



THE 5<sup>th</sup> ALL KENYAN MOOT COURT COMPETITION (AKMCC)

24<sup>th</sup> & 25<sup>th</sup> MARCH 2017

**KENYATTA UNIVERSITY SCHOOL OF LAW (KUSOL)**

**AND**

**AFFILIATE PARTNERS**

**AKMMC COMPROMIS 2017**

**The Case Concerning Purloined Information**

1. The Republic of Jambaze is located in the Eastern part of Africa. Its capital city Narobary is the largest city in the region and the major business hub in East and Central Africa. Jambaze covers 650,000 km<sup>2</sup> and has a population of approximately 45 million as per its 2012 National Population Census conducted by the Jambaze National Bureau of Statistics. It is a former colony that gained independence from the British in 1963. It has recently discovered vast deposits of natural resources in various zones of the country since and remains resource rich. Today, Jambaze is considered as being amongst the powerful developing countries and has recently been made a part of the BRICS organization. By 2060, Jambaze will be second only to China in terms of annual export revenue. There have been numerous reports on the media of massive looting of public property by various government officials in the tune of billions of Jambaze shillings.
2. Jambaze is both a member of the United Nations [UN], the African Union [AU] and the East Africa Community [EAC]. The then 1964 Attorney General and Acting Minister for Foreign Affairs Prof. Wangamati Do-Go' Chizo, on behalf of the Republic of Jambaze, signed and

ratified all the Core United Nations Human Rights Treaties. The state is also a party to the United Nations Convention Against Corruption [UNCAC] of 2003 and the African Union Convention on Preventing and Combating Corruption [AUPCC] of 2003. In addition, Jambaze is a monist state with a legal system similar to that of Kenya.

3. Jambaze is currently leading in reserves and production of natural resources and recent reports by the National Environmental Management Authority has valued its resources at almost USD\$48 trillion. Jambaze's resources primarily comprise of coal and crude oil, with coal amounting to approximately USD\$26 trillion of that valuation.
4. The country has grown since its internal civil strife of 2007-2008 that left scores of civilians dead and property worth millions destroyed. Business has shot up and foreign multi-national companies have taken interest and closely monitoring the country's progress. Recently, the Government of Jambaze, led by the President Mr. Attaynek Muu'h has made significant steps towards tapping its natural resources. Foreign companies have always managed to keep track of such developments. Companies get information through undisclosed sources and consulting companies that specialise in natural resources. The *modus operandi* adopted by the consulting companies is that they pay low grade public officials to steal information from government offices.
5. Based on this 'pocket' information, foreign companies enter into business transactions with the Government of Jambaze or private companies incorporated in Jambaze. The local and foreign investors also seem to invest large amounts of money in the Jambaze single stock exchange. Such investments, that appear to be based on this stolen information, are made in companies /sectors dealing with natural resources and result in enormous profits to investors.

6. President Attaynek Muu'h recently directed the Anti-Corruption investigating agency of the Republic of Jambaze, namely Ethics and Anti-Corruption Commission [EACC], to investigate the mode of operations by which the domestic and international companies have made such large-scale profits. On the basis of the President's direction, a preliminary enquiry [EACC-PE1-2016] was registered on the 14<sup>th</sup> day of February 2016 by the Anti-Graft Agency.
7. During the 45 day preliminary enquiry, the EACC detectives learnt that certain employees working in the ministries were stealing confidential Government documents and selling them to different companies and individuals. On the basis of the preliminary enquiry, the EACC detectives registered an 'Information Report' on the 17<sup>th</sup> day of March 2016 under Section 89 of the Criminal Procedure Code Cap 75 of the Laws of Jambaze, sections 280 [stealing by persons in public service] 273 [theft by a person having an interest in the thing stolen], 315 [cheating], 322 [handling stolen property], breach of trust by public servant, 349 and 352 [forgery] 355 [procuring execution of documents by false pretences] of the Jambaze Penal Code Cap 63 of the Laws of Jambaze. Sections 3 of the Jambaze Government Official Secrets Act, Cap 187 of the Laws of Jambaze and Section 39, 40, 46, 47 and 47A of the Anti-Corruption and Economic Crimes Act, 2003.
8. After making a formal complaint and registering the case with the Office of the Director of Public Prosecutions established under Article 157 of the recently promulgated 'The Constitution of Jambaze, 2010', the EACC detectives together with the Jambaze Police laid a trap on the 20<sup>th</sup> day of March 2016 at Mineral House where the offices of Ministry of Natural Resources was located. The record of proceedings maintained by the detectives and Police shows that the Lead Investigating Detective Alison Arubmay-Enilorac had recorded in the

EACC Police Post Station Daily Diary that on the basis of secret information received by him today, two persons, named David and Henry-Paul, along with their associates were involved in the theft of secret documents and would be coming to Mineral House at midnight with fake Identification Cards (ID cards) and duplicate keys to steal further documents. The Lead Investigating Detective and his team of eight officials would be present at 11:00 pm to arrest the accused persons.

9. The trap was laid and carried out successfully. Upon completion of the trap, the Lead Investigating Detective sent the record of the trap proceedings to the Police Station, which read as under: *“I along with other eight officials and the secret informer left the EACC Police Post Station on the 20<sup>th</sup> day of March 2016 at 22:00 hours in two Black Volkswagen Cars for Mineral House. I upon reaching the spot had asked public persons to join the raid; however, all of them citing personal reasons did not join the raid. Due to paucity of time, no written notice could be served upon them. Upon reaching there we were all sitting in the cars, at about 23:45, one yellow BMW Car stopped closed to the building; two persons had got down from the car and went inside Mineral Towers. The secret informer had confirmed those persons as David and Henry Paul. After waiting for more than an hour, about 00:50, both persons came out of Mineral Towers and they were immediately apprehended. On doing a personal search the following documents were received:*

1. *Photocopy of the Annual Coal Allocations List*
2. *Photocopy of a document entitled ‘Petroleum Planning and Analysis’*
3. *Draft Minutes of Meeting of the High Powered Committee on Exploration of Natural Resources.*
4. *Photocopy of an entire file entitled as ‘Future Coal Resource Planning’*

5. *Photocopy of an entire file entitled as “Presentation on Further Opportunities in Jambaze”*

6. *ID Cards of Ministry of Natural Resources in the names of David and Henry-Paul.*

10. The aforesaid documents and keys were sealed by marking the seal “FP-00001”. On questioning, no reply / justification, was provided by the Accused Persons regarding recovery of such documents.” Thereafter, the EACC detectives and Police interrogated David and Henry-Paul. During interrogation, they were confronted with recorded conversations of the accused persons with unknown persons regarding stealing documents and their call detail records. During such interrogation, David and Henry-Paul confessed to their crimes and disclosed to the investigating agency that they were stealing the documents for various consulting companies and individuals. They told the investigating agency that they were appointed as ad hoc employees in the Jambaze Ministry of Natural Resources. During their employment they met one Mr. Nna Arubak who owned the Company AWK LLC. which provides consulting services in the energy sector.

11. As per the arrested persons, Mr. Arubak lured them into stealing documents for large amounts of money. David and Henry-Paul stole documents for Mr. Arubak by using their ID Cards and duplicate keys. Similarly, David and Henry-Paul also admitted that Mr. Cicero of M/s NYS Energy Ltd, Mrs. Otur Arap Singh of M/s Hustlers Energy Consultants Ltd and Mr. Ngani Attayet of M/s Attayet Industries Ltd. also used to pay money for these documents.

12. Based on these disclosure statements, the offices of AWK LLC, M/s NYS Energy Ltd, M/s Hustlers Energy Consultants Ltd and M/s Attayet Industries Limited were searched on the 21<sup>st</sup> day of March 2016 and copies of various government documents were recovered. Mr. Arubak, Mr. Cicero, Mrs. Otur Arap Singh and Mr. Ngani Attayet were arrested by the

EACC detectives and Police. The Police also recovered a copy of a document titled, '*Draft Jambaze Budget for Financial Year 2016-17*' from the offices of all companies.

13. After their arrest, these persons were interrogated and confronted with call recordings and call detail records and also David and Henry-Paul. The Police also obtained the banks statements of all the accused persons and found that all the companies made monthly payments to David and Henry-Paul. All the company officials gave similar justifications that David and Henry-Paul had projected themselves as journalists and that they had no knowledge that David and Henry-Paul stole the documents. Meanwhile, the EACC detectives and Police also sought a report from the Ministry of Natural Resources and Ministry of Finance on the nature of the documents. Both the Ministries stated that all documents were classified in nature. However in reply to a contemporaneous Right to Information request made by a noted journalist from the famous Standard and Nation Media Groups, both the Ministries stated that they did not have any document, rule, guideline or instruction that provided the basis of classification of documents as secret, confidential or classified. In a well received piece of investigative journalism, Jicho Pevu disclosed that a high ranking government servant from the Ministry of Natural Resources had stated that, "*we decide what is confidential and what is not. We don't need guidelines. After all, we are the government and no Right to Information law can change that.*"
14. Upon completion of investigation, the EACC Police Officials submitted an Investigations Report to the Office of the Director of Public Prosecutions who took the matter before the Special Magistrate Court as constituted under section 3 of the EACC Act. Upon receipt of the formal charges/Indictment Report the Court took cognizance, summoned the accused, completed scrutiny of documents and listed the matter on the 20<sup>th</sup> day of May 2016 for plea

taking under the Criminal Procedure Code Cap 75 of the Laws of Jambaze. The advocates for the accused raised a preliminary objection on various issues about the charges including, an issue on the ingredients of the offences alleged by the prosecution exist to frame and serve a formal notice of indictment / allegations. And another issue as to there being any possible indictment for the offence under the Jambaze Government Official Secrets Act. The accused persons through their advocates also questioned whether the Court can hear and decide on submissions on false implication as the very foundational fact i.e. “secret information” is not being proved by anyone in the list of cited witness and therefore the entire trap and identification becomes questionable. The Magistrate decided the PO against the accused persons, holding the plea taking and bail application hearings as scheduled. The accused persons through their advocates filed an application under Article 22 of the Jambaze Constitution, to the High Court of Jambaze on the following grounds:

- a) To stay the proceedings during the pendency of present application;
- b) Declare and Order that the Jambaze Official Secrets Act is unconstitutional and should be struck down in its entirety being irrelevant and redundant and also against the letter and spirit of articles 34 and 35 of the Constitution of Jambaze and other relevant Statutes;
- c) To quash the charges against the Accused Persons as the lower court has no jurisdiction as none of the Accused Persons are “Public Servants”;
- d) Declare that the prosecution of the accused persons is unfair and contrary to various international human rights treaties and conventions.

15. The matter is pending before the Jambaze's newly established The Anti-Corruption and Economic Crimes Division of the High Court. Prepare heads of arguments for both the Applicant and the Respondent.