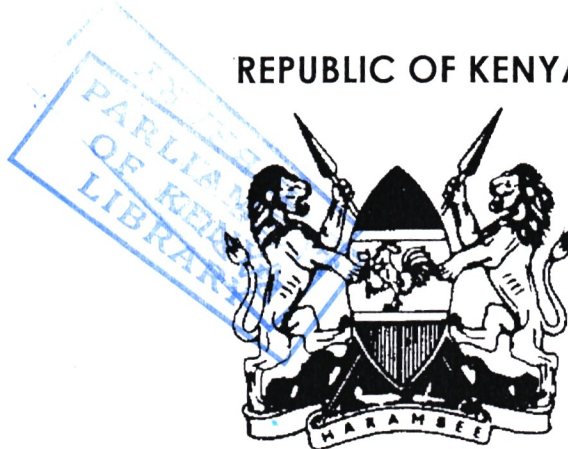


REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

NINTH PARLIAMENT-SIXTH SESSION

REPORT OF

THE SELECT COMMITTEE INVESTIGATING THE CLOSURE OF KENYA
CASHEWNUT FACTORY IN KILIFI IN 1998

Clerk's chambers,
Parliament Buildings,
NAIROBI

September 2007

TABLE OF CONTENTS

No.		Page
1.0.	Preface	1
2.0.	Appendices	3
3.0.	Modus operandi	4
4.0.	Evidence	8
5.0.	Papers laid	32
6.0.	Observations and conclusions	35
7.0.	Recommendations	38

REPORT OF THE SELECT COMMITTEE INVESTIGATING THE CLOSURE OF KENYA CASHEWNUT FACTORY IN KILIFI IN 1998

PREFACE

Hon Speaker Sir,

1. The select Committee investigating the closure of Kenya Cashewnut Factory in Kilifi in 1998 was established by a resolution of the House on the 11th of April 2007. The terms of reference of the Committee were drawn from the motion establishing it, and was:-

"THAT due to the mysterious circumstances under which Kenya Cashewnut factory in Kilifi was closed down in 1998 and noting that its machinery and equipment were sold off without regard to value for money; this House resolves to establish a select committee to investigate and report on the circumstances that led to the collapse of the factory and to determine whether those involved could be apprehended, prosecuted and any property illegally acquired from the company recovered and further that the following be members of the Committee

- (i) The Hon. Joe Khamisi, M.P.
- (ii) The Hon. Joshua Ojode, M.P.
- (iii) The Hon. Lucas Maitha, M.P.
- (iv) The Hon. Abdul A. Bahari, M.P.
- (v) The Hon. Paul K. Sang', M.P.
- (vi) The Hon. Wycliffe Osundwa, M.P.
- (vii) The Hon. (Dr) Naomi Shaaban, M.P.
- (viii) The Hon. Zaddock Syongo, M.P.
- (ix) The Hon. Najib Balala, M.P.
- (x) The Hon. Macharia Mukiri, M.P.
- (xi) The Hon. Mwangi Waithaka, M.P.

2. The Committee held its first sitting on 23rd April 2007 where Members unanimously elected the Hon Joe Khamisi the chair. The Committee held its last sitting on 11th September 2007. The Committee held a total of twenty three (23) sittings during which it held its own in-house sittings and took evidence from twenty six (26) witnesses.

3. The Committee's secretariat comprised staff of the National Assembly only, drawn from the Clerk's chambers.
4. The Committee wishes to sincerely thank the offices of the Speaker and Clerk of the National Assembly for the technical support and overall guidance provided to the committee. The committee also wishes to thank all individuals and institutions that in one way or another played a role to enable it carry out its task.
5. On behalf of the Members of the Select Committee investigating the Closure of the Kenya Cashewnut Factory in Kilifi in 1998, it is my pleasant pleasure and privilege to present to this House a report of the Committee on its investigations and findings.



Hon. Joe Khamisi, M.P.
Chairman

Date 26th September, 2007

APPENDICES

Papers laid

- (i) Minutes of the Special Board of Directors of Kenya Cashewnut Ltd meeting held on 5th November 1993 at Kenya Cashewnut Ltd boardroom Kilifi;
- (ii) Share transfer forms and certificates;
- (iii) Agreement for sale of shares between Kilifi District Co-operative Union, Kenya Assets Management Ltd and Cashew Development Investments Ltd;
- (iv) Letter dated 18th October 1996 by M/s Khaminwa and Khaminwa Advocates to the Managing Director, Kenya Cashewnut Ltd;
- (v) Letter dated 17th October 1996 from African Registrars to the Secretary, Kilifi District Co-operative Union;
- (vi) Letter of guarantee dated 4th November 1993 by Trust Bank Ltd to Industrial and Commercial Development Corporation (ICDC);
- (vii) Letter dated 5th August, 1998 by Mr. Nelson Korir, chairman Kenya Cashewnut Ltd addressed to Mr. Lawrence Chapa of Kenya Cashewnut Ltd;
- (viii) Facsimile message dated 19th September from Mr. William Sambu of Kenya Cashewnut Ltd addressed to Mr. Korir/Mr. Mwangi of the same company.
- (ix) Delivery notes No. 59340, 59341, 59344, 59347, 59749, 59570

MODUS OPERANDI

6. The Committee executed its mandate and terms of reference, in accordance with the existing procedures, practices and modalities of the House derived from the standing orders, the constitution of Kenya, conventions, statutes, practices and rulings of the Chair.

Procedure and Practice

7. Committees are creatures of the House and are required to at all times to operate in accordance with the prevailing procedures and practices of the House which are provided for by the Parliamentary Standing Orders and the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya

Standing Order No. 160 provides that:-

- (1) *Save as and to the extent to which the Chairman may in his discretion otherwise direct for the purpose of facilitating full consideration and discussion of the matter referred to the Committee, the procedure in a select committee shall be as nearly as possible the same as that in the Committee of the whole House:*

Provided that any question arising in a select committee shall be decided by vote and the resolution on any such vote shall constitute the decision of the select committee on that question.

- (2) *The minutes of a select committee shall be kept in the same form as the votes and proceedings of a Committee of the whole House:*

Provided that where a vote on a question is not unanimous, the names of Members voting for and against the question or declining to vote respectively shall be recorded in the minutes.

- (3) *A select committee may continue its deliberations although the House is adjourned or Parliament is prorogued.*
- (4) *A select committee shall have power to receive evidence.*

- (5) *The deliberations of a select committee shall be confined to the matter referred to it by the House and any extension or limitation thereof directed by the House, and in the case of a select committee on a Bill, to the Bill committed to it and relevant amendments*

The National Assembly (Powers and Privileges) Act Cap 6, Laws of Kenya

8. The proceedings and work of the committee were carried out in accordance with the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya

Section 14 of the Act provides that:-

14.(1) The Assembly or any other standing committee thereof may, subject to the provisions of sections 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person

(2) The powers conferred by sub-section (1) on a standing committee may be exercised by any other committee which is specially authorized by a resolution of the Assembly to exercise those powers in respect of any matter or question specified in the resolution.

Section 15(1) of the Act provides that:-

Any order to attend to give evidence or to produce documents before the assembly or a committee shall be notified to the person required to attend or to produce the documents by a summons under the hand of the Clerk issued by the direction of the Speaker

Section 16 of the Act provides that:-

The Assembly or any committee may require that any facts, matters and things relating to the subject of inquiry before it be verified or otherwise ascertained by the oral examination of witnesses, and may cause any such witnesses to be examined upon oath, which the Speaker or the chairman of the Committee, as the case may be, or other person specially appointed for that purpose may administer.

Section 18 (1) of the Act provides that:-

Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Assembly or a Committee shall be entitled, in respect of that evidence or the disclosure of any communication or the production of any paper, book, record or document to the same right or privilege as before a court of law.

Modalities of operation

9. The Committee took evidence from witnesses representing institutions, which had a stake in Kenya Cashewnut Ltd or had dealings with the company. The Committee also took evidence from individuals and institutions which though did not have interest or dealings with Kenya Cashewnut Ltd, they were deemed to have had useful information for its proceedings. Majority of the witnesses appeared in person while a few appeared in the company of their advocates. Some witnesses' evidence was not deemed to be useful and is therefore not part of this report.
10. The Committee toured the Kilifi Cashewnut Factory on 15th June 2007 and took evidence from Millennium Management Ltd who are the current proprietors of the factory. The Committee also held sittings on 16th and 18th June 2007 at the Kilifi County Hall and at the Sun N Sand Beach Resort in Kilifi.
11. The Committee could not take evidence from certain key witnesses owing to various reasons. Mr Pravin Shah the Managing Director of Kenya Cashewnut Ltd at the time of closure of the Factory was in the United Kingdom undergoing treatment. His Advocate Mr. Katwa Kigen failed to convince Members that he would produce him before the Committee. Mr. Yogesh Desai at one time a Managing Director Kenya Cashewnut Ltd had relocated to Canada and his Advocate Mr. Katwa Kigen could not commit himself to producing him before the committee. Mr Pravin Raju at one time the factory manager of Kenya Cashewnut Ltd was said to be on a business tour of India and his advocate Mr. Katwa Kigen was unable to convince Members that he would produce him before the committee.
12. Mr. Raymond Bomet the Commissioner of Co-operatives at the time of closure of the Kenya Cashewnut factory ignored the Committee's summons. Mr. Martin Miyesa, at one time the factory

manager of Kenya Cashewnut Ltd was ailing and admitted in hospital and could not appear before the Committee.

13. Both written and oral evidence were received. Witnesses were summoned in accordance with provisions of the Section 15(i) of the National Assembly (Powers and Privileges) Act. All the oral evidence received was recorded verbatim and is part and parcel of the journals of the House. Proceedings were conducted in accordance with provisions of Standing Order 160.
14. The Committee did a search with the Registrar of Companies and established directorship of Kenya Cashewnut Ltd and companies with shareholding in it. The Committee also did a search with the Registrar of companies and established directorship of some of the companies which dealt with Kenya Cashewnut Ltd. Kenya Cashewnut Ltd was a Limited liability company incorporated in the Republic of Kenya on 13th August 1972 with Kilifi Cashewnut Factory as its main asset. Directorship of the company kept changing from inception until closure of the factory in 1998.

EVIDENCE

EVIDENCE OF THE MINISTRY OF AGRICULTURE

15. Mr. Patrick G. Onchieku, Assistant Director of Agriculture and Mr. Thomas Bonyo, Senior Deputy Director of Agriculture appeared before the Committee on behalf of the Ministry of Agriculture. According to the witnesses, Kenya Cashewnut Ltd was established in 1974 as a parastatal with the Kilifi Cashewnut factory being the company's main asset. The government held a 65% stake in the company through the National Cereals and Produce Board (NCPB) 268,404 shares translating to 31.2% shareholding, Industrial and Commercial Development Corporation (ICDC) 205,905 shares translating to 24.38% shareholding and the Industrial Development Bank (IDB) 78,265 shares translating to 9.20% shareholding. Kilifi District Co-operative Union held 297,426 shares, which translated to 35% shareholding.
16. NCPB was appointed the sole supplier of nuts to the factory under controlled market economy. In 1989, Kenya Cashewnut Ltd started experiencing operational difficulties, which resulted in the laying off of many employees in 1990.
17. In November 1993, the Government on the recommendation of the Parastatal Reform Programme Committee (PRPC) divested from the company and Kilifi District Co-operative Union (KDCU) in exercise of its pre-emptive rights pursuant to the articles of association of Kenya Cashewnut Ltd, acquired the government's 65% shareholding. The shares were valued at 141.20 per share and the total amount the Union paid for the shares was 78,023,448 shillings. In accordance with the sale agreement, the Union also inherited loans and debts from the vendors amounting to 118,540,794.55 shillings. The Union then appointed Berger Plantation and Products Ltd as the factory managing agents of Kenya Cashewnut Ltd.
18. From 1994, Kenya Cashewnut Ltd started facing serious operational difficulties on account of:-
 - (i) Lack of reliable supplier of raw nuts following the withdrawal of NCPB which used to be the sole supplier;
 - (ii) Severe competition by private exporters of raw cashewnuts

- (iii) Heavy loan burden of 118,540,794.55 inherited plus interest accruing thereof. Former employees were owed 33 million shillings redundancy arrears. This liability was not recorded in the sale agreement.
19. Faced with these problems, the factory was temporarily closed down on 28th February 1995. It thereafter emerged that the 65 % shares the Union had acquired from the government were fraudulently transferred to two companies namely Kenya Plantation and Products Ltd and Cashew Development Investments Ltd. This was through a collusion involving Union officials. In fact it was the two companies which paid the 78,023,448.00 purchase price for the 65% shares the Union is purported to have purchased from the government.
20. In 1996, KDCU obtained a loan of 2 million shillings from Kenya Plantation and Products Ltd, which had become a shareholder in Kenya Cashewnut Ltd. The loan was to enable the Union purchase raw cashewnuts from farmers and selling them to Kenya Cashewnut Ltd for processing. The loan was approved by the Union's executive committee meeting held on 7th November 1996 and ratified by the Union's Special Management Committee on 18th November 1996. The terms and conditions of the loan were *inter-alia* that:-
- (i) The loan was free from any interest up to the end of 1997 after which the outstanding amount would attract interest at commercial rates as determined by the lending rates then at Trans National Bank Ltd
 - (ii) Upon execution of the agreement, the borrower was to deposit with the lender the share certificates with duly executed transfer forms and considerations left blank as a security for the loan, which the borrower duly did.
21. The Union deposited seven share certificates for 197,426 shares with the lender as security for the 2 million shillings loan. The Co-operative Bank was holding other share certificates worth 100,074 ordinary shares as security for another loan. The Union defaulted in repaying the 2 million in consequence of which it lost 197,426 shares to Kenya Plantation and Products Ltd, a shareholder in Kenya Cashewnut Ltd.

EVIDENCE OF MAJOR (RTD) WILSON KOITABA, FORMER MANAGING DIRECTOR, NATIONAL CEREALS AND PRODUCE BOARD

22. Major (Rtd) Wilson Koitaba was the Managing Director of National Cereals and Produce Board (NCPB) when the board divested from Kenya Cashewnut Ltd. According to Mr. Koitaba, Kenya Cashewnut Ltd was a parastatal with the government holding 65% shareholding through National Cereals and Produce Board (NCPB), Industrial and Commercial Development Corporation (ICDC) and Industrial Development Bank (IDB). The remaining 35% shareholding was held by Kilifi District Co-operative Union (KDCU).
23. Following a major policy change in 1990 in which the government of Kenya, the World Bank and the International Monetary Fund (IMF) agreed that the Government divests from parastatals that were less strategic, NCPB sold its 31.6 % shareholding to Kilifi District Co-operative Union which was exercising its pre-emptive rights as provided by the articles of association of Kenya Cashewnut Ltd. The process was overseen by the Ministry of Finance under the Directorate of Government Investments and Privatization Enterprises (DGIFE) through a special Committee known as the Parastatal Reform and Privatization Committee (PRPC).
24. The total amount the Union paid NCPB for its 31.6% shareholding was 37 million shillings. According to the sale agreement, the Union would first make a down payment of 10% of the total share price and NCPB would effect the transfer of shares with the balance being paid later. Trust Bank would give a bank guarantee for the balance. Upon receipt of 10% down payment, NCPB issued duly signed transfer forms to the Union to effect transfer in its name. The exercise was witnessed by the chairman of Parastatal Reform and Privatization Committee (PRPC)
25. Prior to the share transfer, the Union owed NCPB 56 million shillings out of which 10 million shillings had been advanced to the Union on instructions from the government while 46 million was a trade debt. It was agreed that the 10 million shillings be converted to a loan and the 46 million shillings trade debt be converted into a secured interest free loan. The Union was unable to pay NCPB the said amounts in consequence of which NCPB filed court proceedings. The total amount NCPB was claiming from the Union was 74 million shillings inclusive of interest.

26. In view of the monies NCPB was owed by the Union, it was not prudent for NCPB to divest from Kenya Cashewnut Ltd before receiving full payment.

EVIDENCE OF MR. NAFTALI MOGERE, MANAGING DIRECTOR, NATIONAL CEREALS AND PRODUCE BOARD

27. Kenya Cashewnut Ltd was a public limited liability company incorporated in Kenya in 1974 with its head office in Kilifi. The company's main objective was processing of cashewnuts and its main asset was the Kilifi Cashewnut Factory. NCPB held a 31.6% stake in Kenya Cashewnut Ltd.
28. In 1990, Kenya Cashewnut Ltd was earmarked for privatization in line with a Government policy. The divestiture process was conducted by the Parastatal Reform Committee (PRPC) and coordinated by the Executive Secretariat and Technical Unit under the Directorate of Government Investment and Privatization Enterprises (DGPE). NCPB and other shareholders in the parastatal were to sell their stakes to Kilifi District Co-operative Union in exercise of its pre-emptive rights. The company shares were valued by PriceWaterHouseCoopers Ltd at 141.20 shillings per share. Other assets and liabilities were not valued.
29. On 29th October 1993, parties signed a sale agreement for the 552,574 shares at 141.20 shillings per share. The total amount payable by the Union was 77 million shillings. NCPB was to receive 37,898,644.80 shillings, ICDC 29 million and IDB 11 million. The agreement provided for the payment of 10% of the purchase price on execution of the agreement and the 90% balance was to be paid later and the purchaser was to provide a bank guarantee for the payment of the 90% balance. The board received a bank guarantee for the payment of the 90% balance from Trust Bank Ltd.
30. NCPB received 37,898,644.00 shillings from the sale of its shares to the Union. Payment was made in two instalments. The first instalment was for 3,789,864.50 shillings being 10% of the purchase price. The amount was paid by a cheque issued by Standard Chartered Bank Ltd. The second instalment was for 34,108,780.30 shillings, which was paid by a cheque issued by Trust Bank Ltd. Apparently, the Union was broke and the source of its funding was unknown. After the sale had been concluded and payment made, the board handed over to the Union a duly signed transfer form

together with the original share certificate to effect the transfer in its name. NCPB also resigned from the board of Kenya Cashewnut Ltd.

31. The Union Directors Mr. Daniel Runya, Mr. Japheth Kavuku and Mr. Samuel Gunga did not however effect transfer of the shares to the Union but to Kenya Plantation and Products Ltd and Cashew Development Investments Ltd.
32. The objective of privatization of Kenya Cashewnut Ltd was to vest the factory in the hands of the local people for increased benefit. This objective was not met.
33. The witness was however unable to produce tangible evidence to show that NCPB received payment for the sale of its stake to Kilifi District Co-operative Union. He could also not confirm if payment came directly from the Union or other sources.

EVIDENCE OF MR. JAMES OCHAMI, MANAGING DIRECTOR, INDUSTRIAL DEVELOPMENT BANK (IDB)

34. According to Mr. Ochami, at the time of privatization of Kenya Cashewnut Ltd, IDB held 9.2 % stake in the company. IDB, ICDC and NCPB held a combined 65% stake in Kenya Cashewnut Ltd. The Company was privatized in 1993 following a government policy on divestiture and privatization. All the three institutions sold their 65% stake in the company to Kilifi District Co-operative Union, which had pre-emptive rights pursuant to the articles of association of Kenya Cashewnut Ltd.
35. IDB signed an agreement for the sale of its 78,265 shares amounting to 11,051,081 shillings in October 1993. IDB received 10% deposit being 1,105,108 shillings and the bank resigned as a director from the board of Kenya Cashewnut Ltd. IDB received a bank guarantee from Trust bank Ltd for the payment of the 90% balance. The bank guarantee was to be effective after ninety (90) days. After receiving the 10% deposit, the bank handed over to the Union duly signed transfer forms and resigned as a director of Kenya Cashewnut Ltd. The balance of 9,945,916 was paid on 4th February 1994.
36. The witness could not produce tangible evidence to show that IDB received payment from the sale of its stake in Kenya Cashewnut Ltd to Kilifi District Co-operative Union. He could also not confirm whether payment came directly from the Union or other sources.

EVIDENCE OF MR ISAACK MOGAKA, EXECUTIVE DIRECTOR, INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION (ICDC)

37. According to Mr. Mogaka, ICDC held 205,905 shares in Kenya Cashewnut Ltd. Other shareholders were NCPB, 268,404 shares, IDB 78,265 shares and Kilifi District Co-operative Union 297,426 shares. In 1993, Kenya Cashewnut Ltd was earmarked for privatization under the auspices of the Executive Secretariat and Technical Unit (ESTU) of the Parastatal Reform and Privatization Committee (PRPC). PriceWaterHouse and Milligan Ltd were contracted to value the company assets. PriceWaterHouse valued the assets at 250.8 million while Milligan valued the company's business as a going concern at 120 million. PriceWaterHouse valuation was adopted and this translated to a price of 141.20 shillings per share.
38. On 29th October 1993, an agreement for the sale of ICDC, IDB and NCPB shares to Kilifi District Co-operative Union was signed and the vendors received 10% deposit from the Union. The sale agreement provided for an initial 10% deposit and a bank guarantee for the 90% balance. Trust Bank Ltd provided the guarantee on behalf of the Union. ICDC received 2,907,378.60 shillings being the 10% down payment vide a bankers cheque from Standard Bank, Moi Avenue branch, Nairobi. At a special board meeting of Kenya Cashewnut Ltd held on 5th November 1993, NCPB, ICDC and IDB resigned from the Board of Kenya Cashewnut Ltd.
39. On 4th February 1994, ICDC received 26,168,407/40 being the 90% balance of the purchase price. The payment was effected vide a bankers cheque by Trust bank. In March 2000, ICDC learnt that Kenya Cashewnut Ltd had been placed under receivership by Barclays Bank of Kenya. In October 2002, ICDC learnt that Kenya Cashewnut Ltd assets had been auctioned by the Receiver Manager.
40. The witness could not produce tangible evidence to show that ICDC received payment for the sale its stake to Kilifi District Co-operative Union, neither could he confirm whether payment came directly from Union or third parties.

EVIDENCE OF MRS. BERNICE GACHEGU, THE REGISTRAR GENERAL

41. Kenya Cashewnut Ltd was incorporated on 13th August 1972 with Cyril Herbet Webb and Eliud Matu Wamae as shareholders, each

holding one share each. On 30th June 1974, Kilifi District Co-operative Union (KDCU) was allotted 40,000 shares for cash. This was out of the total 600,000 shares in the capital of the company valued at 20 shillings per share. On 14th April 1975, the Union was again allotted another 60,000 shares for cash increasing its total shareholding to 100,000 shares. At that time, the share capital of the company had been increased to create more shares.

42. There is no evidence of share transfer in the Kenya Cashewnut Ltd's file but the annual returns of the company for the year 1981 showed that Industrial Development Bank Ltd (IDB) one of the shareholders in Kenya Cashewnut Ltd had transferred 15,942 shares to Kilifi District Co-operative Union. Whether the transfer was a gift or for cash consideration is unknown from the records. By 1981, the Union had 115,942 shares out of the total share capital of 850,000. There is no legal requirement that a transfer of shares in a company be registered with the Registrar of companies.
43. According to the annual returns of the company for the year 1982, Kilifi District Co-operative Union had 212,536 shares. There is no evidence of the share increment from the file but there is possibility that transfer of shares to the Union could have been made by the three shareholders Industrial and Commercial Development Corporation (ICDC), National Cereals and Produce Board (NCPB) and Industrial Development Bank (IDB) as there was marked reduction in their shareholding compared to the previous year.
44. The annual returns of 1994 show that Kilifi District Co-operative Union had 297,426 shares. There is no evidence of share transfer to the Union in the files. As at 8th February 2000 when the Company went under receivership, its shareholding was:-

Kilifi District Co-operative Union	297,426.00
Kenya Plantation and Products Ltd	433,574.00
Cashew Development Investments Ltd	<u>119,000.00</u>
	<u>850,000.00</u>

EVIDENCE OF THE MR. FREDRICK ODHIAMBO, COMMISSIONER OF CO-OPERATIVES

45. Mr. Fredrick Odhiambo also served as the Coast Provincial Commissioner of Co-operatives during the privatization of Kenya Cashewnut Ltd. According to Mr. Odhiambo, Kilifi District Co-operative Union (KDCU) exercised its pre-emptive rights as per

article 8 (a) of the articles of association of Kenya Cashewnut Ltd and acquired the government's 65% stake in Kenya Cashewnut Ltd. Japheth Kavuku, Chairman, Samuel Gunga, Vice Chairman and Daniel Runya, General Manager Kilifi District Co-operative Union represented the Union in the exercise.

46. It later transpired that the 65% stake acquired by the Union from the government had been transferred to Kenya Plantation and Products Ltd (433,574 shares) and Cashew Development Investments Ltd (119,000 shares). The Union remained with its original 35% shareholding. This transfer was not sanctioned by the Union, neither was it sanctioned by the Commissioner of Co-operatives.
47. In 1996, the Union obtained a loan of 2 million shillings from Kenya Plantation and Products Ltd and pledged its 35% shareholding as security. Pursuant to the loan agreement, the Union deposited with the lender share certificates as security together with duly executed share transfer forms and consideration left blank. The Union defaulted in repayment and in accordance with the agreement, it lost its 35% shareholding to the lender.
48. Ms Berger Plantations as the managing agents of Kenya Cashewnut Ltd obtained a loan of 95 million shillings from Barclays Bank of Kenya and charged the Kenya Cashewnut Ltd factory as security. The borrower defaulted in repayment and the lender appointed a Receiver Manager who auctioned the factory to Millennium Management Ltd in the year 2002.

EVIDENCE OF MILLENNIUM MANAGEMENT LTD

49. The Company was represented by two directors namely; Surjeet Singh Hayer and Ajay Kumar, and Mr. Andrew Kadenge, farm manager.
50. The company bought the Kenya Cashewnut Factory in the year 2002 through an auction by Barclays Bank of Kenya's Receiver Managers, Ms. Andrew Douglas Gregory and Abdul Zahir Sheikh of KPMG. The bank was to recover outstanding monies in respect of a loan advanced to Kenya Cashewnut Ltd. The advert for the auction of the factory had appeared in the Standard and Nation newspapers of 8th May 2002, which provided for the sale of a business for processing cashewnuts and macadamia nuts with the benefit of a long leasehold plot at Kilifi comprising 350 acres of land and 32 staff houses.

51. At the time of taking possession, the entire factory area was bushy with bad smell around, the processing plant and offices were in a dilapidated state with collapsed roofs, some machines had been dismantled and parts thereof just lying on the ground, while some machines and equipment were missing. Millennium Management Ltd bought the factory at 63 million shillings. The witnesses admitted that the company did not take steps to establish the real owners of the assets before they took over. The witnesses also confirmed that the company did not receive from the previous management or the Receiver Manager an inventory of the assets at the time of taking over

EVIDENCE OF MR HUBBEL RANDU, FORMER ACCOUNTANT, KILIFI DISTRICT CO-OPERATIVE UNION (KDCU)

52. Mr. Randu was the Accountant Kilifi District Co-operative Union during the privatization of Kenya Cashewnut Ltd. During his term in office, Mr. Japheth Kavuku was the Union's Chairman, Mr. Samuel Gunga the Vice Chairman and Mr. Daniel Runya the General Manager. Mr. Kavuku, Mr. Gunga and Mr. Runya were directors at Kenya Cashewnut Ltd representing the Union, by virtue of their designations.
53. At the time of privatization of Kenya Cashewnut Ltd, Kilifi District Co-operative Union held a 35% stake in the company with the Government holding the remaining 65% through Industrial and Commercial Development Corporation (ICDC), National Cereals and Produce Board (NCPB) and Industrial Development Bank (IDB). The Union was entitled to acquire the government's 65% stake by virtue of pre-emptive rights it enjoyed under the articles of association of Kenya Cashewnut Ltd. The Union did not however have funds to buy the shares and mandated its executive officials to source for funds.
54. A seven-member committee chaired by Mr. Daniel Runya was set up to source for funds. On 1st April 1999 when Mr. Randu appeared before the Public Investments Committee (PIC), the vendors NCPB, ICDC and IDB confirmed having received payment from the Union towards the purchase of the government shares. They also confirmed having issued duly executed transfer forms to the Union officials to effect transfer in the Union's name. According to Mr. Randu, the Union was broke and did not pay any single cent for the shares.

55. In the same year 1999, the Union did a search with the Registrar of Companies and found that the 65% shares though appearing in the sale agreement to have been acquired by the Union, 51% of the shares had been registered in favour of Kenya Plantation and Products Ltd and 14% in favour of Cashew Development Investments Ltd.
56. The Union later learnt that Daniel Runya, Japheth Kavuku and Samuel Gunga were involved in the negotiations and subsequent transfer of the 65% shares to Kenya Plantation and Products Ltd and Cashew Development Investments Ltd. There was no authority whatsoever from the Union for Runya, Kavuku and Gunga to transfer the shares to any third party, neither was there authority from the Commissioner of Co-operatives as required by law. Kavuku, Runya and Gunga were acting illegally on behalf of the Union as the Union had voted them out of office. The Union's efforts to replace them with Benjamin Kubo, Silas Mweri and John Kombe were however frustrated by the directors of Kenya Cashewnut Ltd.
57. Prior to privatization, the Union had representation on the board of Kenya Cashewnut Ltd and got minutes of board meetings and quarterly and annual reports on the affairs of the company. This never happened when Kenya Plantation and Products Ltd and Cashew Development Investments Ltd became shareholders.
58. The company borrowed 45 million shilling from Barclays Bank in 1993 and another 50 million from the same bank in 1996 and was unable to repay. A Barclays Bank of Kenya appointed Receiver Manager took over the management of the factory in 1998. This was months after the factory had been vandalized and closed down. In 2002 Millennium Management Ltd bought the assets of Kenya Cashewnut Ltd through auction by Barclays Bank of Kenya, which was exercising its statutory power of sale. The Union though holding 35% stake in Kenya Cashewnut Ltd was not party to the borrowing from Barclays.

EVIDENCE OF MR. SILAS MWERI, FORMER SECRETARY KILIFI DISTRICT CO-OPERATIVE UNION

59. Mr. Silas Mweri was the Secretary of Kilifi District Co-operative Union from 1996 to 1999. He assumed office after Kenya Cashewnut Ltd had been privatized and succeeded Mr. Daniel Runya. From the records he found in office, the Union held 297,426 shares in Kenya

Cashewnut Ltd which constituted 35% of the total shareholding. Prior to privatization, the Union held 35% stake in Kenya Cashewnut Ltd. The remaining 65% shares were held by government institutions namely National Cereals and Produce Board (NCPB) 268,404 shares, Industrial and Commercial Development Corporation (ICDC) 205,905 shares and Industrial Development Bank (IDB) 78,266 shares.

60. During privatization of Kenya Cashewnut Ltd, the Union was entitled to purchase the 65% shareholding from NCPB, ICDC and IDB in accordance with the pre-emptive rights it enjoyed under the articles of association of Kenya Cashewnut Ltd. The Union was believed to have paid 78 million shillings for the 65% shareholding to the three government institutions. The three institutions confirmed receiving payment and handing over duly executed transfer forms to the Union officials to effect transfer in favour of the Union.

61. The Union's representatives in the board of Kenya Cashewnut Ltd at the time of privatization were:-

(i)	Mr. Japheth Kavuku	-	Chairman
(ii)	Mr. Samuel Gunga	-	Vice Chairman
(iii)	Mr. Daniel Runya	-	General Manager

62. It was understood and believed that KDCU purchased the government's 65% shares and adding to its 35%, became the sole owner of Kenya Cashewnut Ltd and its factory. This was however not the case as the 65% shares were registered in favour of Kenya Plantation and Products Ltd and Cashew Development Investments Ltd. The Directors of these companies were Mr. Yogesh Desai, Pravin Shah, Nelson Korir, Bill Rotich William Kipchumba Sambu and Joshua Kulei. The transfer was done on 23rd December 2004 without the knowledge and consent of the Union and also the Commissioner of Co-operatives as required by law. Japheth Kavuku, Daniel Runya and Samuel Gunga acted on behalf of the Union in the transaction.

63. In 1996, at an Annual General Meeting (AGM) of the Union, attended by the District and Provincial Co-operative Officers, the Union voted out the entire executive team and replaced it with: -

(i)	Mr. Dickson M. Kalama	-	Chairman
(ii)	Mr. Gilbert Dzombo	-	Vice Chairman
(iii)	Mr. Silas D. Mweri	-	Secretary Manager

64. The names of the new officials were forwarded to Kenya Cashewnut Ltd but were rejected. The Company secretaries M/s African Registrars wrote and informed the Union that it had no representation on the board of Kenya Cashewnut Ltd. Mr. Japheth Kavuku, Mr. Samuel Gunga and Mr. Daniel Runya continued to represent the Union on the Board of Kenya Cashewnut Ltd against the wish of the Union until the factory closed down in 1998. When Mr. Mweri took office in 1996, his predecessor Mr. Daniel Runya refused to formally hand over and left with certain crucial documents.
65. The Union carried out its own investigations and established that certain equipment and machinery was missing and had either been stolen by the Directors of Kenya Cashewnut Ltd or transferred to Kenya Bixa Ltd. The equipment and machinery were:-
- (i) 20 shelling machines
 - (ii) 1 calibrator
 - (iii) 1 computer and printer
 - (iv) 1 fax machine
 - (v) 1 refrigerator
 - (vi) 300 plastic bags
 - (vii) One 8kg weighing scale
 - (viii) One 20 kg weighing scale
 - (ix) One 25Kg weighing scale
 - (x) Furniture
 - (xi) 2 air conditioners
 - (xii) 1 motor vehicle
 - (xiii) 1000 aluminum dishes
 - (xiv) Small hoppers
 - (xv) 200 macadamia crackers
 - (xvi) 200 plastic crates
 - (xvii) One 200kg electronic weighing scale
 - (xviii) 1 electronic weighing scale {small lab}
 - (xx) 2 small trolleys
 - (xxi) Steam boiler
 - (xxii) 2 dryer radiator (steam type)
 - (xxiii) 1 dryer solid fuel type
 - (xxiv) 1 steam unit
 - (xxv) 20 trolleys with trays
 - (xxvi) 1 kernel serving unit
 - (xxvii) 30 working tables
 - (xxviii) 1 vacuum gas flush
 - (xxix) 1 vacuum pack

(xxx) 1 vacuum pack bar less
(No 15-29 were referred to as surplus equipments to be sold to M/s Kenya Bixa Ltd)

- (i) The Union also established that Pravin Shah, Yogesh Desai, Nelson Korir, Bill Rotich William Kipchumba Sambu and Joshua Kulei who were directors of Kenya Cashewnut Ltd were also directors at Bixa Kenya Ltd.

EVIDENCE OF DANIEL RUNYA, FORMER GENERAL MANAGER, KILIFI DISTRICT CO-OPERATIVE UNION AND DIRECTOR, KENYA CASHEWNUT LTD

67. Mr. Daniel Runya was employed by Kilifi District Co-operative Union as a General Manager in 1972. While the General Manager, he represented the Union on the board of directors, Kenya Cashewnut Ltd. He resigned from the Union and the board of Kenya Cashewnut Ltd in 1983 in order to contest a Parliamentary seat in Kilifi whereby he lost. He returned to the Union in 1992 on contractual basis and was again appointed General Manager and director, Kenya Cashewnut Ltd.
68. While serving on the board of Kenya Cashewnut Ltd, the company's assets were the factory on 300 acres of land, several houses, several vehicles, and livestock (could not recall numbers). His duties as General Manager were mainly attending Kenya Cashewnut Ltd board meetings and procuring raw cashewnuts for the Union, which would be delivered to the factory.
69. In 1995, Mr. Runya's contract with the Union expired and he ceased being the General Manager. However, he continued serving on the board of Directors Kenya Cashewnut Ltd, not representing the Union but on account of his remarkable procurement of raw cashewnuts to the factory. He continued drawing a salary and allowances and had a company vehicle at his disposal. Mr. Runya confirmed that names of Dickson Kalama, Gilbert Dzomba and Silas Mweri were forwarded to the company to replace him, Samuel Gunga and Japheth Kavuku from the board of Kenya Cashewnut Ltd but the board declined to effect the changes on grounds that there were no vacancies on the board.
70. When the government decided to divest from Kenya Cashewnut Ltd, it is Treasury, which approached the Union to exercise its pre-emptive rights and acquire the 65% shares the government was

disposing. Mr. Runya was called to a meeting at the Coast Provincial Commissioner's boardroom, then Mr. Mbuo Waganagwa to discuss the privatization. He was accompanied by Mr. Japheth Kavuku and Samuel Gunga, members of the Kilifi District Co-operative Union's executive Committee. The meeting was also attended by Kwale and Lamu District Co-operative Union's executive officials, the Permanent Secretary, Ministry of Supplies and Marketing, one Kunnath Gangadharan, one Singh and one Bill Rotich. This was in August 1992 or thereabouts.

71. The meeting resolved that the Kilifi, Kwale and Lamu District Co-operative Unions acquire the 65% government shareholding and that the Unions source for funds to buy the shares. A seven-man committee comprising officials from the three unions was formed and Mr. Runya was elected the chair. Mr. Gangadharan, Mr. Singh and Mr. Rotich did not address the meeting.
72. On 15th December 1992, another meeting was held at the Provincial Commissioner's boardroom where Mr. Runya received a letter informing him that other meetings on the subject between relevant government officials had been held in Nairobi and that it had been decided Kilifi District Co-operative Union acquires the 65% government shareholding in exercise of its pre-emptive rights. The 15th December meeting was chaired by the Coast Provincial Commissioner and attended by the Provincial Commissioner of Co-operatives and the Mombassa District Commissioner. At the meeting all the paper work for the purchase of shares by the Union had been done and the Union was required to make a formal application for the purchase of the shares, which the officials did and thereafter signed the necessary documentation. During the meeting preceding this one, the Union was informed that the government would give it financial backing for the purchase of the shares.
73. At the time of purchasing shares, the factory was performing poorly. In fact the Union had not got any dividends for its shareholding in Kenya Cashewnut Ltd. Mr. Runya, Kavuku, and Gunga's actions in the 65% government shareholding acquisition were because of pressure allegedly from Joshua Kulei and other prominent individuals in the government. According to Mr. Runya, himself, Mr. Kavuku and Mr. Gunga were on one day hosted at State House, Nairobi by the then Head of State, His Excellency President Daniel Arap Moi. Their fares and accommodation for the State House appointment were met by Kenya Plantation and Products Ltd. The

appointment was allegedly arranged by Mr. Joshua Kulei and Mr. Bill Rotich who were directors, Kenya Cashewnut Ltd and Kenya Plantation and Products Ltd. Mr. Kulei and Mr. Rotich also attended the meeting. Mr. Runya and his colleagues were given 5000 Shillings each by the Head of State after the meeting.

74. According to Mr. Runya, the Union bought the 65% shares from National Cereals and Produce Board (NCPB), Industrial and Commercial Development Corporation (ICDC) and Industrial Development Bank (IDB) with funding from Kenya Plantation and Products Ltd. The Union at one time owned 100% shareholding in Kenya Cashewnut Ltd but at a later stage, the 65% shares acquired from the government were transferred to Kenya Plantation and Products Ltd. Mr. Runya confessed that he was involved in the acquisition of the 65% shares from the government and Kenya Plantation and Products Ltd paid 78 million shillings for the shares on behalf of the Union. The amount was paid directly to the vendors through various banks.
75. Mr. Runya confessed that himself and Mr. Japheth Kavuku received duly executed transfer forms from the three government institutions to effect transfer of the shares acquired in the Union's name but failed to do so. Instead, they handed over the forms to the secretariat of Kenya Plantation and Products Ltd and remained with copies thereof. According to Mr. Runya, they were in agreement with Kenya Plantation and Products Ltd that it registers 34% of the shares in its name and the remaining 14% in the Union's name. Mr. Runya could not tell the committee whether the Union sanctioned his action in this connection and whether Kenya Plantation and Products Ltd effected the 34% and 14% transfers. Mr. Runya however maintained that the Union's 35% shareholding in Kenya Cashewnut Ltd was intact.
76. According to Mr. Runya, there were certain equipment and machineries of Kenya Cashewnut factory which were transferred to Kenya Bixa Ltd in Kwale. The reason for the transfer was to increase the capacity of the Bixa factory as the Cashewnut factory was on the verge of collapse.

EVIDENCE OF JAPHETH KAVUKU AND SAMUEL GUNGA, FORMER OFFICIALS, KILIFI DISTRICT CO-OPERATIVE UNION AND DIRECTORS, KENYA CASHEWNUT LTD

77. Mr. Japheth Kavuku was the Chairman, Kilifi District Co-operative Union and Mr. Samuel Gunga was the Union's secretary. The two represented the Union on the board of directors, Kenya Cashewnut Ltd by virtue of the designations and were in office at the time of privatization of Kenya Cashewnut Ltd.
78. According to the witnesses, negotiations for privatization of Kenya Cashewnut Ltd started in 1992. The first meeting was convened by then Coast Provincial Commissioner, Mr. Mbuo Waganagwa in 1992 and was held in his office in Mombasa. The meeting was attended by the Mombasa District Commissioner and the Kilifi, Lamu and Kwale District Co-operative Unions officials. In attendance were four (4) people of Asian origin representing Crown Berger Kenya Ltd. The four (4) did not address the meeting. The witnesses admitted that they did not have authority from the Union to represent it at this meeting.
79. The Provincial Commissioner informed the meeting that the government was divesting from Kenya Cashewnut Ltd and was bringing on board an investor to acquire its stake and that there was need for the Union to co-operate with the investor. Consequently, the Union which had pre-emptive rights pursuant to the articles of association of Kenya Cashewnut Ltd was required to decide how much of the 65 % government shareholding it would purchase and leave the rest to the investor.
80. The second meeting was held in Crown Berger Kenya Ltd offices in Nairobi. Crown Berger paid for these witnesses' transport and accommodation at the Silver Springs Hotel in Nairobi. It was agreed at the meeting that since the Union had pre-emptive rights over the acquisition of the 65% government shareholding in Kenya Cashewnut Ltd but was incapable of exercising them, Crown Berger Kenya Ltd pays for the shares on behalf of the Union and transfers 14% of the shares to the Union and instead of the Union receiving dividends in respect of the 35% shareholding, the amounts would be applied to pay for the 14% shares. Crown Berger's total shareholding would then be 51% and the Union's 49%. The deliberations took two days and on the third day, the witnesses and Mr. Daniel Runya were hosted at State House Nairobi by the then Head of State His Excellency, President Daniel Arap Moi who

commended them for striking a deal with Crown Berger. The State House appointment was allegedly arranged by Mr. Bill Rotich and Mr. Joshua Kulei, who were present during deliberations.

81. The witnesses admitted that they did not have authority from the Union to sell its shares neither was there consent from the Commissioner of Co-operatives as required by law.

EVIDENCE OF KILIFI DISTRICT CO-OPERATIVE UNION

82. The Union was represented by Mr. Dickson Kalama, Chairman, Mr. George Wandai, Vice Chairman, Mr. Hubbel Randu, Secretary and Mr. Johnson Mutana, Mr. Gigan Yaa and Mr. Wellington Rassi, members of the management committee.

83. According to the officials, when the government decided to divest from Kenya Cashewnut Ltd in 1992, the Union expressed interest to buy the government shareholding in accordance with the preemptive rights the Union had under the articles of association of Kenya Cashewnut Ltd. At the time of privatization, Kenya Cashewnut Ltd shareholders were Kilifi District Co-operative Union 297,426 shares and the government institutions, National Cereals and Produce Board (NCPB), 268,404 shares, Industrial and Commercial Development Corporation (ICDC) 205,905 shares and the Industrial Development Bank (IDB) 98,265 shares. The percentage distribution of the shareholding was 65% for the government and 35% for the Union.

84. During the privatization process, the government was represented by the Executive Secretariat and Technical Unit (ESTU) of the Ministry of Finance and Planning whereas the Union was represented by Mr. Japheth Kavuku, chairman, Mr. Samuel Gunga, Vice Chairman and Mr. Daniel Runya, General Manager. Kwale and Lamu District Co-operative Unions were also represented by two officials each. Mr. Daniel Runya was the chairman of the Unions' committee.

85. It came to the light of the Union much more later that the Union officials involved in the privatization exercise kept the Union in the dark as to what was exactly happening. It came to the Union's knowledge that the Union had acquired the government's 65% shareholding and paid 78 million shillings for the shares and also inherited the following debts from Kenya Cashewnut Ltd:-

Government of Kenya	30,000,000.00
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NCPB	56,000,000.00
ICDC	10,000,000.00
Italian Government loan	<u>21,940,754.55</u>
	<u>117,940,745.55</u>

86. An agreement to the effect had been executed whereof Mr. Daniel Runya and Japheth Kavuku signed it on behalf of the Union without the knowledge and authority of the Union. The three government institutions confirmed having received payment for the shares from Kilifi District Co-operative Union and handed over duly executed transfer forms to Union officials, Runya, Kavuku and Gunga to effect transfer in the Union's name. The source of funding for the purchase of the shares was procured by the three officials without the knowledge and authority of the Union. The union was financially incapable of buying the shares.
87. It also came to the knowledge of the Union that upon purchase of the 65% shares from the government institutions, the Union officials, Mr. Daniel Runya, Japheth Kavuku and Samuel Gunga transferred 51% of the shares to Kenya Plantation and Products Ltd and 14% to Cashew Development Investments Ltd. This was without the knowledge and authority of the Union and the Commissioner of Co-operatives as required by law.
88. After the privatization exercise, the Union was denied representation on the Board of Kenya Cashewnut Ltd despite its 35% shareholding. Mr. Daniel Runya, Japheth Kavuku and Samuel Gunga were voted out of office but when their replacements were forwarded to Kenya Cashewnut Ltd, it declined to effect the changes. The three remained on the company's board of directors against the wish of the Union and acted on behalf of the Union illegally.
89. On 25th October 1994 and 11th April 1996, Kenya Cashewnut Ltd borrowed 45 and 50 million shillings respectively from Barclays Bank of Kenya Ltd and pledged as security parcel No. 5046/4, 350 acres of land on which the factory premises were situated and parcel No.1705/35 3.59 acres of land at Bofa in Kilifi on which the Managing Director's residence was situated. Kilifi District Co-operative Union though holding 35% shareholding in Kenya Cashewnut Ltd was not party to the borrowing. Part of the money was used to buy vehicles while the expenditure of the bulk of it was unknown. Despite the borrowing, the company was unable to buy Cashewnuts from farmers.

90. The company failed to repay the Barclays Bank loan and closed the factory in 1998. Barclays Bank appointed Receiver Manager came in after closure and auctioned the factory to Millennium Management Ltd at 58 million shillings in the year 2002. The sale excluded the 3.5 acres at Bofa in Kilifi which had also been charged and which could still be auctioned by the Bank. It should be noted that the Receiver Manager came in after Kenya Cashewnut Ltd had vandalized and closed the factory.
91. The Bank auctioned the company assets despite a pending court case filed by the Union to protect its interest. The Union though holding 35% shareholding in Kenya Cashewnut Ltd was not consulted and was not party to the borrowing as it had been illegally sidelined from the company board. Immediately after the factory was closed down, the company management looted company assets and transferred some to Kenya Bixa Ltd in Kwale. Among the assets were, 2 Tata lorries, 3 Hyundai saloon cars, 1 Toyota salon car, 1 Nissan saloon car, 2 Mitsubishi Pajero cars, 30 sheep and 10 goats. Shelling machines, calibrator, computers, fax machines, refrigerators, plastic bags, weighing scales, gunny bags, air conditioners, furniture, Macadamia cracker unit, 200 plastic crates and trolleys.
92. Sometimes in 1996, the Union was advanced 2 million shillings by Kenya Plantation and Products Ltd, a shareholder in Kenya Cashewnut Ltd, and pledged its 297,426 shares worth 42 million as security. The loan was shared out amongst thirteen (13) Co-operative Societies of the Union and was intended to enable them procure raw cashewnuts from farmers for sale to the factory. At that time, a kilogram of raw cashewnuts was selling at 25 shillings. To the disbelief of the Union, Kenya Cashewnut Ltd was granted monopoly by the government over the purchase of raw cashewnuts in the country and the company fixed the price at 15 shillings per kilogram. The monopoly was granted through the machinations of Mr. Joshua Kulei, a director, Kenya Cashewnut Ltd, then very influential by virtue of being the Personal Assistant to the then Head of state, His Excellency, President Daniel Arap Moi.
93. The Union had purchased raw Cashewnuts worth 2 million shillings at 25 shillings per kilogram and had hoped to sell the stock at 35 shillings per kilogram. With the monopoly enjoyed by Kenya Cashewnut Ltd and having fixed the price, the Union had no alternative but to sell its stock at 15 shillings per kilogram.

Consequently, the Union suffered heavy loss and became hugely indebted to Kenya Plantation and Products Ltd and was supposed to loose its entire shareholding to the company but the company under questionable circumstances never transferred the shares to itself. When Kenya Cashewnut Ltd closed down in 1998, the Union's 35% shareholding was still intact.

EVIDENCE OF MR. BILL ROTICH, FORMER DIRECTOR, KENYA CASHEWNUT LTD

94. Mr. Bill Rotich was a Director, Kenya Cashewnut Ltd from 1993 to 1998 when he resigned because the factory was performing poorly. Apart from Kenya Cashewnut Ltd, Mr. Rotich was also a Director, Crown Berger Kenya Ltd, Kenya Plantation and Products Ltd, Cashew Development Investments Ltd and Kenya Bixa Ltd. The four companies were shareholders in Kenya Cashewnut Ltd and or had dealings with Kenya Cashewnut Ltd.
95. Mr. Rotich attended the first meeting convened by the then Coast Provincial Commissioner Mr. Mbuo Waganagwa in 1992 to discuss the privatization of Kenya Cashewnut Ltd. The main item on the agenda was to explore avenues through which Crown Berger Kenya Ltd would invest in Kenya Cashewnut Ltd. After several meetings, Crown Berger purchased a 65% stake in Kenya Cashewnut Ltd.
96. In 1994/95, Kenya Cashewnut Factory was temporarily closed owing to inadequate raw cashewnuts to process following a diseases called powdery mildew. The company required at least 5000 tonnes of raw cashewnuts to sustain factory operations. As a result, the company declared some employees redundant but did not have monies to pay them their redundancy dues, as this had not been budgeted for. Following inadequate raw cashewnuts to process as a result of the disease, the company started sourcing for raw cashewnuts from Tanzania.
97. Mr. Rotich could not answer some of the questions put to him on grounds that he could not remember. Though he admitted that Crown Berger Kenya Ltd acquired the 65% shares the government was to sell to Kilifi District Co-operative Union, he could not recall if Crown Berger paid any monies for the shares. He claimed he could not recall meetings held in Nairobi and particularly at State House between the Head of state and Kilifi District Co-operative Union officials, Mr. Japheth Kavuku, Mr. Samuel Gunga and Mr. Daniel

Runya in respect of which evidence was received that him and Mr. Joshua Kulei facilitated and were present. The witnesses did not even know the number of shares held by Crown Berger in Kenya Cashewnut Ltd despite being a director, Crown Berger Kenya Ltd.

EVIDENCE OF MR. WILLIAM KIPCHUMBA SAMBU, FORMER DIRECTOR KENYA CASHEWNUT LTD

98. Mr. Sambu was a director, Kenya Cashewnut Ltd. Mr. Sambu was also a Director, Kenya Bixa Ltd, Kenya Plantation and Products Ltd, Cashew Development Investments Ltd and Crown Berger Kenya Ltd all of which were shareholders or had dealings with Kenya Cashewnut Ltd.
99. Sometimes in 1993, there was a meeting in Crown Berger Kenya Ltd's boardroom in Nairobi between the Kilifi District Co-operative Union officials Daniel Runya, Japheth Kavuku and Samuel Gunga. The meeting resolved that out of the 65% shareholding the Union was to acquire from the government in Kenya Cashewnut Ltd, 51% would be acquired by Crown Berger Kenya Ltd and the remaining 14 % would be shared between Kilifi, Lamu and Kwale District Co-operative Unions. After this had happened, Crown Berger Kenya Ltd sold 20% of the 65% shareholding to Kenya Assets Management Ltd and 8% to Kenya Plantation and Products Ltd. Kenya Assets Management Ltd and Kenya Plantation and Products Ltd however had difficulties in paying for the shares and approached Mr. Joshua Kulei who bailed them out.
100. Pravin K. Shah, Yogesh Desai, Joshua Kulei and Bill Rotich were among the directors of Kenya Assets and Management Ltd. The three were also directors of Kenya Cashewnut Ltd.
101. Barclays Bank of Kenya Ltd were the bankers of Kenya Cashewnut Ltd. Every year, the company would borrow from the bank for the purposes of purchasing raw cashewnuts and other requirements. In 1997, Barclays withdrew the loan facility to Kenya Cashewnut Ltd owing to an outstanding amount of 82 million shillings. This meant that the company could not purchase raw cashewnuts for factory processing for the year 1998. A board meeting was held whereby it was resolved that the factory be closed and staff laid off. Thereafter, a Barclays Bank of Kenya appointed Receiver Manager took over the management of the factory.

102. At the time Barclays withdrew the loan facility, shareholders had injected 75 million shillings to the company's working capital. The co-operative union did not contribute anything to the 75 million as it was experiencing financial difficulties and the Co-operative Bank was unwilling to lend it due to its poor credit rating. Following the closure, shareholders lost the 75 million shillings. The company was also indebted to Kenya Bixa Ltd to the tune of 20 million shillings.
103. Mr. Sambu confirmed that some equipment and machinery were transferred from Kenya Cashewnut factory to Kenya Bixa Ltd with the authority of the Board of Directors Kenya Cashewnut Ltd. The reason for this was that Kenya Cashewnut Ltd was repaying a debt it owed Kenya Bixa Ltd and further that Kenya Cashewnut Ltd was going to be closed for long and the equipment and machinery would not be required. He also told the committee that employees were paid all their dues but could not produce evidence to the effect.
104. Mr. Sambu confirmed that there was common directorship between Kenya Cashewnut Ltd and Kenya Bixa Ltd but did not mention names. He resigned as a director of Kenya Cashewnut Ltd in 1998 following the closure of the Kilifi Cashewnut Factory.

EVIDENCE OF MR. JOSHUA KULEI

105. Mr. Kulei was a Director Kenya Cashewnut Ltd, Kenya Assets Management, Kenya Plantation and Products Ltd and Kenya Bixa Ltd.
106. Negotiations for the sale of the government stake in Kenya Cashewnut Ltd commenced in 1992 and were completed in 1993. Four (4) companies had bid to purchase the 65% government shareholding and Crown Berger Kenya Ltd emerged successful because it had the requisite resources and skills to run the Kenya Cashewnut Factory. Crown Berger was to execute a sale agreement on 29th October 1993 but withdrew at the last minute.
107. Kenya Assets Management Ltd took over from Crown Berger and executed a sale agreement on 29th October 1993. Kenya Assets Management Ltd then paid a 10% deposit to the three government institutions NCPB, ICDC and IDB as was provided for by the sale agreement and arranged for a bank guarantee for the repayment of the 90% balance within 90 days. The bank guarantee was provided by Trust Bank Ltd and the 90% balance was paid by Kenya

Plantation and Products Ltd, a nominee of Kenya Assets Management Ltd within the 90 days.

108. It was understood from the onset that Kilifi District Co-operative Union was acquiring the shares for conveyance to Kenya Assets Management Ltd and Kenya Plantation and Products Ltd.
109. After full payment of the 65% government shareholding, Kenya Assets Management Ltd approached Mr. Kulei to take up part of the 65% shares and Mr. Kulei agreed. Two companies were then incorporated for the purposes of holding the 65% shares. The first company was Kenya Plantation and Products Ltd which took 51% and Cashew Development Investments Ltd which took 14%. The 14% shares were to be held by in trust for Kilifi District Co-operative Union by Cashew Development Investments Ltd. Mr. Kulei's shareholding in Kenya Cashewnut Ltd was 20.4% and was on most occasions represented at board meetings by Mr. Ahmed Jibril and Mr. William Sambu. Mr. Sambu was also Mr. Kulei's alternate.
110. When the Kenya Cashewnut factory was closed in 1998, Kenya Cashewnut Ltd owed Kenya Bixa Ltd 36 million shillings in form of loans. The transfer of equipment and machinery from Kenya Cashewnut factory to Kenya Bixa Ltd was intended to reduce the 36 million shillings loan. The total value of assets transferred was 16 million shillings. Kenya Bixa Ltd then wrote off the 20 million shillings balance. The equipment and machinery transferred was also surplus to what was required by Kenya Cashewnut Ltd.
111. Kenya Cashewnut Factory was closed because of:-
 - (i) Old and dilapidated machines
 - (ii) Drought in 1995
 - (iii) *El-nino* in 1997
 - (iv) Low Cashewnut supply from farmers
 - (v) High cashewnut prices set by the government
 - (vi) Liberalization of the cashewnut market
 - (vii) High bank interest rates on loans
 - (viii) High foreign exchange rates
112. In 1997 the Cashewnut market had been liberalized following pressure from cashewnut producers who felt they were underpaid for deliveries to the factory. The pronouncement to liberalize the market was made by the then Head of State, President Daniel Arap Moi when he officially opened the Mombasa Show in 1997. This was

after a meeting with stakeholders at the Mombasa State House. Immediately the market was liberalized, producers started exporting cashewnuts to India and the factory closed down after two months. The witness had advised against the liberalization.

113. Kenya Plantation and Products Ltd lost 207 million shillings in Kenya Cashewnut Ltd. The amount is made up as:-

Purchase of shares	78 million
Paid for pre-purchase redundancies	37 million
Contractors liabilities	6.60 million
Loan to Kilifi District Co-operative Union	2 million
Payments to NCPB	9.32 million
Capital injections and advances by shareholders	<u>75 million</u>
	<u>207.92 M</u>

114. Mr. Kulei told the Committee that he lost 285 million shillings in Kenya Cashewnut Ltd as a result of the closure of the factory out of which 207 million was the investment in Kenya Plantation and Products Ltd and 78 million was a loan granted to the company. He could however not produce evidence to support the loss.

SEARCH WITH THE REGISTRAR OF COMPANIES

115. The committee searched with the Register of Companies the directorship of companies which were shareholders in Kenya Cashewnut Ltd and those which had dealings with the company prior to the closure of the factory. Files of some companies could not be traced. From the search and evidence received during proceedings, it was established that there was common directorship in all the companies. The directors of the companies were as follows:-

Kenya Cashewnut Ltd

116. Yogesh Desai, Pravin Shah, Joshua Kulei, Bill Rotich, William Sambu, Nelson Korir, Ahmed Jibril, Kunnath Gangadharan, Naftali Gitonga, Mohamed Bakari Rupia, Daniel Runya, Japheth Kavuku, and Samuel Gunga.

Kenya Bixa Ltd

117. Yogesh Desai, Pravin Shah (Pravinchandra Kashalchand Shah), Joshua Kulei, Bill Rotich, William Sambu, Ahmed Jibril, Nelson Korir,

Ian Richard Morrell and Dipak Lalji Shah.

Kenya Plantation and Products Ltd

118. Its file could not be traced in the registry. Bill Rotich, Joshua Kulei and William Sambu confirmed to the Committee that they were directors in this company. Evidence received from other witnesses indicates that Pravin Shah, Yogesh Desai and Nelson Korir were also directors in this company

Crown Berger Kenya Ltd

119. Its file could not be traced in the registry. Mr. Bill Rotich however confirmed to the Committee that he was a director in the company.

Kenya Assets Management Ltd

120. Its file could not be traced in the company registry. Evidence received during proceedings indicates that Mr. Joshua Kulei, Mr. Pravin Shah, Mr. William Sambu and Mr. Yogesh Desai were directors of this company.

Cashew Development Investments Ltd

121. The file could not be traced in the registry. Evidence received by the Committee indicates that this company was owned by Kenya Plantation and Products Ltd whose directors were Pravin Shah, Yogesh Desai, Joshua Kulei, Bill Rotich and William Sambu among others.

PAPERS LAID

122. The Committee examined copies of the following papers laid before it by various witnesses. The papers were useful to the Committee in making legal observations and conclusions:-

Minutes of the Special Board of Directors of Kenya Cashewnut Ltd meeting held on 5th November 1993 at Kenya Cashewnut Ltd boardroom in Kilifi

123. Several witnesses including NCPB, ICDC and IDB produced the minutes. However, none of the witnesses produced a signed copy

of the minutes. According to the minutes, NCPB, ICDC and IDB resigned from the board of directors Kenya Cashewnut Ltd before legal formalities for the sale of their shares to Kilifi District Co-operative Union were complete. According to the minutes, the meeting under reference started on Friday 5th November 1993 at 10.00 a.m. and was concluded on Wednesday 10th November 1993 at 4.30 p.m.

Agreement for sale of shares between Kilifi District Co-operative Union Ltd, Kenya Assets Management Ltd and Cashew Development Investments Ltd

124. Pursuant to the agreement, Kilifi District Co-operative Union and its shareholders in Kenya Cashewnut Ltd sold 433,574 ordinary shares constituting 51% of Kenya Cashewnuts Ltd paid up capital to Kenya Assets Management Ltd and a further 119,000 constituting 14% to Cashew Development Investments Ltd. The agreement is however not attested.
125. According to the agreement, Kilifi District Co-operative Union at one time held 100% shareholding in Kenya Cashewnut Ltd.

Share transfer forms and certificates

126. The forms and certificates are in respect of transfer of 433,574 and 119,000 shares by Kilifi District Co-operative Union to Kenya Plantation and Products Ltd and Cashew Development Investments Ltd respectively. The forms are sealed and signed by Daniel Runya on behalf of the Union.

Letter dated 18th October 1996 by M/s Khaminwa and Khaminwa Advocates to the Managing Director, Kenya Cashewnut Ltd

127. Through the letter, the Union sought to have Japheth Kavuku, Samuel Gunga and Daniel Runya replaced with Benjamin Kubo, Silas Mweri and Kombe as directors, Kenya Cashewnuts Ltd. The Union had reached this decision at its Annual General Meeting of 9th August 1996.

Letter dated 17th October 1996 from African Registrars to the Secretary, Kilifi District Co-operative Union

128. African Registrars were the company secretaries of Kenya Cashewnut Ltd. According to their letter, the articles of association

of Kenya Cashewnut Ltd did not have provision for the appointment of representatives of Kilifi District Co-operative Union to the board of Kenya Cashewnut Ltd. The letter further says that the directors representing the interests of the Union on the board of Kenya Cashewnut Ltd had not resigned and there were no vacancies to be filled. The letter also says that the change of representatives or delegates in the Union had nothing to do with the composition of the board of directors of Kenya Cashewnut Ltd.

Letter of guarantee by Trust Bank to Industrial and Commercial Development Corporation (ICDC) dated 4th November

129. NCPB, ICDC and IDB first received a 10% down payment for the sale of their 65% stake to Kilifi District Co-operative Union and the 90% balance was secured by a bank guarantee issued by Trust Bank on behalf of the Union. According to the letter, the guarantee would be effective after 90 days. However, the vendors transferred their shareholding to the Union after receipt of 10% down payment and immediately resigned from the board of Kenya Cashewnut Ltd.

Letter dated 5th August 1998 by Mr. Nelson Korir, chairman Kenya Cashewnut Ltd addressed to Mr. Lawrence Chapa of the same company

130. According to the letter, Mr. Lawrence Chapa was to liaise with the General Manager of Kenya Cashewnut Ltd Mr. Pravin Raju for the transfer of the following from Kenya Cashewnut Ltd to Kenya Bixa Ltd:-

- (i) Macadamia cracker unit
- (ii) 200 plastic crates
- (iii) One 20Kg electronic weighing scale
- (iv) 1 lab electronic weighing scale
- (v) 2 small trolleys

Facsimile message dated 10th September 1998 from Mr. William Sambu of Kenya Cashewnut Ltd to Mr. Korir and Mr. Mwangi of the same company

131. According to the letter, Mr. Korir and Mr. Mwangi were to transfer the following from Kenya Cashewnut Ltd to Kenya Bixa Ltd:-

- (i) Shelling machine
- (ii) Calibrator

- (iii) Computers and printers
- (iv) Fax machine
- (v) Refrigerator
- (vi) Plastic bags
- (vii) Weighing scales
- (viii) Gunny bags
- (ix) Air conditioners
- (x) Motor vehicles

Delivery notes No 59340,59341, 59344, 59347, 59749, 59750

132. According to the delivery notes, Kenya Bixa Ltd acknowledged receipt of the aforementioned equipment and machinery.

OBSERVATIONS AND CONCLUSIONS

133. From the evidence received, the Committee made the following observations and conclusions:-
- (i) There was fraudulent acquisition and transfer of 572,574 (65%) shares Kilifi District Co-operative Union had acquired from the National Cereals and Produce Board (NCPB), Industrial and Commercial Development Corporation (ICDC) and Industrial Development Bank (IDB) to Kenya Plantation and Products Ltd and Cashew Development Investments Ltd. This involved a collusion between Daniel Runya, Japheth Kavuku and Samuel Gunga acting on behalf the Union and who were directors at Kenya Cashewnut Ltd representing the Union, the then directors of Crown Berger Kenya Ltd, Kenya Plantation and Products Ltd, Cashew Development Investments Ltd and Kenya Cashewnut Ltd. The said companies had common directorship.
 - (ii) The three government institutions NCPB, ICDC and IDB claimed to have received full payment for the sale of their shareholding in Kenya Cashewnut Ltd to Kilifi District Co-operative Union. However, none of them could produce tangible evidence to support the receipt of payment and the committee had reasons to believe that payment may not have been made and the government may have lost 78 million shillings in the privatization exercise.
 - (iii) The Commissioner of Co-operatives abdicated his duty and or was negligent to the extent that Kilifi District co-operative

- Union officials Japheth Kavuku, Samuel Gunga and Daniel Runya fraudulently acquired and transferred on behalf of the Union the 65% shareholding from the government to third parties without the Commissioner's knowledge and consent.
- (iv) It was imprudent for the three government institutions; NCPB ICDC and IDB to resign from the board of directors Kenya Cashewnut Ltd and transfer their shareholding to Kilifi District Co-operative after receiving a 10% down payment instead of full payment and before the expiry of ninety (90) days after which the bank guarantee for the payment of the 90% balance by Trust Bank would be effective.
- (v) Granting of monopoly to Kenya Cashewnut Ltd as the sole purchaser of raw cashewnuts from producers particularly at a time when Kenya Plantation and Products Ltd a shareholder of Kenya Cashewnut Ltd had granted Kilifi District Co-operative Union a 2 million shillings loan secured by the Union's 35% shareholding in Kenya Cashewnut Ltd was made with ulterior motive. It will be recalled that the company lowered the price of raw cashewnuts to 15 shillings per kilogram just after the Union had purchased stock worth 2 million at 25 shillings per kg and the Union had to sell the stock at 15 shillings per kilogram suffering a heavy loss. The Union as a result was unable to service the 2 million shillings loan and it is suspect why Kenya Plantation and Products Ltd failed to transfer the Union's shares into its name as it was holding the Union's share certificates as security.
- (vi) Cashewnut producers demanded a liberalized market because of poor pay by Kenya Cashewnut Ltd for raw cashewnuts delivered. It was not surprising that immediately the market was liberalized in 1997, producers started exporting raw cashewnuts to India, a factor that contributed to the closure of the factory.
- (vii) Until closure of Kenya Cashewnut Ltd in 1998, Kilifi District Co-operative Union was still a major shareholder in the company but had been denied representation on the board of Kenya Cashewnut Ltd. Daniel Runya, Japheth Kavuku and Samuel Gunga who after 1996 claimed to be representing Kilifi District Co-operative Union on the board were doing so illegally as the Union had voted them out of office. There was no justified reason by the board of Kenya Cashewnut Ltd to decline to

replace Runya, Kavuku and Gunga from the board of Kenya Cashewnut Ltd.

- (viii) Daniel Runya, Japheth Kavuku and Samuel Gunga had since the privatization process of Kenya Cashewnut Ltd began been acting on behalf of the Union without consulting the Union.
- (ix) Kilifi District Co-operative Union though holding 35% shareholding was without any justified cause or reason denied representation on the board of Kenya Cashewnut Ltd from the year 1996 after its desire to have Mr. Kavuku, Mr. Gunga and Mr. Runya replaced by Dickson Kalama, Silas Mweri and Golbert Dzombo by was declined by Kenya Cashewnut Ltd. The Union therefore though a major shareholder, was not party to many decisions of the company.
- (x) Kenya Cashewnut Ltd had been borrowing, from Barclays Bank of Kenya Ltd. At the time of closure, the company owed the bank 82 million shillings. Though the directors claimed that the borrowing was largely to source for raw cashewnuts for factory processing, they could not produce evidence to the effect. They could also not produce evidence on the repayment status, neither could they produce evidence for the approval of the borrowings. The Committee had strong reasons to believe that the monies were misappropriated. They also claimed to have settled all farmers and employees dues but could not produce evidence.
- (xi) The transfer of some equipment and machinery from Kenya Cashewnut Ltd to Kenya Bixa Ltd was done before the Receiver Manager came in and was a clear indication that Kenya Cashewnut Ltd did not have the intention of repaying the 82 million shillings owed to Barclays Bank Kenya Ltd. The transfer was intended to safeguard part of the company's assets from being lost through an impending auction by the Receiver Manager. The contention that the transfer was meant to repay an outstanding debt to Kenya Bixa Ltd does not make any commercial sense on grounds that:-
 - A majority shareholder, Kilifi District Co-operative Union had been unlawfully denied representation on the board

of Kenya Cashewnut Ltd and was not party to the borrowing.

- There is common directorship between Kenya Cashewnut Ltd and Kenya Bixa Ltd.
 - No similar efforts were made to repay 82 million shillings owed to Barclays Bank Kenya Ltd.
- (xii) In the process of transferring equipment and machinery to Kenya Bixa Ltd, the Kenya Cashewnut Factory was vandalized.
- (xiii) Some company assets like motor vehicles and livestock were not transferred to Bixa Kenya Ltd and the directors could not account for their whereabouts making the committee to conclude that they were taken for personal use by the same directors.
- (xiv) Reasons given by the directors of Kenya Cashewnut Ltd to be responsible for the closure of the factory such as; old and dilapidated machines, drought, el-nino, low cashewnut supply, diseases, high cashewnut prices, liberalization of the cashewnut market, high bank interest rates and high foreign exchange rates are normal operational challenges business enterprises would encounter. Such challenges would be overcome by sound and prudent management which were lacking at Kenya Cashewnut Ltd.

RECOMMENDATIONS

134. From the observations and conclusions made from the evidence received, the Committee makes the following recommendations:-

Shareholding

- (i) The Director of Criminal Investigations Department (CID) should institute investigations on the manner in which the 65% shareholding Kilifi District Co-operative Union was to acquire from the government in Kenya Cashewnut Ltd was fraudulently acquired and ceded to Kenya Plantation and Products Ltd and Cashew Development Investments Ltd with a view to prosecuting culprits;

- (ii) The Director of Criminal Investigation Department should investigate if the three government institutions NCPB, ICDC and IDB were actually paid for the sale of their 65% stake in Kenya Cashewnut Ltd valued at 78 million shillings with a view to prosecuting culprits

Loans from Barclays Bank of Kenya

- (iii) The Director of Criminal Investigations Department (CID) should institute investigations into the misappropriation of monies borrowed from Barclays Bank of Kenya by Kenya Cashewnut Ltd with view to prosecuting the culpable;

Irregular transfer of equipment and machinery to Kenya Bixa Ltd

- (iv) The Director of Criminal Investigation Department (CID) should investigate the irregular transfer of equipment and machinery from Kenya Cashewnut Ltd to Kenya Bixa Ltd with a view to prosecuting the culprits and recovering the equipment and machinery.

While conducting investigations in (i) (ii) (iii) and (IV) above, the Director of Criminal investigation Department (CID) should ascertain the roles played by the directors of Kenya Cashewnut Ltd, Kenya Plantation and Products Ltd, Crown Berger Kenya Ltd, Cashew Development Investments Ltd and Kenya Bixa Ltd namely:-

- **Pravin Shah**
- **Yogesh Desai**
- **Joshua Kulei**
- **Bill Kipsang' Rotich**
- **William Kipchumba Sambu**
- **Nelson Korir**
- **Ahmed Rashid Jibril**
- **Mohamed Bakari Rupia**
- **Kunnath Gangadharan**
- **Daniel Runya**
- **Japheth Kavuku**
- **Samuel Gunga**

with a view to taking appropriate action against those culpable

- (v) Investigations in (i) (ii) (iii) and (IV) above be concluded by 31st December 2008.
- (vi) Mr. Raymond Bomet the Commissioner of Co-operatives during the privatization of Kenya Cashewnut Ltd be barred from holding public office for his abdication of duty and or negligence.
- (vii) Kenya Cashewnut Ltd should pay former employees their redundancy dues.

CONFIDENTIAL

KENYA CASHEWNUTS LIMITED

MINUTES OF THE SPECIAL BOARD OF DIRECTORS MEETING HELD IN THE
COMPANY'S BOARD ROOM, KILIFI ON FRIDAY 5TH NOVEMBER, 1993 AT
10.00 AM AND AT ADJOURNMENT THEREOF

DIRECTORS PRESENT

Mr. C. S. Khaemba	-	Representing N.C.P.B. and Chairman for the meeting
Mr. Harry Jira	-	Managing Director
Ms. Sally Githere	-	Representing ICDC
Mr. E.C.A. Saina	-	Representing IDB
Mr. Mwasi Nyatta	-	Representing P.S Ministry of Finance
Mr. E. M. Gichohi	-	Representing P.S. Ministry of Agriculture, Livestock Development and Marketing
Mr. D. Runya	-	Representing Kilifi D.C. Union
Mr. B. Shaha		
Mr. M.B. Ropia		
Mr. N. Gitonga		

APPOLOGIES FROM

Mr. Mbuo Waganagwa

IN ATTENDANCE

Mr. N. K. Chesoni	-	ICDC
Mr. B. K. Murage	-	Representing t e Company Secretary

MIN. 7/SBDM/93 - AGENDA

The Meeting was convened to transact the following business:

1. To note the buy-out of public sector shareholdings by Kilifi District Co-operative Union.
2. To accept resignation of all the Directors of the Company from the Board together with the secretary and Auditor-General (Corporations).

MIN. 8/SBDM/93 - DURATION

The Board convened and deliberated on matters of the agenda on the following days:

- (i) Friday 5th November, 1993 at the Company's Board Room, Kilifi from 10.45 am to 3.10 p.m.
- (ii) Tuesday 9th November, 1993 at the Anniversary Towers offices in Nairobi of the Executive Secretariat and Technical Unit of the Parastatal Reform Programme Committee from 10.00 am to 1.00 p.m. and from 2.45 p.m. to 5.18 p.m.
- (iii) Wednesday 10th November, 1993 at the Anniversary Towers offices in Nairobi of the Executive Secretariat and Technical Unit of the Parastatal Reform Programme Committee from 3.00 p.m. to 4.20 p.m.

MIN. 9/SBDM/93 - COMPANY'S ASSETS

It was recalled that negotiations for the buy-out of public sector shareholdings i.e. from National Cereals and Produce Board, Industrial & Commercial Development Corporation and Industrial Development Bank were based on the valuation of the assets of Kenya Cashewnuts Limited by M/S Milligan & Company as indicated in their Valuation Report dated 4th March, 1992.

In order to ascertain that the fixed assets were still in place, a joint exercise was carried out by representatives of Kilifi District Co-operative Union, National Cereals and Produce Board, Industrial & Commercial Development Corporation and Industrial Development Bank.

The verification of the Fixed Assets Report was jointly signed by the following persons:

Mr. D. Runya - K.D.C.U

Mr. P. Swagi - N.C.P.B
 Mr. B. Wata - ICDC
 Mr. N. K. Chesoni - ICDC
 Mr. C. N. Mukiri - IDB

The verification of the Fixed Assets Report was accepted and did not reveal material discrepancy when disposals and additions to date are taken into account.

MIN. 10/SBDM/93 - GOING CONCERN BASIS

It was noted that Kilifi District Co-operative Union was acquiring Kenya Cashewnuts Limited on a going concern basis since it was merely buying the shares of NCPB, ICDC and IDB.

Consequently, it was further noted that KDCU would assume responsibility for contingent liabilities of Kenya Cashewnuts Limited.

Contingent Liabilities were noted to be as follows:-

- (i) Outstanding staff Redundancy claim of Kshs. 30,438,318.
- (ii) Pending Law Suit in respect of work done on staff houses for Kshs. 6,691,241
- (iii) Pending Law Suit for wrongful dismissal instituted by a former Deputy Managing Director of the Company.

The Purchaser and Vendors therefore agreed to delete the clause in the Sale Agreement regarding Contingent Liabilities.

MIN. 11/SBDM/93 - PURCHASE CONSENT

The Executive Director of the Executive Secretariat and Technical Unit of the Parastatals Reform Programme Committee indicated that the Commissioner of Co-operatives had given approval for Kilifi District Co-operative Union to purchase the public sector shareholdings in Kenya Cashewnuts Limited and undertook to obtain such written consent as required by the Co-operative Societies Act.

MIN. 12/SBDM/93 - PAYMENT OF PURCHASE PRICE

It was noted that 10% of the purchase price was paid on 29th October, 1993 and that the balance would be paid within 90 days of signing of the Sale Agreement and further that the vendors would be furnished with a Bank Guarantee for the unpaid amount.

MIN. 13/SBDM/93 - LAWYERS FOR THE PURCHASER

It was noted that Hamilton, Harrison & Mathews had assigned the legal work to Aming'a, Opiyo, Masese & Company. Accordingly, it was decided that Hamilton, Harrison & Mathews should give advocates of the vendors an undertaking to the effect that the legal work involved in the deal of acquiring public sector shareholding in Kenya Cashewnuts Limited by Kilifi District Co-operative Union will be finalised by Aming'a, Opiyo, Masese & Company, Advocates.

MIN. 14/SBDM/93 - PENDING MATTERS

It was noted that documentation has not been finalised in regard to Loan Agreements, Management Agreement and Debentures. It was then decided that arrangements should be made to finalise these documents without further delay.

MIN. 15/SBDM/93 - RESIGNATION OF DIRECTORS

The following Directors resigned from the Board and their resignation was noted accordingly.

- Mr. Mbuo Waganagwa - Provincial Commissioner, Coast Province
- Permanent Secretary - Ministry of Finance
- Permanent Secretary - Ministry of Agriculture, Livestock Development and Marketing
- National Cereals and Produce Board
- Industrial & Commercial Development Corporation
- Industrial Development Bank
- Mr. Mohamed Bakari Ropia
- Mr. Naftaly S. Gitonga

Mr. Benjamin Shaha

Mr. Harry Jira

MIN. 16/SBDM/93 - RESIGNATION OF THE SECRETARY

The resignation of Mrs. Nelly Jane Ngigi of the Industrial and Commercial Development Corporation as the Company Secretary of Kenya Cashewnuts Limited was accepted.

MIN. 17/SBDM/93 - RESIGNATION OF THE AUDITOR

The resignation of the Auditor-General (Corporations) as the Auditor of Kenya Cashewnuts Limited was accepted.

MIN. 18/SBDM/93 - ANY OTHER BUSINESS

(a) Peter Evans Obala

The Managing Director reported that he had written to Mr. Obala, the Personnel & Administration Manager, to explain about his questionable involvement in the exercise of the repair of the Company's staff houses. The Managing Director further reported that Mr. Obala had replied exonerating himself and indicating that he was acting on instructions given to him by the ex-Managing Director, Mr. Martin Opi. It was, however, observed that it was clear that Mr. Obala was involved in fraudulent practices in the exercise.

It was therefore **RESOLVED** that Mr. Peter Evans obala be, and is, hereby dismissed from the Company's employment with immediate effect with loss of all benefits and further that the Company reserves the liberty to take any legal action it deems necessary to recover any loss necessitated by his actions.

(a) Mr. Martin Opi

It was noted that Mr. Martin Opi, the ex-Managing Director, bears total responsibility for the fraudulent nature in which the contract for the repair of the staff houses was handled.

Consequently, it was recommended that the Company should write a letter to the Permanent Secretary, Ministry of Agriculture, Livestock Development and Marketing indicating that Kenya Cashewnuts Limited is contemplating taking legal action against Mr. Opi to recover loss necessitated by his action in the repair of the Company's staff houses.

MIN. 19/SBDM/93 - VOTE OF THANKS

On behalf of Kilifi District Co-operative Union (the purchaser) Mr. D. Runya thanked the outgoing members of the Board for having guided the operations of the Company satisfactorily and assured them that everything will be done to ensure that the Company continues to prosper.

The outgoing members of the Board, on behalf of the vendors, wished the purchaser all the best and indicated that the doors were open if any assistance would be required.

On behalf of the Government, Mr. M. Nyatta of the Ministry of Finance registered his gratitude and pleasure that this aspect of privatisation had now been concluded satisfactorily and wished the Coast farmers success in the running of the factory.

There being no any other business the Chairman for the meeting terminated deliberations on Wednesday 10th November, 1993 at 4.20 p.m.

APPROVED-----

CHAIRMAN

DATED-----

FORM OF TRANSFER

FOR THE CONSIDERATION stated below the "Transferor(s)" named do hereby transfer to the "Transferee(s)" named the share or stock specified below subject to the several conditions on which the shares or stock are or is now held by the Transferor(s) and the Transferee(s) do hereby accept and hold the said shares subject to the conditions aforesaid

January 24

13/11
S.M.

SD/8401/10

12/1

Full Name of Company or Undertaking

KENYA CASHEW

Number and full description of shares or amount of stock and number and denomination of units

FIGURES
119,000
ORDINARY SHARES

ON...
NINETEEN THOUSAND ORDINARY
SHARES. TWENTY EACH

TRANSFER FROM

TRANSFEROR(S)
Name(s) and address(es) in full,

KILIFI DISTRICT CO-OPERATIVE UNION LIMITED
BOX 67

(PREFERABLY TYPEWRITTEN OR IN BLOCK CAPITALS)

CONSIDERATION

KSHS. 16,802,800

TRANSFER TO

TRANSFEE(S)
Name(s) and address(es) in full and, in the case of women, status e.g., Spouse.

CASHEW DEVELOPMENT INVESTMENT LIMITED
P.O. BOX 41295
NAIROBI

(PREFERABLY TYPEWRITTEN OR IN BLOCK CAPITALS)

SIGNED SEALED and DELIVERED by the parties to this transfer on the 24th day of December One thousand nine hundred and ninety three

Certificate to cover the within mentioned Shares lodged with

in the presence of SIGNATURE OF WITNESS

Address

Description

in the presence of SIGNATURE OF WITNESS

Address

Description

in the presence of SIGNATURE OF WITNESS

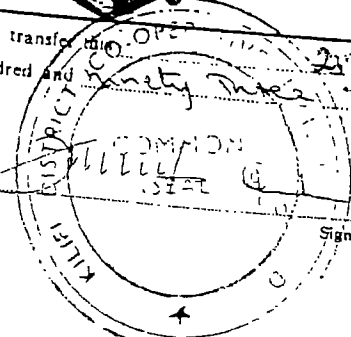
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Description

in the presence of SIGNATURE OF WITNESS

Address

Description



(Signature)

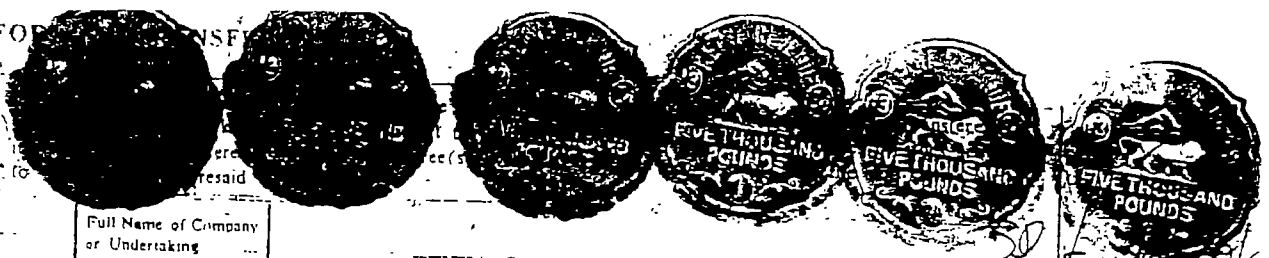
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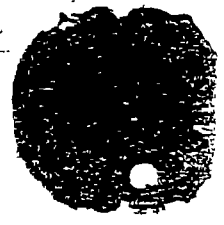
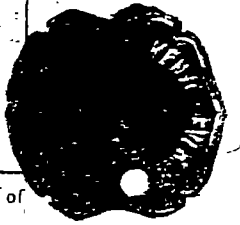
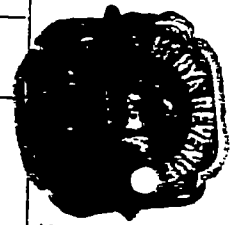
LODGED BY

16 402 800
61 220 648
78,023 448



Full Name of Company or Undertaking	KENYA CASHEWNUITS LIMITED
Number and full description of shares or amount of stock and number and denomination of units	FIGURES: 433,574 WORDS: FOUR HUNDRED AND THIRTY THREE THOUSAND FIVE HUNDRED AND SEVENTY FOUR ORDINARY SHARES OF KSHS. TWENTY EACH
TRANSFER FROM TRANSFEROR(S) name(s) and address(es) in full, (PREFERABLY TYPE-WRITTEN IN BLOCK CAPITALS)	KILIFI DISTRICT CO-OPERATIVE UNION LIMITED P.O. BOX 67 KILIFI
CONSIDERATION	KSHS. 61,220,648/=
TRANSFER TO TRANSFEEE(S) name(s) and address(es) in full and, in the case of women, status e.g., Spouse, (PREFERABLY TYPE-WRITTEN OR IN BLOCK CAPITALS)	KENYA PLANTATIONS AND PRODUCTS LIMITED P.O. BOX 41295 NAIROBI

12/11



Certificate to cover the within mentioned Shares lodged with

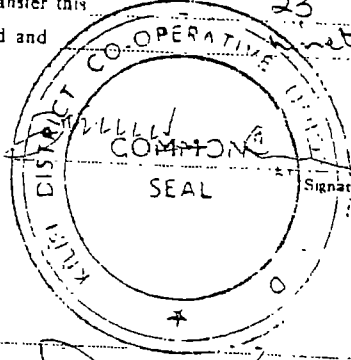
SIGNED SEALED and DELIVERED by the parties to this transfer this 23 day of December One thousand nine hundred and thirty three

in the presence of
SIGNATURE OF WITNESS | _____
Address | _____
Description | _____

in the presence of
SIGNATURE OF WITNESS | _____
Address | _____
Description | _____

in the presence of
SIGNATURE OF WITNESS | _____
Address | _____
Description | _____

in the presence of
SIGNATURE OF WITNESS | _____
Address | _____
Description | _____



(Signature)

(Signature)

(Signature)

LODGED BY

KENYA CASHEWNUTS

Limited.

Note

Capital Shs 17,000,000/= Divided into 850,000

Shares of Shillings 20/= each

This is to certify that KENYA PLANTATIONS AND PRODUCTS LIMITED

of P.O. BOX 41295, NAIROBI

is the Registered Proprietor of FOUR HUNDRED THIRTY THREE THOUSAND

FIVE HUNDRED SEVENTY FOUR ORDINARY Shares of SHILLINGS TWENTY each, fully paid

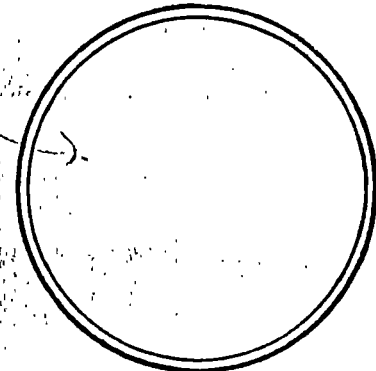
numbered as in margin, in the above named Company subject to the Regulation thereof.

held the

subject to of, and

DISTINCTIVE NOS.			NUMBER OF SHARES
From	To		
Distinctive numbers omitted under the proviso on section 76 of the Companies Act Chapter 486			

KCL Seal



Given under the common Seal of the said Company,

this 17TH day of JANUARY 1994

NOTE: No transfer of the above shares can be registered unless accompanied by this certificate

For and on behalf of: AFRICA REGISTRARS SECRETARIES

Directors

Secretary

No. of Certificate

No. of Shares 119,000

KENYA CASHEWNUTS

Limited.

Capital Shs. 17,000,000/= Divided into 850,000

Shares of Shillings 20/= each

This is to certify that CASHEW DEVELOPMENT INVESTMENT LIMITED

of P.O. BOX 41295, NAIROBI

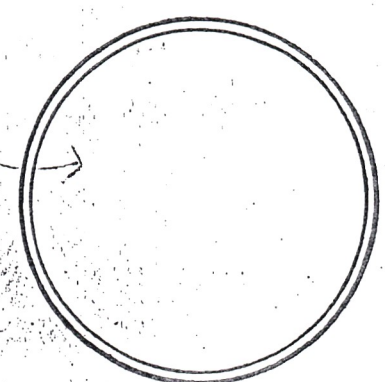
is the Registered Proprietor of ONE HUNDRED AND NINETEEN THOUSAND

ORDINARY Shares of SHILLINGS TWENTY each, fully paid

Numbered as in margin, in the above named Company subject to the Regulation thereof.

DISTINCTIVE NOS.		NUMBER OF SHARES
From Inclusive	To	
Distinctive numbers omitted under the		
Proviso of Section 76 of the Companies		
Act, Chapter 486		

Kel Seal.



Given under the common Seal of the said Company,

this 17TH day of JANUARY 1994.

NOTE: No transfer of the above shares can be registered unless accompanied by this certificate

For and on behalf of:

AFRICA REGISTRARS SECRETARIES

Directors

Secretary

DATED, THE

DAY

OF

1993

KILIFI DISTRICT CO-OPERATIVE UNION
LIMITED

and

KENYA ASSETS MANAGEMENT LIMITED

and

CASHEW DEVELOPMENT INVESTMENTS LIMITED

AGREEMENT

*Sale of shares
& right of management
understandings.*

AMING'A, OPIYO, MASESE & CO.,
ADVOCATES,
SHANKARDASS HOUSE,
MOI AVENUE,
P.O. BOX 59441,
NAIROBI.

THIS AGREEMENT is made on the
BETWEEN:

day of

1993

KILIFI DISTRICT CO-OPERATIVE UNION LIMITED (hereinafter called "KDCU") a registered society under the Co-operative Societies Act (Cap.490) and incorporated in Kenya care of Post Office Box Number 67, Kilifi; KENYA ASSETS MANAGEMENT LIMITED (hereinafter called "KAM") a company incorporated in Kenya care of Post Office Box Number 41295, Nairobi; and CASHEW DEVELOPMENT INVESTMENTS LIMITED (hereinafter called "CDI") a company incorporated in Kenya care of Post Office Box Number Nairobi; (which expressions where the context so admits include their successors and assigns).

WHEREAS:

- (A) KENYA CASHEWNUTS LIMITED (hereinafter called "the Company") a company incorporated in Kenya care of Post Office Box Number 49, Kilifi has an issued and fully paid share capital of Kenya Shillings 17,000,000/= divided into 850,000 ordinary shares of Kenya Shillings 20/= each.
- (B) KDCU is the sole beneficial owner of all the shares in the Company.
- (C) KDCU and its shareholders have agreed to sell 433,574 ordinary shares (51% of the Company's paid up capital) to KAM.
- (D) KDCU has also agreed to sell 119,000 ordinary shares (14% of the Company's paid up capital) to CDI.
- (E) KAM or its Nominees and CDI have agreed to buy the shares offered to them by KDCU.

NOW THEREFORE this Agreement witnesseth as follows:-

1. Representations and Warranties.

KDCU hereby represents and warrants to KAM and CDI as follows:-

- (i) That the Company is a company duly incorporated with limited liability under the Companies Act (CAP.486) and has the corporate power to conduct its business as contemplated to be conducted by the parties hereto and to enter into this Agreement;

- (ii) That the issued and paid up capital of the Company is as stated in Recital A and the Company has not granted or issued or agreed to grant or issue any options over any of its shares;
- (iii) That the Company is not engaged in or threatened by any litigation that KDCU is aware of;
- (iv) That no indebtedness of the Company is secured by any mortgage pledge charge or other lien and no contract or arrangement exists for the creation of such indebtedness mortgage pledge charge or other lien save for those securities which full particulars have prior to the date hereof been disclosed to KAM and CDI.

2. KAM and CDI shall purchase from KDCU and KDCU shall sell 433,574 and 119,000 ordinary shares in the Company to KAM and CDI respectively. It is agreed that KAM and CDI shall purchase the shares at the same price and on the same terms as approved by KAM and CDI for the purchase by KDCU of the shares from the former shareholders of the Company representing the Government of Kenya.

3. Upon payment in full by KAM and CDI, KDCU shall procure that the Company shall thereupon transfer and register the said shares to KAM and CDI as fully paid ranking pari passu in all respects and identical with the existing issued and allotted shares of the Company.

4. CDI agrees that the 119,000 Ordinary Shares allotted to it under clause 3 hereof shall for a period of three years from the date of allotment be the subject of a valid and binding option irrevocably granted by CDI to KDCU and its nominees in the following proportions:-

- (i) KDCU upto 34,000 ordinary shares (4%);
- (ii) Mwamanga Farm Purchase Co-operative Society (hereinafter called "Kwale") (being KDCU's nominee) upto 42,500 ordinary shares (5%); and
- (iii) Lake Kenyatta Farmers Co-operative Society (hereinafter called "Lamu") (being KDCU's nominee) upto 42,500 ordinary shares (5%).

(a) The said shares shall be on offer at the same price and on the same terms at which CDI acquired them from KDCU and the option shall be exercisable at any time within the said period of three years by service on CDI of a notice in that behalf duly signed by an officer properly authorised in that regard by KDCU or its nominees respectively, specifying the number of shares to be bought (being not more than 119,000 ordinary shares in aggregate), the name of the purchaser (being either KDCU or any of its nominees) and enclosing a banker's cheque for the total consideration for the same. CDI will thereafter arrange for the transfer thereof to be effected as soon as practicable, all stamp duties being for the account of the purchaser or purchasers.

(b) Should KDCU or its nominees not exercise the option to purchase any or all the shares within the said period of three years, the shares shall be on offer a further period of two years on terms and conditions to be agreed on by the parties and at a market price to be determined by the Company's Auditors.

5. It is further agreed and understood by all the parties hereto that:-

(i) Each party shall be responsible for obtaining any consents, approvals or permits required by it to give effect to its obligations hereunder and in particular, KDCU shall if necessary due to delays in registration of KDCU's new shares obtain proxies from the former Government shareholders in order to effect its obligation in Clause 5(ii) below, and that completion of these arrangements shall be subject to these being obtained;

(ii) On or before completion hereof the KDCU shall procure that the Memorandum of Association and Articles of Association of the Company are amended in such terms as KAM, CDI and KDCU may require; in particular, KDCU shall procure that the pre-emption rights contained in the Articles of Association are removed;

- (iii) Simultaneously with 5(ii) above, KDCU shall procure that Auditors acceptable to all the parties hereto are appointed auditors of the company.
- (iv) After completion hereof the parties hereto shall appoint mutually acceptable bankers to be Bankers to the company. The signatories of all cheques and other instructions to its Bankers issued by the company shall be as from time to time determined by the Board of the Company;
- (v) As soon as possible after completion the parties shall appoint Directors of the Company proportionate to the shareholding in accordance with the amended Articles and Association;
- (vi) Simultaneously with completion hereof the parties shall procure that the Company will enter into a Management Agreement on terms and conditions acceptable to KAM and CDI with a nominee of KAM and CDI;
- (vii) Upon and after completion hereof KDCU shall procure that all the raw nuts received from its member Co-operative Societies and from the members of Kwale and Lamu are sold to the Company and that all the parties hereto will procure that the Company buys all the raw nuts offered by KDCU, Kwale and Lamu;
- (viii) KDCU may not transfer dispose of or create any legal or equitable interest whether by way of security or otherwise over any of the shares which are the subject of this Agreement before completion hereof.

6. The obligations of CDI arising under clause 4 hereof shall be subject to the performance by KDCU of its undertaking to be performed pursuant to this Agreement.
7. This Agreement constitutes the entire understanding between the parties with regard to its subject matter and supersedes and cancels any previous negotiations and agreements between the parties or any of them oral or written.

8. Time shall be of the essence.
9. Notwithstanding anything to the contrary contained herein, this Agreement shall not constitute the parties as being in partnership and accordingly no party is to be responsible in any way for the liabilities of the other investor relating to this Agreement, and each party shall keep the others indemnified accordingly.
10. Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given when it shall be delivered by hand or if sent by post telex or telefax to the addressees address given below and shall be deemed to have been given on the fifth day after the same was posted or if given by telex or telefax shall be deemed to have been given on the next business day following the day of transmission;

KDCU

:

The General Manager
Kilifi District Co-operative
Union Limited,
P.O. Box 67,
KILIFI.

KAM

:

The Managing Director,
Kenya Assets Management Limited,
P.O. Box 41295,
NAIROBI.

CDI

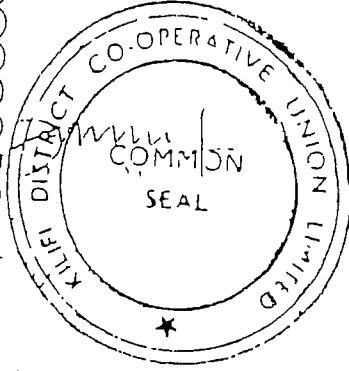
:

The Managing Director,
Cashew Development Investments
Limited,
P.O. Box
NAIROBI.

IN WITNESS WHEREOF this Agreement has been duly executed by the duly authorised representatives of the parties on the day and year first hereinbefore mentioned.

SIGNED for and on behalf of KILIFI)
DISTRICT CO-OPERATIVE UNION LIMITED)

by
duly authorised in the presence of:



SIGNED for and on behalf of KENYA)
ASSETS MANAGEMENT LIMITED by)
duly authorised in the presence of:

SIGNED for and on behalf of CASHEW)
DEVELOPMENT INVESTMENTS LIMITED by)
duly authorised in the presence of:

KHAMINWA & KHAMINWA

ADVOCATES
NOTARIES PUBLIC
COMMISSIONERS FOR OATHS

Galana Centre
Lamu Road
Upper Floor
P.O. Box 784
Malindi - Kenya

JOHN M. KHAMINWA
JOYCE N. KHAMINWA

AL

Your Ref

Our Ref WLI/153/10/96

Date 18.10.96

M/S. KENYA CASHEWNUTS LTD.
P.O. BOX 49
K I L I F I.

25/10/96
Noted
SM

Dear Sirs,

RE: UNIONS DELEGATES.

We act for Kilifi District Co-operative Union Ltd. We have their instructions to write to you in the following terms:-

2. The following have been duly elected to represent the Union in all future meetings of Directors:

- (a) MR. Benjamin P. Kubo
member/Delegate to the Union from Magarini
Farmers Co-operative Society. Address C/O.
P.O. BOX 585, Malindi.
- (b) Mr. Silas D. Mweri
Chairman, Colona Farmers Co-operative Society,
Secretary, Kilifi District Co-operative Union
P.O. BOX 67, Kilifi.
- (c) Mr. John P. Kembe
Chairman, Godoma Farmers Co-operative Society,
Member Management committee of Kilifi District
Co-operative Union C/O. P.O. BOX 67, Kilifi.

3. Please confirm to us that the decision of our client Union will be respected.

Yours faithfully,



KHAMINWA & KHAMINWA.

CC. Commissioner of Co-operatives
P.O. BOX 40811
NAIROBI.

Provincial Co-operative Officer
P.O. BOX 90333
MOBASA.

CC. District Co-operative Officer

Kilifi. P.O. Kilifi District Co-operative Union.
P.O. Box 67,
Kilifi

Registrar General
P.O. BOX 40112
NAIROBI. (Ref: C. II, 118).

Client.

KK/pm.

AFRICA REGISTRARS

KACUTII

Certified Public Secretaries
Aico House
Mamiata Road
P.O. Box 4238
Nairobi Kenya

Phone 727840
Telex 35344
Fax 716271

Ref: 11289/5/mck/1090

17 October 1996

Mr S.D. Mweri
Secretary
Kilifi District Co-operative Union
P.O. Box 67
KILIFI

Dear Sir,

KENYA CASHEWNUTS LIMITED

We refer to your letter dated 14th August 1996 which was addressed to the Managing Director of the above company.

Kindly note that the Articles of Association of this company have no provision for the appointment of representatives of Kilifi District Co-operative union to the Board. Furthermore, the Directors of Kenya Cashewnuts Ltd who are supposed to represent the interests of the farmers have not resigned and there is therefore no vacancy on the Board to be filled. We enclose a copy of the Articles of Association of Kenya Cashewnuts Ltd for your records.

The change of representatives or delegates in the co-operative has nothing to do with the composition of the Board of Kenya Cashewnuts Ltd. The mandate to appoint and remove directors is invested in the shareholders in a general meeting.

Please address all future correspondence regarding this matter to us.

Yours faithfully,



AFRICA REGISTRARS-SECRETARIES

Encl.

c.c. Mr P. Shah
Managing Director
Kenya Cashewnuts Limited
P.O. Box 49
KILIFI

DOCUMENT 3

Trust Bank Limited

HEAD OFFICE Trustforte Building, Moi Avenue, P. O. Box 46342, Nairobi, Kenya
Telephone 226413 / 4 / 5, 216264 / 5 / 6 / 7 Telex 25143 TRUSBK Fax. 334995

4th November, 1993

BANK GUARANTEE NO: GT/140/93

The Managing Director
Industrial & Commercial Development Corp.
P O Box 45519
NAIROBI

Dear Sir

RE: BANK GUARANTEE ISSUED BY TRUST BANK LIMITED IN FAVOUR OF
INDUSTRIAL & COMMERCIAL DEVELOPMENT CORP. KSHS. 26,168,407.40

At the request of our customer KILIFI DISTRICT CO-OPERATIVE UNION LIMITED of P O Box 67 Kilifi pursuant to an agreement of sale dated 29th October, 1993 signed between yourselves and our aforesaid customer.

As provided in the aforesaid Agreement that our customer do provide a Bank Guarantee in your favour for the sum of Kshs.26,168,407.40 as security for the fulfilment of our customers obligation to pay you the balance of the purchase price as provided in the said Agreement.

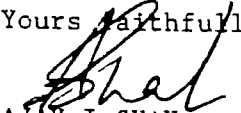
In line with the foregoing, we (TRUST BANK LIMITED) hereby assume full liability as principal debtors towards you for upto the aggregate amount of Kenya Shillings (Twenty six million one hundred and sixty eight thousand four hundred and seven cents forty only) (Kshs. 26,168,407.40).

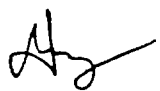
We undertake to make payment to you upon receipt from you of a letter of demand stating that our customer has failed to meet its obligations in the line with the terms of the aforesaid Agreement.

This guarantee shall not be effective until Ninety (90) days after the date of the aforesaid Sale Agreement and shall be conditional upon yourselves fulfilling all your obligations under the aforesaid Agreement.

Our obligations under this Gurantee shall cease upon our receiving notice from our customer and yourselves in writing that payment has been effected.

Yours faithfully


AJAY I. SHAH
EXECUTIVE CHAIRMAN


PRAFUL SHAH
DIRECTOR

K. Deu I**KENYA CASHEWNUTS LTD**

P.O. BOX 49 KILIFI
TEL: 22411-2-3-4
TELEX: KENCASHEW 21262
FAX: (0125) 22040

Ref: SFL/KCL/IAM/23/98.

5th August, 1998.

Mr. Lawrence Chapa,
Kenya Cashewnuts Limited,
P. O. Box 49,
KILIFI.

Dear Sir,

RE: TRANSFER OF EQUIPMENT TO KENYA BIXA LTD

Further to our earlier discussion regarding the above, kindly facilitate the transfer of the following to Kenya Bixa Limited.

- ✓ 1. Macadamia Cracker unit
- ✓ 2. Plastic crates - 200 no. *100*
- ✓ 3. Electronic weighing scale 20kg capacity 1 no.
- ✓ 4. Electronic weighing scale small (lab) 1 no.
- ✓ 5. Small trolley 2 no.

Liaise with the General Manager, Mr. Raju and ensure the safety and timely dispatch of the same.

With regards,

~~999~~
NELSON R. KORIR,
CHAIRMAN.

Fax: MR. R.P. RAJU
KENYA BIXA LTD

Further to our telecon.

Jan 14/8

Att Mr Korian

SURPLUS EQUIPMENT WHICH COULD BE SOLD TO KENYA BIXA LIMITED

		YEAR	COST (KSHS)	NET BOOK VALUE KSHS
1. ✓	STEAM BOILER - OIL FIRED	1 NO		
2. ?	DRYER (SOLID FUEL TYPE)	1 NO		
3. ✓	DRYER RADIATORS (STEAM TYPE)	2 SETS		
4. ✓	STEAMING UNIT	1 NO	18,440.00	13,888.00
5. ✓	TROLLIES WITH TRAYS	20 STTS	1,089,912.10	834,464.10
6. ✓	KERNEL SEIVING UNIT (ROTATORY)	1 NO	204,216.65	156,353.65
7. ✓	WORKING TABLES	30 NO	590,436.30	452,052.30
8. ✓	VACCUUM & GAS FLUSH TIN CONTAINER	1 SET	617,500.00	367,720.00
9. ✓	VAC PACK (OLTREMERE ITALY)	1 NO	583,105.00	391,635.00
10. ✓	VAC PACJ (VAN LEER S.A.)	1 NO	1,240,196.65	1,085,171.65

N.B.

We cannot identify the costs of items 1 to 3. We'll endeavour to check in the latest revaluation report for any possible costs related thereto.

LAWRENCE *[Signature]* PA

KENYA CASHEWNUTS LIMITED

Nairobi Office:
 Room NO: 17
 3rd Floor, Yaya Centre,
 P.O. Box 76465, Nairobi, Kenya
 Tele: 562286/56229/564828/565915
 Fax: 254 (02) 562299

Factory:
 P.O. Box 49, Kilifi, Kenya
 Telephones: 22411/2/3/4
 Telex: KENCASHEW 21262
 Fax: 254 (125) 22040

FACSIMILE MESSAGE

TO: SIGINON FREIGHT LIMITED
 FROM: MR. W. SAMBU
 ATTN: MR. KORIR/MR. MWANGI
 DATE: 10th September 1998
 FAX REF. NO: 0127-51001
 SUBJECT: TRANSFER OF EQUIPMENT TO KENYA BIXA LIMITED

Dear Sirs

Further to our earlier discussion regarding the above, kindly facilitate the transfer of the following to Kenya Bixa Limited.

- | | | |
|-----------------------------------|---------------------------|--------|
| 1. Shelling Machines | - | 20 No. |
| 2. Calibrator | - | 1 |
| 3. Computers/Printers | - | 2 |
| 4. Fax | - | 1 |
| 5. Refrigerator | - | 1 |
| 6. Plastic Bags (Italy) (43x52cm) | - | |
| 7. Weighing Scales 300 kg LAP | - | 2 |
| 8. Weighing Scales 20 kg CAP | - | 4 |
| 9. Gunny Bags | 2615 | None |
| 10. Furniture | | |
| 11. Air Conditioners | - TWO - FROM AASU'S CABIN | None |
| 12. Motor Vehicles | | |

With Regards

W. K. SAMBU

W.K. Sambu

13. ALUMINUM DISHES — 100NO ✓
 14. SMALL CONVEYOR (SHULIN) — 1NO ✓
 15. SMALL HOPPER — 1NO ✓

N.B:

The values and corresponding debit notes should be raised upon the transfer.

W.K. Sambu
 10/9/98

DELIVERY NOTE No 59340

Kenya Cashewnuts Limited

P.O.Box 49, KILIFI Telephone: 22411/4

Customer's Order No. _____

TO

M/s. _____

KILIFI

19/7/1978

Please receive the following goods in good order and condition.

1. Full quantity of ...
... ..

... ..
... ..

... ..
... ..

... ..

Pay Cash _____

Despatched by _____ Collected Owner _____

Parcel/Receipt No. _____

Signature _____

DELIVERY NOTE No. 59841

Kenya Cashewnuts Limited

P.O. Box 49 KILIFI Telephone: 22411/4

Customer's Order No. _____

To _____

M/s. *Kenya Cashewnuts Ltd*

KILIFI

19 *98*

Please receive the following goods in good order and condition.

Twenty (20) Tons

New 30/1/88

6/10

M/V KCC KALUSET

Pay Cash _____

Despatched by *[Signature]*

Collected Owner _____

Parcel/Receipt No. _____

Signature _____

DELIVERY NOTE No. 59344

Kenya Cashewnuts Limited

P.O.Box 49, KILIFI Telephone: 22411/4

Customer's Order No. _____

TO:

M/S

Handwritten address:
KILIFI 17/11 1979

Please receive the following goods in good order and condition.

- Handwritten list of items:*
- 1. *Handwritten description*
- 2. *Handwritten description*
- 3. *Handwritten description*
- 4. *Handwritten description*
- 5. *Handwritten description*
- 6. *Handwritten description*
- 7. *Handwritten description*

Pay Cash _____

Despatched by _____

Collected Owner _____

Parcel/Receipt No. _____

Signature _____

DELIVERY NOTE No. 59347

Kenya Cashewnuts Limited

P.O.Box 49, KILIFI Telephone: 22411/4

Customer's Order No. _____

TO _____

M/s _____

KILIFI _____

19 19

Please receive the following goods in good order and condition.

1) 1000kg of Cashewnuts (Superior) 1000kg
 2) 1000kg of Cashewnuts (Superior) 1000kg
 3) 1000kg of Cashewnuts (Superior) 1000kg
 4) 1000kg of Cashewnuts (Superior) 1000kg
 5) 1000kg of Cashewnuts (Superior) 1000kg

1) 1000kg of Cashewnuts (Superior) 1000kg
 2) 1000kg of Cashewnuts (Superior) 1000kg

Pay Cash _____

Despatched by _____

Collected Owner _____

Parcel/Receipt No. _____

Signature _____

DELIVERY NOTE

No 59749

Kenya Cashewnuts Limited

P.O. Box 49, KILIFI Telephone: 22411/4

Customer's Order No. _____

TO:

3.

*Kenya Cashewnuts Ltd
P.O. Box 49 KILIFI
KILIFI 27/7/1978*

Please receive the following goods in good order and condition.

*1. Cashewnuts
2. Cashewnuts
3. Cashewnuts
4. Cashewnuts
5. Cashewnuts*

Kenya Cashewnuts Ltd

Pay Cash _____

Despatched by _____

[Signature]

Collected Owner _____

Parcel/Receipt No. _____

Signature _____

[Signature]

DELIVERY NOTE No. 59750

Kenya Cashewnuts Limited

P.O.Box 49 KILIFI Telephone: 22411/4

Customer's Order No. _____

TO: _____

iv/s _____

KILIFI

19 98

Please receive the following goods in good order and condition.

FRUIT (M) 500 KGS
MANGOS AND GUAVAS (100)
MANGOS TO RAMPALC
JR/J/28

(100)

MAKER KALIA 1500

Pay Cash _____

Despatched by _____

Collected Owner _____

Parcel/Receipt No. _____

Signature _____

