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International Center for Policy and Conflict

OUR Ref: ICPC/02/26-10/11

Date: 27th October, 2011

The Director of Public Prosecution

NSSF Building, 19th Floor

Milimani Road

Nairobi, KENYA

C.C: Attorney General

The Commissioner of Police

The Chief Justice

Hon. Njenga Karume

RE: CRIMINAL CASE NO 2072 OF 2006; REPUBLIC V SIMON MUKUNJU MWANGI

The International Centre for Policy and Conflict is a Nairobi-based Non-Governmental Organization registered in 2005 in Kenya under the Trustee (Perpetual Succession) Act. The Center is an affiliate of Africa Open Democracy Foundation and partner of Africa Rights and Democracy Institute. It focuses and exists to stimulate and support informed policies dialogue, develop human capacities and research communications that promote and safeguard human dignity, freedom, justice and equality for all through building democratic, peaceful, secure and just societies.

Part of the Center's mandate is promoting and advocating for accountability, transparency and the rule of law in state governance and its actions. Further, we conduct trial monitoring and observation on administration of justice.

We draw your attention to the proceedings of the above mentioned case before the Chief Magistrate at Milimani in Nairobi and the judgment thereof delivered by the same court.

In this case obviously prosecuted by your office and under your supervision Simon Mukunju Mwangi was charged with stealing by directors, contrary to Section 282 of the Penal Code.

The case involved a tender awarded to Richmond Company Limited to supply tents to Department of Defence in 2006.

We wish to bring to your attention a number of vital facts as established by the honourable court in the said trial and captured in its judgement delivered on October 12, 2011.

We observe thus:

1. That this judgement is candid and courageous hence provides a remarkable jurisprudence in tackling impunity by the prosecution and judiciary at the highest levels of Executive arm of the government. The opportunity must be seized in order to promote and defend public interest and national good.
2. That judgement vividly show the said Richmond Company was awarded the contract to supply the tents to the Department of Defence either before or after the directors Mr Simon Munkunju Mwangi (the accused in the criminal case and later convicted and sentenced for three years imprisonment) and Mr Mervin Kenmew Melvin (PW1 in the case) had held a private meeting with Hon. Njenga Karume the then Minister for Defence. This is clear manifest of abuse of office on the part of the Minister. Your office need to immediately institute criminal prosecution against Mr. Njenga Karume.
3. That in the cause of investigating the case against Mr Simon Mukunju, an investigating officer Chief Inspector Maurice Munga visited the Department of Defence several times and came across documents indicating that one Joseph Njenga Karume had received some of the proceeds of the contract from an account of Richmond Company Ltd. Mr Joseph Karume Njenga, now deceased, was the son of Hon. Njenga Karume the then Minister for Defence.
4. That according to the said Chief Inspector Maurice Munga, he was prevailed upon by his boss not to record a statement from Joseph Karume Njenga (referred to in judgement as Joseph Njenga Karume) because it was not possible to summon the said Joseph Karume Njenga for interrogation.
5. That according to evidence by the accused Simon Mukunju in his defence, Richmond Company was on some occasions paid in advance either for the supply of the tents or for work or goods not supplied which was irregular and that the company either never made any tax returns or falsely indicated Nil returns.
6. That according to the findings by the magistrate and captured in the judgement, the matter was one of **"corruption and impunity at the highest level"** as the tender number and Local Purchasing Orders did not match.
7. That according to the finding by the magistrate and captured in the judgment the accused Simon Mukunju **"did not dispute having withdrawn the proceeds of the**

cheque for Ksh11,049,000 paid to Richmond Company by the Department of Defence, for his own benefits and the benefits of Njenga Karume". In other words the court established that part of the proceeds of the contract was shared between the Richmond Company and Joseph Karume Njenga or Njenga Karume.

It is clear from the judgement that as Minister for Defence Hon Njenga Karume may have or actually played a role in awarding the contract to Richmond Company to supply tents to the Department of Defence and from the evidenced adduced by Chief Inspector Maurice Munga, the Minister was aware of the link between Richmond Company and his son Joseph Karume Njenga as far as this particular contract was concerned.

From the facts as adduced by the prosecution and defence in the criminal case and which must be within your knowledge and possession as the Director of Public Prosecutions and as established by the court in the judgement; it is clear that there is compelling evidence to commence investigations against and possible prosecution of Hon Njenga Karume for Abuse of Office under Section 46 of the Anti-Corruption and Economic Crimes Act or any other appropriate legal action.

Notably, the judgement of the court also brings to light the depth of corruption and impunity prevailing in awarding of tenders for supplies to State institutions that are regarded as engaging in matters of national security and whose activities are thus, not always open to public scrutiny.

It is on this basis that we write to you and demand that you order thorough and extensive investigations into the awarding of this tender for supply of tents(never done) to the Department of Defence by Richmond Company and in particular;

1. The specific role that was played by Hon Njenga Karume the then Minister for Defence and his son the late Joseph Karume Njenga in the awarding of the contract and,
2. Any links or relationship between Hon Njenga Karume and Joseph Karume on one hand and Richmond Company Ltd, with the view of instituting the necessary legal proceedings against the Minister or anyone else that may be found liable for any wrong doing.

We look forward to your office expeditious response,

Thank you

Signed 

Ndung'u Wainaina,
Executive Director
International Center for Policy and Conflict