

Kotut: It means redemption my lords.

Miller: Redemption by who?

Kotut: By the holder.

Miller: And who would redeem?

Kotut: It would be the CBK's agent my lords.

Miller: In this particular paragraph who was the CBK agent?

Kotut: In this case it was EBL my lords.

Miller: Precisely so. Who would be the recipient of the money from the agent of the CBK? Would it not be HZ & Company Sir?

Kotut: Yes I think it is my lords.

Miller: So would I be right in saying from this paragraph that the Sh78 million ended up with HZ Limited?

Kotut: I think that is what is implied my lords.

Miller: Implied or it is a clear scenario here?

Kotut: What is the scenario?

Miller: Would you clarify that the money ended up with HZ from this paragraph?

Kotut: On the basis of what is said here the money would have ended up with HZ Group my lords.

Miller: Precisely Sir. Now HZ and Company is now clear received Sh78 million from Kamlesh Pattni. Correct?

Kotut: Yes my lords.

- Kirloskar Engines
- Total Engines
- Posho Mills
- Electrical Motors
- Vee Belts Bearings
- Chuff Cutters
- Cane Crushers
- Kirloskar Spares
- Motor Bicycles
- Power Saws
- Lubricants
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