

GOLDENBERG INQUIRY DAY 183

How collapsed Trade Bank was

By MUGUMO MUNENE
and MUGO NJERU

Collapsed Trade Bank was lent Sh200 million in mysterious circumstances and no record was kept of the transaction, the Goldenberg inquiry heard yesterday.

The bank was ostensibly receiving the cash boost to save it from collapse and stem an imminent crisis in the banking industry.

The bank's liquidation agent Mr Daniel Ng'atony said that books of accounts at both Trade Bank and the Deposit Protection Fund were silent on the matter.

Commission chairman Mr Justice Samuel Bosire directed the witness to investigate the matter further and present more evidence on the matter today.

Trade Bank was later to receive Sh600 million from the fund with the magnificent Yaya Centre complex provided as security.

The Sh600 million, evidence shows, went through Trade Bank to former Cabinet Minister Nicholas Biwott and the HZ Group of companies, associated with him.

The Deposit Protection Fund later lost a court tussle with the HZ Group over the ownership of Yaya Centre and has never recovered the money.

Trade Bank was caught up in the Goldenberg web of transactions before its collapse in 1993.

Earlier the commission heard that Roirie Investments, a company associated with President Kibaki and which held interest in fallen Pan African Bank, did not have control over the management.

Mrs Leah Wambete of the Central Bank told the commission that Roirie was an ordinary shareholder in the bank, whose controlling interest was held by Mr Mohammad Aslam and his company Plaza Group.

Mrs Wambete was testifying under cross-examination by Deposit Protection Fund lawyer Cecil Miller.

The President is listed along with former President Moi and opposition leader Simeon Nyachae as ordinary shareholders in the bank.

Following are excerpts from yesterday's proceedings.

Khaminwa: May it please my lord commissioners, 'appearances as before, the witness Mrs Wambete is here for further cross-examination.

Kitonga: We remind you of your oath Mrs Wambete.

Miller: Which hotel is he referring to? **Wambete:** Meridian Hotel my lords.

Miller: And kindly tell this commission it is March/April which year?

Wambete: This is in 1993 my lords.

Bosire: This statement is not signed?

Wambete: It may have been attached to the same records but I did not see the signed letter.

Bosire: Where is that letter?

Wambete: It is not in the bundle.

Miller: From the letter of Mr Mutula Kilonzo, the sale was supposed to be completed in March 1993?

Wambete: That is true my lords.

Miller: From the Exhibit you referred to, as of November 1993, Mr Daniel arap Moi and Pansal Investments were shareholders of Uhuru Highway Development?

Wambete: That is the position my lords. **Miller:** Is it therefore correct to say that as per your statement, as of September 1993, Mr Mukesh Vaya, Mr H.E.D.A.M and Pansal Investments Limited were shown as the shareholders of Uhuru Highway Development?

Wambete: That is the position my lords. **Miller:** Have you come across any documents

limited which owns Grand Regency Hotel was owned by Mr Mukesh Vaya, the retired President Daniel arap Moi and Pansal Investments Limited?

Wambete: That is the true position in the records my lords.

Miller: Now if we can go to cheque kiting you have indicated that Pan African Bank engaged in cheque kiting with other banks namely Postbank Credit Limited, Delphis Bank Limited, National Bank of Kenya Limited and Trans National Bank Limited is that correct?

Wambete: That is correct my lords.

Miller: Is there any particular reason why other banks like Barclays Bank and Standard Chartered are not in this list?

Wambete: I do not know the reason because I did not find any written document which could have shown me why the other banks were excluded. The only observation was that whenever borrowing was done from Pan African Bank by other banks, it was a certain set of banks which I have named here and that is all.

Miller: And is it then your evidence that all these banks were borrowing from Pan African Bank and that at no time did Pan African Bank borrow from

THE COMMISSION



Bosire, Kitonga and Le Pelley

The 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 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

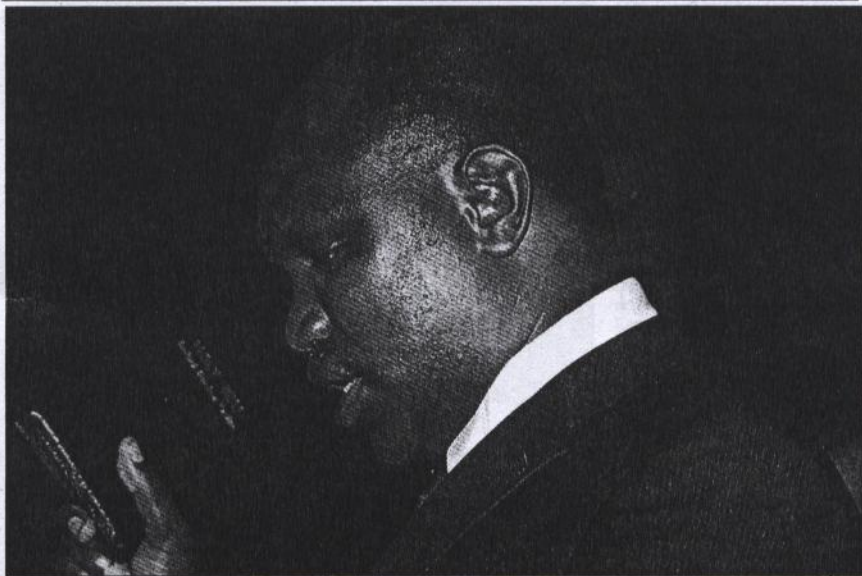
Goldenberg-related cases that had been running in the courts for years without producing a conviction.

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/Thomas Mukoya

Mr Daniel Leparan Ng'atony, a Liquidation Agent at Trade bank, is sworn in as the 67th witness at the inquiry yesterday.

its own but on the face of it, it was not normal lending but there was interest.

Bosire: Was there any evidence that these other banks knew what was happening that Pan African Bank was from somewhere?

There is no evidence my lords.

Miller: You notice that you have listed the shareholders of Pan African Bank as at November 1982?

Wambete: Yes my lords.

Miller: You have listed two categories of shareholders; that is management shareholders and ordinary shareholders?

Wambete: That is correct my lords.

Miller: Can you explain the distinction between the two?

Wambete: Management shareholders my lords may be the ones who make decisions that matter in the bank but the ordinary shareholders as I understand are just investors who have purchased shares in the bank and just waiting to have returns on their investment.

Miller: Did you at any time come across a situation where ordinary shareholders of the bank were involved in the day to day running of the bank?

Wambete: No my lords.

Miller: There is an entry there on page 11 of Roirie Investments Company Lim-

ited which owns Grand Regency Hotel was owned by Mr Mukesh Vaya, the retired President Daniel arap Moi and Pansal Investments Limited?

Wambete: That is the true position in the records my lords.

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Miller: And is it then your evidence that all these banks were borrowing from Pan African Bank and that at no time did Pan African Bank borrow from

from Roirie get involved in the management of the bank?

Wambete: I did not my lords.

Miller: That is all my lords.

Kitonga: Thank you Mrs Wambete and we are very grateful for your evidence which was very precise and impressive. You are released for now but should need arise we shall recall you.

Khaminwa: My lords, my next witness is Mr Morris Morgan Muthamia Mwarima. But before we proceed, Mr Mutula Kilonzo (Jnr) has an application to make.

Kilonzo: My lords I seek leave to represent Mr Gideon Ndambuki who was served with an adverse notice last week.

Kitonga: Leave is granted. Mr Mwarima will be commission witness number 66.

Khaminwa: How old are you Mr Mwarima?

Mwarima: I am 37 years my lords.

Khaminwa: You have a degree from Kenyatta University?

Mwarima: Yes my lords in Sociology and History.

Khaminwa: When did you obtain this degree?

Mwarima: In 1992.

Khaminwa: You stand by the contents of

the statement you made under oath?

Mwarima: Yes my lords.

Khaminwa: You were the students' leader?

YESTERDAY'S HIGHLIGHTS

■ How Goldenberg pillage was used in 1992 Kanu campaigns

■ University professors campaigned for Kanu in 1992 poll

■ The mystery of the Sh200 million lent to Trade Bank in 1991

■ Kibaki company did not have control in fallen Pan African Bank

Mwarima: In September 1991, I reported back to the university having completed my suspension and was readmitted to third year of study. The following year 1992 I continued with my studies and maintained constant touch with FORD Party. While still pursuing my degree course, I threatened to mobilise students to hold a massive demonstration against Ford if there was to be violence at the City Stadium as a result of wrangles within Ford functions. The following day after the Vice-Chancellor Prof. George Eshiwani read about the threat on the Nation Newspaper, he sent a Mercedes Benz Registration KXT 200 to collect me from my Hostel room. Prof Eshiwani's driver a Mr Wambugu picked me up and took me to Prof Eshiwani's office at 8.00 am in the morning. When I reached his office he threatened to expel me if I did not abandon opposition politics to join Kanu. He reminded me that he was aware that I was once detained while in Secondary School for being a member of Mwakanya. The VC was referring to a case in which I was charged before Meru Senior resident magistrate Norbury Dagdale for being in possession of a seditious publication in 1984. This shocked me how he was informed about the incident that had occurred while I was a form four student. He also reminded me that I had just returned from a one year suspension from the university and therefore he could as well expel me completely from the university if I did not abandon opposition politics. It is then that he advised me to mobilise members of opposition within the university so that we could demonstrate our views to the then Head of State former President Moi

Khaminwa: Continue please Mr Mwarima.

On 9th September, 1992, Prof Eshiwani informed me that he had talked to President Moi who agreed to receive us at State House Nairobi the following day. On 10th September, 1992 about 15 Nyayo buses were brought to the University. The buses took us to State House. We were more than 600 University Students I told the President that we were unhappy by the opposition continued wrangling and therefore we had decided to defect to Kanu. I told the President that we were like prodigal sons but now we had found a home.

Infact my defection to Kanu was a result of the threat and intimidation by the VC.

Kitonga: You gave a speech at State House?

Mwarima: Yes I did my lords.

Khaminwa: You were the students' leader?

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GOLDENBERG INQUIRY DAY 183

How varsity students were bribed

CONTINUED FROM PAGE 13

Murgor: You say in your statement at page four that while you were on the trail, you were giving out caps, T shirts, fliers, posters and so on. Was money changing hands during the campaigns?

Mwariama: It was. **Cecil Miller for the Deposit Protection Fund:** What prompted you to come and give evidence Mr Mwariama?

Mwariama: When I heard Prof Eshiwani mentioned by a witness who was here earlier in relation to Goldenberg, my conscience felt hurt. I felt bad that the money we were given was coming from Goldenberg. I even went to Kenyatta University and talked to Prof Standa. He told me that he never knew that this money was coming from Goldenberg. He said that since I was the one coordinating the students, I should give evidence.

Miller: Do you remember who this witness was?

Mwariama: I think it was Mrs Muoki. **Miller:** I will refer you to her exhibit 142 page 42.

Bosire: What do you want to show him?

Miller: I want to find out whether the timing of the payments is fitting in with what he says. Mr Mwariama these are payments from the Steadfast account with Post Bank Credit. I just want you to look at the first four payment listed there which were paid out on various dates in December. Do you recall receiving money at around this time?

Mwariama: Yes my lords, we received money at around that time. We were getting money after every five days.

Bosire: Do you know which dates in December?

Mwariama: I do not recall the dates properly.

Bosire: What were you telling the electorate?

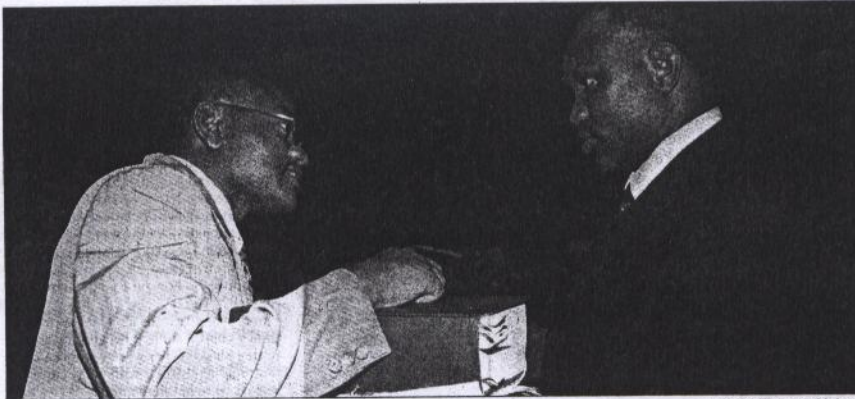
Mwariama: That they should go and vote for Kanu.

Bosire: Did you have conviction.

Khaminwa: They were small mercenaries.

Mwariama: We were not mercenaries. We were students and intellectuals. We were convincing the electorate to vote for Kanu.

Bosire: But you were not in love with



Photo/Thomas Mukoya

A detective attached to the inquiry Paul Wachira (left) talks to Mr Daniel Leparan Ng'atonyi, a witness at the end of yesterday's proceedings.

Kanu?

Mwariama: I was not my lords.

Bosire: All you wanted was money?

Mwariama: Yes my lords.

Bosire: That's how mercenaries behave.

Mwariama: I was just working.

Bosire: Alright.

Miller: On the same page 42 of Exhibit 142, there is a company called Armetek. Did you have dealings with that company?

Mwariama: I never dealt with any company.

Miller: Do you know where the caps came from?

Mwariama: I did not know where they came from. We just collected the caps from Agriculture House.

Miller: That's all.

Juma Kiplenge for Philip Moi: Mr Mwariama, turn to page three of your statement. How much did you receive personally from the money that came from Prof Eshiwani?

Mwariama: It's about Sh180,000.

Kiplenge: How much did you collect for the other coordinators?

Mwariama: The constituency operators would receive Sh12,500 every five days each.

Kiplenge: Did you make any personal

investment from the money you got? **Mwariama:** I only got Sh25,000 from this and Prof Eshiwani still owes me the Sh2 million which he promised me.

Kiplenge: Did you invest what you got? **Mwariama:** There was nothing to invest in, it was all campaign money.

Kiplenge: The money you received was Goldenberg money.

Mwariama: I didn't know that it was Goldenberg money.

Kiplenge: Are you aware that this commission is looking for the Goldenberg money with a view to recovering it from the individuals who received it?

Mwariama: I'm aware.

Kiplenge: And you have confessed that you received the sum of Sh205,000.

Mwariama: My lords, if a thief goes to the bank and employs someone to build a house for him, that worker will not know that the thief has broken into a bank. I was working for Kanu and I was receiving payment for what I was doing.

Kiplenge: And you know that when the labourer is found out, you will be deemed to be handling stolen money.

Mwariama: How would you know that you are handling stolen money.

Kiplenge: Did you pay income tax from this money?

Mwariama: Income tax for what? There was no tax to pay.

Mutula Kilongo Jai: Would you confirm that the money given out by Prof Eshiwani was not used to bribe anybody and that it was for campaign propaganda?

Mwariama: I did not bribe anybody. **Kitonga:** You kept it all?

Mwariama: We used it for expenses while distributing the money.

Khaminwa: Mr Mwariama, the money that you received was from Prof Eshiwani?

Mwariama: He brought the money in briefcases.

Khaminwa: And some stage he told you that he was expecting money from a certain bank?

Mwariama: When I went to his office to complain that the campaign money had not reached students, he told me that he was expecting some money from Post Bank and I should ask the students to wait.

Khaminwa: Why did you refuse to join Honourable Jirongo?

Mwariama: We were doing our campaigns underground and we did not want to be seen.

Bosire: Thank you, but as if we need to trace that money, we will come for you. We are not threatening you. It's part of

our mandate to trace Goldenberg money and if it happens to be Goldenberg money, we will look for it.

After Mr Mwariama's testimony, Mr Daniel Leparan Ng'atonyi of the Deposit Protection Fund and who is presently the liquidation agent for collapsed Trade Bank was sworn in as commission witness number 67.

Khaminwa: Let us go to Exhibit 145 A where you are dealing with the construction of Yaya Centre. That is pages 22 to 374?

Ng'atonyi: Yes my lords.

Khaminwa: Are there some remarks you would like to make to my lords about the construction of the Yaya Centre?

Ng'atonyi: On pages 38 to 43. There is a picture of Yaya Centre. The documents describe the structure, the commercial clock, the apartments and every detail about the building. The hotel and the description of the complex.

Khaminwa: How would you describe the building?

Ng'atonyi: It is magnificent.

Mr Ng'atonyi said that Yaya Centre was valued by LLOYD Masika firm at Sh1.5 billion in September 1993.

Although the building had been charged to the Deposit Protection Fund as security for a Sh600 million loan, the fund later lost a related court battle effectively losing the money and the security along with it.

The Sh600 million from the DPF lent to Trade Bank ended up with the HZ Group of companies, associated with former Cabinet Minister Nicholas Biwott.

The witness further told the commission that in 1991, Trade Bank was lent Sh200 million by the Deposit Protection Fund but neither is the transaction recorded in the fund's books nor in those of the bank.

Commission chairman Mr Justice Samuel Bosire directed Mr Ng'atonyi to study the fallen bank's books relating to 1991 and explain to the commission the mysterious circumstances of the transaction.

The money had been borrowed against a charge of Trade Bank Centre on Valley Road.

The DPF later sold Trade Bank Centre for Sh271 million.

The inquiry resumes today.

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