

GOLDENBERG INQUIRY DAY 178

1992 General Election campaign

shillings, is that correct?
Muoki: Yes my lords.
Khaminwa: Almost half a billion shillings in one day?
Muoki: Yes my lords.
Bosire: The bills showed the export items in column..... 7. Do they show that these items actually existed, were actually exported and where they were?
Muoki: The items shown in the columns were picked from the invoices that were forwarded together with the bills. This is the initial part when they are applying for the pre-shipment finance. The assumption at this stage is that they are going to get money and go to prepare these items. There is no letter showing they came back to show whether they were actually exported or not.
Bosire: Oh I see.
Khaminwa: While on that question, Mrs Muoki, what items were exported could you possibly tell my lords?
Muoki: The items were diamond jewellery.
Khaminwa: To which country or destination were they exported?
Muoki: The importer was Servino Security Incorporation of Switzerland.
Khaminwa: What is the figure on page 13?
Muoki: The five bills amounted to Sh325,987,750.
Khaminwa: Could you please read the total figure on page 13, What is it?
Muoki: The total of all the bills discounted by Goldenberg International as a company through Postbank Credit amounted to Sh1,374,776,442. They were done in five batches.
Bosire: Mrs Muoki, these bills suggest that all those exports, or export items were in actual fact exported. That is the suggestion isn't it?
Muoki: My Lords pre-shipment is initial. They have not done any exportation, GIL is approaching Central Bank through Postbank to get the pre-shipment finance to enable them to prepare the goods for export. What they drew is the invoice for the goods they say they are going to export. The pre-on-board value of those goods is what they have given there.
Bosire: But the fact they have got the money suggests that they are going to prepare those items for export?
Muoki: It suggests they would prepare.
Bosire: They would prepare and they would export and that is why the invoices were given.
Muoki: That is correct my lords.
Bosire: It is assumed that at the end of the day, all these items were exported?
Muoki: Yes my lords.
Bosire: Suppose they were not exported, what does that mean?
Muoki: It means Goldenberg has obtained credit by pretences.
Bosire: The credit, was it given on concessionary terms?
Muoki: Yes my lords.
Bosire: What was the commercial rate of interest as at that time if you know or remember?
Muoki: My lords, I have looked at the report done by PriceWaterhouse and they were saying the rate at that time was 28 per cent, then it went to 30 and ended at 35 per cent for that period.
Bosire: So that means the benefit was the difference of what you have shown here and that rate.
Muoki: Yes my lords.
Bosire: And that is the fraud?
Muoki: Would it be called fraud of opportunity cost? I would call it opportunity cost.
Bosire: It is fraud because they were not entitled to it ... if they did not export.
Muoki: Yes my lords that is correct. Mrs Muoki then explained how on March 19, 1992, Goldenberg International forwarded four pre-shipment finance bills - GIL/D/27/036/92 to GIL/D/30/039/92 dated April 9, 1992 amounting to Sh231,712,592 to Postbank Credit Ltd for discounting with Central Bank. The CD3 forms associated with these bills were numbers



Photo:Joan Perenuan

Lawyer Cecil Miller (right), representing the Deposit Protection Fund, confers with detective Paul Wachira (left), attached to the Goldenberg Commission Inquiry, and lawyer Njoroge Regeru, representing Mr James Kariyoti, during yesterday's proceedings.

633742, 633743, 633744 and 633745. Only copies of the first two CD3 forms were found in the archives.
Bosire: CD3 forms, what was their role?
Muoki: According to the circular which had introduced the pre-shipment finance, they had said CD3 forms should be some of the documents to be attached to the bills.
Bosire: Do you know why?
Muoki: No my lords.
Bosire: You don't know why CD3 forms would be included...
Muoki: In the pre-shipment finance bills? No my lords.
Bosire: Isn't it to show that there was indeed an importer. Do you understand my question? According to the Exhibit 142(b), where would the importer's details be extracted from?
Muoki: There were two documents. There was the invoice that was addressed by the GIL to the importer, there was also some CD3 forms and there was also the contract. You could get the names of the importer from any of those documents.
Bosire: The CD3 form was it not used for purposes of export compensation?
Muoki: Yes my lords it would later be used to claim export compensation.
Bosire: So it was also an export document?
Muoki: Yes my lords.
Bosire: And then its inclusion in the bundle of documents to support any claim for pre-shipment finance?
Muoki: That is correct my lords.
Khaminwa: In your observation, what do you mean by saying document recycling is observed?
Muoki: What I mean is that documents which have been used in other banks like Trade Bank, Delphis Bank, National Bank were also being used again in Postbank to apply for pre-shipment finance. They were recycling these documents used elsewhere.
Khaminwa: For example?
Muoki: For example, the invoices, CD3 forms number 682055, Custom and Excise

Department form number 29 and supporting bills have National Bank of Kenya names on them. Again confirmed and irrevocable letters of credit were not provided to prove the authenticity of these transactions and there is no evidence in the bank records of export business by Goldenberg International through Postbank Credit Limited.
Khaminwa: What was your overall observation?
Muoki: This is what I observed in Goldenberg International, in a number of cases some CD3 forms and invoices had other bank names and stamps on them. The documents were processed at Postbank Credit Limited and forwarded to Central Bank for further processing and pre-shipment finance with respect to the applicant, that is Goldenberg Limited.
Bosire: How was that possible? You work at Central Bank and the issue is if a CD3 had the stamp of another bank and is brought by a different bank, I thought Central Bank would say, no this is not a genuine document and reject it or reject the whole pre-discounting claim.
Muoki: Yes my lords, that is what should have happened, but as you can see it didn't. They allowed documents which have been used in other banks to go on and bid and the money was given to Goldenberg International.
Bosire: What could have happened. There must have been something which happened for them to allow the claim to go through.
Muoki: My lords I would not have known what happened.
Le Pelley: There must have been collusion in the bank?
Muoki: That is one of my observations my lords.
Khaminwa: What kind of officers would be involved in this kind of collusion? Would they be junior or senior officers at the Central Bank?
Muoki: My lords I would not know. But what I can say is that they were officers handling the transactions. As to whether they were the ones making the final decisions, I would not know because I never worked in that department.

Khaminwa: Look at page 30 of Exhibit 142 and read the last paragraph.
Muoki: The money remained in Goldenberg's account until May 10, 1993 where two cheques for Sh900 million and Sh600 million were paid to Panther Investment in their Postbank Credit account.
Khaminwa: Which money is this?
Muoki: These are the proceeds of sale of the \$29.3 million.
Khaminwa: Continue.
Muoki: On the same day, Sh257,261,000 was paid to China Trade in Postbank Credit. In total the amount paid from Goldenberg's accounts on that day was Sh1,757,261,000.
Khaminwa: Is there any comment you would like to make on the retention accounts?
Muoki: Once Goldenberg opened a retention account with Postbank Credit, money would come in. The money from the retention account would be sold by Postbank Credit to Central Bank at a premium which ranged from Sh18 to Sh22. That is how we got a total of the Sh508,057,442.95 million premium.
Bosire: At what rate were they supposed to sell it to the Central Bank?
Muoki: The amount sold to the Central Bank by Goldenberg was always Sh18 higher than the market rate.
Bosire: With the concurrence of the CBK?
Muoki: There was nothing wrong, I'm only looking at the opportunity cost.
Bosire: There was nothing illegal but abuse of office?
Muoki: That can do my lords.
Bosire: It was selling at a loss?
Muoki: Yes.
Khaminwa: Please turn to page 32 of Exhibit 142 Mrs Muoki. My lords, we would like to put in export compensation documents at this stage.
Kitongo: Exhibit 142 D.
Khaminwa: Could you explain to my lords what the table on page 32 of Exhibit 142 is about?
Muoki: It is a summary of export compensation claims which were paid out to Goldenberg International. The records I have found show Goldenberg successfully claimed Sh111,731,408.60 as export compensation.
Bosire: Tell me this if you know, would pre-shipment finance and export compensation

be lodged using the same documents. I get pre-shipment finance and export and after receiving export proceeds, I sell that to CBK and get export compensation?
Muoki: It happened but I do not know what was supposed to have been done. I did not personally handle this.
Bosire: Okay.
Khaminwa: You have made some observations on page 36.
Muoki: As in pre-shipment finance, document recycling is evident in the supporting documents. No foreign currency was received in some cases where CD3 forms were used to obtain pre-shipment finance from CBK. Different CD3 form were used for claim export compensation. Postbank Credit had not dealt with some CD3 forms where foreign currency was received and export compensation claim forms submitted by Goldenberg for endorsement. Postbank Credit however endorsed the same and forward them to the commissioner of Customs and Excise Department. The former managers of Postbank Credit who handled these transactions should explain the circumstances under which this happened. There is no evidence that the funds received by Goldenberg International from Central Bank through discounting of pre-shipment finance were used for export transactions. No letters of credit were received from alleged importers' banks. The funds were transferred to Goldenberg International's account with other banks. It is, therefore, in order to conclude that Goldenberg International did not do any export business through Postbank Credit Ltd. From the foregoing, it is also in order to conclude that all foreign currency received by Postbank Credit in favour of Goldenberg was not related to export transactions. It was fraudulent for Goldenberg International to claim export compensation from the Customs and Excise Department through pretences. The Ministry of Finance should endeavour to recover all the amounts paid to Goldenberg as export compensation. There were no claims lodged for export compensation by Panther Investments or China Trade.
Khaminwa: Let us move on to page 37.
Muoki: This covers the banking relationship between Postbank Credit and Goldenberg-related companies. The first account I found related to Goldenberg was Steadfast Ltd/Staedfast Ltd, Goldenberg International, China Trade Agencies and Nyamangu Holdings Ltd.
Khaminwa: Let us move on to page 38.
Muoki: This is about Steadfast Ltd's account. The relevant back-up documents are in Exhibit 142 E.
Khaminwa: Please read page 38 of your statement Exhibit 142.
Muoki: Steadfast Ltd opened an account on December 15, 1992. The details of the company are given in the account opening form.
Khaminwa: Please read the names of the main managers, directors and authorised signatories.
Muoki: Augustine Okori, director.
Khaminwa: Do you know who this is?
Muoki: I have learnt that he was Mr Patti's driver.
Khaminwa: Continue.
Muoki: Piyush Kansara, director. The two directors operated the account jointly. This account was opened with inadequate documentation as shown by a review of the account-opening documents checklist on February 28, 1998. Most of the documents were found missing as follows: The memorandum and articles of association, the certificate of incorporation, board resolutions, photographs of the directors, IDs of the directors and introduction. The account was opened with a cheque for Sh4 million drawn on Exchange Bank View Park Towers branch, Nairobi.
Le Pelley: Do we need to read all these details Dr Khaminwa?
Khaminwa: There are a few things that