

THE CO-OPERATIVE BANK OF KENYA LTD



**PARLIAMENTARY INVESTMENT
COMMITTEE REPORT**

31ST OCTOBER 2013

I. BACKGROUND

We write further to our report dated 23rd October 2013 when we highlighted the following in regard to Riverside Drive LR. No. 209/4383/3 Nairobi.

- That Cotton Board of Kenya had a debt in our books which they were unable to pay. This debt was secured by amongst other securities the property on Riverside Drive LR. No. 209/4383/3 Nairobi.
- The said property was auctioned by Watts Enterprises acting on behalf of the Bank so as to facilitate repayment of the debt in our books then standing at Kes.6,411,989.85 as at 16th August 2000.
- The auction was held on 8th November 2000 and the highest bidder Mr. John M. N. Mututho committed to pay Kes.21.5m of which Kes.5.375m, - being the 25% deposit was paid immediately.
- The property had been valued at a market value of Kshs.20 million and forced sale value of Kshs.12 million.

II. FURTHER CLARIFICATION SOUGHT

We provide the following clarifications as requested;

1. Reconciliation of the balance

The following table explains the balances after the auction;-

<u>Particulars</u>	<u>Debit amount (dr)</u>	<u>Credit amount (cr)</u>
Opening balance	6,411,989.85	
Interest & ledger fees	926,297.35	
Auctioneers fees	348,751.85	
Legal fees	179,270.00	
Payments 1		5,375,000.00
Payments 2		3,000,000.00
TOTAL	-7,866,309.05	8,375,000.00
Refund to Cotton Board		508,690.45

The balance of Kes.6, 411,989.85 did not include interest accrued between August 2000 and July 2001, a period of eleven (11) months, of Kes.926,297.85. Auctioneers fee levied on the account that amounted to Kes.348,751.85 and legal fees arising from professional services to oppose an application for injunction filed by Cotton Board of Kenya that amounted to Kes.179,270/-. These amounts resulted in a balance due of Kes.7,866,309.55 which was off-set by the Kes.8,375,000/- received, leaving a credit balance of Kes.508,690.45 which was paid to Cotton Board of Kenya as earlier reported. *A copy of the full account print out of the loan account is attached for reference.

2. Details on the public auction

The public auction was attended by nine (9) bidders attached is a copy of the attendance register/ hand written auction notes received from M/s Watts Enterprises.

3. Conclusion of the sale:

Following a successful public auction the purchaser had paid the deposit and subsequently made arrangements to conclude the purchase, but Cotton Board put an injunction in court to stop the process (HCCC No. 2037 of 2000) - see enclosed copy of letter dated 7th December 2000 from M/s. Sheth & Wathigo Company Advocates.

There were subsequent Court applications (HCCC No. 1285 of 2001) between Cotton Board and the purchaser regarding the same property that were concluded by **Court Orders** based on mutual consents that provided for the following;

Court Order issued on 22nd August 2001

- i) The defendant to pay the balance of the purchase price for the premises known as LR 209/4389/3 Nairobi directly to Cotton Board of Kenya the plaintiff herein.

- ii) Upon receipt of Kes.2m the plaintiff to give vacant possession of the said premises to the defendant and the balance to be paid within 6 months.
- iii) The defendant to redeem in full the plaintiffs account with the chargee's Co-operative Bank of Kenya Ltd
- iv) Upon execution of transfer by the said chargee the plaintiff's advocates to call for the title documents together with the said transfer from the charge and to hold the same for the facilitation of completion of the transaction in terms of this consent.
- v) In default each party to be at liberty to apply.

The above Court order was followed through by Court Order issued on 20th September 2001 which ordered as follows;

- i) That the suit be and is hereby marked as settled;
- ii) That the plaintiff do give vacant possession of the premises known as LR No. 209/4389/3 Riverside Estate Nairobi upon payment of a substantial portion of the outstanding balance;0
- iii) That the outstanding balance thereafter be paid in six monthly instalments;
- iv) That the plaintiff's advocates to liaise with the Co-operative Bank of Kenya Limited as chargee for the suit premises, appropriately for the release of the title documents so as to facilitate completion of the transaction;
- v) That in the event of non-compliance by either party, there be liberty to apply.

Copies of the two Court Orders are enclosed herewith.

We note that the Bank acted professionally and totally in line with the Public auction and subsequently the High Court Orders issued on the matter.

Appendixes:

1. Copy of loan account print outs.
2. Copy of Auction attendance register/Auction notes from Watts Enterprises
3. Copy of Letter dated 7th December 2000 from Sheth & Wathigo Co. Advocates on readiness to pay balance
4. Copy of fee note dated 24th April 2001 from Onyango Ohaga & Co. Advocates giving details of the suit against the Bank after auction
5. Copy of Court Orders issued on 22nd August 2001 and 21st September 2001 in the matter.



CO OPERATIVE

We are you

STATEMENT DATE:
STATEMENT NO.:
PAGE:

CUSTOMER NAME AND ADDRESS

COOP HOUSE BRANCH
COTTON LINT AND SEED MARKETING
BOARD
016/03/006021/01
FACTORIES/GIMM.MILLS (P/ARB)

25.750

ACCOUNT NUMBER

ACCOUNT DESCRIPTION

CURRENCY

02 JAN 01
15
1 KES

DATE	DESCRIPTION	DATE	AMOUNT	VALUE	DATE	BALANCE
	BALANCE BROUGHT FORWARD					6,263,049.40DR
31 JUL 00	INTEREST TO DATE	31 JUL 00	148,940.45			6,411,989.85DR
31 JUL 00	INT TO AC 01603/006021/01	31 JUL 00	400.00			6,412,389.85DR
31 JUL 00	INT FRM AC01603/006021/01	31 JUL 00	148,940.45			6,411,989.85DR
31 AUG 00	BANK CHQ COMMISSION	31 AUG 00	400.00			6,412,389.85DR
31 AUG 00	HOUSING & VALUATION CONS.	31 AUG 00	65,810.00			6,478,199.85DR
31 AUG 00	SERVICE FEE APPLIED	31 AUG 00	16.00			6,478,215.85DR
31 AUG 00	INTEREST TO DATE	31 AUG 00	146,158.20			6,624,374.05DR
31 AUG 00	INT TO AC 01603/006021/01	31 AUG 00	146,158.20	146,158.20		6,478,215.85DR
31 AUG 00	INT FRM AC01603/006021/01	31 AUG 00	146,158.20			6,624,374.05DR
30 SEP 00	INTEREST TO DATE	30 SEP 00	140,200.75			6,624,374.05DR
30 SEP 00	INT TO AC 01603/006021/01	30 SEP 00	140,200.75	140,200.75		6,764,574.80DR
30 SEP 00	INT FRM AC01603/006021/01	30 SEP 00	140,200.75			6,624,374.05DR
31 OCT 00	INTEREST TO DATE	31 OCT 00	147,940.35			6,764,574.80DR
31 OCT 00	INT TO AC 01603/006021/01	31 OCT 00	147,940.35	147,940.35		6,912,515.15DR
31 OCT 00	INT FRM 01603/006021/01	31 OCT 00	147,940.35			6,764,574.80DR
16 NOV 00	LOCAL CHQ DEPOSIT	16 NOV 00	5,375,000.00	5,375,000.00		6,912,515.15DR
30 NOV 00	SERVICE FEE APPLIED	30 NOV 00	16.00			1,537,531.15DR
30 NOV 00	INTEREST TO DATE	30 NOV 00	93,211.75			1,630,742.90DR
06 DEC 00	BANK CHQ COMMISSION	06 DEC 00	400.00			1,631,142.90DR
06 DEC 00	WATTS ENTERPRISES	06 DEC 00	348,751.85			1,979,894.75DR
31 DEC 00	INTEREST TO DATE	31 DEC 00	41,822.10			2,021,716.85DR

MIN BALANCE : CURRENT A/CS 4000/=, SAVINGS A/CS 1000/=,
JUMBO JUNIOR 1000/=, JUMBO SCHOLAR 500/=,
COTTON LINT AND SEED MARKETING
BOARD
P.O. BOX 30477
NAIROBI

END OF STATEMENT

B.W. LTD.

Failing receipt by the Bank within 15 days from the date of dispatch of this statement with notice of disagreement with any of the entries, will be assumed to be correct. Any communication intimating disagreement with the statement should be addressed to the manager and marked "PRIVATE & CONFIDENTIAL"



CO OPERATIVE

BANK OF KENYA

We are you

STATEMENT DATE:

STATEMENT NO.:

PAGE:

CUSTOMER NAME AND ADDRESS

ACCOUNT NUMBER

COOP HOUSE BRANCH
COTTON LINT AND SEED MARKETING
BOARD
016/03/006021/01
FACTORIES/GINN. MILLS (P/ARR)

ACCOUNT DESCRIPTION

25.000

CURRENCY

02 JUL 01

16

1 KES

DATE	BALANCE BROUGHT FORWARD	WITHDRAWAL	DEPOSIT	VALUE DATE	BALANCE
31 JAN 01	INTEREST TO DATE	31 JAN 01	44,214.70		2,021,716.85DR
28 FEB 01	INTEREST TO DATE	28 FEB 01	40,993.20		2,106,924.75DR
31 MAR 01	INTEREST TO DATE	31 MAR 01	46,525.55		2,153,450.30DR
30 APR 01	INTEREST TO DATE	30 APR 01	46,018.95		2,199,469.25DR
31 MAY 01	INTEREST TO DATE	31 MAY 01	46,821.60		2,246,290.85DR
30 JUN 01	INTEREST TO DATE	30 JUN 01	46,156.70		2,292,447.55DR
<p>APPLY FOR YOUR CO-OP CASH DEBIT CARD NOW. THE BANK WILL NOT ACCEPT PHOTOCARDS FROM 1ST AUGUST 2001. COTTON LINT AND SEED MARKETING BOARD P.O. BOX 30477 NAIROBI</p> <p>END OF STATEMENT</p>					

B.W. LTD.

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CO OPERATIVE

We are you

STATEMENT DATE:
STATEMENT NO.:
PAGE:

CUSTOMER NAME AND ADDRESS

COOP HOUSE BRANCH
COTTON LINT AND SEED MARKETING
BOARD
016/03/006021/01
FACTORIES/GINN. MILLS (P/ARR)

0.000

ACCOUNT NUMBER

ACCOUNT DESCRIPTION

CURRENCY 02 JAN 02
17
1 KES

DATE	BALANCE BROUGHT FORWARD	PARTICULARS	WITHDRAWAL	DEPOSIT	VALUE	BALANCE
01	CHEQUE DEPOSIT-900087		12 JUL 01		000.00	2,292,447.55
16 JUL 01	ONYANGO OHAGA & CO		16 JUL 01	179,270.00		528,282.45
16 JUL 01	INTEREST APPL. DR		16 JUL 01	18,842.00		509,440.45
31 JUL 01	INTEREST TO DATE		31 JUL 01	750.00		508,690.45
20 DEC 01	COTTON BOARD OF KENYA		20 DEC 01	508,690.45		0.00
<p>WE WISH YOU A PROSPEROUS AND HAPPY NEW YEAR. WE ARE YOU!</p> <p>COTTON LINT AND SEED MARKETING BOARD P.O. BOX 30477 NAIROBI</p> <p>HND OF STATEMENT</p>						

BW LTD

Falling receipt by the Bank within 15 days from the date of dispatch of this statement with notice of disagreement with any of the entries, will be assumed to be correct. Any communication intimating disagreement with the statement should be addressed to the manager and marked "PRIVATE & CONFIDENTIAL"

WATTS ENTERPRISES

AUCTION HELD ON 8TH NOVEMBER 2000 AT 11.00 AM IN OUR VIEW PARK TOWERS OFFICES - NAIROBI

	NAME	ADDRESS	TEL CONTACTS	PROPERTY
				L.R.NO:209/4389/3 - RIVERSIDE NAIROBI
1	Monicah Odede	BOX 22518 NRB	330890	
2	Lamech Odoyo Obadia	BOX 53494 NRB	212394	
3	Mr. Mungai	BOX 30477 NRB		
4	Osman Nasir	BOX 78278 NRB	449246	
5	Job M. Kiarago	BOX 68240 NRB	071-20805	
6	John M. Mututho	BOX 76439 NRB	577366	
7	Mr. Chirchir Kipketer	BOX 52512 NRB	534241	
8	John Njogi	BOX 21617 NRB	212640	
9	Joseph Muthiora	BOX 718 RUARAKA	812040	
10				
11				
12				
13				
14				

Ringkasan Hasil

- 8.9 M Odade 11. M Mutus
- 8.5 Muthira 11.5 Odade 16. Mutus
- 9 M Mutus 12 M Mugi 16.5 Odade
- 9.5 Odade 13 M Mutus 17 M Muthira
- 10 M chuchir 14 M Mutus 17.5 Odade
- 10.5 J Mutus 14.5 Muthira 18 M Mugi
- 15 M Job 18.5 Jaman
- 16 M Mugi 19 M M
- 19.5 Jaman



2011
2011

2150

2150

John M. ...
Highest Leader

3
25
1500
11

75
3950

537,000 deposit

2150

**SHETH & WATHIGO CO.,
ADVOCATES**

& COMMISSIONER FOR OATHS

RAJNI SHETH, B.A (HONS) LL.B

J.G. WATHIGO
LL.B (HONS) DIP in Admin. (Birmingham)

M.W. KAMAU
LL.B (HONS) NAI DIP Law (KSL), CPS(K)

Nairobi Office

Windsor House

1st Floor

University Way,

P. O. Box 49100

Tel: 226607, 337721

Fax: 313082

weyhanu@sheth.co.ke

NAIROBI

Nakuru Of

Vickers House

1st floor

NAKURU

Our Ref: MWK/CON/JM/204/00

7th December, 2000

The Co-operative Bank (K) Ltd
Kenya Re-insurance Plaza 4th Floor
Taifa Road
P.O. Box 48231
NAIROBI

Attn: Mr. Kennedy K. Abuga

Dear Sir

RE: PURCHASE OF L.R. NO. 209/4389/3
RIVERSIDE ESTATE NAIROBI



We refer to the above. Our client is now ready to complete the sale. We confirm we are holding a cheque drawn in your favour for the balance.

In view of the fact that there is a pending Civil Case HCCC No. 2037 of 2000 we propose the following course of action:-

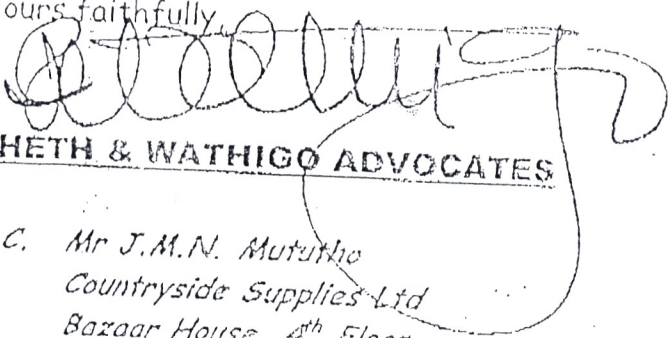
- 1) That we immediately open a deposit client account for Kshs. 16,125,000/= with your Bank with irrevocable instructions that the money be released to the Bank upon our notification that the Transfer has been successfully registered. In the event that the Transfer is not registered the money shall be held to our order and returned on demand.
- 2) That you execute the enclosed Transfer and let us have the same back together with the Original Title Deed and instrument of Charge. Time is of the essence in this regard.

When replying please quote our reference

- 3) The Bank will be responsible for the rates and Land Rent upto and including the date of sale.
- 4) That you will take all the necessary steps to defend Civil Suit No. 2037 of 2000.

A Copy of the cheque is enclosed herewith together with a letter dated 7th/12/2000 from our client instructing us on the issue just for your information.

Yours faithfully,



SHETH & WATHIGO ADVOCATES

C.C. Mr J.M.N. Mututhio
Countryside Supplies Ltd
Bazaar House, 4th Floor
NAIROBI

Mr. D.G. Kariuki
Watts Enterprises Ltd
View Park Towers
9th Floor, Wing A (II)
P.O. Box 73376
NAIROBI

Mr. J.M. Ohaga
Onyango Ohaga & Co. Advocates
20th Century Plaza, 2nd Floor
Mama Ngina Street
NAIROBI

Euro Bank



Date 7th. Dec. 2000

Hamilton House, Wabera Street
P.O.Box 43071, Nairobi, Kenya

33-000

Printed by Temo

Pay THE COOPERATIVE BANK OF KENYA LTD. or order

Ksh 16,125,000

Kenya Shillings SIXTEEN MILLION ONE HUNDRED
AND TWENTY FIVE THOUSAND ONLY.

Countryside Supplies Ltd

Jolly Mwa Mwa

Cheque Number Bank Code Account Number

⑈ 25 2 1 5 4 1 3 3 0 0 0 4 1 1 ⑈ 1 0 0 0 9 7 0 2 8 ⑈

24th April, 2001

INTERIM

FEE NOTE NO:

Our Ref: 2/459/235
Your Ref: B/6/COTT/2 VOL VI

The Co-operative Bank of Kenya Ltd,
P.O. Box 48231,
NAIROBI

High Court Civil Case No. 2037 of 2000 [Milimani]
-COTTON BOARD OF KENYA versus THE CO-OPERATIVE BANK OF KENYA
LIMITED & JOHN M N MUTHOTHO

2000 Nov/April 2001

On account of our costs for professional services rendered; receiving your instructions to oppose an application for injunction filed by the Plaintiff seeking orders restraining the sale of the transfer of property L R No. 209/4389/3, Riverside Drive, Nairobi to the 2nd Defendant until the determination of the suit; perusing the papers filed on behalf of the Plaintiff; preparing and filing the necessary papers in reply including notice of preliminary objection, replying affidavit and defence; corresponding with you over the matter and advising; various attendances in court and having the application dismissed on 21st March 2001; rendering our interim fee note for work done during the marginal period have due regard to the nature of the matter and considering the value of the pecuniary interest involved herein.

Shs.150,000.00

Disbursements subject to V A T

Incidentals, copies and postages

Shs. 1,500.00

Shs. 151,500.00

+18% VAT

Shs. 27,270.00

ONYANGO, OHAGA
& CO.

Continuation Sheet
Payments not subject to V A T

Court fee + Commissioner of Oaths

Shs. 500.00

Less received from you on account

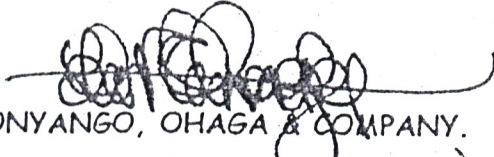
Shs. 179,270.00

Balance due to us

Shs. nil

Shs. 179,270.00

With Compliments,


ONYANGO, OHAGA & COMPANY.

Issue by chg
Dr. Kc 0160300602101
Per Pro. THE CO-OPERATIVE BANK OF KENYA LTD
60 OPERATING HOUSE, BOND STREET, NAIROBI
W. O. Ochieng
Corporate Man

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO.1285 OF 2001

COTTON BOARD OF KENYA PLAINTIFF

VERSUS

JOHN M.N. MUTUTHO DEFENDANT

(IN CHAMBERS ON 22ND AUGUST 2001 BEFORE HON. LADY JUSTICE ALUOCH)

ORDER

APPLICATION FOR ORDERS :

- (a) THAT this application be heard urgently and on priority basis.
- (b) THAT an urgent injunction order be issued to restrain the defendant from evicting the plaintiff from its premises known as **LR No. 209/4389/3 RIVERSIDE ESTATE NAIROBI** while pending the hearing and determination of this application.
- (c) THAT the costs of this application be provided for.
- (d) THAT such other and/or further orders be made as this Honourable court may Deem fit and just.

THIS APPLICATION made under Order XXXIX Rule 1,2 and 3 of the Civil Procedure Rules, Section 3A of the civil Procedure Act and all other enabling provisions of the Law presented to this court on 31st July 2001 by counsel for the plaintiff/applicant **AND UPON READING** the affidavit of **ERNEST MUNGAI** together with the annexure sworn on the 30th day of July 2001 **AND UPON READING** the Replying Affidavit of **JOHN M.N. MUTUTHO** with the attached annextures sworn on the 22nd day of August 2001 **AND UPON HEARING** the counsel for the plaintiff/applicant and counsel for the Defendant/Respondent.

IT IS HEREBY ORDERED BY CONSENT:-

1. THAT this matter be marked as settled under the following terms:

- (a) The defendant to pay the balance of the purchase price for the premises known as LR 209/4389/3 Nairobi directly to the Cotton Board of Kenya the plaintiff herein.
- (b) Upon receipt of Khs.2,000,000 the plaintiff to give vacant possession of the said premises to the defendant and the balance to be paid within 6 months.
- (c) The defendant to redeem in full the plaintiffs account with the chargee's cooperative Bank of Kenya Ltd.
- (e) Upon execution of transfer by the said chargee the plaintiff's advocates to call for the title document together with the said transfer from the chargee and to hold the same for the facilitation of completion of the transaction in terms of this consent.
- (f) In default each party to be at liberty to apply.

GIVEN under my hand and the seal of this court on 22nd day of August 2001.

DATED at Nairobi this 30th day of August - 2001



**PRINCIPAL DEPUTY REGISTRAR
HIGH COURT OF KENYA AT NAIROBI**

Checked
[Signature]
24-8-2001

I CERTIFY THIS IS A TRUE
COPY OF THE ORIGINAL
DATED.....4/11/13.....
Pd
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

Approved

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1285 OF 2001

COTTON BOARD OF KENYA PLAINTIFF

VERSUS

JOHN M.N. MUTUTHO DEFENDANT

ORDER

UPON READING a letter of Consent Ref: KWL/140/01 dated 5th September 2001 and filed in Court on 20th September, 2001 signed by counsel for the Plaintiff and Counsel for the Defendant.

IT IS ORDERED BY CONSENT:-

1. **THAT** this suit be and is hereby marked as settled with no orders as to cost.
2. **THAT** the Plaintiff do give vacant possession of the premises known as L.R. 209/4389/3 **RIVERSIDE ESTATE NAIROBI** upon payment of a substantial portion of the outstanding balance.
3. **THAT** the outstanding balance thereafter be paid in six monthly instalments.
4. **THAT** the Plaintiff's Advocates to liase with the Co-operative Bank of Kenya Limited as the chargee for the said suit premises, appropriately for the release of the title documents so as to facilitate completion of the transaction.
5. **THAT** in the event of non-compliance by either party, there be liberty to apply.

GIVEN under my hand and seal of the court this 26th day of September 2001.

ISSUED at Nairobi this *28th* day of *September*, 2001.

*Checked
Jesse
28/9*

**PRINCIPAL DEPUTY REGISTRAR
HIGH COURT OF KENYA AT NAIROBI**

I CERTIFY THIS IS A TRUE
COPY OF THE ORIGINAL
DATED..... *4/11/13*

P.B.O.
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI