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GAZETTE NOTICE NO. 1237

THE COMMISSIONS OF INQUIRY ACT

(Cap. 102)

APPOINTMENT OF JUDICIAL COMMISSION OF INQUIRY

IN EXERCISE of the powers conferred by section 3 of the Commissions of Inquiry Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, being of the opinion that it is in the public interest, do appoint a commission of inquiry to inquire into allegations of irregular payments of export compensation to Goldenberg International Limited, popularly known as "the Goldenberg Affair" and into payments made by the Central Bank of Kenya to the Exchange Bank Limited in respect of fictitious foreign exchange claims, to be headed by—

Justice Samuel Elkana Onderi Bosire, a judge of the Court of Appeal, as the chairman; and

Justice Daniel K. Aganyanya, a judge of the High Court of Kenya; and

Peter Le Pelley, Senior Counsel,
as the commissioners; and

Justice Daniel K. Aganyanya,
as the vice-chairman; and

William Ouko,
Dan K. Ameyo,
to be the joint secretaries of the commission; and

Waweru Gatonye,
Dorcas Agik Oduor,
to be counsel to assist the Commission.

Dated the 24th February, 2003.

MWAI KIBAKI,
President.

GAZETTE NOTICE NO. 1238

THE COMMISSIONS OF INQUIRY ACT

(Cap. 102)

JUDICIAL COMMISSION OF INQUIRY

Citation

A JUDICIAL COMMISSION to inquire into allegations of irregular payments of export compensation by the Ministry of Finance to Goldenberg International Limited, popularly known as the

"Goldenberg Affair" and into payments made by the Central Bank of Kenya to the Exchange Bank Limited in respect of fictitious foreign exchange claims and other related matters.

Now therefore, in exercise of the powers conferred upon the President by section 3 of the Commissions of Inquiry Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, do direct the commissioners to hold an inquiry at Nairobi with immediate effect. The terms of reference shall be:

- (a) To inquire into the origins of, the acceptance and the implementation by the Government of the proposal to award export compensation in respect of exports of gold and diamond jewellery under the Local Manufactures (Export Compensation) Act (Chapter 482 of the laws of Kenya);
- (b) To inquire into allegations of irregular payments of export compensation under the Local Manufactures (Export Compensation) Act to Goldenberg International Limited, being a percentage of the value of gold and diamond jewellery allegedly exported from Kenya by the said company, with a view to establishing—
 - (i) whether in fact any gold or diamond jewellery was exported from Kenya and if so, how much and to whom;
 - (ii) whether the amount of gold or diamond jewellery exported was processed through Customs as required;
 - (iii) whether there was a declaration and remittance of the alleged foreign currency earnings;
 - (iv) whether the alleged foreign currency earned was cleared and remitted to the Central Bank of Kenya and if so, how much;
 - (v) the circumstances and grounds upon which the compensation was claimed and paid to Goldenberg International Limited;
 - (vi) the actual amount of export compensation paid to Goldenberg International Limited, including but not limited to KSh. 5.8 billion, and whether any of the said amount was paid to third parties and if so, the identity of such third parties and the amounts paid to them.
- (c) To inquire into the alleged payment of US\$210 million (KSh. 13.5) billion by the Central Bank of Kenya to the Exchange Bank Limited in respect of fictitious foreign exchange claims with a view to establishing—
 - (i) whether the equivalent in Kenya shillings was paid to Exchange Bank Limited and/or Goldenberg International Limited and if so, how the money was utilised; and
 - (ii) whether any or all the money was paid to third parties

and if so, the identity of such parties and the amounts paid to them.

- (d) To establish all persons, public or private, involved in the alleged irregular claims and payments to Goldenberg International Limited and/or Exchange Bank Limited and the extent of their responsibility.
- (e) To inquire into and investigate any other matter that is incidental to or connected with the foregoing.
- (f) To recommend—
 - (i) the prosecution or further criminal investigations against any person or persons who may have committed offences related to such claims or payments;
 - (ii) ways, means and measures that must be taken to prevent, control or eradicate such schemes or frauds in the future;
 - (iii) any reimbursement and/or compensation to the Government by any person and the extent of such reimbursement or compensation; and
 - (iv) any other policy or action that may conclusively deal with the "Goldenberg Affair"; and

in accordance with section 7 (1) of the said Act, to report thereon as soon as reasonably practicable.

And I direct that—

Justice Daniel K. Aganyanya,
Peter Le Pelley, Senior Counsel,

shall be the commissioners and that Justice Samuel Elkana Onderi Bosire, a judge of the Court of Appeal, shall be the chairman of the said commission and Justice Daniel K. Aganyanya, a judge of the High Court of Kenya, shall be the vice-chairman.

And I do appoint—

William Ouko,
Dan K. Ameyo,

to be the joint secretaries of the commission, and further, I do appoint—

Waweru Gatonye,
Dorcas Agik Oduor,

to be counsel to assist the said Commission.

And I do direct that, in the performance of its task, the commission shall receive views from members of the public and receive oral/or written statements from any person with relevant information, and may—

- (a) use official reports of any previous investigations into the said payments;
- (b) use any investigation report by any institution or organization into the payments; and
- (c) commission reports from experts in any relevant areas.

And I do direct that in accordance with the provisions of section 10 (1) of the said Act, the commissioners shall summon any person or persons concerned to testify on oath and to produce any books, plans and documents that the commissioners may require.

And I do direct that after its commencement, the said inquiry may be held at such times and in such places as the said commissioners may, from time to time, determine and shall be held in public or in private as the said commissioners may, from time to time, determine.

And I do direct that the said commissioners shall execute the said inquiry with all diligence and speed and make their report without undue delay.

And I do command all other persons whom it may concern to take due notice hereof and to give their obedience accordingly.

Dated the 24th February, 2003.

MWAI KIBAKI,
President.