



KAMOTHO NJOMO & COMPANY

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Our Ref: JM/Lit/432B/16

Your Ref: T.B.A

Date: 7th June, 2016

The Chief Executive Officer

Deloitte Kenya Limited

Deloitte Place, Waiyaki Way, Muthangari

P.O. Box 40092-00100

Nairobi.

Dear Sir,

Attention of Mr. William Oelofse

RE: FORENSIC AUDIT PROCESS AT KENYA AIRWAYS LTD

We refer to our letter dated 7th April 2016 on the referenced matter and note that we are yet to receive any response thereto. A copy of the said letter is enclosed for ease of reference.

Preamble

As you are aware, there is a pending dispute between our client and KQ being Nairobi ELRC Case No. 430 of 2016 Alex Wainaina Mbugua versus Kenya Airways Limited. We enclose herewith a copy of the ruling delivered in the aforesaid matter in favour of our client barring KQ from replacing him.

Our previous letter was predicated on our client's grave concerns on the integrity and professionalism of the forensic audit process. In the aforesaid letter, we noted that in his replying affidavit dated 31 March 2016, Amb Dennis Awori had curiously stated as follows:

"Further, since the termination of the Applicant's employment, new matters have come to light following a forensic audit presently being undertaken in relation to the financial management of the affairs of the Respondent and the results of such

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audit may require the Respondent to consider further legal action against the Applicant."

We highlighted our client's concern that the Chairman of the Board premeditated the outcome of the forensic audit even before the process was concluded and was using the same as justification to oppose our client's re-instatement. How did the Chairman know, before the forensic audit was concluded, that there would be matters that could lead to further legal action levelled against our client?

Forensic audit

Our client was taken aback on Sunday 5 June 2016, when he received two anonymous emails from a certain "majimazuri". These emails which were also copied to several persons included two attachments purporting to be your reports on the forensic work done on fuel procurement and repatriation of currencies. Copies of the two reports are attached herein for your perusal.

We have had an opportunity to peruse the said reports and noted with great exception the glaring lack of professionalism in how the reports were prepared without sufficient consultations which is a clear indication that they are a hoax and not of the quality expected of a firm with international reputé like yourselves. However, in the event that these reports originated from your office, our client has serious concerns on the inaccuracies, innuendo and desperate attempt to find him culpable at whatever cost for the following reasons:

Concerns and observations on Jet Fuel Report

As you are well aware from correspondence between your firm and our client before his unceremonious exit, he was the one who pushed for the conduct of the forensic audit. At that point, there were no whistle blowing reports. Your assertion in the background section reference 2.1 that the fuel audit was necessitated by whistle

blowing is therefore not correct. The main driver for the forensic audit was the apparent massive revenue leakage in outstations from 2011 to date.

On page 16, the report mentions names of staff members whose laptops were handpicked for forensic data analysis. As your report clearly indicates, our client was not involved in the day to day jet fuel procurement transactions. What then was the rationale for selecting his computer for this analysis? In section 4.1, your report further alleges that our client, together with Safia Robinson and Victoria Mwema signed the PPM in 2009. The two ladies mentioned left KQ long before our client joined the company in July 2008. It is therefore very strange that you found a document signed by staff who never worked together with our client.

Regarding tendering for jet fuel, our instructions are that the tender was open to as many suppliers as possible except for those blacklisted. Your assertion in paragraph 5.2.16 is therefore inaccurate. In paragraphs 5.2.23/24/25, you point out correctly that there were many contract extensions. We have been instructed that the reason for this was because there was a committee that was finalizing the set-up of the KQ Fuel Company that had been approved by the board. Thus it did not make sense to enter into long term contracts. From your report, it appears that you did not look at the minutes of the project committee meetings set up to manage the process of establishing the KQ fuel company. In fact, we have been instructed that KQ at some point retained the services of a fulltime consultant to work on this project and the team travelled as far as India and the Middle East to try and identify potential suppliers. Our client was at the forefront of pushing for this project and clearly he would not have been so committed to it if he was deriving a personal benefit from the suppliers as alluded in various sections of your report. It is very concerning that you did not make the slightest attempt to establish the genuine reasons why the contract extensions were done with the knowledge of the board, or whether you deliberately chose to ignore this important fact in your report. Your insinuation that these contract extensions were mischievous is not supported by the facts and

suggests that your team was very eager to find something to latch onto to justify a premeditated conclusion.

By far the most shocking concern to our client in this report is the false suggestion in paragraphs 5.2.28/29/30 that the MOPAG method of procuring jet fuel is cheaper than the OTS method. Our instructions are that the decision to move from MOPAG to OTS was not taken lightly and was taken after serious analysis, debate and research. We have been further instructed that the former CEO even requested the internal audit team to review the rationale behind the preference of the OTS to MOPAG. There have also been several thoroughly conducted internal audit exercises to confirm whether OTS was working efficiently. All these reports came to the same conclusion that OTS was the better method. After reading your report, it does not seem that your team was aware of the work done by the internal audit or perhaps you simply chose to ignore their observations as well?

We have sought our client's instructions as regards paragraphs 5.3.23, 5.3.41 and 5.3.46 of your reports. His position is that the observations are not correct and this is a confirmation of your complete misunderstanding of how OTS and MOPAG work. Our client contends that both MOPAG and OTS rely on the internationally determined Platts price of jet fuel. There are several other costs added to the Platts price including IDF and KPC charges. All these charges are levied as a percentage of the Platts price to arrive at a cost before supplier margin. The difference between OTS and MOPAG is how the margin for the fuel supplier is determined. In MOPAG, this is determined as percentage of the total cost and in OTS, the supplier margin is negotiated and fixed at an agreed amount. The risk with MOPAG is that as the Platts price goes up, the supplier margin goes up. This structure would leave KQ exposed to increases in fuel prices. However as the Platts price goes down the supplier margin goes down. It would therefore follow that if you review a few invoices during a period that the Platts price are down as was the case in recent months, you would arrive at the inaccurate conclusion that MOPAG is cheaper. The basic

principle in risk management in to protect the upside risk. In OTS this is protected as the margin is fixed. It is like having a fixed interest rate on a loan in an environment where interest rates are volatile. The other rationale in OTS is that operational costs that suppliers incur are not subject to changes in the global jet prices. They can therefore be determined and negotiated. Our instructions are that KQ procurement team spends many hours negotiating the suppliers down to the minimum to allow very small margins and thereby resulting in significant fuel cost savings for the company. Our client recalls that the procurement team did an analysis over a 5 year period that indicated that the average margin had gone down from KES 6 to KES 2 largely due to OTS. This resulted in significant demonstrable jet fuel savings for the airline.

The AFRAA fuel saving initiative was originally mooted by our client and is one of many cost saving initiatives that he initiated and reported to the board. The AFRAA initiative involves combining the fuel uplift of AFRAA member airlines in Africa with the aim of attracting better fuel prices. This initiative has resulted in savings of hundreds of millions of shillings for KQ since its introduction. The negotiations are led by KQ and not Juliette Indetie as suggested in the report. We have been instructed that Ms Indetie is the Finance Manager of AFRAA and had no previous knowledge or experience in fuel procurement. She has however participated in the negotiations and learnt along the way. The decision to use the MOPAG ahead of the better OTS method for AFRAA was recommended by KQ and not by Ms Indetie as suggested. This recommendation was based on the fact that there are too many countries and suppliers involved to have intimate one on one discussion to agree on a fixed margin as required by the OTS method. The OTS method which would be preferable as it manages risk better but is not practically applicable in AFRAA. It is important to highlight that the recommendations of AFRAA fuel committee are led by KQ team and not Ms Indetie as the report seems to suggest in paragraph 5.3.49/50/51 of the report.

Your conclusion on this important issue is quite concerning and in our client's view is based on lack of understanding of how MOPAG and OTS work. As already pointed out, in a volatile price environment, a FIXED COST is always less risky than a VARIABLE COST. Further, the basic fundamentals of risk management is to always protect the upside exposure and this is exactly what the OTS model does. To get a meaningful understanding of MOPAG and OTS, the same analysis needs to be done when fuel prices were higher. An analysis between MOPAG and OTS in the current low price environment favors MOPAG incorrectly. It seems that the conclusions on MOPAG are based on discussions with Miss Munjidi who is a supervisor in the payments section and not a procurement practitioner. What is perplexing is why your team chose to arrive at such firm conclusions without checking with the head of procurement or indeed our client who are much better versed on the subject matter.

The most serious concern from our client is his inclusion in the culpability matrix in section 7 of the report. Nowhere in the entire report is our client mentioned as he was not involved in the fuel procurement negotiations or even the day to day operations and payments related to fuel. Our client's only involvement is a shared responsibility with the CEO in driving policy and signing contracts. Why then are the current and former the CEO's not included in the culpability matrix? What was the rationale of including his name ONLY in this section? Our client is convinced that his inclusion is a part of a witch hunt given the remarks of the Chairman of the board way back in March 2016. It is disheartening for our client to see an attempt to besmirch the fuel procurement process after all the legitimate efforts that have been taken to reduce this cost.

Concerns and observations on repatriation report

On page 24 of the report, you indicate the names of the KQ staff whose laptops were shortlisted for digital forensic data analysis. Again, our client is extremely concerned that his name was profiled yet he was not involved in the day to repatriation

activities in the treasury department. This premeditated action goes a long way in supporting our clients concern that there is indeed a witch hunt going on to try and find him culpable at whatever cost. It is curious that the laptop of the current CEO was not selected even though, in our client's recollection, he was the one who introduced Dubai Bank to KQ following his trips with the Treasury manager to Dubai.

Even though our client already denied the allegation that he gave verbal instructions to open a bank account, you have preferred to believe Jane's account in paragraph 4.2.16 even though she demonstrated her economy with the truth in her dealings with you as you point out in paragraph 4.3.26. Our client wishes to reiterate that this allegation repeated in paragraph 4.3.21 by Jane Kiboi is false. Your over reliance on verbal accusations' also contradicts the statement at the beginning of the your report that you only rely on facts established from documents.

As our client indicated to you in writing, he does not recall signing the guarantee letter and that the signature appears like an obvious forgery. What is concerning is that you have chosen to ignore our clients observation on the forged signature without subjecting the same to a handwriting expert. Furthermore, he avers that you had informed him that the communication between yourselves was strictly private and confidential. Our client takes strong exception to the observation that confidential communication has been included in a formal report in paragraph 4.3.37 and discussed at KQ board without his consent and knowledge. The culpability matrix on table 24 causes a lot of concern for our client that you found him culpable based on verbal accusations and a forged signature. This is highly irregular and unprofessional and confirms his fear that this process is a witch hunt aimed squarely at our client. If there was any doubt, this is confirmed by your recommendations in section 8.3.

Finally section 7 is a contradiction of your statements in section 1.4 on page 15 dealing with your scope and limitations; where you state "we will not express an opinion or other form of assurance with respect to KQ's internal control systems". You seem to have forgotten your own limitations and gone ahead to offer numerous comments on the internal controls.

Media leakage

The contents of these two reports were conveniently leaked to the media by either KQ or Deloitte and Touché given that they were the only ones with access to the reports. There have been several reports in the Standard newspapers including Sunday 29 May 2016, Saturday 4th June 2016 and Sunday 5th June 2016. Needless to say, these reports have caused irreparable damage to our client's reputation and standing in society both locally and internationally. As a finance professional of over 30 years, this damage is indeed profound and it will be impossible to reverse the same. Our client holds both KQ and Deloitte and Touché responsible for this aberration. As the longest serving Finance Director of KQ, this is indeed regrettable. Our client is also seriously concerned that your firm has made zero effort in denying the contents contained in these media reports.

Scope of the forensic audit

Our client wishes to remind you that he was the one who fought tirelessly through the audit committee and the board for the forensic audit to be approved. The main scope of the forensic audit was investigation on suspected revenue leakages estimated to run into billions of shillings. As the attached PowerPoint presentation indicates, the ticket revenues received from four sampled stations of London, Amsterdam, Mumbai and Dubai are suspiciously low and below seat cost. As the analysis shows, KQ potentially lost US\$ 3.9 million in one month from only 4 stations if the average fare had been set at direct operating seat cost. Our client also instructed us that this analysis was done in June which is a low peak month and the loss would be much higher in analysis was done in the peak season. As pointed out,

this loss is computed assuming a fare at direct operating seat cost which is very low. A more realistic revenue expectation would be at least twice the direct operating seat cost so as to cover fleet ownership, overheads and financing costs. If the seat cost was doubled for purposes of analysis, the "leakage" could be about US\$ 8 million per month for the 4 stations selected. This extrapolates to a "leakage" of approximately US\$ 100 million (KES 10 billion) from just 4 stations in one year. Considering that KQ flies to over 50 destinations, then the potential leakages would be really large numbers! If you extrapolate backwards to October 2011 when these leakages apparently started, then we are talking real big numbers!

The information that our client has is that you have spent very little time investigating the revenue area. Our client believes that this has a lot to do with the reality that neither you nor your team members have sufficient commercial aviation experience to be able to conduct a meaningful forensic investigation in the revenue department. It is imperative that you boost the team with members who have commercial experience and knowledge in Revenue Management, Network Planning and sales. As our client pointed out to you during your only meeting with him in your offices on 14 March 2016, he has a lot of information and concerns on the commercial area in particular and also on other areas as stipulated hereunder:

1. Revenue (Commercial) issues

- a. Change of agents after change of commercial structure in 2011.
- b. Change of GSA's in key outstations.
- c. Toxic SPA contracts leading to very low and negative fares.
- d. Appointment of Staff with no aviation commercial experience in key positions.
- e. KLM impact.
- f. Sale of London slot.
- g. Leakage in stations identified.

2. Procurement Issues

- a. Choice of E190 and establishment on who the local agent is/was?

- b. SPV structure on E190 and investigation on whether commissions were paid and to whom?
- c. Ownership of Amicable Transport.
- d. Ownership of Career Directions.
- e. Ownership of ALM
- f. Process of sale of recent London slot and mysterious disappearance of previous London slot.
- g. ICT procurement in general and the recent renewal of the SITA contract in particular.

3. Freight Business

- a. Volume of freighter business in Kenya and why KQ only commands such a small portion. KQ only operates one narrow body while over ten airlines land in JKIA, the cargo hub for Africa, every day with wide body aircraft.
- b. True owners of Astral Aviation who operate over 10 aircraft at JKIA. How can a privately owned company do so much better than KQ?

The information that our client has is that the vast majority of the forensic audit has focused on areas previously under his control. While our client has no objection and welcomes the forensic review in the Finance area, it is important that the areas that potentially had more material leakages with significantly bigger impact on the P&L be investigated as well. Despite our client availing himself for further discussions during the meeting of 14 March 2016, nobody from Deloitte has contacted him on any of the above issues. This is why our client is convinced that there is a deliberate witch hunt going on to find him culpable while at the same time avoiding to look at the areas that he had concerns with when he motivated for the conduct of the forensic audit in the first place. Our client is also convinced that his hurriedly engineered and executed exit just before the start of the forensic audit was not a coincidence but a scheme aimed at ensuring that he was kept away. This fear is being sanctified by an audit process whose outcome was known to the Chairman of Board well before it was concluded. Our client reiterates that he is still available to

share the limited information he has as he was hounded out of office and his computer confiscated without notice.

Way Forward

As demonstrated above, our client is convinced that there is a witch hunt aimed at implicating him in actions he was not responsible for or even aware of. This is confirmed with his poorly engineered and executed illegal and unfair termination. What is most disturbing is why a professional firm of Deloitte's standing could prepare and discuss a report with the KQ board with such serious conclusions and recommendations without consulting him. What is also curious is the dubious effort on your part to bedevil the OTS method to the point of suggesting that there are beneficiaries of the same.

In view of the foregoing, our client would like your confirmation on whether the attached reports are genuine. If indeed they are, then our client demands that the following actions be undertaken by your firm without any further delay:

1. Immediate withdrawal of these two reports and any other reports that may have been discussed at the board without our clients input;
2. Availing our client an opportunity to comment on the report and thereafter a chance for comprehensive discussions with him with a view to have all inaccuracies expunged;
3. Removal of all references to discussions with our client that have been included in the reports without his knowledge and/or consent;
4. Removal of our client from the culpability matrices;
5. Confirmation in writing that no future forensic reports that touch on our clients areas of responsibility will be shared with any third parties before his input is provided;
6. Confirmation that the forensic audit will not be concluded without thorough investigation into the areas highlighted above and with a specific focus on the

revenue area. In our client's opinion, the current team does not have the competency and sufficient experience on commercial issues to be able to conduct the investigation in a meaningful way.

Conclusion

We wish to conclude by reiterating our clients concern at the damage that the articles in the media derived from your report have caused to his professional integrity. These untrue reports have also caused serious distress to our client and his family. Our client has also noted that there has been no effort on your part to disown the contents of these media articles so far

We have advised our client on various legal remedies available to him in both local and international jurisdictions and he is currently considering the options. We will be communicating to you in due course on the legal direction that our client decides to pursue.

Yours faithfully,

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