REPORT OF JUDICIAL COMMISSION

APPOINTED TO

INQUIRE INTO ALLEGATIONS INVOLVING

CHARLES MUGANE NJONJO

(FORMER MINISTER FOR CONSTITUTIONAL AFFAIRS AND MEMBER OF PARLIAMENT FOR KIKUYU CONSTITUENCY)

CHAIRMAN:

HON. MR. JUSTICE C. H. E. MILLER, E.B.S.

PRESENTED TO

HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF KENYA

HON. DANIEL T. ARAP MOI, C.G.H., M.P.

THIS 9TH DAY OF NOVEMBER, 1984

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JUDICIAL COMMISSION OF INQUIRY
OLD CHAMBER
PARLIAMENT BUILDINGS
P.O. BOX 42362
NAIROBI
9TH NOVEMBER, 1984

His Excellency the President,
Hon. Daniel T. arap Moi, C.G.H., M.P.,
State House,
Nairobi.

Your Excellency,

You appointed us Commissioners by Gazette Notice No. 2749 of 26th July, 1983 to inquire into the conduct of Charles Mugane Njonjo, former Minister for Constitutional Affairs.

We would like to state that we felt honoured to be so appointed.

We have completed our task and now humbly submit our Report in accordance with the provisions of Section 7(1) of the Commissions of Inquiry Act (Cap. 102), and as directed in Gazette Notice No. 4051 which also set out the Terms of Reference.

We remain,

Your Excellency's Most Obedient Servants,

C. H. E. MILLER,
Chairman.

C. B. MADAN,
Commissioner.

E. OWUOR (MRS.),
Commissioner.

JARED BENSON KANGWANA,

BENJAMIN PATRICK KUBO,
Joint Secretaries.

ACKNOWLEDGEMENTS

We would like to thank the Attorney-General, Hon. Justice Matthew Guy Muli, M.P. who appeared *amicus curiae* to the proceedings.

We would also like to record our appreciation to the team of Counsel assisting the Inquiry, namely, Lee Gacuiga Muthoga (Leading Counsel), Timan Ndere Njugi and John Walter Onyango-Otieno. Their assistance was invaluable, in our efforts to ascertain the truth.

We must express our sincere appreciation of the contribution of the Secretaries to the Commission Jared Benson Kangwana and Benjamin Patrick Kubo. We are indebted to them. They brought to bear their legal knowledge, as well as their previous inquiry experience, in aid of the Proceedings and the compilation of this Report. Our work might have been well nigh impossible, had it not been for their unswerving devotion and hard work.

HON. JUSTICE C. H. E. MILLER,
Chairman.

HON. JUSTICE C. B. MADAN,
Commissioner.

HON. JUSTICE E. OWUOR (MRS.),
Commissioner.

INTRODUCTION

1. We, Hon. Mr. Justice C. H. E. Miller, E.B.S., (Chairman), Hon. Mr. Justice Chunilal B. Madan, Q.C., and Hon. Justice Mrs. Effie Owuor, were appointed Commissioners by His Excellency the President of the Republic of Kenya under the Commissions of Inquiry Act, Chapter 102, of the Laws of Kenya as per:

(i) Gazette Notice No. 2749 dated 26th of July, 1983 and published on the 29th of July, 1983.

(ii) Gazette Notice No. 4051 dated the 20th of October, 1983 and published on the 21st of October, 1983.

Citation

To inquire into allegations made within and outside Parliament involving Charles Mugane Njonjo, former Minister for Constitutional Affairs and Member of Parliament for Kikuyu Constituency, that he conducted himself in a manner prejudicial to the State and calculated to cause alarm and despondency with a view to undermining the office of the Head of State of the Republic of Kenya and the image and performance of the Government thereof as by law established and generally or in particular to matters appertaining thereto.

Terms of Reference

(*a*) to inquire into allegations that Charles Mugane Njonjo conducted himself in a manner prejudicial to the security of the State, the position of the Head of State, the image of the President and the constitutionally established government of the Republic of Kenya including, among others,

> allegations that he was a party to a conspiracy or conspiracies to overthrow, by unlawful means, the Government of the Republic of Kenya, during the month of August, 1982, or the concealment thereof; was a party to the unlawful activities of one Andrew Mungai Muthemba, or the concealment thereof; and was a party to the convening of the purported Rungiri Presbyterian Church of East Africa prayer meeting on 12th of June, 1983 and/or its conversion into an irregular political gathering with the intention of undermining the position and image of the President and the political leadership in the country;

(*b*) to inquire into allegations that Charles Mugane Njonjo acted against Kenya's national interest and policy of maintaining good neighbourliness and of opposing the inhuman regime of South Africa including, among others,

allegations that he was a party to a conspiracy or conspiracies to overthrow by unlawful means the brotherly government of the Republic of Seychelles as by law established, during the month of November, 1981, especially when His Excellency the President of Kenya was Chairman of the Organization of African Unity;

(*c*) to inquire into allegations that Charles Mugane Njonjo misused his office as Attorney-General and/or Minister including, among others,

allegations that he arrogated to himself the duties and powers of the President; that he solicited or received or attempted to receive or offered or made or attempted to make corrupt payments, granted favours or acted to the prejudice of individuals, to seek political support, to undermine the process of democracy and to protect persons involved in illegal activities;

(*d*) to inquire generally or in particular into any matter pertaining to the above;

and in accordance with the provisions of Section 7(1) of the said Act, to report thereon.

2. Under Gazette Notice No. 2749 and Gazette Notice No. 4051, Jared Benson Kangwana and Benjamin Patrick Kubo were appointed to be the Secretaries to the Inquiry.

3. Under Gazette Notice 4051 Lee Gacuiga Muthoga, Timan Ndere Njugi and John Walter Onyango-Otieno were appointed to be Counsel to assist the Inquiry.

4. Further, by the said Gazette Notice No. 4051 we the Commissioners were directed in accordance with the provisions of Section 10(1) of the said Act to summon the said Charles Mugane Njonjo, and any other person or persons concerned, to testify on oath and to produce any books, plans and documents that the Commissioners may require.

5. In accordance with Section 5 of the said Act, we the Commissioners on the 3rd day of August, 1983 made and subscribed an oath in the prescribed form before a Judge of the High Court, prior to embarking on our duties as Commissioners.

6. There being no regulations made as provided by Section 19 of the Commissions of Inquiry Act, by authority of Section 9 thereof, we devised appropriate Rules and Procedure to regulate the proceedings of the Inquiry, which we handed out on the 10th day of January, 1984. The said Rules and Procedure are set out in Appendix "A".

7. As directed, the Inquiry was held in the Old Chamber, Parliament Buildings, Nairobi commencing on the 28th day of October, 1983 at 10.00 a.m. Charles Mugane Njonjo was notified of the holding and the hearing

of the Inquiry by serving on him the aforementioned terms of reference and the hearing notice as published in Gazette Notice No. 4052 and appearing as Appendix "B". There was further served on him a witness summons dated the 27th day of July, 1984 appearing as Appendix "C". Njonjo duly appeared in person on the appointed day and throughout the Inquiry, being represented by his two advocates, Mr. W. S. Deverell and Mr. P. K. Muite.

8. The Inquiry was held in public in accordance with the provisions of Section 3(4) of the said Act, save only in one instance when the evidence was received *in camera.*

9. Sixty-two witnesses including Charles Mugane Njonjo were summoned; they personally testified on oath directly before us, examined-in-chief by Counsel assisting the Inquiry, who, where appropriate, also cross-examined them, and where necessary re-examined them, after the advocate representing the subject of the Inquiry had exercised the right of cross-examining them.

10. Njonjo was given unlimited right and opportunity as stated in Gazette Notice No. 4051 as well as provided in our Rules and Procedure to adduce material evidence in his behalf, in refutation of the allegations and also in refutation of the evidence adduced before us; and despite being warned of the consequences thereof, he declined to exercise his right to be examined-in-chief by his own advocate even when he himself testified before us on oath. When he was examined-in-chief by Counsel assisting the Inquiry about the allegations made against him in the terms of reference, Njonjo merely denied them. This is an important matter in jurisprudence and we will refer to it later.

11. Hearings continued for 107 days, during which time we received a total of 208 exhibits; 182 of them were tendered by Counsel assisting the Inquiry, and 26 by Counsel representing the subject of the Inquiry.

12. In accordance with Section 12 of the Act (Cap. 102) leave was granted to applicants who considered themselves implicated or concerned in the matters under Inquiry. Two of the applicants duly appeared; their advocates cross-examined the relevant witnesses. We ruled that there would be no findings issued by us, and accordingly we make no findings thereon.

13. The Attorney-General, Hon. Justice Matthew Guy Muli, M.P., appeared *amicus curiae* and addressed the Inquiry at the beginning as well as at the close of the proceedings thereof. His opening address and the chairman's closing address are reproduced in Appendices "D" and "E" respectively.

PART I

THE EVIDENCE—OUR APPROACH

14. During the preparation of this Report we have been mindful that while we were a Judicial tribunal for the purpose of receiving and assessing the evidence adduced before us, we were not a trial court. Our task as we saw it, was to determine whether the allegations specified in the terms of reference have or have not been established. We have followed the provisions of the Evidence Act (Cap. 80) governing the admission of relevant and hearsay evidence as well as the rules of natural justice in so far as they are not excluded by the nature of the Inquiry being a probe. We did not therefore discount any evidence as irrelevant or useless until the Report stage. A probe would otherwise generally fail to ascertain the truth or otherwise of allegations.

15. An inquiry as this, not being a trial of any individual, may go on what are called "fishing expeditions" thereby permitting the reception of hearsay evidence, as it may lead to the discovery of matters of great public importance. If it does, the result justifies its admission. If it does not, no injury has resulted. (*Hallett's Royal Commissions and Boards of Inquiry* 1982 *Edition*).

16. We accepted certain hearsay evidence on the basis explained above and acted upon it only where it became authenticated by other evidence.

17. We would add that fairness is not necessarily confined to procedural matters. It has a wider range. When Njonjo sought to show that he was not having a proper hearing, we did not feel precluded from viewing the nature of the evidence as a whole in deciding whether he was being treated fairly.

18. Njonjo having refused to be led in evidence by his own Counsel, he was told that we required to know of him whether he wished to say anything in his own behalf. He replied, yes, if he was asked by the Leading Counsel. He was then invited by Counsel assisting the Inquiry to deal with the allegations in the terms of reference which, as we have noted elsewhere, he merely denied. He was then cross-examined by Counsel assisting the Inquiry on certain aspects of the evidence adduced before us. During the course of his examination, he asked for and was given leave to make a personal statement in the following terms:

> "My Lords, before my Counsel says anything further I would like to say something very briefly with Your Lordships' permission. First, I would like to say how very sorry I am that these proceedings became necessary. It is now over a year since the Inquiry was set up and we have 102 days

of hearings. This has naturally been an unpleasant and sad and indeed a humbling experience for me. But I do believe that the very fact that such proceedings have taken place is a tribute to the maturity and stability that exists in our country, Kenya, and the Christian wisdom of His Excellency the President and trusting in that wisdom and fairness of His Excellency the President, I have asked my two Counsel to do all they can at this stage to keep any further proceedings here as short as possible. I am very grateful to you My Lords, for allowing me to say that and that is all I wish to say."

19. In making his statement Njonjo did not appear to be concerned with the proceedings of the Inquiry. Instead, he purported to address His Excellency the President direct. By doing so he once again left all the allegations made against him and the mass of the evidence adduced before us untouched, thereby leaving it open for adverse inferences to be drawn against him. It was for this reason that we made a reference to jurisprudence in paragraph 10 of the Introduction.

PART II

CHARLES MUGANE NJONJO:

SUBJECT OF THE INQUIRY

20. The subject of the Inquiry, Charles Mugane Njonjo, is a Kenyan by birth, having been born in 1920.

21. His father was a colonial chief. Njonjo received his early education in Kenya and Uganda. He proceeded to South Africa for further studies and later qualified as a lawyer in England after his call to the English Bar by Grays Inn. He returned home in 1955 when Kenya was still a British Colony. He was initially employed in the Office of the Registrar-General. Later he was transferred to the Chambers of the Attorney-General where he worked as a Crown Counsel.

22. When Kenya achieved independence in 1963, Njonjo was appointed the first African Attorney-General, a position which he held until April, 1980 when he retired to contest a Parliamentary by-election for Kikuyu Constituency. He was returned unopposed in June, 1980. After his election, he was appointed Minister for Constitutional and Home Affairs, the designation being changed later to Ministry of Constitutional Affairs. He was suspended as Minister by His Excellency the President on 29th June, 1983.

23. Njonjo is married with three children. He is a widely travelled person, and extensively involved in several commercial enterprises.

PART III

TERM OF REFERENCE (a)

24. The allegations made in the term of reference (*a*) which we have previously set out in full in the Introduction may be split into the following components, namely that Charles Mugane Njonjo—

(i) conducted himself in a manner prejudicial to the security of the State;

(ii) conducted himself in a manner prejudicial to the position of the Head of State;

(iii) conducted himself in a manner prejudicial to the image of the President and the constitutionally established government of the Republic of Kenya, including among others;
allegations that he was a party to—

(iv) a conspiracy or conspiracies to overthrow, by unlawful means, the Government of the Republic of Kenya, during the month of August, 1982, or the concealment thereof;

(v) the unlawful activities of one Andrew Mungai Muthemba, or the concealment thereof; and

(vi) the convening of the purported Rungiri Presbyterian Church of East Africa prayer meeting on 12th June, 1983 and/or its conversion into an irregular political gathering with the intention of undermining the position and image of the President and the political leadership in the country.

Security of State

25. As regards this allegation, we now consider whether Njonjo was involved in the illegal importation of arms and ammunition into Kenya.

26. The evidence clearly established that there was accumulation of an inordinate quantity of firearms and ammunition together with the installation of ground-to-air and air-to-ground transmitting and receiving radio equipment, stored in two adjoining rooms of a private dwelling house the property of people known as Haryanto family, and situated along Lenana Road in the heart of Nairobi, the capital city of the Republic of Kenya. More particularly, this huge cache of arms and ammunition was stored centrally within lethal range of the State House, the Headquarters of the Kenya Army and a Police Station. That much we saw for ourselves when we visited the Haryanto home officially during the course of the Inquiry.

27. The principal actors involved in the evidence concerning the cache of arms and ammunition were members of the Haryanto family, a man named Captain Boskovic, the subject of the Inquiry Charles Mugane Njonjo, his

official driver at the time Chief Inspector of Police Kabucho Wakori and the Chief Licensing Officer of the Central Firearms Bureau Senior Superintendent of Police Douglas Alan Walker.

28. It would appear that the Haryantos first visited Kenya in the sixties on a hunting trip. Thereafter they visited the country regularly. The head of the family Yani Haryanto was first locally known as Lim Poo Hin (or Hein). He later changed his name to Haryanto by which name we will continue to refer to him.

29. We were told that the Haryantos are exceedingly wealthy people. In Kenya, they acquired a camp at Masai Mara where they also installed the kind of radio equipment which we found in their house in Nairobi.

30. Captain Boskovic was the Managing Director of a business known as Boskovic Air Charters Limited of which Njonjo and a member or members of the Haryanto family were shareholders and directors. Boskovic came to be regarded as the local representative of the Haryantos, in Nairobi. He was a neighbour of the Haryantos living about seventy metres away along Lenana Road.

31. The Haryantos and Njonjo would seem to have endeared themselves to each other so much so that at the age of 61 years Njonjo was the best man at the wedding of a 19 year old Haryanto son.

32. Several members of the Haryanto family were licensed to hold firearms totalling more than one hundred. Members of the Haryanto family and some friends, totalling 32 persons, came to Kenya in June, 1980. They were met and accommodated in the V.I.P. lounge of the Jomo Kenyatta International Airport by Njonjo's official driver Kabucho who was in his police uniform and Walker who joined them there.

33. Walker had presented himself at the Airport at the invitation of an employee of the Haryantos in Nairobi one Mohamed Bashir, who took to him a telex dated 12th May, 1980 addressed to Boskovic by an American named Kent Crane. The telex listed 17 firearms and a large amount of ammunition to be imported into Kenya. The object of Walker's visit to the airport was to issue an import permit therefor. He referred to the telex as advance notice of the importation of the firearms into Kenya.

34. Kabucho was using Njonjo's Mercedes Benz car registration No. KVD 710. He said he had gone to the airport at the request of Boskovic, who told him an additional vehicle would be required to transport the large amount of the Haryanto luggage. It was not an unusual visit to the airport by Kabucho. It was a regular part of his duties as Njonjo's driver to take or receive him at the airport, as also his wealthy friends like the Haryantos, and persons like the American Kent Crane. It was quite normal for Kabucho to see to

the comfort of Njonjo's friends and visitors in the V.I.P. lounge, and to facilitate their exit from the airport without their luggage being checked.

35. On this occasion Kabucho collected the luggage of the Haryantos which included firearms and ammunition, slipped it through without it being checked while Walker was sitting upstairs in the V.I.P lounge chatting away with the Haryantos in total direliction of his duty and oblivious of the ostensible purpose of his visit to the airport. According to Walker, when he came down with the Haryantos from the V.I.P. lounge he found the firearms had already left the airport. Walker said he followed the firearms and ammunition to the Haryanto home with the object of discharging his duty of licensing their importation which he should have inspected and licensed before they left the airport. It follows therefore that Walker must have known that the firearms and ammunition had been taken to the Haryanto home.

36. Walker said he issued an import permit for the firearms and ammunition at the Haryanto home; Walker was unable to produce the import permit or a copy thereof.

37. We heard some amazing evidence indicating unpardonable incompetence on the part of this Chief Licensing Officer of the Central Firearms Bureau of Kenya. He told us, *inter alia*:

"I asked them (Haryantos) to display or to let me have access to and see the firearms they had imported . . . I had no expectation of any particular number. I cannot recollect how many I saw, and unfortunately, there is no document on the file that can help my memory on that. I did see some. I re-collect I issued an import licence in respect of them but I cannot trace that document in my file now. The object of my going to the airport was to issue an import permit. I re-collect doing so (at the Haryanto home).

I did not compare the guns that were so imported and for which I issued the licence with the telex which I had notifying me of their proposed importation. I regret I cannot explain that. I simply accepted what they produced as the firearms they had imported, as being those the importation of which was sought by the telex message. I accepted their own declaration about it.

I took two of the arms with me; they were presented to me and Kabucho as gifts.

The one donated to me does not appear on the telex, a .38 special revolver number 523960—Serial 23960. It is a colt revolver special calibre at the time sold for about Sh. 6,000 to Sh. 7,000.

The one donated to Kabucho appears on the telex, a colt .38 detective special serial No. 526971.

It is identical with the one given to me. Kent Crane was in the party on this occasion.

None of the Haryantos is a firearms dealer."

38. To state the obvious the .38 special revolver, which was presented to Walker, must have been smuggled into the country earlier or on that occasion. How many more arms and ammunition were similarly smuggled into the country, we shall never know.

39. Walker also told us:

"I did not render any special service to be given a present worth KSh. 6,000. I am not aware of any kind of services rendered to the Haryanto family by Kabucho which would induce them to make a similar present to him other than driving them from and to the airport".

40. The second consignment of arms and ammunition was brought into the country by the same American Kent Crane who was accompanied by another American called Theodore on 31st March/1st April, 1981. Crane is the same individual who came with the Haryantos in June, 1980 with arms and ammunition. Crane and Theodore flew into Nairobi on flight number BA 054 from South Africa on the night of 31st March/1st April, 1981. They were met at the airport by Walker, Kabucho and Mohamed Bashir. Kabucho's evidence was that he was instructed by Njonjo's personal secretary Penelope Anne Warren-Hill, commonly referred to as Penny Hill, to meet the two Americans upon their arrival at the airport. He was about to leave from Njonjo's house in Muthaiga, Nairobi, in Njonjo's official Government vehicle to go to the airport for that purpose when Mohamed Bashir arrived there to remind him about the mission and offered to take him to the airport in a Mercedes Benz car No. KVD 710 which according to Walker, the Haryantos had bought from Njonjo although according to official records the car is still registered in Njonjo's name. We saw that car at the Haryanto home on the occasion of our visit there.

41. When Kabucho and Bashir left for the airport Njonjo was at his Muthaiga home. Kabucho categorically stated that he went to the airport because Njonjo instructed him to do so.

42. Kabucho asked for the use of the V.I.P. lounge for the Americans who had brought a large amount of baggage with them. While in the V.I.P. lounge, they were asked by a Security Officer what their baggage contained. Their answer was food, fishing rods and camping equipment. In the customs hall, their baggage was placed before an alert Customs Officer named Martin Goya Sitati for examination. He also inquired of the Americans about the contents of their baggage in the hearing of Walker. The Americans' reply was that it was foodstuffs for the former Minister for Constitutional Affairs, Mr. Njonjo. Sitati feeling suspicious about a long carton, he asked the Americans what it contained. They replied, fishing rods. Sitati ordered them to open it. The Americans were reluctant to do so. Sitati opened it with the aid of Ben Odero a Customs Prevention Officer. The carton was found to contain a rifle. The other baggage was also opened. It contained two shotguns with

telescopic sights, some more rifles and about 5,000 rounds of ammunition. Among the firearms was also a 7.62 mm military rifle which civilians are absolutely prohibited by law to import.

43. When asked to explain the lie, the Americans replied that the baggage had been packed and given to them by someone else for Njonjo, and they were not aware of the contents. At this point Walker jumped forward and said that he had been sent there by Njonjo to issue an import permit for the arms and ammunition. Walker whisked a permit book out of his pocket and began to write a permit for the arms and ammunition including the 7.62 mm rifle in the name of Kent Crane a civilian who, to repeat, was an absolutely prohibited person to import and hold that particular rifle. Walker said he took the arms and ammunition to the Central Firearms Armoury with him that night. A Security Officer Mr. Angwenyi who was on duty that night testified that Kabucho drove off with the arms and ammunition with Mohamed Bashir the same night in Njonjo's Mercedes Benz car No. KVD 710. Mr. Angwenyi made an entry to that effect in the Airport Security Office Occurrence Book.

44. Walker's Deputy Chief Inspector Charles Ngatia Gichuru told us that Walker sent him to collect the very same firearms and ammunition from the airport next morning and take them to the Central Firearms Bureau; he informed Walker that he had done so, and that he and Walker together took them to their armoury and booked them in their register.

45. On 9th April, 1981 Walker reported the importation of the consignment to the then Commissioner of Police Ben Gethi because of the discovery of the prohibited 7.62 mm rifle by Customs. Gethi directed him to have the consignment re-exported from the country because of the illegal importation of the 7.62 mm rifle. Walker claimed to have personally supervised the re-exportation of the firearms and ammunition which were taken out of the country by Kent Crane as accompanied luggage. If true, Walker handed over or allowed Kent Crane, an unauthorized person, to resume possession of the 7.62 mm prohibited rifle.

46. There is an established strict procedure which is required to be observed when firearms are exported or re-exported from the country. After the firearms have been checked by Security and Customs, an export permit must be made out which is stamped by Customs. The firearms are then handed over to the airline to be given in turn into the custody of the captain of the flight. The permit is entered in a despatch book kept for that purpose at the airport to be forwarded to the Central Firearms Bureau where a record of the export or re-export is made. It is only then that it would be reliably known what firearms are not or should not be in the country and if the firearms to be exported or re-exported have been actually sent out of the country. In this instance there is no record of an export permit in the despatch book at the airport. Walker was also unable to produce the original or duplicate from his records at the Central Firearms Bureau.

47. It will be noted we were given three differing versions of how the firearms left the airport, namely, the Walker version, the Gichuru version and the Angwenyi version.

48. In total defiance of the law, Walker tried to legitimatize the illegal importation into Kenya of a prohibited military 7.62 mm rifle by issuing an import permit for it in the name of a civilian, Kent Crane. If Walker is believed, he also facilitated the same prohibited rifle to be smuggled out of the country by the same civilian, Kent Crane.

49. The military 7.62 mm rifle could not by any stretch of imagination be brought into the country by a civilian for any legitimate purpose. In any event Kent Crane was not permitted to bring it into the country even under the pretext that it was for Njonjo. The importation of this prohibited rifle had to be accounted for. Walker did it by illegally issuing an import permit for it. He must have known that the Commissioner of Police would probably order the consignment to be either re-exported or destroyed. It was ordered to be re-exported. Walker claimed to have done so by handing it back to the smuggler Kent Crane to square the book, knowing that he should not do so. He must have thought that nothing further would be heard about it and that would be the end of the matter. He, therefore, never troubled himself about the export permit. We quote the familiar saying that the best laid plans of mice and men go awry. Unfortunately for Walker also this Inquiry was set up.

50. We consider that Walker lied on two occasions, firstly, that he himself took the firearms and ammunition to the Armoury, and, secondly, that he personally supervised their re-exportation as accompanied luggage by Kent Crane. We reject Walker's evidence that he removed the consignment of the firearms to the Armoury. We are therefore left with the two versions of Gichuru and Angwenyi. The evidence does not support Gichuru's version. Neither he nor Walker were able to produce the register to which Gichuru referred. We accept Angwenyi's version. It is corroborated by the contemporaneous entry which he made in the Airport Security Office Occurrence Book. We find that Kabucho removed the firearms and ammunition from the airport and transported them to some undisclosed destination.

51. We consider that Walker tried to bam-boozle Gethi in a memorandum of background information relating to the Haryantos which he wrote to Gethi on 22nd May, 1981. Walker stated *inter alia* that the Haryantos "had made Crane import from South Africa on their behalf the seven fireams which caused so much interest on 1st April, and which were re-exported on 9th April. These firearms were undoubtedly intended for the defence of their camp which is quite near to the scene of some recent unpleasant incidents close to the Tanzania border. I am personally absolutely satisfied that there was no sinister motive behind the attempted importation of these weapons and that they simply wanted to make their camp 'secure' by their standards."

We are satisfied that the Haryantos had nothing to do with this particular consignment. Walker's memorandum was intended to cover Njonjo's involvement in the importation of the consignment.

52. On the evidence, we are satisfied that the consignment which arrived in the country on the night of 31st March/1st April, 1981, and which was falsely declared to be food for Njonjo, and fishing rods and camping equipment, and for which Walker stated that he had been instructed by Njonjo to issue an import permit, and which Kabucho went to the airport to collect on the instructions of Njonjo never left the country. We have no hesitation in saying that the two Americans who brought in the consignment (this was the second time that Kent Crane had come with firearms), knowingly told a plain but stupid lie about the contents of the consignment. Wherever they are in Kenya they are there illegally, and a threat to the security of the State. The inference irresistibly follows that Njonjo must know where they are.

53. The third aspect in relation to firearms to which we would draw attention is the large cache of arms in the strong room of the Haryanto home which is not licensed for the storage of arms. The Haryantos have not been back in Kenya since 1980 to renew their arms licences. The large cache being unlicensed, the arms were being held there illegally to Walker's knowledge. The law requires that a duplicate key of any storeroom where a large quantity of firearms is kept must be deposited with the Central Firearms Bureau. Although aware of it, Walker did nothing to acquire the duplicate key. He agreed that anyone who had a key and knew the combination of the lock could have made use of the firearms in the strongroom.

54. Events had begun to move fast. Walker feeling that the gusts from the official enquiries which were being made in connection with the importation of arms and allied matters were getting uncomfortably close, on 2nd November, 1983 had the Haryanto strongroom for arms opened by a locksmith. In doing so he made three omissions. Firstly, he made no inquiries from Boskovic who was the Haryantos' contact man in Nairobi whether he or anyone else had a key to the strongroom. Secondly, Walker did not inform A.C.P. Odera Odede who was engaged in making inquiries and who had interviewed him in connection with these matters that A.C.P. Odede or his representative could be present when the strongroom was opened. Thirdly, he did not also convey any information to the Commissioner of Police about it. In addition, Walker left within about fifteen minutes of the strongroom having been opened. This conduct on the part of Walker made it impossible to check correctly his reported finding of the quantity of arms and ammunition in the strongroom when opened.

55. When opened, the strongroom was found to contain 3 rifles, 6 revolvers, 2 shotguns, 17 other rifles and five boxes of ammunition containing (1) 1676 rounds of assorted ammunition, (2) 990 rounds of ammunition, (3) 1018

rounds of ammunition, (4) 3999 cartridges and 2 tins of airgun pellets, and (5) 1576 cartridges.

56. We note that Njonjo did not deny his connection with the Haryantos or Boskovic. He also did not deny that Kabucho acted on his behalf. He admitted that Penny Hill had been his personal secretary.

57. In particular we note that Njonjo made no reference at all in any way to importation of firearms.

58. During Njonjo's tenure of office as Attorney-General as well as Minister for Constitutional Affairs it was, and still is, the declared policy of the Republic of Kenya that the citizens of the apartheid regime of South Africa shall not be allowed entry into Kenya.

59. All persons who are residents of the apartheid regime of South Africa, irrespective of their nationalities, require visas to enter Kenya. All visa applications for these persons had to be referred to the Principal Immigration Officer, who at the time was James Kasyula Mutua, for approval before being issued.

60. Njonjo acting in complete disregard of the Kenya visa regulations was responsible for a large number of visas being issued to residents of the apartheid regime of South Africa without any prior reference to the Principal Immigration Officer for approval. His secretary would write to Mutua that Njonjo had decided a visa be issued to the individual mentioned in the letter. All such visas were issued without the applicants being security vetted. Upon receipt of the letter, the docile Mutua issued the visa. So mindful was Njonjo of the convenience of South Africans that in some cases he arranged for the visa to wait for handing over to the visitor from South Africa on his arrival at the airport.

61. Among the people who entered Kenya in the above manner there were a member of the apartheid Government of South Africa, a high ranking officer in the South African Armed Forces, Lt. Col. F. A. J. Van Zijl and also J. Lockley a former employee in the Police Force of Kenya then serving in the South African Police Force. Lockley entered Kenya twice under visas issued to him upon Njonjo's directions.

62. South Africa is known to be a haven for mercenaries whose mission in life is to cause revolutions and havoc in other countries for money. Njonjo exposed Kenya to reconnaisance by people of that country. Mercenaries from South Africa were proved to have been actually linked with the abortive coup to overthrow the lawfully established Government of the Seychelles in November, 1981 as more fully dealt with in another part of the Report.

63. We reach the firm conclusion that by instigating, facilitating and participating in the illegal importaton of arms and ammunition into Kenya, by building up an arsenal in the Haryanto home, which must have been intended for use in an insurrection, and allowing the residents of South Africa to enter Kenya in utter disregard of Kenya's security, Njonjo conducted himself in a manner prejudicial to the security of the State. We find this allegation well established.

The Position of the Head of State, The Image of the President and the Constitutionally Established Government of the Republic of Kenya.

64. As regards the above allegations, we now consider the evidence relating thereto.

65. Since 1978, His Excellency President Daniel Toroitich arap Moi has been the Head of State and the constitutionally established Government of the Republic of Kenya. He portrays the image of the nation both at home and abroad.

66. The evidence relating to these allegations boggles the mind. The exposé began with a then little known man named Emmanuel Karisa Maitha who was employed as a Clinical Officer by the Municipal Council of Mombasa at the Mwakirunge Sub-Health Centre in May, 1979. He was approached by Said Hemed then Member of Parliament for Mombasa North, to resign his job and join politics by contesting the Bamburi Ward Civic seat. Hemed persisted in his request promising to sponsor Maitha with unlimited finance, and to help him get back his job if he failed in the election. When Maitha asked him what his interest was, Hemed said that he was a very good friend of Charles Njonjo, the Attorney-General of Kenya who was a very close friend of His Excellency the President who had assigned Njonjo to see that the leaders elected in the 1979 elections would be identified to the President, through Njonjo. Hemed said that he had been appointed by Njonjo, and he in turn selected Maitha as one capable of leadership.

67. Maitha said he was convinced because the names of the President and Njonjo were mentioned to him. He resigned his job in May, 1979 with a view to contesting the civic election. Hemed asked him to accompany him to Nairobi to meet Njonjo who would be helping him (Maitha) financially in his campaign. Hemed brought him to Nairobi and took him to Njonjo's office in Sheria House. Maitha waited outside while Hemed went into Njonjo's office. Njonjo and Hemed came out together about one and a half hours later. Hemed told Maitha to greet "Mzee" (Njonjo), in abeisance we suppose. Njonjo shook hands with Maitha and asked him if he was Emmanuel. Maitha replied, "Yes, Sir". Njonjo said he was too busy to discuss anything but Hemed would tell him something about him (Njonjo) when they went back home.

68. After leaving Njonjo's office, Hemed told Maitha that Njonjo was very happy to meet him. Hemed and Maitha went to Azee Guest House where they were staying. There Hemed opened his brief case which he had carried to Njonjo's office. He took out KSh. 10,000 in a bundle of KSh. 100 notes and gave it to Maitha saying it was from Njonjo to assist him in his campaign. Maitha returned to Mombasa by bus. Hemed went to Maitha's house after nomination day and asked for two photographs of Maitha, one for posters and a smaller one for badges. After a week, Hemed took to Maitha some 3,000 election posters and 2,000 election badges. Hemed said the bill for the printing of the posters by Coastal Printers of Mombasa "had been cleared by Njonjo". Hemed helped very much during the election, and Maitha was elected.

69. In October, 1979, Hemed took Maitha to a special private room in Tamarind Restaurant, Mombasa. He told Maitha that he was going to reveal a very confidential matter which Maitha must not reveal to anyone otherwise Maitha may even lose his life. Hemed told him that Njonjo was going to resign as Attorney-General and arrangements had been made for a constituency seat for him and that Njonjo was going to take over as the President later. Maitha asked him why. Hemed said the present President was not an educated President and Njonjo felt he would lead the country properly.

70. Hemed also told Maitha that they had decided to nominate Rajab Sumba and Ahmed Mwidani for election as Mayor and Deputy Mayor of Mombasa respectively in Njonjo's interests. He showed Maitha Sh. 400,000 which was in his brief case, and which he said he got from Njonjo for the election of the Mayor of Mombasa. Hemed said he was not interested in working for Njonjo direct. He had discussed the issue with Shariff Nassir then M.P. for Mombasa Central who would handle the campaign for the Mayor's election. He was going to take the money to Shariff Nassir's house in Jubilee Building. They proceeded to the house where they met Nassir and 20 elected municipal councillors. Maitha named all 20 of them.

71. Hemed and Nassir went into a private room and they came out after a while. Hemed said he was going to leave them with Nassir. Nassir told them that he and Hemed were very close to the Government. They had decided to nominate Rajab Sumba and Mwidani to be Mayor and Deputy Mayor of the Municipality of Mombasa respectively. He gave each councillor Sh. 500 in Sh. 100 notes. He also told them if any councillor had a debt probelm he should contact him as he was the supervisor for the mayor's election campaign. They agreed to hold secret meetings and Nassir would meet the hotel and club bills. Rajab Sumba and Mwidani were elected mayor and deputy mayor respectively. Nassir gave the councillors who had voted for the mayor a present of Sh. 1,000 each at Kanu office, Mombasa.

72. Hemed won his Parliamentary seat for Mombasa North in 1979. He said Njonjo told him he was appointed Chief Whip through Njonjo's

influence as Njonjo wanted him to be his contact man with M.P.s. Hemed also told Maitha that Njonjo played a big role in appointments of most ministers and assistant ministers in order to boost his group for him to become the President. Njonjo had also assigned Hemed the special duty to take to him most members of the Asian business community to help him financially. Maitha produced two of the ten photographs taken in Njonjo's office and given to him by Hemed showing Njonjo receiving cheques from Asians.

73. Hemed further said that Njonjo was working to win support from all tribes in Kenya. They wanted Maitha to work in their group because he was a Giriama. Njonjo had approached Katana Ngala, M.P. for Kilifi North to join the group but Ngala had refused because he suspected some people in the Njonjo group were involved in the death of his late father Ronald Ngala.

74. Hemed told Maitha that he (Hemed) was going to be appointed Foreign Minister, S. S. Oloitipitip would be the Vice-President, and G. G. Kariuki a Minister of State in the new Government of Njonjo. He had arranged for an Arab Prince to come to Kenya and boost some projects in Kenya, especially in Njonjo's constituency so that people would believe in Njonjo's group rather than in Moi's group. Hemed said the money from Arab countries was to help the Njonjo campaign.

75. Hemed further told Maitha that Oloitipitip was transferred to Ministry of Local Government for special duty as he was a very close friend of Njonjo. Oloitipitip's special duty was to go to every local authority in the country, hold barazas and make promises of grants of public money, impossible for the Government of President Moi to meet.

76. Towards the end of 1982 Hemed told Maitha that Njonjo wanted to see him at his house in Diani. He went there with Hemed and a Malindi businesman Gulam Hussein. Njonjo was not there. Instead they met Duncan Ndegwa the former Governor of the Central Bank who told them he had been sent there to meet them as Njonjo would not be able to get to the Coast during that week-end. Gulam Hussein was told to go out and wait in the car.

77. Ndegwa asked Hemed a lot of things about how Njonjo's campaign was going on at the Coast, and how far they had gone about the Kalenjin M.P.s joining the group. Hemed replied everthing was going well.

78. Ndegwa then delivered Njonjo's message about a plot in Bamburi Ward No. 384, Section 2, Mainland North, comprising 444 acres which had been purchased by four persons whose names Ndegwa mentioned, and from whom he said he had acquired 50 acres. They had been unable to use the land because squatters were living on it. Njonjo wanted to ask Maitha as councillor for the area to help Hemed to remove the squatters.

79. Maitha asked for time and Ndegwa arranged to meet him at Nyali Golf Club on the following day which was a Sunday. They met there and had lunch together after Ndegwa finished playing golf. Maitha told him he was not ready to help Hemed to evict the squatters. Ndegwa however insisted and asked him to meet him in his office the next day which he did. Ndegwa then told him he had telephoned both Njonjo and Hemed and Njonjo had said if Maitha accepted his request he would be given a car from D. T. Dobie. Maitha still refused. Most of the squatters were of his own tribe. Ndegwa gave him KSh. 500 to come to Nairobi on Wednesday at 10.00 a.m. to explain it personally to Njonjo. Maitha telephoned Hemed who told him that he was free to go.

80. In Nairobi Ndegwa gave Maitha a letter and told him to go and see Njonjo in his office in Re-Insurance Plaza.

81. After being kept waiting for one and a half hours Maitha was taken to Njonjo's secretary who told him that Njonjo would meet him when he came to the Coast. She gave him a letter written by Njonjo addressed to Hemed. He took the letter to Hemed in Mombasa. Hemed read it and told him that Njonjo wanted him to comply with the request. Hemed reminded him how Njonjo had helped him in his campaign and Hemed was also a good friend of his. He reminded him how he had recruited him into the Njonjo group but Maitha insisted he was not ready to help to evict the squatters. They quarrelled and Hemed chased him away from his house. Hemed thereafter kept telling him he was going to teach him a lesson and before the 1983 elections Maitha was expelled from the Party by Kanu Mombasa Branch of which Shariff Nassir was the Chairman and Hemed the Treasurer.

82. When they met later Hemed told Maitha that the expulsion from Kanu was only the beginning. He would be facing more than that.

83. Maitha was reinstated by Kanu Headquarters the same week.

84. Maitha's evidence was not challenged.

85. In 1981 Lawrence Simiyu Sifuna was Member of Parliament for Bungoma South Constituency and Jackson Kalweo was Member for Nyambene North Constituency and also an Assistant Minister.

86. Kalweo asked Sifuna in Parliament Buildings why Sifuna showed a negative attitude towards Njonjo who was a very powerful man, and he must join Njonjo's group or he would suffer if he refused. Kalweo also said that an election petition pending against him in the High Court would be thrown out which would prove that Njonjo was a very powerful man. Sifuna told Kalweo that he did not wish to join Njonjo's group. The petition against Kalweo was in fact later dismissed.

87. Kalweo approached Sifuna on two other occasions in 1981. He told Sifuna that more people had joined the camp of Njonjo who was going to rule the country. Sifuna must also join to be on the safe side, and Njonjo would definitely make him an Assistant Minister. Kalweo cited examples of two others Members who had agreed to join Njonjo's camp and they would be given ministerial posts. It turned out that the two were appointed Assistant Ministers. Sifuna still refused to join Njonjo's or any other camp. He said his loyalty was direct to the President.

88. Njonjo's recruiting agent Kalweo having proved unsuccessful, Njonjo himself approached Sifuna and asked him why his attitude towards him was always negative. Sifuna also told him he was not interested in joining his camp. Njonjo came again and asked Sifuna to see him in his office. Sifuna told him only if he had a problem concerning his Ministry not otherwise.

89. One day Njonjo went and sat next to Sifuna in the House. He used to refer to Sifuna and some other Members of Parliament as the "Seven Sisters". Sifuna asked him why he was sitting next to the Seven Sisters. Njonjo laughed and went out. He came back and sat next to Sifuna again with his hands in the outside pockets of his jacket.

90. Njonjo pulled his hand out of his pocket and tried to push KSh. 100 notes into Sifuna's pocket. Sifuna asked him what he was giving him money for. Njonjo told him to keep quiet. Sifuna threw the money back at him saying, " I don't want your money". Two others Members saw Sifuna throwing the money back. Njonjo took back his money and went away. The two Members laughed and said, "Shame! Shame!"

91. Clement Lubembe the then Member for Ikolomani came to see Sifuna twice during 1981/82. He requested Sifuna to go to Kimani Court Hotel to meet Njonjo and the then Chief Secretary Jeremiah Kiereini there. Sifuna told him he did not want to meet Njonjo. On the second occasion Lubembe came to the Railway Restaurant where Sifuna was having a drink with the then Member of Parliament Alfonse Okuku and the late Tom Mboya's son.

92. Lubembe started to talk about Karachuonyo politics. Okuku did not like it and he left with the late Tom Mboya's son. Lubembe then told Sifuna that Njonjo was the only right person to be the President of the country. He asked Sifuna to accompany him to Kimani Court Hotel where he was going to meet Njonjo and Kiereini. Sifuna told him he did not want to be involved in the Njonjo affair. Lubembe insisted that Njonjo was a good man and very soon he would be ruling the country. He himself would be given a good post soon to prove Njonjo was a true leader. Some weeks later, Lubembe was appointed Chairman of the Sugar Authority.

93. In the early part of 1980, Njonjo attended Parliamentary debates as the Attorney-General. He asked Sifuna why he and some other M.P.s applauded the Vice-President whenever he came into the Chamber. Sifuna told him that there was only one Vice-President who was Number Two in the Government and he did not see why he should feel jealous or bad about it. Njonjo warned him if he and the other M.P.s did not stop it they would suffer along with others who were opposed to his directives.

94. When Sifuna refused to join the Njonjo camp his file was taken to the C.I.D. together with those of others who had also refused to associate themselves with Njonjo. The C.I.D. was then under Njonjo's ministerial portfolio. Sifuna told us:

"The purpose was to establish any slight mistake, either mileage claim or anything, and then you land in hot soup. Slight mistake and then definitely you will be put in. Fortunately, there was nothing, I was clean and my file was returned.

"It is a fact he (Njonjo) had ill-motives against the President ... It is a fact that in 1981 he had negative attitude towards the President. That is a fact.

"To be a traitor and to be guilty of treason you must be somebody who wishes to overthrow the Government by unconstitutional means". That is exactly what Njonjo was trying to do. Njonjo himself was aiming at being the President of the country.

"A person who obtains political power by manipulation and intrigue is a traitor."

95. Sifuna was at home in his Constituency after the distrubances of 1st August, 1982. The O.C.P.D., Bungoma District and the Special Branch Officer went there. As a result of what they told him he came to Nairobi and found that immigration officers had gone to his residence in Ruaraka and taken away his passport.

96. In September, 1982, Sifuna was chosen a delegate to attend the I.P.U. Conference in Italy. He obtained a letter from the Speaker of the National Assembly which he took to a Mr. Keya, then Deputy Principal Immigration Officer. Keya took him to the Principal Immigration Officer Mutua, who read the letter. Mutua told Sifuna he had no objection to returning his passport, but there were certain conditions which he would have to fulfil upon his return from Italy. Mutua asked him why he hated Njonjo when he knew Njonjo was ruling the country. Mutua said he was prepared to take him to Njonjo and he would get whatever he wanted, a Ministerial post or money. Mutua further said that Sifuna was like his child and he was trying to help him to be a big man in the country; "after all Njonjo needs only 125 Members of Parliament to back him and then you will see him at the top". Mutua gave Sifuna his passport and he left.

97. Sifuna went to Italy. He came back. He did not go to Mutua's office. Keya told him a week later that Mutua wanted to see him. Sifuna did not go. Keya approached him a second time and asked him why he refused to go and see Mutua. Sifuna told him he would do so the following day. He did not do so.

98. Some days later, he received a telephone message in Parliament Buildings requesting him to go and see Mutua personally. He did so on the following day. Mutua asked him why he had ignored his fatherly advice. He was still prepared to take him to Njonjo to be given anything so long as he agreed with Njonjo. Sifuna told him he was not interested. Mutua became annoyed and told Sifuna to surrender his passport which he did. He never got it back. Mutua said, "Give me back the passport". Sifuna said, "Take it", The Immigration Department was under Njonjo's ministerial portfolio when Sifuna's passport was taken away.

99. Sifuna said that Njonjo's activties led him (Sifuna) to think that he had ulterior motives. In 1981 Sifuna regarded Njonjo as being hostile to the President even though he was a Cabinet Minister and the President had warned that he did not want to hear about groups. While Njonjo was paying lip-service to the President and pretending to be loyal to him, he was at the same time engineering agents to recruit as many M.Ps. as possible into his camp. Whatever Njonjo was doing was contrary to what the President was doing.

"He was giving me money to win me into his group."

His camp existed in Parliament from 1981. Apart from Njonjo himself, other Members of Parliament who approached him were Kalweo, Stephen Kiragu or Kiragu Stephen, Said Hemed, the late Juma Boy, the then Deputy Speaker Moses arap Keino and also the then Principal Immigration Officer Mutua.

"Njonjo was actually aiming to be the President. A person who obtains political power by manipulation and intrigue is a traitor. Njonjo is a traitor."

100. Francis arap Mutwol, like His Excellency the President, is of the Kalenjin tribe. He was at the relevant time Member of Parliament for Kerio Central, and Secretary of the Kanu Parliamentary Group. He said Njonjo, Cabinet Minister from 1980 to 1983, was a personal friend of his and had given him his direct telephone number.

101. Njonjo told him in his office in Jogoo House that certain M.P.s were not useful to him or to the Government, like Waruru Kanja, Mark Mwithaga, Koigi wa Wamwere, Martin Shikuku and Samuel Ng'eny. He said he would do his best to get rid of them.

102. Mutwol visited him again in Jogoo House towards the end of 1980. Njonjo told him that he did not like Karugu who took over from him as

Attorney-General. Karugu was not of his choice and was not doing things the way he used to do.

103. In June, 1981 Njonjo mentioned to Mutwol that he had his own group and asked him for assistance to persuade other Members of Parliament to join him. He asked Mutwol mainly to persuade the Kalenjin Members of Parliament, about 12 of them, leaving out Cabinet Ministers for which purpose he gave Mutwol Sh. 10,000. Mutwol took the money but did not use it as directed.

104. Mutwol asked Njonjo to assist him in a harambee in his constituency. Njonjo agreed. The harambee was held on 19th September, 1981 at Kapcheriot. On September 8th, an Army helicopter flew out to locate where Kapcheriot is. On September 19th a huge army helicopter landed at Kapcheriot bringing in Njonjo the guest of honour. Sh. 400,000 was raised at the harambee, Njonjo contributing Sh. 90,000.

105. A few weeks later Njonjo asked Mutwol if he had ever seen any other Minister going to a harambee in an army helicopter. Mutwol replied in the negative and Njonjo told him "to tell my friends and Members of Parliament to see where the light was".

106. A month later Njonjo told Mutwol that he had 60 M.P.s on his side. He asked about what had happened to the Sh. 10,000 he had given Mutwol and was told things were in progress. Mutwol told him there was no difficulty in persuading the Kalenjin M.P.s and he could rest assured that they were on his side, even though he had done no canvassing. Njonjo asked him to extend his persuasion to other M.P.s also but to leave out the "Seven Sisters". Njonjo gave him another Sh. 10,000 for that purpose. Mutwol used it for harambees. Njonjo also sent him Sh. 5,000, Sh. 2,000 and Sh. 3,000 for harambees. On the occasion in his office Njonjo told Mutwol that "he did not like the Vice-President, the Vice-President was not a man to be relied on, the Vice-Prsident was a drunkard". Njonjo also told Mutwol to personally ask His Excellency the President to remove the Vice-President and if the President did not do so the Kalenjin would live to regret it. Mutwol promised to do so.

107. Njonjo also said that "the Kalenjin knew how to look after cattle but not human beings". He also told Mutwol again personally to tell the President in his own Kalenjin language that if the President did not remove the Vice-President the Kalenjin would live to regret it.

108. Njonjo also talked about the possibility of replacing the Vice-President. He said that it could be he himself or somebody else.

109. In 1982 Njonjo told Mutwol that things were not moving as he had expected. He said he had expected to have won over 125 M.P.s on to his side. Mutwol said that he understood the significance of the number 125 to be that they would declare a vote of no confidence in Parliament in the

Government of President Moi. Mutwol was supposed to enlist Kalenjin Members of Parliament for Njonjo's group against the President.

110. Njonjo angrily told Mutwol that he was dissatisfied because he had not seen the fruits of Mutwol's work. They quarrelled and Mutwol left. Before Mutwol left Njonjo warned that unless the Kalenjin followed him he would not assist them and they would live to regret it.

111. On Budget Day in 1982, Njonjo came into the Members Room where Mutwol was making a telephone call. Njonjo started to talk. He said members did not appreciate the help he had given them to obtain cars, that he had also bought cars for many. Mutwol remarked that Njonjo had not given him any assistance at all. Njonjo wrote down the registration number of a Mercedes Benz vehicle KVD 710 and said that if all went well Mutwol could have it. Mutwol never got the promised car.

112. Mutwol said that he did not personally join Njonjo's group, nor did he recruit anyone to join and that there was in fact such a group otherwise there would have been no money to spend. On several occasions Njonjo gave warnings to many Honourable Members that they would lose their seats if they did this, that or the other thing.

113. Mutwol capped his evidence by saying that he warned the Kalenjin M.P.s that there was danger, and they should unite against Njonjo's activities.

114. Mashengu wa Mwachofi M.P. for Wundanyi Constituency in the Coast Province moved a Private Members motion in Parliament in April, 1981 concerning land ownership and land scarcity in Taita/Taveta District. Njonjo opposed the motion and spoke against it. The motion was lost.

115. Jackson Kalweo approached Mwachofi a week or two later and asked him "what is wrong with you people? Why do you want to argue and disagree with Hon. Njonjo? For example, with this motion of yours, what you needed to do was to go and see him and the problem would be solved. Njonjo is a very powerful man and if you agree to work with him then all your problems will be solved." Kalweo also said his own financial problems were gone since he had started working with Njonjo. He also won his election petition because Njonjo helped him. Mwachofi told him he had no disagreement with Njonjo and no reason to go and see him.

116. Kalweo approached him twice again in 1981, and complained that Mwachofi had become worse since he had talked to him about seeing Njonjo. He also complained that Mwachofi had no respect for Njonjo, he argued and disagreed with Njonjo everytime he spoke. If Mwachofi wanted to be safe he should tell him so that he could report where and when to see Njonjo. Mwachofi told him he was not willing to see Njonjo.

117. On the second occasion Kalweo asked him about his friend Koigi wa Wamwere, then M.P. for Nakuru North. Mwachofi told him he knew like everyone else that Wamwere was in detention. Kalweo warned him that if he did not change his attitude towards Njonjo, they would lock him up like Wamwere.

118. After the disturbances of 1st August, 1982, Immigration Officer Nyamongo with others visited him in Parliament Buildings. He was told to produce his passport which he did and surrendered it at the Immigration Headquarters where Nyamongo took him in his car. He was told that the Principal Immigration Officer (Mutua) had been instructed by his Minister Charles Njonjo to withdraw his passport and the passports of twelve other Members of Parliament. He has never gone back to collect it as he does not require a passport to go to his Constituency.

119. In 1981 Said Hemed was still M.P. for Mombasa North, and also the Chief Whip. Hemed approached Mwachofi twice on the issue of reconciliation with Njonjo. Hemed told Mwachofi that as they both came from the Coast he would not like to see Mwachofi get into trouble. Mwachofi should therefore stop disagreeing openly with Njonjo in the House otherwise he would end up in jail. Hemed offered to take Mwachofi to Njonjo's office but Mwachofi refused because he had no personal disagreement with Njonjo. Hemed accused him of not concentrating on his constituency problems and of getting too much involved in national politics which was the main reason for the disagreement with Njonjo.

120. Mwachofi was organizing a harambee for a number of projects in his constituency on a day appointed by his Harambee Committee. He received a letter asking Njonjo to do a harambee on the same day but for a different project in his constituency. There would be two harambees on the same day but at different places, one by Njonjo and the other officiated by someone else. When Mwachofi spoke to Njonjo in the House if he could change the date, Njonjo asked him to go and see him in his office at 8.00 a.m. on the following morning. He went there at 7.45 a.m. He was told to wait. Hemed walked in at 9.00 a.m. They both sat there waiting until 10.00 a.m. Njonjo came into the waiting room and called Hemed. The two of them walked off downstairs. Mwachofi never got an opportunity for a discussion with Njonjo.

121. Sometime later, Mwachofi found Hemed and the late Juma Boy in the television room in Parliament Buildings. Hemed told him Mzee (Njonjo) would like to see him so that he could have his problems solved. Njonjo wanted to discuss things and help him financially. Mwachofi said if he was referring to the harambee he was not going there. Juma Boy reacted that he had always told Mwachofi to be careful with what line he took in debates. He did not seem to understand that Njonjo loved him. Hemed also said Njonjo loved him very much and he should agree to go and see Njonjo.

122. Mwachofi replied, "You people tell me repeatedly that Njonjo loves me. Do you think I am a girl that I am going to get married to him?" Hemed warned that these matters were not a joke and he (Mwachofi) should take his warning seriously or he would be detained like his brother Wamwere.

123. Zablon Owigo Olang', the then M.P. for Ndhiwa, was Assistant Minister for Constitutional and Home Affairs in Njonjo's office. He similarly went to see Mwachofi twice.

124. Olang' told him about Njonjo's coming visit to his Constituency for a harambee to raise funds for a school. Mwachofi explained that the dates were conflicting. However for some reason the harambee never materialized.

125. Njonjo went to Mwachofi's Constituency to donate a piano to a church. He addressed the church congregation. He said Christian leadership was needed to have peace, love and unity in the country. He named some dignitaries sitting there as examples of good Christian leadership but said he could not say the same for their M.P. (Mwachofi) who never went to church. Njonjo further said the Holy Book said cleanliness is next to godliness but the man they elected, whose name he could not pronounce, was untidy. He did not even shave his beard.

126. When the programme for the function was drawn Mwachofi was not included in the list nor was he invited to it. He came to know about it and had turned up. He was not given an opportunity to say anything except to "Welcome" the piano by making a contribution.

127. Olang's second approach was prior to this incident. He then told Mwachofi that "they were going to come to my Constituency and if you do not co-operate, we are going to make sure we come to finish you politically".

128. Njonjo was a Front Bencher. Mwachofi was always a Back Bencher. He wondered whether Njonjo was not going to get pain in his neck by constantly turning around to look at him. Once Njonjo looked back and said he did not know what was eating "Karl Max". After he finished speaking Njonjo went to the back bench and sat next to Mwachofi who said:

"Welcome, Comrade".

129. Njonjo told him he had helped most of those idiots the M.P.s who had gone to him with their problems but Mwachofi, with his marxism, had never gone to see him. He could always help to sort out some of Mwachofi's problems. Njonjo kept insisting that Mwachofi should go to his office personally and things would be sorted out. It appeared strange to Mwachofi that he should go to Njonjo for help and become an idiot.

130. Mwachofi told Njonjo he had no personal problems. If anything, it was to ask the authorities for the release of Koigi wa Mamwere. Njonjo said he no longer wielded any power, he did not even know they were holding Wamwere. Mwachofi told him he thought Njonjo was a Government Minister.

131. Njonjo moved closer and speaking in a lower tone said, "You see the problem with your friend (President) is that he does not know what he is doing. At least Kenyatta was a President. His yes was a yes and his no was a no. But this one does not seem to know what he is doing". Mwachofi said he was shocked. He assumed Njonjo was refering to His Excellency the President. He asked Njonjo if that was the reason why he did not raise his hand to applaud "Nyayo" whenever His Excellency walked in during Kanu Parliamentary Group Meetings. Njonjo replied in Kiswahili:

"Wacha maneno yako hayo".

Njonjo then left and resumed his seat on the Front Bench.

132. Deverell cross-examined Mwachofi that Njonjo's derogatory remarks about the President or the M.P.s were malicious invention. Replied Mwachofi:

"It is not a malicious attempt. It is true and Mr. Njonjo knows it."

On being asked again, Mwachofi repeated, "'It is not a malicious attempt, it is true and he knows it to be true."

133. Frederick Fidelis Gumo was M.P. for Kitale East elected in 1979. He was an Assistant Minister for Transport and Communications and Ministry of Tourism and Wildlife.

134. He served as Assistant Minister between January 1981 and February, 1982 for the Ministry of Local Government when the Minister was Stanley Oloitipitip. Katana Ngala was Assistant Minister with him in the same Ministry.

135. In 1981 Njonjo told Gumo in the House that Karugu who had succeeded him was messing up the Attorney-General's Office. He suggested that Gumo should tell the President to combine the two offices of Constitutional Affairs and Office of the Attorney-General so that the dignity of the office could be maintained. He should be appointed Minister for both. Gumo told him he himself was in a better position to talk to the President.

136. Wasike Ndombi was also M.P. in 1982. He moved a motion in Parliament that Githunguri had stolen money from the National Bank of Kenya Limited, the case was investigated and the file taken to the office of the Attorney-General when Njonjo was still the Attorney-General. The file was ordered to be closed and Githunguri could not be taken to court.

137. Njonjo was very bitter about it in the House when Ndombi was asked to substantiate his allegation. Njonjo asked Gumo to tell Ndombi to withdraw the allegation; if he refused he would put him in trouble.

138. Gumo advised Ndombi he should withdraw the allegation. Ndombi withdrew although he had documents to support the allegation which he showed to Gumo.

139. In conversation in Njonjo's office in Re-Insurance Plaza, Njonjo told him (Gumo) that a lot of people were talking a lot of "fitina" about him to the President, unfounded things which were not true. If the President did not stop listening to such characters, one day he might fall into trouble. Gumo was surprised.

140. Around May or June, 1983, Gumo visited the office of Elijah Mwangale in Utalii House. He found Mrs. Julia Ojiambo there. Later, G. G. Kariuki and Kamotho joined them. They were talking about the statement made by the President at Kisii that a traitor was being groomed by some foreign powers to take over the Government of Kenya. Kariuki told Mwangale that he was the one who had caused all the trouble by mentioning Njonjo as the traitor. Njonjo had a lot of connections overseas. It would take him a minute to take over the leadership of the country, he just needed to press a button and things would work out by themselves to take over the Presidency. Therefore, he did not believe that Njonjo was interested in taking over or that he was a traitor.

141. Gumo used to accompany his Minister Oloitipitip on his harambee meetings. The Minister would tell him he had no money for the harambee. He would telephone Njonjo for assistance. Njonjo's driver would bring him in Sh. 100 notes, several bundles. Oloitipitip would say that Njonjo was a very good and generous man.

142. In 1982, he was with Oloitipitip at the ceremony of installing the Kiambu Municipal Council. He gave the council some grants from the Ministry. He asked the leaders in Kiambu to work together with Njonjo. He said that Njonjo was a good man, clever, rich and he had a lot of good leadership in him. The people of Kiambu were very lucky to have someone like Njonjo who could do whatever they wanted for them. He appealed to them to give him their support because he was a powerful man, one day he might even rule the country if they gave him their support.

143. In 1981 Gumo and Katana Ngala travelled to Lamu with the Minister. They stayed at a hotel. The Minister wondered why the President was not calling for Kanu elections which he wanted held so that Njonjo could be elected Vice-President. He, Oloitipitip, would be elected Chairman of the Party. He had done all the ground work, all Chairmen of County Councils, Mayors and other delegates were behind him. They would vote for Njonjo who would win. Gumo told him he should stop talking about the Njonjo affair every day. It might one day put him in trouble. Ngala told Oloitipitip he was going too far. Oloitipitip said he did not mind. One day they would be surprised to see Njonjo as the President of the country.

144. The position of the Head of State under a democratic system of Government is politically very sensitive indeed. It is, however, exposed to detraction and remains vulnerable to political intrigue. It is, therefore, important for the welfare and stability of the nation that the Head of State should enjoy the confidence, respect and affection of the people which he inspires because of his own personal qualities and not because of the power he wields. It is for this reason that the Head of State is easily vulnerable to insidious whispering campaigns to malign him.

145. We have related evidence showing how Njonjo set in motion intrigues deliberately designed to undermine the position of the Head of State, his image, as well as to usurp the power of the constitutionally established government of the Republic of Kenya.

146. We have related the direct evidence of five witnesses, all persons of position in the public life of the country. They were persons who refused to succumb to Njonjo's bribery, intimidation and threats of deprivation of personal liberty. They proved themselves men of stout courage. We have no reason to doubt their integrity. All that was suggested to some of them was that their evidence was either malicious or a figment of their imagination. Their account, however, of their contacts with Njonjo or others acting on his behalf, and events, incidents, and conversations, with Njonjo or those acting on his behalf, is so authentically detailed, specific, defined and qualified that it is utterly unreasonable to say about the totality of their evidence that it is malicious invention, false or perjured as suggested. The most notable feature of their evidence is that these witnesses became involved separately in events which were set in motion not by any of them but by Njonjo or his henchmen at his instigation. Although they were personally subjected to the events or suffered or were threatened with his wrath they had no motive to form themselves into a group of liars to speak falsely against or about Njonjo. There was no direct connection revealed between them to bring or bind them together. The connection between them took shape as a result of their evidence before us becoming collated. The absence of any connection between them initially sets the stamp of truth upon their evidence. Although given a full opportunity Njonjo made no reference to this mass of evidence.

147. The political intrigues which Njonjo set in motion were not abruptly applied. Nor would he seem to have first decided in April, 1980 to enter Parliament. Hemed knew of his intention in 1979. Therefore his intrigues were the result of planning over a period beginning in 1979 when while still the Attorney-General he began to spread his tentacles as the evidence adduced before us tells.

148. To be evil is an art in itself. On the evidence, we are of the view that Njonjo decided to pursue his unconstitutional objective even though his action was a betrayal of the constitutionally established government of the Republic of Kenya, prejudicial to the Head of State and the image of the

President. He had convinced himself that if the consequences worked out it would not be bad on any count to reach his goal, even if it resulted in injustices. Therefore, associating with incipient criminals and equally disloyal persons was justified which is unavoidable for conspirators.

149. On the evidence adduced before us it would be a travesty of justice to say that the allegations we have considered in this part have not been established.

150. We unhesitatingly express our opinion that Charles Mugane Njonjo conducted himself in a manner prejudicial to the Head of State, the Image of the President and the constitutionally established Government of the Republic of Kenya.

Allegation that Charles Mugane Njonjo was a party to a conspiracy or conspiracies to overthrow, by unlawful means, the Government of the Republic of Kenya, during the month of August, 1982, or the concealment thereof.

151. The seriousness of this allegation is strikingly apparent.

152. The advocate appearing for Njonjo urged that we ignore the evidence which Counsel assisting the Inquiry adduced in respect of this allegation. The advocate said, "Not a jot of evidence in the legal sense, had been adduced on these allegations except the extraordinary performance by my learned friend, Mr. Muthoga, in calling Mr. Raila Odinga to relate the Bar Gossip and tittle-tattle around the town".

153. Counsel assisting the Inquiry asked us to take into account the following facts:

(i) That the allegation contained in our Terms of Reference was not restricted to the events of 1st August, 1982;

(ii) That there was an uprising in a section of the Kenya Air Force, as it then was, thereby causing a national disturbance;

(iii) That it was the quality of the evidence that matters;

(iv) That Raila Odinga's evidence should not be ignored as being only Bar Gossip.

154. Odinga is the major witness in respect of this allegation. We admitted his evidence bearing in mind our approach to hearsay evidence as stated in Part I.

155. At the time of Mr. Odinga's testimony before us on the 26th July, 1984, he was a lawfully detained person since 23rd March, 1983. He was picked up by police for interrogation after the disturbances of 1st August, 1982. He said that he had a conversation with one Kiprono arap Keino the then Deputy Speaker of the National Assembly in the Gymnasium of the

Hilton Hotel, Nairobi, during March, 1982. They were friends having met each other in Germany in the early sixties. The two began discussing politics in general. Odinga told Keino that there were certain cliques in the Government who were attempting to intimidate and muzzle Parliament, which was not in the best interest of the country.

156. Keino retorted: "I know you people do not like Njonjo". By "You people", Keino meant the Luos. Odinga then told Keino that the Luos had no reason to like somebody who had once said that he cannot shake hands with them. Keino replied that whether the Luos liked it or not Njonjo would make it as the next President of this country. At this stage Keino did not elaborate how that was going to come about. Odinga expressed his personal opinion that: "Njonjo is day-dreaming because in my opinion, Mr Njonjo cannot win free and fair election". Keino affirmed that things would be arranged soon for Njonjo to become the President.

157. Odinga's interest in Njonjo's activities was first aroused in the middle of 1981, when a Ugandan diplomat friend of his (Odinga) requested for assistance in some investigations involving Njonjo and some Ugandans to the effect that the South African Government was attempting to destabilize Uganda by financing exiled Ugandan opposition groups, and for which purpose they had placed substantial sums of money at Njonjo's disposal to be distributed among the opposition groups.

158. On 19th August, 1982 Odinga was in custody at the Headquarters of the General Service Unit, Ruaraka. The then Commissioner of Police Ben Gethi accompanied by Mbuthia the then Commandant of G.S.U., a G.S.U. Inspector Mwaniki Muriithi and three other G.S.U. officers visited Odinga in his cell at 11.00 p.m. Gethi ordered that Odinga be given pen and paper and he Odinga to write all he knew about the disturbances of 1st August, 1982 and his role in it.

159. Odinga then wrote what he called a truthful and detailed account of what he knew about the matter. The statement was handed to Gethi who read it and tore it into pieces, saying that it was rubbish. He ordered that Odinga be given fresh paper to write a "proper" statement.

160. This exercise was repeated four times, with the same result the statement being torn by Gethi each time. Odinga said that Gethi's reason for tearing the statements was that he objected to the reference to Njonjo saying that they were lies.

161. Odinga said that Gethi then ordered him to write out a "confession" to seek mercy and address it to "Uncle Ben". The confession that Gethi wanted was for Odinga to say that he knew about the planning of the events of 1st August, 1982, that he regretted it and was asking the Government for mercy. Odinga did not write any confession.

162. Odinga said the substance of his four statements was:

"I stated that I had received information to the effect that Mr. Njonjo had made plans to overthrow the Government of Kenya with the aid of South African and Israeli mercenaries and the General Service Unit. To this effect substantial amounts of arms had been smuggled into the country. Some of these arms were kept somewhere in the Aberdares and the said coup was planned to take place on the 5th August, 1982. I also stated that the same source had said that several South Africans and Israeli agents had come into the country to make arrangements for the coup".

163. On 21st August, 1982 while still in custody, Odinga was told by Superintendent Patrick Shaw that Gethi had been relieved of his post as Commissioner of Police. Gethi told us that he was retired in the public interest.

164. Odinga informed Muriithi about Gethi's dismissal. Muriithi's reaction was: "How can Gethi be sacked and Njonjo left?" He went on to say, that Gethi had built up the G.S.U. from scratch (Gethi himself confirmed this in his evidence); that when the G.S.U. was called into action on the 1st August, 1982 they did not know on which side to fight. Muriithi went on to say that they had been expecting events similar to those of 1st August.

165. The gist of Odinga's evidence was put to Gethi who denied it all.

166. Gethi's testimony about Njonjo and the events of 1st August, 1982 began when he was cross-examined by Njonjo's advocate:

"*Mr. Deverell.*—In that capacity as the Commissioner of Police, did you receive any information implicating Charles Njonjo in the attempt which took place on the 1st August, 1982, to overthrow the Government?

Mr. Gethi.—Nothing at all, Your Lordship.

Mr. Deverell.—And in that capacity did you receive any information of the implication of Mr. Charles Njonjo in any direct attempt to overthrow the Government by unlawful means in August, 1982?

Mr. Gethi.—No Sir".

167. Gethi said that on 19th August, 1982 at about 11.00 p.m. he went to G.S.U. cells where a Professor Alfred Otieno from the University of Nairobi and Odinga from the Kenya Bureau of Standards were being held. He demanded to be shown the two people since he did not know them. Gethi was accompanied by the then Commandant of G.S.U. Mbuthia. He held a very casual conversation with the two prisoners about the events of 1st August, their professions and positions in life. There being nothing much about the 1st August events except bare denials, Gethi instructed Mbuthia to make available pens and paper for the two to write out their statements should they wish to do so.

168. The following day, 20th August, 1982, he inquired from Mbuthia whether the prisoners had written anything. He was told they had written nothing significant. He further instructed Mbuthia that should they do so their statements should be handed over to Senior Assistant Commissioner of Police Sokhi who is no longer in the force, or the late Kassim Salim of Nairobi Area Special Branch.

169. Cross-examined by Counsel assisting the Inquiry, Gethi said that Odinga started writing while he was there but as he was writing very slowly Gethi instructed Odinga should be given plenty of time to finish. Asked whether he read any of Odinga's statements his answer was "Yes, they were rambling, Raila's writing was going in circles and not saying very much."

Muthoga then asked Gethi:

"Did you Mr. Gethi, in consequence of that writing going in circles and not saying very much tear it off?"

Gethi.—I cannot remember, My Lords.

Muthoga.—Did you read anything significant in the writing which was going in circles?

Gethi.—I cannot remember off-head, My Lords.

Chairman.—Pardon?

Gethi.—I cannot remember, My Lords.

Muthoga.—Perhaps Mr. Gethi, I could jog your memory a little. Did any of them write about Mr. Charles Njonjo?

Gethi.—I do not remember, My Lords.

Muthoga.—If they had written something about Mr. Charles Njonjo would it have been significant?

Gethi.—Of course, My Lords.

Muthoga.—Now can you remember tearing out statements written by those gentlemen?

Gethi.—No, My Lords."

Gethi then went on to say that on the following day Mbuthia did not give him any written statement nor did he tell him about any. Gethi said he was only interested in the connection of these two with the events of 1st August, 1982.

170. Gethi said he had his first inkling of the disturbances at 3.00 a.m. The Deputy Commissioner of Police Musau telephoned and informed him that there were some disturbances in Embakasi Area, the details of which were not clear at that time. Njonjo and Gethi were in telephone communication with each other about the disturbances around 4.00 a.m.

171. We have set out evidence of Gethi and Odinga in relation to the incident at the G.S.U. cells on the night of 19th August, 1982. Having considered Gethi's and Odinga's evidence, we have come to the conclusion that Gethi was not candid with us in respect of the events of the 19th of August, 1982. Gethi remembered everything else that happened on that night except the two most important things:

(*a*) Whether Odinga's statements made references to Njonjo; and

(*b*) Whether he tore up the statements because of the references to Njonjo.

172. We accept Odinga's evidence, supported as it is by Muriithi, that Gethi tore up his statements because they implicated Njonjo in the coup plan for 5th August, 1982. It is abundantly clear from the evidence that Njonjo and Gethi had known each other over a long period. When he was Commandant of the G.S.U. Gethi used to escort Njonjo to the airport through unconventional routes in disregard of Immigration and Security Regulations. We note that in his own evidence Njonjo made no reference to Odinga's evidence.

173. We have stated that Njonjo was implicated in the illegal importation of arms, in the build-up of the cache in the Haryanto home and, as will be shown later, also in Muthemba's attempts to acquire arms and train personnel; the only reasonable conclusion we can reach is that these activities in which Njonjo was involved, were a part of conspiracies to overthrow, by unlawful means, the Government of the Republic of Kenya during the month of August, 1982, and also the concealment thereof.

The Unlawful Activities of Andrew Mungai Muthemba, or the Concealment Thereof.

174. We propose first to deal with the allegation that Njonjo was a party to the unlawful activities of Andrew Mungai Muthemba.

175. Muthemba was the first accused in the first ever treason trial in Independent Kenya. He and a co-accused Dickson Kamau son of Georges Muiruri were charged with treason and concealment of treason respectively in High Court Criminal Case No. 25 of 1981. Both accused were acquitted at the trial. Section 40 (1) of the Penal Code enacts:

"40 (1). Any person who, owing allegiance to the Republic, in Kenya or elsewhere—

(*a*) compasses, imagines, invents, devises or intends—

(i) the death, maiming or wounding, or the imprisonment or restraint, of the President; or

(ii) the deposing by unlawful means of the President from his position as President or from the style, honour and name of Head of State and Commander-in-Chief of the Armed Forces of the Republic of Kenya; or

(iii) the overthrow by unlawful means of the Government; and

(*b*) expresses, utters or declares any such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing or by any overt act or deed,

is guilty of the offence of treason".

176. We are conscious that for the purpose of this allegation, the word "party" must conform to its ordinary dictionary meaning; i.e. either "a group of people doing something together" or "the needs and aims of such an association".

177. It is clear that as a matter of fact, Njonjo and Muthemba are geneologically very closely related. Muthemba's father and Njonjo's mother have the same father, but different mothers. This relationship cannot of itself found a conclusion that the two men would automatically be in agreement on any matter.

178. Muthemba who testified before us, is a commercial businessman and director of Kentazuga Hardware Ltd., Nairobi, and was so, at all known times relevant to this Inquiry. The matters leading up to his being tried for treason directly relate to the period when Njonjo was first Attorney-General, and then Minister for Constitutional Affairs, *inter alia,* the C.I.D. falling within his ministerial portfolio.

179. In his statements to the Police, also in his prepared written unsworn statement which he was permitted to read in his defence at the trial, and also read before us Muthemba projected himself as a voluntary investigator of likely serious offences which may affect the security and well-being of Kenya. To emphasise his partriotic zeal in that behalf, he said that he used to, and could spend vast sums of his own money without hope of financial reward. However, for the purposes of the treason trial, his acclaimed voluntary investigatory activities included arms and ammunition among other potential criminal matters.

180. A portion of the evidence in the certified court proceedings of the Preliminary Inquiry and the High Court trial (Exhibits 106 A and B), was to the effect that around the middle of January, 1981 information reached the Headquarters of the defunct Kenya Air Force at Nanyuki that a group of persons were preparing to smuggle arms from the government arms depot, Nanyuki. One Captain Ricky Waithaka Gitucha, a Captain of the Kenya Air Force at Nanyuki, started to investigate the arms smuggling information under an assumed name; and that led him to meet Andrew Mungai Muthemba and the 2nd accused Dickson Kamau s/o Georges Muiruri of the treason case. On the 4th February, 1981 Gitucha posing as a computer programmer of the Kenya Air Force Supply Depot, Nanyuki, met the two accused in the office of Muthemba in Nairobi; and in the ensuing discussion, Muthemba was alleged to have said:

> "We have formed a group that intends to return Kenya to where it was and in order to do so the big man and some of his close associates will have to go. In order to do this equipment and expertise are needed."

This formed the subject of overt act No. 4 of the treason charge which we will deal with later under the second limb of the allegation "or the concealment thereof".

181. It is convenient to here interpose a finding of fact in the judgement of the treason trial:

"Captain Gitucha obtained quotations the following day—these appear to be the cost price to Government not a payment demanded by thieves for stolen property—and submitted them to Muthemba on 6th February. This was admitted by Muthemba and Kamau who were present . . . The list comprised in the quotation was obviously prepared by Captain Gitucha and consists of items which he—not Muthemba—considered necessary for a suprise attack on the President and his close associates. Muthemba, he said, told him the numbers required. They included no less than 50 automatic rifles. No comment was made on the items in the list or the price which totalled Sh. 288,327 and Muthemba agreed to pay 50 per cent on or before delivery. Muthemba and Kamau both admitted these facts. They are the subject of overt acts 6, 7 and 8 (1st accused) . . . and I find them proved."

"These overt acts were:

(6) On the 6th February, 1981 at 4.00 p.m. or thereabouts he received quotations for the items requested in paragraph 5.

(7) On the 6th February, 1981 at the same meeting he handed to the said Captain Gitucha a further list of items that he required.

(8) On the 6th February, 1981 at the same meeting he offered to pay half of the amount of the quotation on delivery of the first consignment."

We endorse the trial court's finding of fact relating to overt acts Nos. 6, 7 and 8.

182. We heard evidence from one Peter Leyani Likimani, a Kenya Enrolled Nurse serving in the Armed Forces' Medical Corps as a corporal from March, 1978. Apart from his basic nursing assignment, he had experience in "Fire Power Demonstrations" in 1980. The witness explained that this exercise is periodically carried out by the Kenya Army at a place called Archer's Post with official weapons. He went on to say that whilst on Fire Power Demonstrations duty early 1980, he went on a few days leave and stayed with a friend, Sergeant Kokoyo, at the Armed Forces Memorial Hospital, Nairobi. While in Nairobi, he visited the Thorn Tree Restaurant of the New Stanley Hotel. There, he was joined by Muthemba and another man. After ascertaining from the witness his occupation, name and address including the fact that he was on leave from Archer's Post, Muthemba made note of these particulars in a note book and said he would try to contact him at a later date.

183. Sometime later, Muthemba telephoned Likimani at his camp at Gilgil, and requested that they meet each other where they met before at New Stanley Hotel. This was done, and Muthemba and another man then drove with the witness to a private dwelling house away from central Nairobi;

and there, Likimani told Muthemba that it was impossible to get practice ammunition for Muthemba as requested by him. Muthemba then asked Likimani to find him six to eight infantry non-commissioned officers who were good with arms, to train some men in the use of arms: and that each non-commissioned officer would be paid about Sh. 50,000.

184. Likimani told Muthemba that he would try to get the non-commissioned officers as requested and Muthemba gave him Sh. 6,000 there and then, and soon after, together with Muthemba's companion, Likimani was brought back to Nairobi where Muthemba bought food for the three of them at the Inter-Continental Hotel after which Muthemba's companion drove Likimani to the Armed Forces Memorial Hospital. Before they parted, Likimani told Muthemba that the matter he requested him to handle was "Serious and dangerous to a State like this" (Kenya). Likimani returned to his camp at Gilgil the next day. Shortly thereafter he was sent off with B-Company on duty at Wajir, North-Eastern Province as Base, but he himself was stationed at Takaba about 300 kilometres away; he worked there from about July, 1980 to end of March, 1981.

185. One day in March, 1981 he went to Wajir to collect medical supplies and got into conversation with one Josphat Ngaku a radio signaller. As a result, the two men went to the Officers' Mess to find newspapers; and Likimani there saw in a newspaper a headline that Muthemba was to be tried for treason. The witness said that from that moment he continuously feared that he would be apprehended; and in February, 1982 he defected to Malawi where he was in fact immediately apprehended and detained until December, 1983 when he was brought back to Kenya.

186. In his cross-examination of Muthemba, Counsel assisting the Inquiry put to Muthemba each of the purported facts as related by Likimani, touching Muthemba's meetings with Likimani and Muthemba's requests for supply of ammunition and instructors in the use of arms. Muthemba flatly denied knowing or even having ever met Likimani.

187. It is appropriate to note at this juncture, that tendered in evidence at Muthemba's trial and before us as exhibit 180 (*a*), there is the official copy of the report of Captain Gitucha to Intelligence Officer, Kenya Air Force Headquarters dated 6th February, 1981. This report, *inter alia,* states:

> "A confidential report has been submitted to S.I.O. V.I.C. They are planning for a group of about fifty (50). They told me their training is in Ndeiya forest but they need some experts. They also indicate that they have already produced a small consignment which is around Nanyuki and they would like me to help them transport it to Nairobi".

188. Njonjo's advocate cross-examined Likimani at length and in most searching manner. We were satisfied that Likimani's evidence was left completely undisturbed; and believing him on the basis of demeanour, clarity

and absence of evasion, we accept the facts related in his testimony, and conclude that it was established that Muthemba in fact engaged himself in the unlawful activity related by Likimani.

189. There was another item of Muthemba's acclaimed voluntary investigations which was definitely an unlawful activity in itself. Put briefly Muthemba after a series of evasive answers finally agreed under cross-examination, that one Abdul Karim Bhatt who was one of Muthemba's company debtors to the amount of KSh. 140,000 gave him a London, U.K. bank cheque to the amount of more that KSh. 500,000 in sterling. Muthemba said that as he happened to have been travelling to London around the time Bhatt gave him the cheque, he took it to London and presented it "to see if it was genuine, as Bhatt wanted me to believe him and to deduct my money from there; and I would have returned the rest to him in Kenya; however, I was not going to be paid, I was going to check whether the cheque was okay there because I happened to be going there. The cheque was not genuine so I was not paid and even if the cheque was genuine I would have presented it here. I cannot remember the year it could have been 1979, 1980, 1981 or 1982; I cannot remember whether it was a cash cheque or in my company's name. It could have been either myself or the company or even cash; one of those three. The person across the counter did not give a note of the information that the cheque was not genuine. He did not write on the cheque that it was not genuine. I took the cheque to Central Bank (Kenya) and just told them the cheque was not genuine and they accepted that. That was Mr. Shapi".

190. We have been at pains to reproduce the portion of Muthemba's evidence immediately above to illustrate the deceptive nature of the evidence he gave before us. What is more, it is on this very question of so-called voluntary investigations that Njonjo said at the Muthemba trial (Exhibit 106):

"I met 1st accused in my office as Attorney-General in March last year. It was 31st March, 1980. When he came also present was James Karugu, the Deputy Public Prosecutor. When he came he told me there was smuggling of foreign currency. I telephoned Shapi at Central Bank in their presence. Shapi is officer in charge of Exchange Control Investigation Branch. I asked Shapi to inquire into the matter. I asked 1st accused to pass on any information to Shapi. 1st accused and Shapi then left my office—1st accused did not discuss any other matter again. He did not visit me again in that office. He never visited me in my new office as Minister. He did not visit me at my residence. He never discussed the question of smuggling arms and ammunition from K.A.F., Army or Police. Never discussed arms smuggling. I never authorized him to carry out investigations in that regard. I did not authorize investigation into any other matter. Had he brought any matter to do with Exchange Control I would have telephoned Shapi—if other criminal matters I would have referred to C.I.D. He was not my informer".

191. Compared with Njonjo's above version that Muthemba never discussed with him the smuggling of arms, Muthemba's several versions on the same matter are most interesting. They range from in effect calling Njonjo a total liar, in another breath coinciding with or adopting the Njonjo version in whole or in part, and finally leaving a formidable challenge to common sense and the resulting reasoning as to the real meaning of their evidence.

192. We reproduce *indicia* of this from Muthemba's documentary and *viva voce* evidence before us:

"Yes, I remember a bit of it, My Lords. I did request them (Muiruri and Cpl. Shimba) to get me some arms and ammunition which I would buy and they never brought anything.

"I cannot remember the person who requested me to acquire the arms. It was my own initiative.

"I did not think it was a risk. It did not occur to me.

"It was a secret and, therefore, you did not worry about your safety. Is that what you mean?"—answer—"That is correct." "Well, the protection was the secret, because I had found some people through some connections.

"Suppose having obtained the arms, you wanted to inform the police or Mr. Njonjo, where is the secret?"—answer—"There could be no secret again."

"I picked on him (Njonjo) just like that. I could not pick on everybody because these are too many people; but I just picked on one. And even with the police, I could have picked only a few of them, not everybody.

"I thought it was all right; he (Njonjo) was the right person to tell about it.

"Were you in the habit of informing Mr. Njonjo on these matters?"—answer—"I had only seen him once in connection with another matter."

"But you covered yourself first with your own secret and protection as an informer,"—answer—"Yes, the secret was there."

"If you look at it there was an offence. "I could have taken them (the arms) to the police or Mr. Njonjo whichever was convenient.

"We had never discussed them (arms). I had faith. I trusted that he (Njonjo) would accept and believe me.

"In the course of some of our discussion, we have touched many subjects and in fact he told me if I find any true information regarding the whole country I should beyond reasonable doubt establish the truth. Then

I take the whole thing to either him, Mr. Shapi, Mr. Gethi or Mr. Nderi it would be very important and most helpful for the sake of security and well-being of the country in general.

"I saw Mr. Njonjo sometimes last year while he was the Attorney-General. It could have been between April, and July, I cannot know how many times I have been seeing him especially last year. This year I have seen him about four times or more. I cannot remember the dates. I have no particular dates when I have mentioned about the arms and ammunition since I quite often meet Mr. Nderi, Mr. Njonjo and Mr. Gethi.

"Whenever I see especially Mr. Njonjo, I always inform him that I am trying hard to establish evidence of firstly foreign exchange loss loophole and any other matter of security I may overhear or come across, of sabotage or wrecking of Government or arms business.

"I have been an informant of Mr. Charles Njonjo (the Minister for Constitutional and Home Affairs) and who is my first cousin.

"Mr. Njonjo has been particular on receiving information which has been verified, hence the reason why I have been obtaining documents illegally to confirm my information. Once I confirm my information on a particular issue, I then report back to Mr. Njonjo.

"I have reasonable access to Mr. Njonjo and I have had frequent contact with him, both in his office and at his residence.

"On receipt of those goods (the arms) I would have delivered them to Mr. Njonjo but in his absence, I would have taken them to Mr. Nderi, the Director of C.I.D."

193. It can readily be seen, that Njonjo and Muthemba are at one, only in relation to the exchange control "investigation" incident with the report first to Njonjo, followed by directions by Njonjo to Shapi to investigate. In relation to the wider field of the so-called private investigations by Muthemba, the arms affair having come to light, Njonjo has sought to deny his involvement. However, from Muthemba's above evidence, Njonjo's denial has to be untrue. In his evidence before the High Court, Njonjo claimed that there was only the solitary Exchange Control approach to him by Muthemba. He also disowned any cordial relationship with Muthemba as well as his visits to Njonjo's office and residence. However, Muthemba's evidence is more revealing. Notwithstanding that Njonjo had overall authority over the Criminal Investigation Department and also had other investigation agencies of the country at his disposal, he did not officially appoint Muthemba to supplement the existing official investigation agencies. Instead he was clandestinely a party to Muthemba's proven attempt to smuggle arms from Government custody. We paid very close attention to Muthemba as he testified. We found him one of the most intelligent and lucid witnesses. We find that he took care to protect himself and his cousin Njonjo whenever occasion demanded.

194. We have carefully considered the evidence. We find that Njonjo was a party to Muthemba's unlawful activities.

Concealment

195. We now examine evidence in relation to the allegation "or the concealment thereof".

196. Section 42 of the Penal Code, provides:

"42. Any person who—

(*a*) becomes an accessory after the fact to treason; or

(*b*) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the Attorney-General, administrative officer, magistrate, or officer in charge of a police station, or use other reasonable endeavours to prevent the commission of the offence,

is guilty of the felony termed misprision of treason and is liable to imprisonment for life."

197. At the time of the investigations leading up to the trial of Muthemba and Muiruri in the High Court (Criminal Case No. 25 of 1981), James Boro Karugu was Attorney-General, having succeeded Njonjo in office, and Sharad Sadashiv Rao the Deputy Public Prosecutor. Karugu and Rao were serving under Njonjo as Attorney-General up till his retirement from that post in April, 1980 and his appointment thereafter as Minister for Constitutional Affairs as from the 24th June, 1980. Karugu joined the service in 1964 as Crown Counsel, later designated "State Counsel". He, thereafter, rose up through the grades of Senior State Counsel, Deputy Public Prosecutor and finally Attorney-General in which latter capacity he served until early June, 1981. Rao joined the service in 1970 as Senior State Counsel. While Njonjo was still the Attorney-General, a new post was created for him as Assistant Deputy Public Prosecutor and he was appointed to that post in July, 1971. When Karugu was appointed Attorney-General, Rao was appointed Deputy Public Prosecutor in June, 1980 which position he held until September, 1983.

198. With respect to the Case No. 25 of 1981, it was first taken to court before a Magistrate for Preliminary Inquiry on the 5th March, 1981. Rao said in evidence that he "formally appeared in court" on the 19th March, 1981 as he was instructed by Karugu to take over the prosecution a day or so before, from Kihara Muttu, Senior State Counsel, and to charge Muthemba with treason, and that at that time, the two accused had already appeared in court on a lesser charge under section 391 of the Penal Code. The relevant portion of the section provides:

"391. Any person who solicits or incites or attempts to procure another to do any act or make any omission, whether in Kenya or elsewhere, of such a nature that, if the act were done or the omission were

made, an offence would thereby be committed, under the laws of Kenya or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Kenya."

199. Rao said that as he took over the prosecution from Muttu, he studied the file, and had serious doubt that the charge of treason could be sustained; that he communicated the matter of his doubt to Karugu, who insisted that he (Rao) should proceed with the treason charge; and that he did so despite his personal doubt, as Karugu was the Attorney-General and himself as Deputy Public Prosecutor, he had to carry out Karugu's instructions.

200. Rao said that, throughout the prosecution up to his summing-up the case, he continued to have serious doubt as it was a weak case; and that at the end, Karugu told him that he "had done a good job on it". Karugu's version of the matter was entirely different. He said that on the first day the man was taken to court, Rao took the file to him at about 5.00 p.m. and told him that although the accused person had already been taken to court on a charge under section 391, he was of the view that the matter was of a more serious nature; and that he (Karugu) had better take over. Karugu said that he took the file home that evening and studied it, took it back to the office and handed it over to Rao with instructions to do a summary of the evidence and settle the charge. That done, the two men discussed the matter and Rao expressed the view that there was a strong *prima facie* case of treason subject to "plugging certain holes and tying loose ends and binding"; and Karugu therefore authorized the prosecution for treason against Muthemba and misprision of treason against Muiruri. Karugu said that he called for the file again and handed it over to Muttu for the purpose of conducting the Preliminary Inquiry, with a view to having Rao, Muttu and other officers as Rao may require for the High Court trial. We accept Karugu's testimony that at no time throughout the prosecution did Rao say to him that the case was weak or that he was having any difficulty; but that on the day the trial judge summed up the case to the assessors Rao said to him—"The summing-up was dead against us".

201. Although Rao tried to be evasive as to the exact date upon which he took control of the prosecution of the case, it is clear that with the case file in his possession and the Magistrate's Preliminary Inquiry not yet commenced, Rao noted that in Muthemba's statements to Special Branch, reference was made to Njonjo to the effect that what Muthemba had allegedly done was done upon Njonjo's authority. He said that he therefore telephoned Njonjo about it, and actually sent Assistant Commissioner of Police Khan to Njonjo on the matter; and that he (Rao) expected that A.C.P. Khan would have recorded a statement from Njonjo; but that Khan returned

without a statement saying that Njonjo said, that he (Njonjo) would come and give evidence in court. Rao said that he did not ask Khan for an explanation as to why he did not obtain a statement from Njonjo; the explanation, Rao said, "was that Njonjo told him (Khan) he was willing to come and confirm what he had told him, in court". Pressed to explain whether Khan's verbal report of what Njonjo had said was satisfactory, Rao made these answers:

> "I do not think we (Khan and I) discussed whether, in addition to offering to give evidence in court, Njonjo was willing or not willing to make a statement to pre-empt, as it were, possible defence to what Muthemba could have raised . . . strange or not, but I am just relating what happened . . . A Police Officer ought to have taken a statement, or perhaps make notes of what happened; I think so, especially a Senior Police Officer of the rank of Assistant Commissioner of Police . . . Yes, at that time we were at the stage of Preliminary Inquiry, where the court at first instance, had still to decide whether Muthemba ought to be committed for trial . . . "I did tell Mr. Karugu that Njonjo had not made a statement; but that he had denied the allegations that Muthemba had made in his statement. Mr. Karugu expressed no opinion on the matter . . . There was definitely a flaw in not taking a statement from Mr. Njonjo; I considered it".

202. It is clear to us that Njonjo refused to record a statement to A.C.P. Khan. Rao condoned Njonjo's refusal. We pointed out to Rao that if for any reason Njonjo was unable to testify at the trial and he not having recorded a statement that would stand in the way of the prosecution.

203. Whether as Attorney-General or Minister for Constitutional Affairs, Njonjo cannot be heard to say that he did not recognise his duty to the State to record a statement concerning the serious allegation made by Muthemba. Rao conceded in his evidence:

> "We should have taken a statement right from the beginning, before a decision was taken whether to prosecute Muthemba on treason or not . . . I did substitute the charge to treason before I obtained or procured a statement from Njonjo".

There was of course no recorded statement "obtained or procured". It is clear that Rao substituted the treason charge conscious though he was, as he himself said, that, he had serious doubts that the substituted charge would succeed.

204. We find that Njonjo full well knowing the prosecution preparation procedure, deliberately refused to record a statement. We are fortified in this finding because when asked if "there were any logistic difficulties about recording a statement from Mr. Njonjo", Rao stated irrelevantly: "The logistic difficulties were that there were serious differences between Mr. Karugu and Mr. Njonjo at the time". When asked, he replied he did not know what the differences were.

205. We observe that the learned trial judge remarked in his judgement of the treason trial that no attempt was made to get any statement from Njonjo before the Preliminary Inquiry started.

206. We now advert to overt act No. 4:

"4. *Andrew Mungai Muthemba.*—On 4th February, 1981 at 11.20 a.m. or thereabouts uttered to one Captain Ricky Waithaka Gitucha words to the effect that they had formed a group intending to return Kenya to where it was before and in order to do that the big man and a few of his close associates will have to go."

207. Under cross-examination, Rao attempted to disown responsibility for going to court to prosecute the treason charge; he however admitted that he personally gave consideration to the flaws in the prosecution before a decision had been taken to prefer that charge. He said, a decision had been taken to prefer that charge. He said, that he gave consideration to the provisions of Section 45 of the Penal Code; and went on to say —"It was after I had given consideration to that particular section, that I decided on the overt acts which we set out to prove. I only set out those that I thought I could prove". This is in agreement with what Karugu said in relation to Rao's settling the charge.

208. The following is an extract from the judgement of the trial court:

"On 19th February, acting on instructions, Gitucha reported to Supt. Mimano of Special Branch (Nairobi Area). Mimano fitted him with a transmitter. Gitucha then went to Muthemba's office where a discussion took place. Gitucha asked Muthemba to list his priority items."

209. On that day Mimano positioned himself outside Muthemba's office and recorded the discussion between Muthemba and Gitucha. A tape and the transcript thereof were prepared by Mimano; both were tendered and admitted in evidence through Rao, both at the Preliminary Inquiry and the trial. However, in relation to the pursuits of the evidentiary purpose of this exercise, there was a surprising departure from the accepted procedure; and this had to result in the destruction of the prosecution for treason, because the tape was not played to the hearing of the trial court. Rao said:

"Ordinarily, the tape recording would have been a very useful piece of evidence; in my view it was completely unsatisfactory. I did listen to the tape recording with great interest. It must have been before the Preliminary Inquiry because I have seen in the record that I did say at the Preliminary Inquiry that it was not audible. In my view it was entirely inaudible. It was not played in court, but I offered it in evidence and it was accepted because there was no objection from the defence. In fact, I did not want to put it in at all. I asked the defence; Mr. Georgiadis wanted the tape in. We put the tape in and we had the transcript of it which was going in with the consent of both parties. It was inaudible. It could not be heard."

210. Rao, asked by us why, having produced the tape at the trial, he did not have it played in court, replied:

"It was open to the Judge. If the Judge wanted to hear it, it was there. I did not as prosecutor, suggest to the trial judge and the court that the cassette or tape be played. It is correct to say that in our jurisdiction, the judge occupies the position of judge and jury."

211. Quite appropriately Counsel assisting the Inquiry brought the tape into evidence. The tape was played to the hearing of the Inquiry assembly, and an interpreter related the English version of what he heard. True it is that the clarity of the recording of the conversation was impaired by extraneous noises. The interpreter translated into English "this man must move". The transcript which was in evidence at the trial and commented upon by the trial judge included the phrase "But the important thing is to get rid of this man". The tape when played before us was not inaudible as Rao claimed. We reproduce specifically relevant Commonwealth Criminal guide, on the question of "Tape recordings and transcripts", from Archibold Criminal Pleadings, Evidence and Practice, (40th Edition):

"518(2) *Tape recordings and transcripts.* Having a transcript of a tape recording is an obvious convenience and a great aid to the jury. *Provided that a jury is guided by what they hear themselves and on that they base their ultimate decision* there is no objection to a copy of a transcript properly proved, being put to them."

We need hardly point out, that on the above authoritative practice guide, the playing of the tape for the hearing by the court takes precedence over the transcript. Rao full well knowing this practice guide, he did not adopt it.

212. The transcript clearly indicates that it was Muthemba who wrote the list of the priority items of arms and ammunition he required. The learned trial judge opined that:

"As indicated in his statements, Muthemba by this time suspected that Gitucha was an agent provocateur. Nevertheless he wrote (exhibit 7)—

100 G/R
4 Patchetts
10 Smoking (which he deleted)
15 Rifles
1,000
1,400 Ammunition.

The handing over of a list of priority items is overt act 14. Although done at the request of the agent provocateur it was I think proved."

213. Muthemba having written the priority arms list, at the Inquiry it was suggested to him that in our view it was an operational list, comprising select arms and ammunition required for the execution of a massive assault.

We note that at the same time as Muthemba was carrying out his so-called test of security of government arms plus request for arms instructors with mention of training ground, there was also the Haryantos' illegally existing arms and ammunition depot, which was being augmented by Kent Crane coming with arms from South Africa in the guise of "food for Njonjo". Common sense dictates that Muthemba could not have written the priority arms list merely to prove that smuggling of arms from the Kenya Air Force, Nanyuki Depot was taking place or was possible. It was part of an overall plan in which Njonjo was involved.

214. We note that in testing the value of Gitucha's evidence, the learned trial judge correctly observed: "He made written reports to his superior officers he said, but declined to produce them. They were apparently classified material". Rao told the Inquiry that in his assessment of the evidence as a whole at the outset, he was conscious of the importance of Gitucha's evidence. Gitucha's report dated 5th February 1981 (Exhibit 180 (*a*)) was available in Rao's prosecution file to corroborate Gitucha's evidence. Rao deliberately did not produce it. He told us that seeing it in the file before us he would not have produced it in any event. Although he had the report in his file he misled the trial judge into believing that Gitucha's aforesaid report did not in fact exist.

215. Rao was in communication with Njonjo both before and during the Preliminary Inquiry and trial in the High Court. He told us that he was in sympathy with Njonjo's view which "all the time" was that there was no justification for Muthemba's prosecution on the treason charge, and it was ill-motivated to smear Njonjo's political career. The corroboration of Gitucha's evidence was an elementary requirement. It cannot be that Rao overlooked or was ignorant of it. We draw the compelling inference that Rao deliberately withheld Gitucha's report in order to prevent Muthemba's illegal activities in regard to arms being proved which in turn would establish Njonjo's connection therewith.

216. Finally, we cannot reasonably escape the conclusion that Njonjo was a party to the concealment of Muthemba's unlawful activities. We find this allegation also established.

Allegation that Njonjo was a party to the convening of the purported Rungiri Presbyterian Church of East Africa prayer meeting on 12th June, 1983 and/ or its concersion into an irregular political gathering with the intention of undermining the position and image of the President and the political leadership in the country.

217. As regards the above allegation, Counsel assisting the Inquiry said that they did not come across evidence which would take this area any further than it was when this matter was debated in Parliament on 15th June, 1983.

218. We therefore make no finding regarding this allegation, or any implication arising therefrom, relating to the Rungiri Church of East Africa prayer meeting held on 12th June, 1983.

PART IV

TERM OF REFERENCE (b)

219. The allegations made in the Term of Reference (*b*) which we have previously set out in full in the Introduction may be split into the following components, namely that Charles Mugane Njonjo—

(i) acted against Kenya's national interest and policy of maintaining good neighbourliness;

(ii) acted against Kenya's national interest and policy of opposing the inhuman regime of South Africa, including among others;

(iii) allegation that he was a party to a conspiracy or conspiracies to overthrow, by unlawful means, the brotherly government of the Republic of Seychelles as by law established, during the month of November, 1981, especially when His Excellency the President of Kenya was Chairman of the Organization of African Unity.

Kenya's National Interest and Policy of Maintaining Good Neighbourliness.

220. The evidence concerning this allegation, came from Dr. Robert John Ouko. Dr. Ouko was Kenya's Minister for Foreign Affairs from 1979 to 1983. Prior to that he had served as Kenya's Minister in the East African Community for eight years. When the Community broke up, he was appointed Minister for Economic Planning and Community Affairs in the Government of Kenya.

221. Dr. Ouko told us in evidence that in 1976 a high powered delegation was led by His Excellency the Vice-President Mr. Mwai Kibaki then Minister for Finance, to a meeting at Arusha, Tanzania, in connection with Kenya Government policy of maintaining and strengthening the Community. The delegation also included Dr. Ouko, Mr. Isaac Omolo-Okero then Minister for Power and Communications and Njonjo then Attorney-General of Kenya. During a coffee break Dr. Ouko and Njonjo had a discussion as follows:

"Dr. Ouko: Mr. Njonjo asked me "Why are you fighting so hard to maintain this thing?" I then asked him, "Which thing?" To that he replied, "This East African Community of yours." He went on to say, "You are an able man with long experience. You will be able to get a big job in Kenya. Why are you bothering with this thing?" I replied, "It is not a job for me which is at stake, it is the unity of East Africa which we are fighting for. It is the joint effort of the East African countries to develop economically and socially that is the important issue and not the welfare of one individual like me." Njonjo replied: "Forget it, it will break up".

222. The Community unfortunately did break up. Njonjo followed up the matter in a debate in Parliament on 5th July, 1977 as recorded in the Hansard of the day (Exhibit 95). Njonjo told the National Assembly of Kenya that he did not like the East African Community and that when the Community collapsed he drank five champaignes to celebrate its death.

223. Njonjo's advocate tried to exonerate him by suggesting to Dr. Ouko that it was a mere chat during a coffee break between two Ministers at a personal level within the permitted "immediate Government circles". Dr. Ouko did not agree.

224. As Njonjo was also a Member of Cabinet by virtue of his position as Attorney-General, Dr. Ouko referred us to the principle of collective responsibility which every Minister is enjoined to observe, and to which every Minister's attention is drawn in the Ministerial Letter of Appointment of which Njonjo must have been aware, and as stated in sections 17 (2) and 17 (3) of the Constitution reading as follows:

> "As you know, this principle of collective responsibility means that you share with your Cabinet Colleagues responsibility for the policy and administration of the Government, and you are not, therefore, at liberty to criticise or differ from the Government outside immediate Government circles . . . Outside Government circles you must at all times support the policies of the Government both in public and in private." If one is not willing to do this then he "must resign".

225. We are satisfied that Dr. Ouko told us nothing but the truth in regard to the conversation with Njonjo at Arusha; it is also confirmed by Njonjo's remarks in Parliament which appeared in the Hansard Report produced before us by Dr. Ouko.

226. Accordingly, we find and conclude that Njonjo acted against Kenya's national interest and policy of maintaining good neighbourliness by openly declaring his hostility, both at Arusha and thereafter in Parliament, and by celebrating the break up of the East African Community which comprised Kenya, Uganda and Tanzania.

Kenya's National Interest and Policy of Opposing the Inhuman Regime of South Africa.

227. The evidence concerning this allegation came from Dr. Ouko, Mutua the then Principal Immigration Officer, Njonjo's former Personal Secretary Penny Hill and Karugu former Attorney-General.

228. Dr. Ouko further told us that Kenya's Foreign Policy is based on the following principles:

(1) Peace for all mankind;

(2) Non-alignment in relation to international affairs;

(3) Promotion of good neighbourliness;

(4) Adherence to the Principles and Charter of the United Nations and the Organization of African Unity;
(5) Non interference in the internal affairs of other countries;
(6) Respect for territorial integrity of each nation;
(7) Respect for human dignity;
(8) Support for liberation of Africa.

229. Kenya Government's stand in respect of the obnoxious policy of apartheid in South Africa was and still is clear. It was part of Dr. Ouko's duty as Foreign Minister to articulate it from time to time.

230. On 6th June, 1980 he addressed the International Press at the Intercontinental Hotel, Nairobi when he referred to Kenya's policy regarding South Africa and its practice of apartheid. Dr. Ouko said, *inter alia*:

"The South African Government continues to practice the obnoxious policy of apartheid in defiance of repeated calls by the world community for its abolition . . . . In South Africa to this day people are given labels. In South Africa, people like cattle on a show ground are labelled White, Indians, Coloured and Blacks. There is even a category of people referred to officially as "Temporary White". The wholesomeness of human dignity is thus violated by these superficial classfications."

231. Dr. Ouko delivered his speech on a Saturday 5th June, 1980. Next day Njonjo telephoned him at his house and the following conversation ensued:

"Dr. Ouko: I answered the telephone and asked who was calling. He said he was Charles Njonjo; and he asked me "Why did you blast South Africa?" I told him that I was the Minister for Foreign Affairs in Kenya and that it was my duty to explain Kenya's foreign policy to the rest of the world. I further said that as Foreign Minister I was the official spokesman of Kenya Government on those matters and what I said on South Africa correctly reflected the Kenya Government's policy on South Africa and that even H.E. the President had said this about South Africa." Then Mr. Njonjo told me and I want to quote the exact words as I can remember them. He said "Well let him do it, but not you." In response I said, "You must be joking. I have not said all that there is to say and I will continue in that vein." Njonjo replied: "You have been warned and you had better heed my warning."

232. At this time Njonjo was out of the Government and also not a Member of Parliament. He was nevertheless impudently trying to reprimand a Senior Cabinet Minister for doing his duty by articulating Kenya's foreign policy in respect of South Africa.

233. Both as Attorney-General and Minister for Constitutional Affairs, Njonjo was busy authorizing the entry of numerous nationals and residents of South Africa into Kenya contrary to Government policy. He continued

to do so even when he was neither Attorney-General nor Minister, for on 16th May, 1980, Penny Hill using Attorney-General's letterhead wrote "in the usual way" (Exhibit 55 folio 14) requesting Mutua to issue a visa to John Lockley which she said had been authorized by Njonjo.

234. From the evidence the practice was that notwithstanding that Mutua was the Principal Immigration Officer, Penny Hill would write to him that Njonjo had decided that visas be issued to named South African nationals and residents. In three cases Njonjo himself wrote the letters. Mutua issued the visas as instructed even though no reason was given for entry into Kenya and both Njonjo and Mutua knew that the proper procedure, as laid down in the Kenya Visa Regulations, was not being followed or security vetting being carried out. Thirty-four such letters were produced before us against which thirty-eight visas were issued between the dates 10th January, 1979 and 23rd August, 1982. Among those who entered Kenya in this fashion were John Lockley, a member of the South African Police Force, and Lt. Col. F. A. J. Van Zijl, a member of the South African Armed Forces. John Lockley had been in Kenya a few months previously under the pretext of looking at our police dogs. Njonjo also authorized visas to be issued indiscriminately, for example, to a couple named Randell, because they were friends of Lockley. We would repeat that Njonjo ordered visas to be issued to Lockley and Van Zijl knowing that they were members of the South African Police and Armed Forces respectively in total disregard of Kenya's policy and security.

235. The Commonwealth Law Ministers Conference was scheduled to be held in Barbados in April, 1980. Kenya's delegation to it consisted of Njonjo as the Attorney-General, Karugu the then Deputy Public Prosecutor and Coward the Registrar-General. Njonjo made the travel arrangements which included a stop-over for two days in South Africa as guests of a man called Ray . . . a member of the Ministry of South African Foreign Affairs. Njonjo resigned as Attorney-General before the trip could materialize. Karugu who succeeded him changed the itinerary to go to Barbados via London. Karugu said:

> "I had just been appointed Attorney-General, and the idea of my being seen hob-nobbing with a South African Government official made me a little nervous and I did not want to start unnecessary problems for myself in the light of our declared policy in relation and with regard to our connection with South Africa."

Karugu also said Njonjo felt very angry and hurt. Njonjo was not averse to having personal contact with South Africans. He entertained Ray and his wife to luncheon in New Stanley Hotel, Nairobi at which Karugu and Coward were also present.

236. Njonjo acted in the manner aforesaid and actively collaborated with South Africans in total disregard of Kenya's national interest and policy

at a time, in 1980, when the country was preparing to host a meeting of the African Heads of State with a view to His Excellency the President taking over the Chairmanship of the Organization of African Unity.

237. We find this allegation firmly established.

Allegation that Charles Mugane Njonjo was a party to a conspiracy or conspiracies to overthrow, by unlawful means, the brotherly government of the Republic of Seychelles as by law established during the month of November, 1981, especially when His Excellency the President of Kenya was Chairman of the Organization of African Unity.

238. The above allegation contains the following matters of fact, i.e. (1) that at the time relevant to the said allegation, the President of Kenya was Chairman of the Organization of African Unity, (2) that on 25th November, 1981 there was an attempted coup d'etat to overthrow the Government of the Republic of Seychelles, a member State of the Organization of African Unity; (3) that Njonjo and Gethi were accused by the Government of the Seychelles as having been involved in the attempted coup d'etat.

239. The evidence shows that a "cabinet in exile" was to be airlifted from Kenya to the Seychelles had the coup succeeded.

240. The attempted coup was repulsed, and forty-four of the mercenaries who were engaged in the attempt, escaped to South Africa but five of them were captured. Among those who escaped was their leader, one Col. Hoare alias "Mad Mike" an Irishman living in South Africa and who appeared to have master-minded the operation. One of the mercenaries named Dolinschek was arrested and subsequently stood trial for treason in the Seychelles Supreme Court.

241. The evidence relating to the allegation centred around the testimony of (1) William Henry Boyd Parkinson an Irishman resident in Kenya and former member of the Special Branch of Kenya with admitted South African connections and (2) Captain David John Gilchrist Leonard.

242. Parkinson testified that his participation in the coup arrangements to supply an aircraft capable of flying direct to the Seychelles was a result of a request made to him by the late D. J. Irwin, Deputy Director of C.I.D., who assured him that the exercise had been referred to and approved by "a much higher authority", and that Irwin enjoined him to utmost secrecy. Parkinson also said that at their second meeting Irwin told him that the flight would carry "the cabinet in exile" direct to the Seychelles from Nairobi.

243. As a result of further discussion with the late Irwin and Assistant Commissioner of Police Gontier, Parkinson said he "agreed" to reserve an aircraft "November 821 Charlie Alpha" for the flight to the Seychelles during

the latter part of November, 1981. Parkinson supplied to the managers of the aircraft Sunbird Aviation Limited five names of fictitious American tourists, namely, Mr. and Mrs. Morgan, Mr. and Mrs. Bowman and Mr. Nescott. Sunbird Aviation applied to the Civil Aviation Board for Clearance of the flight for the 24th November, 1981, and this was granted.

244. Parkinson engaged Captain Schraft, a Newzealander, to be the pilot and Captain Leonard, also a pilot, as the navigator of the flight. The flight did not take place because the coup did not succeed.

245. Leonard said that on being engaged by Parkinson for the flight to Seychelles, "Given the nature of the commission, I asked if this exercise was with the approval and knowledge of the Kenya, and, I believe I said, British Governments. Parkinson said it had the full support of the Kenya Government at a high level. At this juncture he said: 'My previous employer' and this was taken by me at the time to mean Mr. Charles Njonjo".

246. When cross-examined as to the term "previous employer", Leonard said: "I have no doubt who the person referred to was, when Parkinson used the phrase singularly "your previous employer". I understand the phrase to refer to the Hon. Charles Njonjo. The phrase was used in the context of reassuring myself, in an answer to a question by me, as to the level of clearance of the project. I did take it to mean my previous employer".

247. Njonjo, then Cabinet Minister, was Leonard's previous employer as shareholder and director of Boskovic Air Charters Limited for which Leonard had previously worked.

248. Parkinson was an acrobatic liar. He shamelessly admitted having lied freely. He said he felt obliged to do so because Irwin had enjoined him to secrecy. Parkinson consistently made false statements to the authorities. He asked Capt. Schraft to alter his original statement. He requested Capt. Leonard to deviate from the truth but Leonard refused. We do not accept that Parkinson and the others locally involved would have acted in the way they did without knowing the identity of the "higher authority" to ensure immunity for themselves. The evidence of Parkinson and Leonard clearly establishes that Njonjo was the higher authority referred to. Both Irwin and Gontier were working in the C.I.D. which was under Njonjo at the time.

249. Njonjo made no reference to the evidence of Parkinson and Leonard.

250. We find as a matter of fact that there were in Kenya persons involved in the attempted overthrow of the Government of the Seychelles. These persons included Njonjo and Parkinson.

251. We find this allegation established.

PART V

TERM OF REFERENCE (c)

252. The allegations made in the Term of Reference (*c*) which we have previously set out in full in the Introduction may be split into the following components, namely that Charles Mugane Njonjo misused his office as Attorney-General and/or as Minister in that:

(i) he arrogated to himself the duties and powers of the President;

(ii) he solicited or received or attempted to receive or offered or made or attempted to make corrupt payments;

(iii) he granted favours or acted to the prejudice of individuals, to seek political support, to undermine the process of democracy and to protect persons involved in illegal activities.

Arrogation of Powers

253. No evidence was adduced before us in support of this allegation.

Corrupt Payments

254. Ng'ang'a was M.P. for Kikuyu Constituency, also Assistant Minister, having been elected in the 1979 General Elections. According to Njonjo his friend Stanley Githunguri first approached him during late March, 1980 and asked him to resign and join politics. He said he was invited by some friends on 10th April, 1980 "that I should retire from the Civil Service and go into politics". On the other hand Maitha told us Njonjo's recruiting agent Hemed informed Maitha in 1979 that arrangements had been made for a constituency seat for Njonjo in Nairobi, and Njonjo was going to be the President of Kenya.

255. Githunguri arranged a meeting between Ng'ang'a and Njonjo, and these two in fact met together with Githunguri, Kariuki Kimani and James Karugu in Njonjo's Law Office in Sheria House. This meeting resulted in the proposal for Ng'ang'a to resign his seat. There was then a second meeting between Njonjo, Ng'ang'a and Karugu. At this meeting Karugu suggested that Ng'ang'a be compensated in the sum of KSh. 40,000 the legally allowed amount for election expenses; he also suggested that KSh. 200,000 would be good compensation. Ng'ang'a left, wrote his letters of resignation which he delivered to the then Chief Secretary Mr. Kiereini. Ng'ang'a said Kiereini told him "Will you see Mr. Njonjo and tell him that you have put in your resignation". Ng'ang'a went to Njonjo's office the same day and informed him accordingly whereupon Njonjo gave him money without mentioning the amount. Njonjo said that some friends of his, whose names he did not disclose, wanted to assist him as he was no longer in employment. Njonjo said that Karugu contributed KSh. 10,000 and also Njonjo himself an unspecified sum. Njonjo later agreed that the money handed over to Ng'ang'a could have been the sum of KSh. 160,000.

256. When examined Njonjo initially denied emphatically that there was any arrangement to pay any money, or that any money was in fact paid to Ng'ang'a at all for any consideration. We quote his evidence on the point on 2nd August, 1984:

"*Muthoga.*—In consideration of resigning his seat was he to be paid anything?

Njonjo.—My Lords—

Chairman.—Yes. Was he?

Njonjo.—No.

Muthoga.—He was not to be paid anything?

Njonjo.—He was not, My Lords.

Muthoga.—Was he paid?

Njonjo.—He was not paid, My Lords.

Chairman.—Yes, he has said that three times.

Njonjo.—Three times I have said it and I will say it the fourth time.

Muthoga.—He was not paid any money?

Njonjo.—My Lords, Mr. Ng'ang'a was never paid any money in consideration, as it is being suggested by your leading counsel, to resign his seat. No money at all. If your leading Counsel has any evidence at all I will be most delighted if it is produced before this Commission. It is an outrageous suggestion.

Muthoga.—Was he paid any money for any purpose?

Njonjo.—My Lords, Mr. Amos Ng'ang'a was paid no money at all. No money.

Muthoga.—For any consideration?

Njonjo.—For any.

Muthoga.—Not one shilling?

Njonjo.—Not a penny.

Muthoga.—You did not pay him one shilling at all in relation to his Parliamentary seat?

Njonjo.—My Lords, I paid Amos Ng'ang'a not a shilling as is being suggested by the leading Counsel. No money at all.

Muthoga.—Did anyone pay him any money?

Njonjo.—I am not aware of anybody paying Mr. Amos Ng'ang'a any money to relinquish his Parliamentary seat.

Muthoga.—Did anybody pay him any money for any other purpose or consideration?

Deverell.—My Lords, when my learned friend says, 'any other money for any other purpose' would he not be a little more precise because that would mean somebody paying him Sh. 5 for sale of ice-cream or something like that.

Muthoga.—Please Mr. Deverell. Please Mr. Deverell.

Justice Owuor.—I think Mr. Muthoga added the words 'in consideration' at the end.

Muthoga.—For any other consideration.

Deverell.—But for any other consideration would include buying ice-cream or selling ice-cream.

Chairman.—You keep on making your jokes. You, Mr. Deverell, keep on making your jokes.

In the long run you may find it is not going to accrue to your credibility and your status before this Inquiry. You keep on making your jokes. You take out your cold ice-cream and push it in your mouth. Proceed, please.

Njonjo.—My Lord, can I hear the question now?

Muthoga.—Did any person pay any money to Mr. Ng'ang'a in consideration or in connection with his Parliamentary seat?

Njonjo.—My Lords, I am not aware of any money being paid by any person, whoever this person is, in consideration of Mr. Amos Ng'ang'a relinquishing his Parliamentary seat.

Muthoga.—And did he request for any money?

Njonjo.—My Lords, request me?

Muthoga.—You or the other two gentlemen sitting with you.

Njonjo.—Mr. Amos Ng'ang'a never requested any money from me and I am not aware that he requested any money from any other person.

Muthoga.—And was he reimbursed or anything discussed at that meeting?

Njonjo.—No discussion took place on what the leading Counsel calls reimbursement.

Muthoga.—Of expenses?

Njonjo.—Of expenses . . . .

Muthoga.—Mr. Njonjo, I put it to you that you did pay him Sh. 160,000.

Njonjo.—Mr. Ng'ang'a?

Muthoga.—Yes.

Njonjo.—Of course, that is what he is saying.

Muthoga.—Did you?

Njonjo.—My Lords, I do not recall paying Mr. Ng'ang'a Sh. 160,000 or any money at all to do with relinquishing his seat.

Chairman.—And from what you have just said, did you pay him that sum of money for any other purpose?

Njonjo.—I do not remember, My Lords. I helped Mr. Amos Ng'ang'a since I became a Member of Parliament. Really not to help him personally, but to help the people in his area, and one of them was to do with a water project.

Muthoga.—His Lordship's question was: Did you pay him that sum of money for any other purpose?

Njonjo.—I said, My Lords, I may have given him some money to do with water projects in the area.

Muthoga.—Sh. 160,000?

Njonjo.—No, My Lords, I do not think I have given Mr. Amos Ng'ang'a that amount of money.

Muthoga.—Sh. 200,000?

Njonjo.—My Lords, do not put it up. In fact I would say it is less.

Muthoga.—The assistance he has given to Mr. Ng'ang'a was it during the month of April, or during that discussion period?

Njonjo.—No, the money I recollect was paid when I was a Member of Parliament.

257. On the 3rd August, 1984 Njonjo stated he wished to make a correction on the evidence he gave the previous day in connection with payment to Mr. Amos Ng'ang'a. He stated:

"The correction I would like to make followed a question by your leading Counsel which to me suggested . . . in fact, the word he used was 'in consideration' and I am afraid as you have advised me before, that word 'consideration' put me on guard and it gave me the impression that your leading Counsel was suggesting that I either 'bought' Mr. Amos Ng'ang'a or paid him money, in order that he may resign from his Parliamentary seat. As a result of the use of that word 'in consideration' and the questions that followed that I may have given a wrong impression.

I do want to say that Mr. Ng'ang'a was paid some money, and, again my recollection of that would be that it took place sometime in April, but I cannot remember how much money it was. It could be the figure your leading Counsel suggested; Sh. 160,000, or Sh. 170,000, or even less. My memory, My Lords, is vague about this. I am being asked questions about events that took place four years ago and, I cannot claim that my memory is that clear about the events that took place so long ago.

My Lords, I thought about this after yesterday's session, as I was going home and later on in the afternoon and I consulted my Counsel and told them what I have just said. I also informed them that I would like to take the earliest opportunity to correct the evidence on this aspect, which I gave yesterday. What I am saying now, on reflection, is that I think payment was made but what was uppermost in my mind was the suggestion by your leading Counsel that this payment had been made in consideration to induce Mr. Ng'ang'a to resign his Kikuyu Parliamentary seat.

It is my recollection, My Lords, that that payment was made in April, and it is also my recollection that Mr. Amos Ng'ang'a had agreed in March to resign his Parliamentary seat. My Lords, I am grateful that you have been good enough to give me this opportunity to make that correction."

258. We find the following facts established:

(i) that there was an agreement between Njonjo and Ng'ang'a for Ng'ang'a to resign his parliamentary seat to open the way for Njonjo's candidature;

(ii) that Ng'ang'a entered into the agreement as a result of overtures made to him by three of Njonjo's friends acting as his emissaries;

(iii) that Njonjo was himself preparing to join politics as far back as 1979;

(iv) that Njonjo was aware of the efforts made by his emissaries who took Ng'ang'a to Njonjo's office where agreement was reached between the two of them for Ng'ang'a to be paid money to resign his seat;

(v) that Njonjo corruptly made payment of Sh. 160,000 in his office to Ng'ang'a upon his reporting to Njonjo that he had handed in his letters of resignation to the then Chief Secretary;

(vi) that the corrupt payment of Sh. 160,000 made by Njonjo was to seek political support and undermine the process of democracy.

259. Francis arap Mutwol was Member of Parliament for Kerio Central constituency. He was also Secretary to Kanu Parliamentary Group. He said Njonjo was his personal friend during the period 1980 to the middle of 1983 when Njonjo held the post of Cabinet Minister. Mutwol said that on occasions he spoke to Njonjo on the telephone and also visited him in both his offices, at Jogoo House then at Re-Insurance Plaza. Mutwol said that on one of his visits to Njonjo, during the course of their conversation Njonjo said that there were certain Members of Parliament who were not useful to him or to this Government; and he named Waruru Kanja, Mark Mwithaga, Koigi wa Wamwere, Martin Shikuku and Samwel arap Ng'eny. Njonjo further said that he would do his best to get rid of them.

260. Mutwol visited Njonjo again in June, 1981 and on that occasion, Njonjo for the first time said that he had his own group of Members of Parliament; and he wanted Mutwol to persuade other Members of Parliament mainly the Kalenjin, but excluding Ministers to join the group. For this purpose Njonjo gave him Sh. 10,000 which he took but did not use for that purpose; nor did he return it.

261. When Mutwol next visited Njonjo in his office, Njonjo asked him what had happened to the Sh. 10,000 given to him. Mutwol replied "things were in progress". Njonjo gave him a further Sh. 10,000 and told him to persuade other Members of Parliament but excluding the "Sisters".

262. Mutwol said he took the money, used it for his Harambee fund drives, and did not give it back to Njonjo. He found it unnecessary to make any efforts to carry out Njonjo's requests because Kalenjin Members were behind the President.

263. On a subsequent occasion Njonjo told Mutwol that he was not seeing the fruits of his work and they parted in anger.

264. We believe Mutwol and find that Njonjo corruptly made the two payments of Sh. 10,000 each to Mutwol to seek political support and to undermine the process of democracy. In this case also Njonjo adduced no evidence in refutation.

265. Lawrence Simiyu Sifuna, M.P. for Bungoma South Constituency testified before us. He first entered politics and became a Member of Parliament at the 1979 General Elections; and his evidence relates to his personal experience through his encounters with Njonjo in Parliament.

266. Sifuna said that he had no personal animosity against Njonjo. He however made it clear that he was of the view that Njonjo was not in favour of President Moi's being President of Kenya. When asked to explain, he replied:

> "I mean that although Mr. Njonjo was a Cabinet Minister, his activities showed that he was against the President. One, by urging or asking Members of Parliament to side with him when in actual fact we were warned here by the President, that he did not want to hear this business of groupings; but Mr. Njonjo would pay lip-service by pretending to our President that he was loyal to him, and when he went out, he started engineering his agents to recruit as many Members of Parliament as possible to his camp."

267. Sifuna said that sometime in 1981, Njonjo asked him why he was always showing a negative attitude towards him and why he always did not agree with his proposals in Parliament. Sifuna replied:

> "As we are all Hon. Members of the House, I had no ill-feelings against him, but the question of joining his group or his camp—I was not interested."

268. Sifuna said that on a second occasion Njonjo in conversation requested that he (Sifuna) go see him in his office and he rejected the invitation.

269. Sifuna was a back-bencher. The next occasion he met Njonjo was when Njonjo went over from the front bench and sat next to him in the Chamber. Njonjo withdrew from his own pocket a bundle of KSh. 100 notes and tried to push the money into Sifuna's pocket. Sifuna said, he there and then "threw the money back to him" and told him "I don't want your money, you had better take your money back", and that the noise he (Sifuna) made, attracted the attention of two M.P.s who laughed and said to Njonjo "Shame!" "Shame!" whereupon Njonjo walked out of the Chamber.

270. Sifuna was strenuously cross-examined by Njonjo's advocate; but the witness remained unshaken in his evidence on the incident. Njonjo's advocate then tried to explain the occurrence by suggesting to Sifuna: "Do you recall him giving you KSh. 500 for your Harambee and you complained that it was not enough?" To this the witness replied: "He is the last friend of mine I would ask for harambee money".

271. Njonjo made no reference to the evidence of Sifuna.

272. We are satisfied that as a matter of fact, Njonjo acted as the witness related.

273. We accordingly find and conclude that Njonjo attempted to make a corrupt payment to Sifuna in order to induce him to join his (Njonjo's) camp thereby seeking political support and undermining the process of democracy.

Granting of Favours

274. We will consider the evidence in respect of this allegation in regard to favours granted by Njonjo when holding the office Attorney-General and/or as Minister.

275. In 1970 Jesse Mwangi Gachago was a director of Boskovic Air Charters Limited. The company was taken over by someone from Holland. Njonjo became shareholder and director of the company. Boskovic told Gachago that he was under pressure from Njonjo that Gachago should quit the board of directors. Gachago quit.

276. Gachago and one Godfrey Muhuri Muchiri, both members of Parliament at the time, were on 2nd February, 1978 convicted of theft of coffee and sentenced to imprisonment for five years each. On 29th April, 1980 they were told by Mathenge the Officer-in-Charge of the Prison that they were going to leave. Mathenge drove them to Prisons Headquarters in Nairobi where on the directions of the Commissioner of Prisons Reuben Mutua, he picked up another prison officer named Mutebi and then drove to Njonjo's house in Muthaiga. Mutua instructed Mutebi to escort the two prisoners to Njonjo's house and witness their release as he (Mutua) had not seen their Release Orders and according to him "it was very abnormal".

277. Njonjo welcomed them. The members of Gachago's and Muchiri's families were present; also Member of Parliament Njenga Karume, and Muchiri's nephew Lee Ngugi. Njonjo handed the prison officers two Release Orders and told them that Gachago and Muchiri were released. The two prison officers left leaving Gachago and Muchiri with Njonjo. Mutebi reported back to Reuben Mutua with the two Release Orders and confirmed that the prisoners had been released.

278. Gachago said that Njonjo addressed the gathering. Njonjo made it a point to discuss why the two had been imprisoned and why they were then being released. He said that:

(*a*) Gachago had told one David Ogina that Njonjo was implicated in the murder of the late Tom Mboya. Gachago, admitted that he had said this to Ogina.

(*b*) Gachago and Muchiri had been his (Njonjo's) political antagonists and they were associating with his other political antagonist Dr. Njoroge Mungai.

(*c*) The two of them had gone to plead with Mzee Jomo Kenyatta instead of pleading with him (Njonjo). Gachago also agreed that they had travelled to Mombasa with a view to persuading Mzee Kenyatta to intervene, but they were unable to meet him.

(*d*) Njenga Karume had sworn that Gachago and Muchiri would not go to prison; he (Njonjo) was going to teach Njenga Karume a lesson that he was the Attorney-General and not merely the Chairman of Gema (Gikuyu, Embu and Meru Association) which Njenga Karume then was.

Njonjo also told them that even the late President Mzee Jomo Kenyatta gave him instructions to drop the case against Gachago and Muchiri because it appeared politically motivated. He told Mzee Kenyatta that if he was not left free to deal with them (Gachago and Muchiri), and send them to prison, he would resign. He told the families of Gachago and Muchiri that the prisoners had been released and that was why he had arranged for them to meet at his house to take them home. Njonjo informed them that he had granted them a big favour because of the many requests from his friends and also because during his election campaign the people of Kikuyu Constituency requested him to release Muchiri who is also from that constituency.

279. Gachago said he believed what Njonjo said for who was he not to believe "the powerful Attorney-General".

280. Reuben Mutua told us that Njonjo asked him some time in April, 1980 while he was still the Attorney-General to prepare two Release Orders in respect of these two prisoners. Njonjo thus initiated the release of these two prisoners. On 28th April, 1980, Njonjo informed Reuben Mutua that he had the Release Orders of the two prisoners and they should be escorted to his house at Muthaiga the following day without being told that they were going to be released. Reuben Mutua acting under the belief that Njonjo was still the Attorney-General, ordered the prison officer Mutebi to escort the two prisoners as stated earlier and not release them without their Release Orders. Mutebi returned with the two Release Orders and reported that the prisoners had been released at Njonjo's house. Reuben Mutua said that this was not the only occasion when prisoners were released on Njonjo's instructions at a place other than the prison gate as required by Prisons Regulations.

281. When Gachago and Muchiri were released at Njonjo's residence at Muthaiga, Njonjo was no longer the Attorney-General he having retired on 25th April, 1980 in order to go into politics. He neverthless had the audacity to order prisoners to be taken to his house in order to effect their actual release himself.

282. We find and conclude that Njonjo's conduct in relation to Gachago and Muchiri amounted to misuse of office of Attorney-General to seek political support.

283. We now consider the allegation that Njonjo misused his office as Minister by granting favours to convicted criminals in order to seek political support. The period covered here is from the time he was sworn in as Minister on 24th June, 1980, up to the time when he ceased to be a Minister during June, 1983. The Department concerned is that of Prisons which fell under his ministerial portfolio.

284. Reuben Mutua explained to us that any prisoner sentenced to imprisonment for one month or over is legally entitled to remission of one-third of the sentence.

285. Reuben Mutua also explained that under Section 46 (4) of the Prisons Act (Cap. 90) the power of extra remission lies with the Minister (Njonjo here).

286. Reuben Mutua said that he recommended the release of these prisoners in the manner he did "in order to enable the Minister to carry out his wishes"; that extra remission may only be granted upon the recommendation of the Commissioner of Prisons on the grounds of ill-health, exceptional merit, mere good behaviour not being sufficient. On the ground of ill-health, a report has to be obtained from the doctor that the prisoner is permanently sick. The report is sent to the Director of Medical Services who places it before the Medical Advisory Board and if approved, only then the Commissioner of Prisons may recommend to the Minister the grant of extra remission. Extra remission may also be granted in cases of very special circumstances. Reuben Mutua also said that none of the prisoners whose release Njonjo ordered qualified for extra remission.

287. Several prisoners were released on the strength of Release Orders authorized and signed by Njonjo.

288. A decision had been taken by Government to deprive prisoners convicted of the offence of robbery with violence of remission. The decision had been communicated to the Commissioner of Prisons by Njonjo himself in his capacity as Attorney-General in his letter dated 6th August, 1973 in which he *inter alia* stated:

> "I was asked to remind you, and through you the members of the Board, that the Government takes a very serious view of the offence of armed robbery . . . I do not think anybody should have any sympathy with this type of person in our society . . . It is ridiculous to suggest that they should be given remission as if they had committed a petty offence".

289. This directive was in force at the time of the Inquiry. Prisoner Thomson Kahunguria Mbugua (File No. KAM/1311/71/LS) was officially notified that it applied to him. Mbugua was convited on 14th August, 1971 for the offence of robbery with violence contrary to Section 296 of the Penal Code and sentenced to 19 years imprisonment. The date of his release should

have been 13th August, 1985 after serving his sentence in full. Notwithstanding that Njonjo was aware of the directive, and he had also been informed in writing by Reuben Mutua of the offence the prisoner had committed, and that he had been deprived of remission, Njonjo nevertheless granted Mbugua remission of four years and four and half months by ordering his release on 26th March, 1981, contrary to the terms of the directive which he had himself conveyed to the Commissioner of Prisons. Whether the directive was legally correct or not Njonjo capriciously ordered Mbugua's release.

290. Njonjo also authorized the release of the following prisoners:

(1) Edward Kioi Kago, Prison File No. KMS/2004/80/LS.

(2) George Mungai Mbugua, Prison File No. KAM/879/77/LS.

(3) John Ngige Gitau, Prison File No. KMS/1813/80 LS.

(4) Silas Mburu Kamiri, Prison File No. MBA/103/81/LS.

(5) Joe Kihara Murugu, Prison File No. KMS/1564/80/LS.

We accept Reuben Mutua's evidence that none of these five prisoners merited extra remission. Nevertheless Njonjo directed him to recommend their release as without it Njonjo as Minister would not have been able to grant extra remission to any of them. In the case of these five prisoners, Njonjo instructed Reuben Mutua to furnish a report on each of them. Reuben Mutua did so. Njonjo as Minister then directed him to recommend their release which Reuben Mutua also did as ordered by Njonjo.

291. To understand why Njonjo took such personal interest in the above cases, one has to look at their place of origin as revealed in their prison files:

Thomson Kahunguria Mbugua came from Muguga in Kikuyu constituency. His file does not show where he was released.

Edward Kioi Kago came from Muguga Location, within Kikuyu constituency. His file does not show where he was released.

George Mungai Mbugua came from Uthiru Village within Kikuyu constituency. His file does not show where he was released.

John Ngige Gitau came from Nyathuna Village within Kikuyu constituency. His file does not show where he was released.

Silas Mburu Kamiri came from Ruthingiti Primary School, Karai Division in Kiambu District within Kikuyu constituency. His file does not show where he was released.

Joe Kihara Murugu came from Karura Village in Kiambu District. His file does not show where he was released.

Godfrey Muhuri Muchiri came from Kikuyu constituency. He was released in Njonjo's house.

292. Six of the seven prisoners came from Njonjo's Kikuyu constituency.

293. We find that Njonjo misused his Ministerial office by granting these favours to prisoners who came from his constituency with the object of seeking political support.

294. We will now consider the case of two other prisoners whom Njonjo released.

295. Reuben Mutua told us that in 1981 he was directed to prepare a list of prisoners to be released under a general amnesty by H.E. the President under the powers confered by section 27 of the Constitution. Reuben Mutua was directed as to which category of prisoners the list should include. Reuben Mutua accordingly sent a circular to all Provincial Prison Commanders to provide him with lists of prisoners who qualified for release under the amnesty. The lists he required were mainly of people who were about to complete their sentence of imprisonment for petty offences. The lists were submitted to him and he compiled the final list therefrom.

296. At that time there was a prisoner named Benson Mbugua Kariuki. He had originally been condemned to death for murder; on appeal the conviction was reduced to manslaughter and a sentence of ten years imprisonment substituted. He would have been due for release on 23rd January, 1985.

297. A few weeks after his appointment as Minister for Constitutional Affairs in July, 1980, Njonjo asked Reuben Mutua for a report on this prisoner. Reuben Mutua accordingly wrote a detailed report on the prisoner dated the 19th July, 1980 and sent it to the Minister (Exhibit 79), strongly advising against any early release.

298. After he had submitted his report Reuben Mutua was again requested by Njonjo for another report. He submitted another report dated 17th February, 1981 (Exhibit 80). He once again stated that it would be too soon to release the prisoner since he had been convicted and sentenced on 16th November, 1979. He also forwarded a medical report on the prisoner which indicated no permanent ill-health. That was the last that he heard of this matter.

299. In November, 1981 he received the list he had asked for from the prison in Nyanza Province. It did not contain the name of Benson Mbugua Kariuki who was serving his sentence at Kibos Prison. Indeed his name could not be included in the list since he did not qualify for release under the general amnesty.

300. The final and comprehensive list which Reuben Mutua got typed at Prisons Headquarters and which he sent to the Minister also did not contain Kariuki's name. However, when Reuben Mutua received back the list (Exhibit 81) which he had sent to Njonjo it showed that Kariuki's name had been added at the bottom of the page, in between the names of two other prisoners Nos. 1126 and 1127. There was no number against Kariuki's name. His name had been added using a different typewriter from the one used to prepare the original list.

301. Reuben Mutua said that Njonjo telephoned him after he received the list for approval requesting him to send someone to collect the list for implementation. He also told him that he (Njonjo) had added Benson Mbugua Kariuki's name. He directed Reuben Mutua to include the name on all copies of the list at Headquarters which were going to be sent to different prisons. Reuben Mutua did this and also contacted Kibos Prison to deliver the message to them.

302. On Jamhuri Day Kariuki like all the other prisoners on the list was released. This was noted on his prison file. We find that Njonjo improperly added Kariuki's name to the list for release. We also find that he told Reuben Mutua that he had added Kariuki's name to the list.

303. Finally we consider the release of the prisoner Njiru Gikuma.

304. The former Minister for Higher Education Mr. Joseph Kamotho addressed a letter to Njonjo saying that he had talked to him about this prisoner and "he appeals for clemency".

305. Njonjo directed Reuben Mutua to make a report on the prisoner and send it to him and Reuben Mutua did so. A few days afterwards, Njonjo wrote back categorically telling Reuben Mutua that he had received a plea from Kamotho and he would like to help. In the same letter Njonjo requested Mutua to think of any other way in which the prisoner could be released without the usual papers to His Excellency.

306. This prisoner was then released by Njonjo under powers conferred upon the Minister by Section 46 (4). Njonjo went out of his way to grant Kamotho a favour. Reuben Mutua was cross-examined for several days by Njonjo's advocate. Njonjo himself did not say a single word about these prisoners.

307. We find that in the case of these two prisoners Njonjo misused his office as Minister with the object of seeking political support.

Acting to the Prejudice of Individuals

308. We now consider the already related evidence of Sifuna and Mwachofi with specific regard to the allegation that Njonjo misused his office as Attorney-General and/or Minister by acting to the prejudice of individuals.

309. We find that Mwachofi's passport was withdrawn by Mutua acting upon the instructions of his Minister Njonjo in order to pressurize Mwachofi into joining the Njonjo camp. Njonjo went all the way to get Mwachofi's support, even if it meant destroying Mwachofi politically in the process.

310. We also find that Sifuna's passport was similarly withdrawn by Mutua in order to pressurize him into joining Njonjo's camp.

311. In both instances Njonjo's conduct amounted to misuse of office by acting to the prejudice of Mwachofi and Sifuna by intimidation and threats of loss of personal liberty in order to seek political support thereby undermining the process of democracy.

312. We consider the evidence of Hon. Abdallah Ndovu Mwidau Member of Parliament for Mombasa South and Ex-Director of Societe Generale de Surveillance (S.G.S.) and that of Mr. Sydney George Reeve, the Managing Director of S.G.S.

313. Mwidau told us that prior to being M.P. for Mombasa South in 1979, he had been councillor and also mayor of Mombasa sometime between 1963 and 1974. In addition he was a life member of the ruling party Kanu. His association with Njonjo began in 1977 when he received a message from Njonjo through the late Juma Boy and former Member of Parliament for Kwale East Kassim Bakari Mwamzandi.

314. Mwidau was employed by S.G.S. for 28 years. In 1979 he was a director of the company and also shareholder in a subsidiary company Super Freighters Limited.

315. Mwidau decided to contest the General Elections of 1979. After he had obtained clearance from the Party, he received a message from Njonjo through Reeve. Reeve told him that Njonjo had telephoned and instructed him to tell Mwidau that he had to choose between remaining in the company or resigning to contest the Election.

316. Mwidau said the directive to resign his job before contesting the Election did not apply to him since S.G.S. was not a Government Department or a Parastatal body.

317. Mwidau told Reeve that he did not believe Njonjo could say this. Mwidau telephoned Njonjo on the spot from Reeve's office. On asking Njonjo about the message delivered to him by Reeve, Njonjo confirmed that it was true, but he would not discuss it on the telephone and asked Mwidau to see him in Nairobi on the following day.

318. Next day in Njonjo's office Mwidau asked him the reason for the message. Njonjo replied that it was because Mwidau had financially sponsored most of the civic candidates in Mombasa Town. Mwidau said that was not true and showed Njonjo his bank statement to prove that he had no money. Njonjo said he sympathized with him and that Mwidau should go back to Mombasa and wait to hear from him.

319. Later in Mombasa, the then Provincial Commissioner Mr. Eliud Mahihu telephoned Mwidau and told him that Njonjo had said that he could go ahead and contest the Election as well as keep his job. Reeve also told him the same thing.

320. Mwidau stood for and won his election into Parliament. Njonjo, however, had not finished with him. On 24th May 1980 Reeve called Mwidau and told him that Njonjo had summoned him to his Diani house Mombasa and instructed him that it was the President's wish that Mwidau should be dismissed from the company with immediate effect. Mwidau told Reeve that he did not believe Njonjo had been instructed by the Government to dismiss him in-as-much as theirs was not a Government company and Mwidau knew that at the time Njonjo was not in the Government; he was a private citizen. Reeve looked very worried and insisted that Mwidau must resign as otherwise the company's licences might be withdrawn. Reeve told us that if Mwidau had not resigned the parent company's contract with the Central Bank of Kenya would have been at stake.

321. Reeve told us that as far as he was concerned, Njonjo was the Government.

322. Mwidau refused to resign. Reeve called in the company's advocate, and later Reeve also called in the Company's Regional Vice-President for Africa Mr. Kneubuller to Mombasa from Zurich. After several meetings Mwidau was coerced into signing a request for his early retirement although he had done nothing to the detriment of the company and his retirement was completely to his own disadvantage. He lost house allowance, free furniture, educational fees for 13 children, medical benefits, and free car and petrol. The youngest child then was only one year old. Mwidau became a sick man as a result.

323. Mwidau was also forced to sell his shares in the subsidiary company. He proposed that his shares be transferred to one of his children. Reeve told him that Njonjo did not even want to hear about his children. Mwidau ceased to have any connection with the company for which he had worked for 28 years. He was unceremoniously forced out of the company.

324. In 1982 Mwidau met Njonjo in his office in Nairobi. He asked Njonjo what lay behind what Njonjo had done to him. Njonjo replied: "I am sorry, Abdallah, this was a very big mistake". Njonjo went on to say he had been misled by Hemed and Shariff Nassir. Mwidau did not pursue the subject because he knew Hemed and Nassir were Njonjo's friends.

325. With his confession Njonjo was clearly falsely misleading Reeve that it was the President's wish that Mwidau should resign from the company. Njonjo himself never told Mwidau that the President wished him to be sacked.

326. We look at the evidence to tell us why Njonjo was persecuting Mwidau. We find the reason in the testimony of Maitha and Gumo.

327. As early as 1979 Njonjo was trying to capture the organs of local government in the country. Both Hemed and Nassir arrogantly told Maitha that they had decided who would be the next Mayor and Deputy Mayor of

Mombasa in the interest of Njonjo. Hemed displayed KSh. 400,000 to Maitha which he said Njonjo had given him to cover the election of the Mayor and Deputy Mayor. Hemed handed the money to Shariff Nassir who corruptly bought over 20 elected councillors to vote for two candidates chosen by Hemed and Nassir in the interest of Njonjo.

328. Oloitipitip told Gumo and Katana Ngala at Lamu that he had arranged for Njonjo's election as Vice-President of the ruling Party Kanu.

329. The reason given by Njonjo through Reeve to Mwidau for his cavalier treatment that Mwidau was sponsoring candidates for local elections was in our opinion palpably false. In our opinion the real reason was to capture, as many as possible, the organs of the local government for political support. What better centre, after Nairobi, than the second most important municipality of Mombasa in Kenya. We also recall Maitha's evidence that Hemed gave him Sh. 10,000 from Njonjo to assist him in his campaign for the civic seat. There was nothing altruistic in what Hemed did for Maitha. It was all instigated by Njonjo for his own political benefit.

330. We have already stated that we believe the evidenve of Maitha and Gumo. We also believe the evidence of Reeve and Mwidau. Njonjo himself said not a single word about their evidence.

331. We find and conclude that by persecuting Mwidau, an innocent man, Njonjo acted to Mwidau's prejudice and detriment.

332. We also find and conclude that Njonjo instigated corrupt practices through his emissaries Hemed and Nassir by providing them with money to buy elected councillors to rig the election of the mayor and deputy mayor of Mombasa with the object of seeking political support thereby undermining the process of democracy.

333. Senior Superintendent of Police Essau Kihumba Kioni was seconded to Kenya Airways from 1st August, 1978 as Security Services Manager for three years. He told us that in early January, 1981 he was informed by his security staff of the very heavy baggage brought in by Njonjo from London. Kioni made inquiries from Mr. Todd the accountant in the Revenue section of Kenya Airways to find out the exact weight. Todd informed him that the excess was 270 kilogrammes. They discussed the matter and agreed to contact the chief accountant, Mr. Edward Ntalami about it.

334. Todd took to Ntalami a Passenger Ticket Coupon No. 7064200454-2533 issued in the name of Charles Njonjo as first class passenger. The coupon clearly showed that Njonjo had travelled with 270 kilogrammes accompanied excess baggage. The total weight of his baggage was 300 kilogrammes. The excess baggage had not been paid for. Ntalami told Todd to confirm this with London. A telex was sent to London on 19th January, 1981 the reply to which confirmed that the excess baggage had not been paid for.

335. As a result Ntalami went to discuss this matter with the then Managing Director, Lord Cole. He asked Lord Cole whether he should invoice Njonjo for the excess baggage. Lord Cole told him to go ahead and do so.

336. Todd invoiced Njonjo on 21st January, 1981 for KSh. 36,272.50 being the charges for the excess baggage. The invoice was sent to Njonjo but he never paid.

337. On the 29th January, 1981 Kioni received a message that he was wanted at Njonjo's office. He went to Njonjo's office at Old Jogoo House at 2.30 p.m. and found Lord Cole and Simon Mbugua the then Permanent Secretary in the Ministry of Transport and Communications there. As he arrived, the secretary informed him that Njonjo was waiting for him. When he entered Njonjo's office, Njonjo said:

"Come in Mr. Kioni, I am very disgusted with you".

Kioni replied that even if he was disgusted "so long as there was a dialogue there would be an agreement". This conversation was in Kikuyu in the presence of Lord Cole and Simon Mbugua who were already in the office.

338. The next thing that Njonjo asked Kioni was "why all this witch-hunting?" Njonjo showed him the Invoice for the excess baggage and asked whether he knew anything about it. Kioni replied that he was aware of the excess baggage but not of the invoice. Kioni said he thought there was more to it than met the eye; he tried to explain to Njonjo that he was not to blame in any way. In our view Kioni should not have been expected to offer any explanation as Njonjo had been properly invoiced. Ntalami told us that he was not aware of any directive that exempted Njonjo or any V.I.P. from paying for excess baggage.

339. Upon realizing that the situation was serious Kioni told Njonjo in Kikuyu "some people were trying to use him (Njonjo) as a Caterpillar to crush a fly like him" (Kioni).

340. Kioni told us that before he left the meeting he was very apprehensive about the security of his employment so he asked Njonjo whether his career with Kenya Airways and the Police Force would not be in jeopardy. Njonjo told him it was okay and added "Maneno Yamekwisha".

341. Immediately after this meeting Lord Cole sent a hand-written note to the Administrative Executive to issue a Credit Note in respect of Njonjo's Invoice and to take it to Lord Cole personally. This was done and Lord Cole signed it.

342. On 5th February, 1981 Kioni received a message that he should meet Lord Cole in the Lobby of the Hilton Hotel at 7.30 p.m. Kioni kept the appointment. Lord Cole told him that he regretted that he had to terminate

his services with Kenya Airways due to pressure. He handed him a letter terminating his services with immediate effect. Kioni went back to Special Branch and was soon thereafter retired in "public interest".

343. Kioni told us that at the time his services were terminated he was 40 years old, married with three school-going children; the first being a 15 year old son.

344. We find and conclude that Kioni lost his job simply because he did his duty by pointing out that Njonjo had not paid the excess charges. We also find and conclude that Njonjo acted to the prejudice and calamitous detriment of Kioni in misuse of his office as Minister which revealed an inhumanly cruel streak.

345. Mr. Richard Namai was the Area Manager of Kenya Airways in London in charge of United Kingdom and Ireland.

346. In 1978 Kenya Airways entered into a Consolidation Arrangement with A.B.C. Travels and Tours of London. The agreement is known as V.F.R. (Visiting Friends and Relatives) and Group Inclusive Tours Traffic, the object being to promote passenger traffic in these categories. Ideally a Consolidation Agent in London should know Kenya. A.B.C. Travels and Tours was such a company. It was managed by one Jagdish Acharya a brother of Mr. Acharya of Acharya Travel Agency Limited in Nairobi, of which Njonjo was shareholder and director. A.B.C. Travels were the sole Consolidating Agent of Kenya Airways for all the time Namai was in office.

347. Sometime in 1981, a Mr. Sofat of Somak Travels and Tours applied to Kenya Airways to be appointed as additional Consolidation Agent in U.K. A meeting was held in Namai's office, London which Sofat, Namai, Crosbie the Commercial Executive, Kagari the Sales and Service Manager from Nairobi, and Goodwin of the London office were present. The meeting was to consider Sofat's proposals.

348. When the meeting was in progress, Namai's Secretary informed him that Njonjo was at the office to see him. Namai hurriedly went out and greeted Njonjo. They both went into Namai's office where the meeting was in progress. Everyone stood up and Mr. Namai introduced them to Njonjo. On reaching Mr. Sofat, Njonjo said:

> "You are the Sofat I have been hearing about; one of those people who are behind the demise of East African Airways. I hope that you do not extend those your intrigues to our Airline" (Kenya Airways).

349. Sofat was shaken and denied being that person. Njonjo then walked out. The officials of Kenya Airways discussed among themselves what Njonjo had said to Sofat and decided to call off the meeting because, in Namai's words: "there were doubts in the integrity of the person we were negotiating with by a senior Cabinet Minister of Kenya Government".

350. Namai said that that was Njonjo's only visit during his term of office in London.

351. We construe Njonjo's abrupt intrusion at the meeting, and his curt derogatory accusation of Sofat, to have been a calculated and intimidating move to arrest all possibility of Sofat's application being granted, with the object of preserving A.B.C. Travels and Tours' monopoly, in which he held an interest through Acharya Travel Agency Limited, Nairobi.

352. We find and conclude that Njonjo acted to the prejudice of both Kenya Airways and Sofat and granted a favour to A.B.C. Travels and Tours, London.

PART VI

TERM OF REFERENCE (d)

353. We have already set out in full this Term of Reference (*d*) in the Introduction.

354. Evidence was adduced before us relating to the following matters:

(i) Kikuyu Constituency Development Fund;

(ii) Association for the Physically Disabled of Kenya Fund;

(iii) The Bohras of Kenya;

(iv) Purchase overseas of a Mercedes Benz motor vehicle Registration No. KVD 710; and

(v) Njonjo and his Passports.

Kikuyu Constituency Development Fund

355. We consider the evidence of Mahmoud Perali Manji, a Director and Company Secretary of Credit Finance Corporation Limited (C.F.C.), a financial institution.

356. Njonjo opened Accout No. 8097 with C.F.C. on 24th January, 1981. Njonjo was the sole signatory to this account. On 31st May, 1982 there was a credit balance of Sh. 114,770/70 in this account after payment of Sh. 43,968/45 accrued interest to Njonjo by an "Account Payee Only" cheque. Njonjo acknowledged receipt of the sum of Sh. 43,968/45 by his letter of 26th May, 1982 addressed to C.F.C. (Exhibit 127 (*g*)).

357. The credit balance of KSh. 114,770.70 was re-deposited in account No. 9969 on seven days' call on 21st May, 1982 in the name of Kikuyu Constituency Development Fund. After further deposits the credit balance in this account on 30th April, 1984 was KSh. 649,410.70, and the accrued interest as on that date was KSh. 115,074.95. On the same day a new account No. 9953 was opened in the name of Kikuyu Constituency Development Fund with a deposit of KSh. 1,000,000 for twelve months to mature on 21st May, 1983. Upon maturity the sum of KSh. 1,000,000 in account No. 9953 was re-deposited in account No. 13668 for twelve months in the name of Kikuyu Constituency Development Fund. On 30th April, 1984 the accrued interest on this account was KSh. 155,569.80.

358. Njonjo remained the sole signatory to all these accounts.

359. On 4th November, 1981, Njonjo wrote to Credit Finance Corporation as follows:

"RE: KIKUYU CONSTITUENCY FUND DEPOSIT ACCOUNT No. 8097

Please arrange to uplift the following amounts from the above account making the cheques payable to:

	KSh.
1. Kikuyu Constituency Fund	300,000
2. Hon. Charles Njonjo	100,000
Total withdrawal ...	400,000

Yours faithfully,
for Kikuyu Constituency Fund.

(Signed):
HON. CHARLES NJONJO".

The cheques were issued as directed by Njonjo and account No 8097 duly debited on 4th November, 1981 (Exhibit 127 (*e*)). The C.F.C. cheque for KSh. 100,000 (Exhibit 129) drawn in favour of Njonjo was deposited in the joint account No. 2359377 of Njonjo and his wife with Barclays Bank, Moi Avenue, Nairobi. Their joint account was duly credited with the sum of KSh. 100,000 on 5th November, 1981 (Exhibit 148 (*b*)).

360. On 4th December, 1981 Njonjo wrote to C.F.C. as follows:

"RE: KIKUYU CONSTITUENCY DEVELOPMENT FUND DEPOSIT ACCOUNT No. 8097

Please uplift KSh. 100,000 from the above account, making the cheque payable to me.

Yours faithfully,
for Kikuyu Constituency Fund.

(Signed):
HON. CHARLES NJONJO".

361. This cheque was also issued as directed by Njonjo and account No. 8097 duly debited on 4th December, 1981. The cheque (Exhibit 127 (*a*)) drawn in favour of Njonjo was deposited on 5th December, 1981 in the joint account No. 2358377 of Njonjo and his wife with Barclays Bank, Moi Avenue, Nairobi. Their joint account was duly credited with the sum of KSh. 100,000 on the same day (Exhibit 148 (*g*)).

362. Manji also said that various sums of money being accrued interest in the Kikuyu Constituency Development Fund Accounts were paid to Njonjo.

363. On 10th February, 1982 Njonjo was paid KSh. 51,116.25 being accrued interest up to 31st December, 1981 on account No. 8097 of Kikuyu Constituency Development Fund. Njonjo acknowledged receipt of the sum of KSh. 51,116.25 by his letter dated 11th February, 1982 (Exhibit 127 (*l*)) addressed to C.F.C.

364. On 19th January, 1983 Njonjo was paid Sh. 72,819.60 by C.F.C. cheque of that date being accrued interest on account Nos. 9969 and 9953 of Kikuyu Constituency Development Fund. The cheque was deposited in the joint account No. 4678 of Mr. and Mrs. Charles Njonjo with Commercial Bank of Africa Limited, Wabera Street, Nairobi on 20th January, 1983. The account was duly credited on the same day with the sum of Sh. 72,819.60 (Exhibit 149 (*c*)).

365. Our findings indicate criminal conduct on the part of Njonjo requiring investigations to decide whether charges should be laid.

Association for the Physically Disabled of Kenya Fund

366. Mr. Naushad Nurali Merali, the Managing Director of Ryce Motors Limited gave evidence relating to the above matter.

367. His company's business is to import, assemble and sell motor vehicles.

368. Merali said that during 1980/81, in response to an appeal by His Excellency the President for aid to the physically disabled of Kenya, his company decided that the proceeds of sale of its first assembled vehicle be donated to the physically disabled of Kenya fund.

369. Njonjo was then the chairman of the Association for the Physically Disabled of Kenya.

370. On 8th April, 1981 Ryce Motors Limited held a ceremony in its showrooms at Koinange Street, Nairobi to publicize the donation; and Njonjo attended as the representative of the association to receive the vehicle.

371. Press coverage showed Njonjo sitting in the vehicle's driving seat and other dignitaries looking on.

372. Merali said that the vehicle was then left in his donor company's showrooms for purposes of a raffle, whereby as much money as possible may be collected for the association.

373. The company's intention was further clearly expressed, in that on the 14th April, 1981 the company wrote to Njonjo thanking him for having attended the ceremony "to hand over our gift to the Physically Disabled of Kenya". Njonjo replied by letter dated 13th May, 1981 in these terms:

> "I am writing to thank you for the beautiful tray that you sent .... This will serve as a reminder of the visit to Ryce Motors on Wednesday, 8th April, 1981 *to receive Daihatsu pick-up for the Physically Disabled of Kenya.*

May I say once again how very grateful I am for your *generous contribution to the fund* for the disabled".

374. On 21st May, 1981, Njonjo called Merali to his office at Jogoo House, and told him that to raffle the vehicle would take a long time, and so Ryce Motors Limited should buy the vehicle at its cost value.

375. Merali bought back the vehicle for Sh. 103,000. He said: "the cheque was payable to Kikuyu Constituency Development Fund. Mr. Njonjo suggested I make it in the name of Kikuyu Constituency Development Fund (as payee) since there were disabled people within the constituency. Who was I to question the chairman of the association".

376. Merali returned to his office and wrote the cheque as directed by Njonjo, took it to Njonjo's office and delivered it to him personally.

377. The cheque for Sh. 103,000 was produced in evidence. Upon its identification and examination, we were satisfied that it was drawn as stated by Merali. It had been deposited and paid into account No. 8097 of Kikuyu Constituency Development Fund with Credit Finance Corporation Limited.

378. Merali also produced his company's bank statement of account which showed that the cheque had been encashed.

379. Merali was emphatic that it was not his company's intention to give a donation to Kikuyu Constituency Development Fund. Upon examination of the bank statement of Kikuyu Constituency Development Fund, Merali identified the credit entry to that fund on the 22nd May, 1981 of the amount of Sh. 103,000 arising from the Ryce Motors Limited cheque which was issued on the previous day 21st May 1981.

380. Further documentary exhibits examined by Merali before us confirmed that account No. 8097 was opened by Njonjo as the sole signatory for the operation of the account and the passbook was issued to him as shown in the specimen signature card to open the account.

381. Even though His Excellency the President had made the appeal for the disabled of Kenya, Njonjo deflected the Sh. 103,000 to the credit of the Kikuyu Constituency Development Fund.

382. We are satisfied that as a result of Njonjo directing Merali to issue the cheque in favour of the Kikuyu Constituency Development Fund, he was disappointed that his company's donation would not enure to the benefit of the disabled of Kenya generally.

383. We are satisfied that the following facts have been established:

(i) that Njonjo as Minister and Chairman of the Association for the Physically Disabled of Kenya, deviated from the true nature of the appeal of the Head of State, i.e. for benefit of the disabled of Kenya as a whole;

(ii) that he effected this, by deflecting charitable monetary gift of Ryce Motors Limited for the disabled of Kenya to the Kikuyu Constituency Development Fund.

384. We therefore find and conclude that conversion by Njonjo of Sh. 103,000 as stated was misuse of office as Minister with the object of seeking political support in his constituency.

The Bohras of Kenya

385. In Kenya, there is a Muslim Community known as Dawoodi Bohra Community, who are the followers of His Holiness Dr. Syedna Mohamed Burhanuddin. Mr. Husseinbhai Ahmedali Hebatullah, a Bohra himself, told us that the Bohra Community's constitution was exempted from registration in Kenya. The exemption was withdrawn during Njonjo's tenure of office as Attorney-General. A court case ensued; and the judgement *inter alia* ordered that all the property of the community should be held by the Public Trustee.

386. Soon after the aforesaid judicial proceedings and judgement thereof, representatives of the Bohra Community paid Njonjo a courtesy call as Attorney-General in late 1976. The Community's exemption from registration was restored and their property returned to them. His Holiness visited Kenya in 1980 and Njonjo was one of the persons who received him at the Airport. A few days later, Njonjo paid His Holiness a visit in Hebatullah's house at Kitisuru, Nairobi.

387. During His Holiness' stay in Kenya the Buhrani Foundation was set up for charitable purposes with a corpus of Sh. 5.2 million to be raised from the Bohra Community. His Holiness donated the sum of Sh. 51,052. Njonjo was a party to the trust deed and became a trustee of the Foundation and Chairman of the Board of Trustees for life.

388. Hebatullah and Njonjo signed the document establishing the Foundation's bank account with the A.B.N. Bank. Njonjo was to sign all cheques with one other trustee.

389. On 29th November, 1983, Njonjo resigned from the Chairmanship of the Board of Trustees although appointed for life. He is however still life trustee of the Foundation.

390. By the Bohra Community's Trust rules, it is forbidden to promote any religion other than the Muslim religion.

391. However, on 4th May, 1981, Njonjo wrote to Hebatullah requesting the sum of Sh. 300,000 for certain purposes stated to be charitable, though they were alien to the specific directions for use of the trust money. Njonjo's application was forwarded to His Holiness who, directed that Njonjo be personally given Sh. 50,000 to be utilized at his discretion. This was done.

392. Again on 4th November, 1981 Njonjo wrote to Hebatullah applying for Sh. 300,000 "to help various charitable organizations in my Constituency and elsewhere; there are a number of schools and a Madrasa in Karai Muslim Village, which are in need of assistance". This was done.

393. Of the Sh. 300,000, Sh. 290,000 was given to the Kikuyu Constituency Development Fund, and Sh. 10,000 to Komothai Girls' Technical High School.

394. We were offered no explanation why the Bohra Community's exemption from registration was restored or their property released. In view of the withdrawal of funds by Njonjo from the Kikuyu Constituency Development Fund banking accounts related by us in another part of the Report we are of the opinion that these matters be investigated to determine whether any irregularities occurred.

Purchase Overseas of Mercedes Benz Motor Vehicle Registration No. KVD 710.

395. Henry Kahigu, the Registrar of Motor Vehicles testified and produced as an exhibit the official file of the Registry of Motor Vehicles, in respect of a Mercedes Benz Saloon car 350 SEL Registration Number KVD 710. The vehicle was first registered in West Germany on 11th September, 1978, and in Kenya on 12th October, 1978 in the name of Charles Njonjo of P.O. Box 40112, Nairobi, which is the postal address of the Office of the Attorney-General of Kenya. At that time Njonjo was the Attorney-General and also a director of D.T. Dobie and Co. (K) Ltd., the local agents for Mercedes Benz vehicles.

396. Kahigu produced from the file a copy of a form described as "Application for Foreign Exchange Allocation for Overseas Delivery of Motor Vehicles for Leave Purposes". He explained that the form is one of the essential documents required by the Registry for the purpose of registering motor vehicles which are imported by individuals directly, or through companies, while on overseas leave.

397. The document signifies that approval has been granted by the Central Bank of Kenya and also foreign exchange allocated for the purchase of a vehicle overseas.

398. The application form is signed by Njonjo as applicant, certifying that he had read and understood the conditions detailed in Exchange Control Notice No. 12 (Revised) which conditions were set out in full on the reverse of the application form. D.T. Dobie and Co. (K) Ltd. certified the application in the following terms:

> "We certify that the above named employee of this Company has been granted leave for the period specified above and is returning to Kenya thereafter."

399. As Njonjo was the Attorney-General at that time, the transaction needs to be investigated to determine whether Njonjo was really D.T. Dobie's employee as projected by Njonjo and as certified by D.T. Dobie, to enable him to obtain the foreign exchange allocation.

Njonjo and his Passports

400. Njonjo held one Kenyan diplomatic passport and 3 other purported Kenyan diplomatic passports all four of which were concurrently valid. They were all issued to him at Nairobi when James Kasyula Mutua was the Principal Immigration Officer. The numbers of these passports were (1) D000003 (Exhibit 38); (2) D000003 (Exhibit 39); (3) D000110 (Exhibit 43) and (4) D000003 (Exhibit 45).

401. A fifth diplomatic passport No. D19 (Exhibit 44) was also issued to him at Nairobi on 31st May, 1965. It expired on 30th May, 1970 and was renewed valid until 30th May, 1975.

402. Njonjo's three of the other four diplomatic passports, namely, Exhibits 38, 39 and 45, bore the same serial number D000003.

(i) Exhibit 38 Passport No. D000003 was issued on 7th September, 1979, to expire on 6th September, 1984. As required this passport was signed by the holder Njonjo on page 2. Profession of the holder was stated to be Cabinet Minister.

(ii) Exhibit 39 Passport No. D000003 was also issued on 7th September, 1979 to expire on 6th September, 1984. This passport was not signed by the holder Njonjo. Profession of the holder was stated to be Attorney-General. Senior Immigration Officer, Sakattar Singh Sehmi said that Mutua gave him this passport with instructions to alter the holder's profession to Cabinet Minister. Sehmi did so.

(iii) Exhibit 43 Passport No. D000110 was issued on 30th April, 1974, to expire on 29th April, 1979 but was renewed valid until 29th April, 1984. This passport was signed by the holder Njonjo.

(iv) Exhibit 45 Passport No. D000003 was issued on 12th January, 1983 to expire on 11th January, 1988. It was not signed by the holder Njonjo.

403. Mutua told us Exhibit 45 is a diplomatic passport bound in hard cover as opposed to the then current official soft cover passports known as "new series" Exhibits 38 and 39. He first saw it when Njonjo gave it to him in January, 1983 saying that it was given to him by David Knight a representative of the firm of Bradbury Wilkinson (Aero Print) Ltd. of London which printed the new series soft cover passports which were received at the end of August, 1979. Njonjo said the cover looked impressive and he would like it to be issued to him. Mutua authorized Immigration Officer, David Moseti to issue it to Njonjo on 12th January, 1983.

404. Mutua agreed that there is no record of it in the department's official register in which all diplomatic passports issued in the new series after 7th

September, 1979 are recorded. No diplomatic passport should be issued without being entered in the register.

405. The Immigration Department had not ordered hard cover passports like Exhibit 45. It is not from the passports stock of the Immigration Department. It does not correspond with the passports issued by the Immigration Department. There is no application for it in Njonjo's Immigration file (Exhibit 50). It was clandestinely obtained and was a forgery. Njonjo used it to travel.

406. Mutua told us that Kenyan passports are serially numbered. There should be only one passport serial number D000003. Njonjo also took to him Exhibit 38 which bore serial number D000003. Exhibits 38 and 39 show they were both issued on the same date. This is impossible as Njonjo was Attorney-General before he became Cabinet Minister. Therefore the passport Exhibit 39 in which his profession was stated to be Attorney-General, later amended to Cabinet Minister must have been issued before Exhibit 38 in which his profession was stated to be Cabinet Minister. The date of issue of Exhibit 38 was false. As passport Exhibit No. 39 with serial number D000003 was the first to be issued, Exhibit No. 38 must therefore also be a forgery. Mutua said he issued the passports on Njonjo's instructions as his Minister. Njonjo provided his photographs for the passports to Mutua. Njonjo also used Exhibit 38 to travel.

407. In the official Immigration File pertaining to Njonjo there is a declaration at folio 93 which is signed by him, but not dated, that all previous passports have been surrendered by him. On the strength of it passport No. 000110 (Exhibit 43) was issued to Njonjo on 30th April, 1974 and was valid to 29th April, 1984. That passport is signed by him as holder.

408. Applicants are warned on page 3 of Form PP1 that the consequences of untrue statements may prove serious to them.

409. On 30th April, 1974 Njonjo had a previous passport (Exhibit 44) valid to 30th May, 1975 which he did not declare in Form PP1. The declaration at folio 93 was therefore false. Njonjo never surrendered any of his passports as required.

410. There are no application forms in respect of Exhibits 38 and 45 in Njonjo's Immigration file (Exhibit 50). An application form is required to be completed in respect of each diplomatic passport issued.

411. The tenders for the cost of printing the new series passports were submitted to the Central Tender Board. On Njonjo's instructions the contract was allocated to Bradburys even though their price was higher by about £26,000.

412. We find and conclude that Njonjo misused his office both as Attorney-General and Minister in the matter of the passports.

413. We also find and conclude that he acted to the detriment of the Government of Kenya in the matter of the tender for the printing of passports.

PART VII

SUMMARY OF FINDINGS AND CONCLUSIONS

	Allegation	*Finding/Conclusion*	*Paragraph*	*Page*
1.	Allegation that Njonjo conducted himself in a manner prejudicial to the security of State.	By instigating, facilitating and participating in the illegal importation of arms and ammunition into Kenya, by building up an arsenal in the Haryanto home, which must have been intended for use in an insurrection, and allowing the residents of South Africa to enter Kenya in utter disregard of Kenya's security, Njonjo conducted himself in a manner prejudicial to the security of State.	63	13
2.	Allegation that Njonjo conducted himself in a manner prejudicial to the position of the Head of State, the image of the President and the constitutionally established Government of the Republic of Kenya.	Njonjo conducted himself in a manner prejudicial to the Head of State, the image of the President and the constitutionally established Government of the Republic of Kenya.	150	27
3.	Allegation that Njonjo was a party to a conspiracy or conspiracies to overthrow by unlawful means the Government of the Republic of Kenya, during the month of August 1982, or the concealment thereof.	Njonjo was implicated in the illegal importation of arms, in the build-up of the cache in the Haryanto home, and also in Muthemba's attempts to acquire arms and train personnel; these activities in which he was involved, were part of conspiracies to overthrow, by unlawful means the Government of the Republic of Kenya during the month of August, 1982, and also the concealment thereof.	173	31
4.	Allegation that Njonjo was a party to the unlawful activities of Andrew Mungai Muthemba, or the concealment thereof.	Njonjo was a party to Muthemba's unlawful activities. Njonjo was also a party to the concealment of Muthemba's unlawful activities.	194	38

	Allegation	*Finding/Conclusion*	*Paragraph*	*Page*
5.	Allegation that Njonjo was a party to the convening of the purported Rungiri Presbyterian Church of East Africa prayer meeting on 12th June, 1983 and/or its conversion into an irregular political gathering with the intention of undermining the position and image of the President and the political leadership in the country.	No finding regarding this allegation, or any implication arising therefrom.	217	44
6.	Allegation that Njonjo acted against Kenya's national interest and policy of maintaining good neighbourliness.	Njonjo acted against Kenya's national interest and policy of maintaining good neighbourliness by openly declaring his hostility, both at Arusha and thereafter in Parliament and by celebrating the break-up of the East African Community which comprised Kenya, Uganda and Tanzania.	226	46
7.	Allegation that Njonjo acted against Kenya's national interest and policy of opposing the inhuman regime of South Africa.	Njonjo actively collaborated with South Africans in total disregard of Kenya's national interest and policy at a time in 1980, when the country was preparing to host a Meeting of the African Heads of State with a view to His Excellency the President taking over the Chairmanship of the Organization of African Unity.	236 and 237	48 and 67 48–49
8.	Allegation that Njonjo was a party to a conspiracy or conspiracies to overthrow by unlawful means the brotherly government of the Republic of Seychelles as by law established during the month of November, 1981, especially when His Excellency the President of Kenya was Chairman of the Organization of African Unity.	There were in Kenya persons involved in the attempted overthrow of the Government of Seychelles. These persons included Njonjo and Parkinson.	250 and 251	50

	Allegation	*Finding/Conclusion*	*Paragraph*	*Page*
9.	Allegation that Njonjo misused his office as Attorney-General and/or Minister in that he arrogated to himself the duties and powers of the President.	No evidence to support this allegation.	253	
10.	Allegation that Njonjo misused his office as Attorney-General and/or as Minister in that he solicited or received or attempted to receive or offered or made or attempted to make corrupt payments.	Njonjo corruptly made the payment of Sh. 160,000 in consideration of Amos Ng'ang'a resigning his Parliamentary Seat to enable him (Njonjo) to seek election thereto, as well as to seek political support, thereby undermining the process of democracy.	258	55
		—Njonjo corruptly made two payments of Sh. 10,000 each to Mutwol to seek political support and undermine the process of democracy.	264	56
		—Njonjo attempted to make a corrupt payment to Sifuna in order to induce him to join his (Njonjo's) camp thereby seeking political support and undermining the process of democracy.	273	57
11.	Allegation that Njonjo misused his office as Attorney-General and/or as Minister in that he granted favours or acted to the prejudice of individuals, to seek political support, to undermine the process of democracy and to protect persons involved in illegal activities.	Njonjo's conduct in relation to Gachago and Muchiri amounted to misuse of office of Attorney-General to seek political support.	282	58
		—Njonjo misused his Ministerial office by granting favours to prisoners who came from his constituency with the object of seeking political support.	293	61
		—Njonjo misused his office as Minister with the object of seeking political support in releasing two other prisoners, namely, Benson Mbugua Kariuki and Njiru Gikuma.	307	62

Allegation	*Finding/Conclusion*	*Paragraph*	*Page*
	—Njonjo misused his office by acting to the prejudice of Mwachofi and Sifuna by intimidation and threats of loss of personal liberty in order to seek political support thereby undermining the process of democracy.	311	63
	—By persecuting Mwidau, an innocent man, Njonjo acted to Mwidau's prejudice and detriment.	331	65
	—Njonjo instigated corrupt practices through his emissaries Said Hemed and Shariff Nassir by providing them with money to buy elected councillors to rig the election of the Mayor and Deputy Mayor of Mombasa with the object of seeking political support thereby undermining the process of democracy.	332	65
	—Njonjo acted to the prejudice and calamitous detriment of E. K. Kioni in misuse of his office as Minister.	344	67
	—Njonjo acted to the prejudice of both Kenya Airways and Sofat and granted a favour to A.B.C. Travels and Tours London by his abrupt intrusion at the meeting of Kenya Airways in London and his curt derogatory accusation of Sofat. He did this with the object of preserving A.B.C. Travels and Tours' monopoly, in which he held an interest through Acharya Travel Agency Limited, Nairobi.	346 and 347	67–68

SUMMARY OF FINDINGS AND CONCLUSIONS—(*Contd.*)

	Matters Pertaining	*Finding/Conclusion*	*Paragraph*	*Page*
1.	Matters relating to the Kikuyu Constituency Development Fund.	Evidence indicates criminal conduct on the part of Njonjo requiring investigations to decide whether charges should be laid.	365	71
2.	Matters relating to the Association for Physically Disabled of Kenya Fund.	The conversion by Njonjo of the charitable monetary gift of Sh. 103,000 for the physically disabled fund to Kikuyu Constituency Development Fund was misuse of office as Minister with the object of seeking political support in his Constituency.	383 and 384	72–73
3.	Matters relating to the Bohras of Kenya.	As no explanation was offered why the Bohra Community's exemption from registration was restored or their property released and in view of payments made by the Community into the account of Kikuyu Constituency Development Fund from which Njonjo made withdrawals of funds, these matters be investigated to determine whether any irregularities occurred.	393 and 394	74
4.	Matters relating to the purchase overseas of Mercedes Benz motor vehicle registration number KVD 710.	D. T. Dobie's certificate needs to be investigated to determine whether Njonjo was really their employee as projected by Njonjo and as certified by them to enable him to obtain the Foreign Exchange Allocation.	399	75
5.	Matters relating to Njonjo and his passports.	Njonjo misused his office both as Attorney-General and Minister in the matter of his passports.	412	76
		—Njonjo acted to the detriment of the Government of Kenya in the matter of the tender for the printing of passports by instructing that the contract be allotted to Bradbury's even though their price was higher by about £26,000.	411 and 413	76

JUDICIAL COMMISSION OF INQUIRY

The Commissions of Inquiry Act, Cap. 102
Laws of Kenya

RULES AND PROCEDURE

This Commission of Inquiry has been convened pursuant to its appointment to inquire into the conduct of Mr. Charles Mugane Njonjo as stated in Gazette Notice No. 2749 published on 29th July, 1983 and Notice No. 4051 published on 21st October 1983.

The Commissioners make the following rules for the conduct and management of the proceedings of the Inquiry under section 9 of the Commissions of Inquiry Act.

1. The Attorney-General appears *amicus curiae.*

2. Subject to section 9 of the Act the Commission of Inquiry shall sit daily at 9.30 a.m. from Tuesdays to Fridays.

3. The Commissioners may direct that the public shall not be admitted to all or to any specified part of the proceedings of the Inquiry, and subject to any such direction, the Inquiry shall be held in public, but the Commissioners may exclude any person or class of persons from all or any part of the proceedings of the Inquiry if satisfied that it is desirable so to do for the preservation of order, for the due conduct of the Inquiry, or for the protection of the person, property or reputation of any witness in the Inquiry or any person referred to in the course of the proceedings thereof, and may, if satisfied that it is desirable for any of the purposes aforesaid so to do, order that no person shall publish the name, address or photograph of any such witness or person or any evidence or information whereby he would be likely to be identified and any person who contravenes such an order shall without prejudice to section 121 of the Penal Code, be guilty of an offence and liable to a fine not exceeding two thousand shillings.

4. Without the leave of the Commissioners no evidence shall be adduced in public to the Inquiry concerning or relating to any matter prejudicial to the security of the State or the Head of State.

5. Mr. Njonjo shall be entitled to be represented by an advocate in the proceedings of the Inquiry.

6. Any person who is in any way implicated or concerned in any matter under Inquiry shall be entitled to be represented by an advocate.

7. Any other person who desires to be so represented may, by leave of the Commission, be so represented.

8. The advocate assisting the Inquiry will present evidence relating to the Inquiry referred to in the Terms of Reference of the Inquiry.

9. The advocate assisting the Inquiry will warn the witness that after examination-in-chief, he may also be cross-examined by him.

10. The Commissioners may summon Mr. Njonjo and any other person or persons to testify on oath and, may call for the production of books, plans and documents that the Commissioners may require.

11. Mr. Njonjo may adduce material evidence in his behalf as stated in Gazette Notice No. 4051 of 1983.

12. The Commissioners may call for any further evidence on any point relating to any matter before them and may recall any witness for further examination.

13. Evidence shall be adduced by the question and answer method.

Dated at Nairobi this 22nd day of November, 1983.

C. H. E. MILLER,
Chairman, Commission of Inquiry.

APPENDIX "B"

GAZETTE NOTICE No. 4052

IN THE MATTER of a Judicial Commission of Inquiry established by His Excellency the President on 26th of July, 1983, under the Commissions of Inquiry Act, Cap. 102 of the Laws of Kenya to inquire under its terms of reference into allegations made involving Charles Mugane Njonjo as set out in the Commission's terms of reference.

To: Charles Mugane Njonjo,
Naivasha Avenue,
Muthaiga,
P.O. Box 40666, Nairobi.

WHEREAS His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya has appointed a Commission of Inquiry to inquire into your conduct as per the Citation and Terms of Reference thereof annexed hereto:

TAKE NOTICE that we, the said Commission of Inquiry will assemble at Old Chamber, Parliament Buildings at 10 a.m. on the 28th day of October, 1983, to conduct the said inquiry.

AND FURTHER TAKE NOTICE that you, the said Charles Mugane Njonjo, may appear either in person or by your advocate at the hearing of the evidence, to cross-examine any witness testifying thereto, and to adduce without unreasonable delay material evidence in your behalf in refutation of or otherwise in relation to the evidence.

AND FURTHER TAKE NOTICE that the Commission will proceed to hold the inquiry and receive evidence pertaining thereto your absence notwithstanding.

GIVEN under the hand of the Chairman for and on behalf of the said Commission of Inquiry at Old Chamber, Parliament Buildings, Nairobi.

Dated at Nairobi the 20th October, 1983.

C. H. E. MILLER,
Chairman, Commission of Inquiry.

To be served on:
Charles Mugane Njonjo,
Naivasha Avenue,
Muthaiga,
P.O. Box 40666, Nairobi.

Please acknowledge this notice and the attached instrument by signing hereunder:

CHARLES MUGANE NJONJO,

..... day of October, 1983.

REPUBLIC OF KENYA

IN the matter of Judicial Commission of Inquiry established by His Excellency the President on 26th July 1983 under the Commissions of Inquiry Act, Cap 102 of the Laws of Kenya to inquire under its terms of reference into allegations made involving Charles Mugane Njonjo, as set out in the Commission's Terms of Reference.

WITNESS SUMMONS

To: Mr. Charles Mugane Njonjo,
Naivasha Avenue,
Muthaiga, Nairobi.

WHEREAS His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya has appointed a Commission of Inquiry to inquire into the conduct of Mr. Charles Mugane Njonjo and WHEREAS your personal attendance is required as a witness to give evidence;

NOW THEREFORE you are hereby commanded to attend the Inquiry at the Old Chamber, Parliament Buildings at 9.15 a.m. on the 30th day of July 1984 as a witness in the said Inquiry and to remain in attendance until released by the Commission.

GIVEN under my hand for and on behalf of the Commission of Inquiry this 27th day of July 1984.

C. H. E. MILLER,
Chairman.

Please acknowledge this witness summons by signing hereunder.

C. M. NJONJO,

Dated the 27th July, 1984.

ATTORNEY-GENERAL'S OPENING ADDRESS

May it please My Lord Chairman, Mr. Justice Miller, My Lord Mr. Justice Madan and My Gracious Lady Justice Owuor. I appear before you, *amicus curiae*, on behalf of the Republic.

It is my honour and privilege to welcome this Commission and initiate the commencement of its business.

To assist you in this onerous and noble task, His Excellency the President has appointed two distinguished lawyers, Messrs Jared Benson Kangwana and Benjamin Patrick Kubo as joint secretaries, and three most able Counsel, Messrs Lee Muthoga, Timan Njugi and Onyango-Otieno. All these gentlemen will, I am sure, put their combined talents at your disposal to facilitate and expedite the Inquiry.

The National Assembly has provided you with the facilities you require to enable you to undertake this task with all due speed and efficiency. My office will, all the time, be available to assist you in any way that you may wish to be assisted.

I am informed that the person whose conduct is the subject of this Inquiry will be represented by Messrs Deverell and P. Muite, both eminent lawyers. I am happy to observe that the person whose conduct is the subject of this Inquiry is physically present in this Chamber in response to your summons.

Permit me, My Lords, to observe that having two sets of Counsel must not in any way, mislead us into seeing this Inquiry as a trial, it is not. Accordingly, My Lords Commissioners, subject to the observance of the rules of relevance and natural justice, of which you are sole judges, nothing should fetter your endeavours in getting to the roots and truth of the allegations into which you are directed to inquire.

My first duty is to formally present to you the instruments appoining the Commission namely:

Gazette Notice Number 2749 of 29th July, 1983; Gazette Notice Number 2836 of 5th August, 1983; Gazette Notice Number 4051 of 21st October, 1983; and the signed Instrument which I hereby lay on he table.

(Hon. Muli laid the documents on the table)

This is a momentous occasion in the history of our beloved country. It is an important and serious occasion for it is Kenya's first public Inquiry into the conduct of one who has held and served in undoubtedly some of the highest offices in Kenya's Government almost from the birth of Independent Kenya nearly twenty years ago.

You will no doubt, as is your duty, go into every aspect of the allegations that you are directed to investigate under the Terms of your appointment. All the Kenyans will be waiting anxiously to hear, and know the results of your deliberations and the conclusions thereof.

We attained independence almost 20 years ago and emerged into an era with fond hopes that every citizen and everyone who lives in this country will enjoy freedom from fear, the right to personal liberty, freedom of conscience, expression, and association. Indeed, our constitution assures each one of us the right of others to do the same. I am pleased to say that this has to a large extent been achieved.

Kenyans today can justifiably be proud of the democratic manner in which we have secured and protected these liberties. Nevertheless, we cannot afford to be complacent nor to take democracy and the enjoyment of these rights for granted. The price of

freedom is eternal vigilance. It is for this purpose that this Commission has been issued to inquire into these very serious allegations which concern the security of the State and the position and image of the Head of State, and touch upon the very fabric of our society.

What is alleged amounts to a systematic erosion of the rule of law, culminating in a conspiracy to endanger and undermine the sovereignity of the State itself. The allegations of involvement in conspiracy to overthrow the Government of a friendly neighbouring country, and that too in collusion with the abhorent regime of South Africa, which subjugates the majority of its people is no less serious.

That seriousness is not mitigated by the fact that our Head of State was at the particular time, the Chairman of the Organization of African Unity. I must stress that the specific allegations in the Terms of Reference do not in any way limit the generality of the Citation.

You will be at liberty to summon whomsoever you wish to testify before you, to enable you to discharge your duty to arrive at the truth. The subject of this Inquiry will no doubt be called to testify as directed, and will be free to call witnesses on his behalf. All these witnesses may be examined or cross-examined by Counsel from both sides who are assisting the Commission. You will be at liberty to adjourn from time to time as exigencies require and re-assemble as may be convenient to you and to all the parties concerned.

The issuance of this Commission and appointment of Your Lordships as Commissioners underscores His Excellency the President's desire to consolidate, preserve the democratic process and the adherence to the rule of law and equality before the law, and also the very cardinal principle of natural justice that no one shall be condemned unheard.

In other lands accusation of the matters alleged in the Terms of Reference alone without proof would have landed the subject before a Kangaroo Court and thence to a firing squad without a hearing and without a voice being raised on his behalf. We are proud, therefore, to be the legatees of a tradition which does not condone such acts. It is with this in mind that My Lords, the Commissioners you are charged with the responsibility to ensure that fair play and justice is not only done but seen to be done.

The International and Local Press will no doubt be covering this event extensively. I would like to appeal to them to report the proceedings of the Inquiry accurately, objectively and responsibly and to avoid over-sensationalizing the issues. They owe this not only to the reading public but to the State, the subject and to the world generally.

May I appeal to the people of Kenya to avoid gossip and await the outcome of the Inquiry. They should continue with their normal duties and leave the Commission to do its duty without interference or pressure from whatever source.

Lastly, let me take this opportunity to call on the public and public servants who have information which would in any way assist the Commission, to come forward and place it before the Commission through the Office of the Assisting Counsel and the Secretaries to the Commission.

To you, My Lords Commissioners, I would emphasize that you should feel free to express your findings in your report without fear or favour, in the full knowledge that the mission that you are undertaking has the full backing and support of the Government; and the citizens of Kenya who are the beneficiaries of the fruits of undiluted independence and self-determination, await the result of the Inquiry.

Thank you.

CHAIRMAN'S CLOSING ADDRESS

Hon. Attorney-General, on behalf of my fellow Commissioners and myself, it is my duty to extend to you our profound gratitude for the interest that you have taken in this Inquiry. There is no doubt that it was not done merely because you are the immediate keeper of the laws of Kenya, but because as I personally know you, and I am sure my fellow Commissioners also know you, you have been engaged in the actual work of judge of the High Court of Kenya. We are most grateful, honourable Attorney-General and we can assure you that in keeping with our fundamental oath of delivering justice in all cases before us, we will do our best not to let you down and, of course, not to let down any of our brothers and sisters, "wananchi" of Kenya.

As this public Inquiry draws to its close, it is my duty to more specifically deal with an as yet inexplicable, but discrespectful and distasteful episode in these proceedings than I did at the moment when that episode occurred.

The present action has been prompted by reason of the following premises:

(1) This Inquiry has its birth in the Constitution of Kenya; and as I pointed out before, the authority empowering this Inquiry is of Royal Commissions status, as known and recognized in the Commonwealth.

(2) Conduct "prejudicial to the position of the Head of State, and image of the President and the constitutionally established Government of the Republic of Kenya and matters pertaining thereto" form part of the Terms of Reference.

(3) That this Inquiry is a judicial proceeding and is set out in the Act—Chapter 102 —and our Rules and Procedure.

Subject to and in conjunction with those premises, it is the automatic principle of practice before courts or tribunals, that an advocate is not to adopt or pursue a line or stand in the representation of his client, and, I repeat, without the tacit consent and approval of the client.

In his evidence on oath, Mr. Njonjo has most correctly restated the Solicitor and Client relationship, by stating that his advocate, Mr. Deverell, "has his fullest confidence". In other words, I think it is correct to say that the advocate must be taken to be speaking for and on behalf of the client, Mr. Njonjo, in these proceedings. The record of proceedings of this Inquiry would show that Mr. Deverell speaking for and on behalf of Mr. Njonjo, expressly used words in the cross-examination of a witness, Francis arap Mutwol, which words by logical deduction and the context must be interpreted to mean that His Excellency the President is only President of the Kalenjin tribe of Kenya.

The record of proceedings would show my instantaneous revolt and challenge of Mr. Deverell, when he, in my opinion, deliberately uttered the disparaging remarks in his advocacy. It would also be seen that in response to my challenge, Mr. Deverell engaged the Commission with a stream of tangled words and circumlocution, but leaving the express consideration of the horrible innuendo untouched.

We, the Commissioners, consider that whilst we still have control of this forum it is our duty to here and now firmly record our utter disgust at Mr. Deverell's utterances directed against the image of the Head of State. Our sense of legal duty and responsibility demand these observations right here in public in the Inquiry where Mr. Deverell committed his disrespectful act.

Mr. Deverell should, no doubt, know what is meant, or entailed. If need be, that has been indicated to him in the past. I am forced to observe, with profound respect, that in my little personal book of honours of barristers of Kenya, Mr. Deverell up till this Inquiry, his name took place as one of the first fourteen. Alas! Alas! That is what has been done in this Inquiry to the Head of State. All I can say is that, unfortunately, so many people misuse and misunderstand what is meant by our *motto* of Peace, Love and Unity.

Indeed, and in fact, I can go further to say that for the years of practice of Mr. Muite and Mr. Deverell before me in the High Court and the Court of Appeal, I can assure anyone that Mr. Muite would not, in his wildest dreams, have done what Mr. Deverell has done, in the presence of the public of Kenya and this Inquiry.

On behalf of the Commissioners, it is my duty to also firmly and sincerely associate ourselves with the remarks of gratitude already expressed by Mr. Muthoga, and so wonderfully and also sincerely expressed by the Hon. Attorney-General. We, the Commissioners, can only assure you, be of no doubt that hereafter we will certainly in our fairness and natural justice consider the evidence before us and due and just report return. We thank you all very much for your apt attention and punctuality.

We now rise, as I declare this Inquiry formally closed.

APPENDIX 'F'

JUDICIAL COMMISSION OF INQUIRY

LIST OF WITNESSES

No.	*Name*	*Occupation*
1.	Douglas Allen Walker	Superintendent of Police, Chief Licensing Officer, Central Firearms Bureau.
2.	Julius Monyoncho Angwenyi ..	Assistant Security Officer, Ministry of Transport and Communications, Jomo Kenyatta Airport.
3.	Sebastian Macharia Chege	Station Manager, Kenya Airways, Jomo Kenyatta Airport.
4.	Martin Goya Sitati	Assistant Preventive Officer, Customs Department, Ministry of Finance and Planning.
5.	Charles Ngatia Gichuru	Chief Inspector of Police, Central Firearms Bureau.
6.	Edward Ntalami	Chief Accountant, Kenya Airways.
7.	Essau Kihumba Kioni (Ex-Senior Superintendent of Police).	Ex-Security Services Manager, Kenya Airways.
8.	Zablon Munyasa	Assistant Security Officer-in-charge, Jomo Kenyatta Airport.
9.	Michael Otieno	Assistant Registrar of Companies.
10.	Richard Namai	Manager, Traffic Services, Kenya Airways.
11.	Benjamin Meja Gethi	Ex-Commissioner of Police.
12.	Benjamin Liech Odero	Customs Preventive Officer, Jomo Kenyatta Airport.
13.	Peter Anthony Vuko Kafwihi ..	Senior Immigration Officer, Head Office.
14.	Sakattar Singh Sehmi	Senior Immigration Officer, Head Office.
15.	David N. Moseti	Immigration Officer, Jomo Kenyatta Airport.
16.	Josphat Kivinda Musyoka	Higher Clerical Officer, Immigration Department, Head Office.
17.	James Kasyula Mutua	Ex-Principal Immigration Officer.
18.	Henry Kahigu	Registrar of Motor Vehicles.
19.	David Otina	Senior Superintendent of Police, C.I.D. Headquarters.
20.	Tito Birech Kuruna	Senior Manager in-charge, Banking Department, Central Bank of Kenya.
21.	Penelope Anne Warren-Hill	Ex-Personal Secretary of Mr. C. M. Njonjo.
22.	Kabucho Wakori	Ex-Chief Inspector of Police, Former Official Driver of Mr. C. M. Njonjo.
23.	Reuben N. Mutua	Commissioner of Prisons.
24.	Jesse Mwangi Gachago	Ex-Director in Boskovic Air Charters and Ex-Member of Parliament for Makuyu.

No.	*Name*	*Occupation*
25.	Abdallah Ndovu Mwidau	Member of Parliament, Mombasa South and Ex-employee of S.G.S. (Societe Generale de Surveillance).
26.	Lawrence Simiyu Sifuna	Member of Parliament, Bungoma South.
27.	Francis arap Mutwol	Ex-Member of Parliament, Kerio Central and Ex-Secretary Kanu Parliamentary Group.
28.	Mashengu wa Mwachofi	Member of Parliament, Wundanyi.
29.	Sydney George Reeve	Managing Director, S.G.S. (Societe Generale de Surveillance).
30.	Emmanuel Karisa Maitha	Councillor, Bamburi Ward in Mombasa Municipal Council.
31.	William Musau Kilonzo	Chief Sectional Engineer, Radio Control and Licensing Officer, Kenya Posts and Telecommunications Corporation.
32.	Dr. Robert John Ouko	Member of Parliament, Kisumu Rural and Minister for Labour.
33.	Fredrick Fidelis Gumo	Member of Parliament, Kitale East.
34.	Wamalwa Kijana	Member of Parliament, Kitale West.
35.	Clement Kalani Lubembe	Former Trade Unionist and Former Member of Parliament.
36.	Moses Mimano	Ex-Senior Superintendent of Police, Nairobi Area, Special Branch Headquarters.
37.	Abdul Rauf	Acting Registrar of High Court of Kenya.
38.	Naushad Nurali Merali	Managing Director, Ryce Motors Ltd.
39.	Vithalbhai Ambalal Shah	Director, Bedsitters Ltd. Company Secretary/Accountant, Gambit Holdings Ltd.; Company Secretary/Accountant, Technical and Industrial Representations Ltd.
40.	Mahmoud Perali Manji	Director and Company Secretary, Credit Finance Corporation Ltd.
41.	Husseinbhai Hamedali Hebatulla ..	Industrialist.
42.	Moses Githinji Kibera	Officer in-charge, Currents Account and Cash Department, National Bank of Kenya Ltd., Moi Avenue, Nairobi.
43.	Bernard Muiruri	Chief Accountant, Barclays Bank, Moi Avenue, Nairobi.
44.	Erastus Waweru Mukabi	Assistant Operations Manager, Commercial Bank of Africa, Wabera Street, Nairobi.
45.	Dickson Kamau Muiruri alias Dickson Kamau son of Georges Muiruri ..	Unemployed.
46.	Andrew Mungai Muthemba	Businessman.
47.	Hasnukh Pranjivan Makhecha ..	Advocate.

LIST OF WITNESSES—(*Contd.*)

No.	*Name*	*Occupation*
48.	Peter Leyani Likimani	Corporal in Armed Forces Medical Corps.
49.	Jeremiah Odera Odede..	Assistant Commissioner of Police, Police Headquarters.
50.	Andrew Ranjan Perera	Master and Registrar, Supreme Court of Seychelles.
51.	Capt. Alistair John Wilson	Pilot.
52.	Gerry Saurer	Manager, Six-Eighty Hotel, Nairobi.
53.	Mrs. Sally Pearson	Ex-Charter Officer, Sunbird Aviation Ltd.
54.	William Henry Boyd Parkinson ..	Businessman.
55.	Capt. David John Gilchrist Leonard ..	Pilot.
56.	Sharad Sadashiv Rao	Ex-Deputy Public Prosecutor.
57.	James Boro Karugu	Ex-Attorney-General.
58.	Hon. Mr. Justice Alfred Simpson ..	Chief Justice.
59.	Raila Amolo Odinga	Ex-Assistant Director, Kenya Bureau of Standards.
60.	Charles Mugane Njonjo	Ex-Minister for Constitutional Affairs.
61.	Amos Ng'ang'a	Chairman, Kenya Power Co. Ltd. and Tana and Athi Rivers Development Authority.
62.	Duncan Ndegwa	Ex-Governor, Central Bank of Kenya.