

Ng'eny and Magugu clear names

From Page 2

Kotut: Yes my lords.

Miller: So why do you now say loaded sir?

Kotut: Because essentially because of that.

Miller: Because of?

Kotut: My lords, I said I did not understand the ruling of the Court of Appeal but we could see that the subject was very loaded, very heavy. So it took such a long complicated.

Kitonga: Wait Mr Kotut.

Mrs Saadia Karimbux Effendy for Biwott interjects.

Effendy: My lords, if I may say I thought that Mr Miller was referring to a new bundle of documents and that is why he stood up for cross-examination and then we continue the way he is going on, then we shall have to revisit the issue. As the lords may please shall re-examine this witness.

Bosire: I thought Mr Da Gama Ross is the one who requested this exhibit comes in.

Miller: That is precisely correct.

Effendy: Infact we thought he is already referred to this exhibit. We urge we should re-examine this witness once again.

Bosire: We can't deal with that now. Da Gama Ross is one who brought in this document in cross-examination.

Effendy: Yes my lords.

Bosire: Because he said that he was not to be here this week.

Effendy: Yes my lords.

Bosire: So the time had not come for this exhibit to be brought

Effendy: Yes.

Bosire: And we had stood down Mr Miller because of this exhibit. He was going to get this document and that is why he is having a second bite.

Effendy: I see my lord. Infact we have been issued with this document. I thought that it had been issued to them. However, we can say these things in submission.

Bosire: Very well. Because as far as I am concerned, this document came in as a result of your senior.

Effendy: That is right.

Bosire: Otherwise Mr Miller had prepared and we had allowed him to do it so that he can be able to complete cross-examination.

Effendy: We will handle this during submissions.

Bosire: Proceed.

Miller: Thank you my lords. Now Mr Kotut sir, if I may take you back to page 2 of the same exhibit, are you there?

Kotut: Yes my lords.

Miller: Are you aware that costs are normally awarded to advocates and not to the clients?

Kotut: I would not know that my lords.

Miller: You don't know. But here you can see that the cheque has gone not to advocates but to L. Z Engineering Construction. Correct?

Kotut: Yes my lords.

Bosire: Now Mr Miller, don't we have party costs?

Miller: Yes there are party and

Bosire: What was it?

Miller: This I believe was just part of the cost of the total cost of Sh145.5 million which was the cost awarded by the court.

Lead assisting counsel John Khaminwa interjects.

Khaminwa: Normally my lords, the cheque would be written in the name of the law firm. The whole thing is normally adjusted behind the scenes. It is not done the way it had been done at all. When the bill of costs was being done, DPF had somebody else in mind.

Kitonga: He is referring to the mode of payment, not the payment itself.

Miller: Yes my lord I am referring to mode. Now we were dealing with the issue of the trend unlikely to change in the future sir. You were explaining before my learned counsel interjected. Could you kindly proceed with the explanation you were giving?

Kotut: No the explanation was very simple my lords that the whole subject from what I saw from the documents seemed to be a very complicated and big subject and that is loading I am talking about.

Miller: OK. But do you share the view or did you have the view that you feel that the decisions were not as you expected?

Kotut: That is correct my lord.

Miller: Not as you would have expected?

Kotut: Now can we go to page 72 of the same bundle.

Bosire: I hope it is not an appeal.

Miller: No my lords. I am just trying to make it clear. To clear my client's case as much as possible. I am just trying today but my client's case. I am just getting concerned. He is the one who initiated the whole project so it is necessary to make it clear how the whole issue went.

Bosire: Why I am feeling uncomfortable is that the decisions you are challenging.

Millers: Yes my lord.



Magugu



Ng'eny

Bosire: Are by my colleagues.

Miller: I understand that my lords but the fact remains the decisions are now and I stand guided by you but as long as the matter is not before the court, we can have the same re-opened.

Bosire: We hand it over to scholars.

Miller: My lord you are the scholar. My lords I have consulted with my seniors and assisting counsel and we are looking into a particular authority that I think we shall produce before you which I hope we shall be able to get it. It states quite clearly that

a Commission of Inquiry has the power to re-open matters that have been closed in a court of law to look into them again and make the necessary recommendation my lord. My lord, I believe that we will be able to produce it to you towards the end of my submissions my lord.

Bosire: Do you think our recommendation will overrule them?

Miller: Not necessarily but the money went and the security went. And already we have made out the connection between this company and the Goldenberg-related companies my lord. As a result my lord, it is in your limit to look into the issues we shall be raising so that you can make the necessary finding my lords.

Bosire: Proceed.

Miller: Thank you my lord.

Khaminwa: I had a different impression. I got the impression that Mr Kotut's statement that the courts were being taken for granted.

Miller: My lords infact that is where I thought he was going to head my lord.

Bosire: I think what we do is show your client's grievance. And then proceed.

Miller: My lord show?

Bosire: Your client's grievance.

Miller: That is what I am doing my lord. Now can we go to page 72 of the same document.

Kotut: I am there my lords.

Miller: Now you can see those are minutes of the DPF held on April 25, 1999?

Kotut: Yes my lords.

Miller: And of course by that time, Mr Micah Cheserem was the Governor. You were no longer there?

Kotut: Yes my lords.

Miller: If you look at minute 282.

Kotut: Yes my lords.

Miller: It states proposed settlement of litigation matters relating to Yaya Centre and HZ Group of Companies.

Kotut: Yes my lords.

Miller: Now I read that minute...

The board was briefed on the proposal received by the management from Esmail & Esmail in respect of claims relating to Yaya Centre and the HZ Group of Company. In a nutshell, the said lawyers on behalf of their clients proposed that in consideration for the DPF be paid Sh100 million.

All the claims relating to Yaya Centre should be marked as settled and the title relating to Yaya Towers be discharged and released to Yaya Towers Ltd. Now what do you understand by that?

Kotut: My understanding of that my lord is lawyers for the borrower were suggesting they pay a small fraction of the amount owing and matters be settled.

Miller: Correct. Now and you can see this was in 1999?

Kotut: Yes my lords.

Miller: Now let go to the next paragraph. say. The board having duly considered the proposal noted that the sum of Sh100 million proposed to be paid is too low and required further consideration. The board accordingly rejected the proposals. Correct?

Kotut: Yes my lords.

Miller: So it is clear that even as late as 1999, the borrower was making some offer of settlement?

Kotut: Yes my lords.

Miller: Although for a very small amount of money compared to what was outstanding?

Kotut: Yes my lords.

Miller: And lets go to page 75 sir. Are you there sir.

Kotut: Yes my lords.

Miller: Minute number 397.

Kotut: Yes my lords.

Miller: Now I will read it for you sir... The heading is TB and HZ Group of Companies. Members were informed HZ Group of Companies owed TB Sh 880.50 million as at November 3 2000. Are you with me sir?

Kotut: Yes my lords.

Miller: The realization of those funds has been hampered by various court injunctions and ultimately the disappearance of the court file. Are you there sir.

Kotut: Yes my lords.

Miller: Now you can see clearly as at the year of 2000 there is an outstanding figure of Sh800 million?

Kotut: Yes my lords.

Miller: Now, confirm what was said because I know you were not there. Was this from the original loan of Sh500 million that was owed by the H Z Group of companies?

Kotut: I would imagine so my lords but of course I do not know.

Miller: Fine. But you can see as of this time of the year 2000, there is Sh800 million which the board says is still outstanding

Kotut: Yes my lords.

Khaminwa said they would recall former Kenya Commercial Bank (KCB) General Manager Elijah arap Bii over the payment of Sh5.8 billion to testify further about the workings at the bank.

The commission demanded that a senior KCB employee do appear before them because they were holding Mr Bii as a suspect

