

FAILED OR 'FAILED'? POSTMORTEM OF AN IVORY PROSECUTION



**MCCR/1132/2015, the Republic (of Kenya) vs
Abdulrahman Mahmoud Sheikh and eight others - a
case study**

Part 2 of Inside the Wildlife Crime Courtrooms of Kenya

**By Chris Morris
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Cover Photo: Clockwise from top left – 'Sheikh's et al' before Mombasa court on September 11th, 2023, Thai customs displaying the 3127 kg of ivory seized from Mombasa in April 2015, map depiction of Thailand and Singapore, the site of both seizures attributed to 'Sheikh's et al', and the 4600 kg of ivory, rhino horn and lion's teeth laid out in Singapore following the second sister seizure in May 2015.

TABLE OF CONTENTS

PREFACE.....	5
INTRODUCTION.....	7
THE ENDING.....	10
THE CONTEXT.....	12
THE BEGINNING.....	15
THE INVESTIGATION - Logistics.....	18
THE INVESTIGATION - Arrests.....	21
THE INVESTIGATION - Consolidation Point & More Arrests.....	24
THE PROSECUTION - Decision to Charge.....	27
THE PROSECUTION - Ivory as an Exhibit.....	29
THE PROSECUTION - Early Days.....	31
FINANCIAL INVESTIGATION & ASSETS RESTRAINT.....	36
THE PROSECUTION - Spinning Wheels.....	38
MUTUAL LEGAL ASSISTANCE and JOURNEY REPULSED.....	39
THE JEFWAS - The First Cracks.....	43
TESTIMONY - Tea, Siginon Global & Other Witnesses.....	44
FIRST EVIDENCE - Primary Accused.....	49
MLA II- New Evidence Application	53
THE PROSECUTION - The Last Day	56
CROSS-EXAMINATION - The Last Day.....	59

CASE MANAGEMENT and TRANSFERS.....	61
ANALYSIS of EVIDENCE.....	63
QUESTIONS and CONTRADICTIONS.....	68
ORGANIZED CRIME - It Began with Two Lorries.....	81
ORGANIZED CRIME - On Home Turf.....	83
ORGANIZED CRIME - DNA and other Analyses.....	85
DÉNOUEMENT' - 'FAILED'.....	93
PAST and PRESENT INDICATIVE of the FUTURE.....	94
THE BATTLE NEEDS TO MOVE INTO THE COURTROOM.....	99
APPENDIX.....	102
GLOSSARY and CASE LIST.....	106
REFERENCES.....	113

PREFACE

In April 2015, when Thailand authorities seized a container of Kenyan origin containing tea leaves and ivory, I had been in Kenya barely a month. Fresh in-country, a neophyte to the field of transnational wildlife crime, I was volunteering in Nairobi with the investigational NGO, The Eagle Network, when the story broke. Coming from an investigative background I was immediately drawn in by the circumstances surrounding the seizure. Unbeknownst to me at the time, almost nine years later, I would find myself sitting in Mombasa, watching the final acquittal.

This is a case study that comes from an 'inside the courtroom' perspective. It is a focus on the evidence presented, evidence not presented, as well as the processes involved. Purely by chance, I found myself uniquely positioned over the duration of the trial to gather publicly available court documents with other evidence, supplemented with open source and background information from a host of different sources. This includes my attendance at 23 of the last 26 court sittings.

Having heard first-hand the testimony of only the last four witnesses, revelations based on the testimony of the previous 24 witnesses came from a document that is referred to as a "typed proceedings".

In all criminal proceedings that I have witnessed within the Kenyan court system, the record of a witness's testimony comes from the presiding magistrate's hand-written notes. Understandably, they are typically not easily read. That only becomes an issue if the presiding Magistrate is transferred and is replaced by another magistrate mid-trial. This is a common occurrence in many ivory related trials.

A magistrate transfer typically triggers a requirement for the handwritten notes to be typed, facilitating an easier read for the new incoming magistrate to familiarize themselves with what has previously transpired. Unfortunately, these typed proceedings can be wanting in accuracy. 'Typos' are common, particularly relating to dates, times, names of persons, or places. Also affecting accuracy is the court practise, in cross examination, whereby magistrates do not write down the question, just the answer. If counsel asks a question that requires just a 'yes' or 'no' answer, it may not even be recorded. Critical information can be and is regularly lost.

For these reasons, I have not taken the typed proceedings as definitive. Testimony that I believe to be critical has been verified through secondary sources.

In this case, the 113-page written ruling on acquittal of Chief Magistrate Martha Mutuku, summarizes the salient points of each witness's testimony based on what she read or heard during trial. (She only heard testimony from 3 of the 28 witnesses.) Her ruling also revealed the contents of some of the documents, letters, and emails, submitted as exhibits by the prosecution during the course of the trial and not availed through open court.

During the nine years that I followed this prosecution, I also had the opportunity to observe, as well as source, various documents, judgements, rulings, relating to most other Kenyan major ivory seizure prosecutions. This included attending 17 sittings of **MCCR/417/2013* - R. vs. Fredrick Sababu Mungule and James Kassiwa (3827 kg)**. This is one of only two convictions (the Feisal Mohamed Ali case is not counted as a conviction) registered in a major ivory trafficking case within Kenya since 2009. While the sentence rendered was less than optimal (two years imprisonment for 3827 kg ivory), I have pondered if in fact the registered conviction had anything to do with the case being monitored.

While this is a case study of only one prosecution, it is a microcosm of what is happening, and what has happened, in the prosecution of major wildlife cases in Kenya, and other sub-Saharan elephant range states. The ivory seizure on which this study is based is related either directly or indirectly, to a significant number of other ivory seizures, large and small, international and national, all at the hands of transnational organized crime (TOC) groups. There are 23 referenced ivory prosecution cases throughout this study (case summary list to be found on page 105) and those marked with an asterisk have one other commonality, corruption/compromise. I use the term interchangeably. In local circles, it is my experience that 'compromise' is the word most oft used to describe cases before the court that have been hijacked by others, both inside and outside of the criminal justice system, whose interest is not based on justice.

The message to be conveyed in this 'Postmortem' cannot fit into a one or two-page, executive summary. There is too much to tell and it would not be believed. For those readers with time challenges, may I suggest going straight to the 'Analysis of Evidence' and the 'Dénouement'. That may motivate for further reading.

MCCR/1132/2015* – Republic (of Kenya) vs. Abdulrahman Mahmoud Sheikh and eight others (3127 kg - Thailand) is not atypical in its outcome and investigational processes. Initial seizures, arrests and investigations, are touted as successes. The road of justice and deterrence, however, does not end with seizure and arrest. It travels through a courtroom. This case study is about one such journey.



Figure 1: July 7th, 2022, in Mombasa courtroom #1, the prosecution represented by Jami Yamina (standing at front) withdraws its application to submit new evidence. The author is standing against the wall extreme right. (Photo – Dihoff Mukoto)

INTRODUCTION

This chronicles a major ivory trafficking investigation and prosecution that failed. From a law enforcement and prosecutorial perspective, cases that do not end in a conviction are in the minority. Statistically, criminal justice systems often boast of conviction rates in the 90% range. That would not be the percentage for ivory trafficking cases involving thousands of kilograms of ivory, and particularly in Kenya.

But it is not that this particular prosecution failed. It is the manner in which it did so.

In a 2021 interview, the head of Kenya's Directorate of Criminal Investigation (DCI) at the time, George Kinoti, candidly admitted that in the past "wildlife crime was not initially taken seriously as a major crime."¹ *MCCR/1132/2015 – Republic vs. Abdulrahman Mahmoud Sheikh and eight others {3127 kg-Thailand}*, (hereinafter 'Sheikh's et al') was one of those cases.

'Sheikh's et al' was certainly not the first or only ivory prosecution whereby all accused were acquitted. In fact, quite the opposite. If one was to

examine past results of major wildlife trafficking trials globally, one would find that acquittals or questionable sentencing were the norm, not the exception.

But “The Sheikh’s case” as it was known colloquially, was atypical in that it spoke to almost all the issues that face investigations and prosecutions of TOC groups exporting quantities of wildlife or wildlife trophies across international boundaries. It involved multi-agency collaboration at the national and international level. The mutual legal assistance (MLA) process was required to expedite the transfer of exhibits between involved countries. A parallel financial and proceeds of crime investigation was initiated to examine the feasibility of asset recovery pending a conviction on the criminal charges. Interpol assistance was requested to locate wanted fugitives and to liaise between involved national law enforcement agencies.

And there was a corruption factor, omnipresent in virtually all similar investigations, lurking within criminal justice systems that are fragile or susceptible to outside interference. Kenya would fall in that category. It took mere months for it to be realized that at least two of the major involved players in this investigation had benefactors with political clout.

Some may question why a prosecution that began in 2015 is even relevant in 2025. The explanation is simple. Despite all the rhetoric and the hundreds of millions of dollars that have been poured into the conservation justice realm in Africa, from a justice and deterrence perspective, little has changed. Yes, the standard of investigations, bolstered with a considerable international NGO presence, has improved. But investigation is only 50% of the justice and deterrence equation. The other 50%, the prosecution and the courtroom process, is just as critical and that is where all the same vulnerabilities present themselves.

This 2015 case is also relevant due to its high-profile, particularly in the early years. A number of international investigational agencies and NGO’s lent their assistance or support including Interpol, U.S. Fish and Wildlife Service (USFW), U.S. Department of Homeland Security, Lusaka Agreement Task Force (LATF), Environmental Investigative Agency (EIA), Eagle Network, Satoe Project, Basel Governance, Center for Advanced Defence Studies (C4ADS), Center for Environmental Forensic Science, Wildlife Direct, and Freeland.

This case was also the subject, or received mention, in several publications including those from the Financial Action Task Force (FATF)², Global Initiative Against Transnational Organized Crime (GITOC)³, TRAFFIC⁴, Wildlife Direct⁵, and Wall Street Journal⁶. Two of the case antagonists,

Nicholas and Samuel Jefwa, were also featured in the film documentary, "The Planet Killers – The Ivory Kings"⁷.

In the end, however, it became just another wildlife case that had been frittered away, another wasted opportunity at justice for the higher-level players, like all the others before it.

The purpose of this case study is twofold. The first is to present an in-depth look at the process of a wildlife trafficking trial while at the same time providing insights into reasons for its extended eight-year duration. There are many proponents who believe that trial length is a strong indicator of a compromised proceedings⁸. Kenya has had two other major ivory prosecutions that took similar extended periods of time. They were both related to this seizure under study.

The second, and primary purpose is to provide an answer to the question oft asked in similar major ivory trafficking cases but rarely answered. Did this prosecution fail for technical reasons or did it 'fail' because an individual(s) or entity outside the sphere of the criminal justice system wanted it so. Was the acquittal due to a lack of institutional capacity, presented through procedural errors, sub-standard case management, and absence of leadership? Or was this 'failure' pre-ordained and/or orchestrated by persons in positions of influence who had the ability to effect decision making at key times and in key areas during the trial, thereby guaranteeing an acquittal?

It is in only the rarest of cases where a 'smoking gun' presents itself during a trial or investigation, one that can identify conclusively the specific individuals or entities who have subverted justice. The 'Sheikh's et al' was not one of those rare cases. There were, however, significant breakdowns and failures in essentially every aspect of this investigation and prosecution that taken in totality, provides compelling circumstantial evidence to question the integrity and validity of the process.

One of the lead investigators, in one of his affidavits submitted to the court, made a reference "*that the ongoing investigations are of a complex nature involving cross cutting issues, foreign jurisdictions, and requiring mutual legal assistance and diplomatic formalities.*"⁹

'Complex' was the adjective most often used by prosecutors when characterizing this case, particularly when addressing the court and providing justification for prosecutorial delays and/or issues with the mutual legal assistance process. While perhaps an oversimplification, complex is absolutely the correct word to describe the numerous and varied layers and sub-plots that played out throughout 'Sheikh's' et al'.

This report will touch on most of them, certainly all that bear relevance to the final acquittal ruling and the aspect of corruption. The investigation, the prosecution, the mutual legal assistance requests, the proceeds of crime/asset recovery investigation, the search for the Jefwa brothers, the new evidence application (or second mutual legal assistance request), courtroom delays, the absence of phone data, the use of container seals, the sister Singapore seizure that was not prosecuted, and how this Thailand seizure was related and/or linked to many others, and not only in Kenya.



Figure 2: October 13, 2023, all accused in Mombasa courtroom #1 waiting for a ruling to be made as to whether there was a case to answer for the defence. The ruling was not ready, but this was their last day in court (on the criminal charges) as the subsequent acquittal was delivered virtually 6 days later. (Photo – Dihoff Mukoto)

THE ENDING

The final pronouncement came on October 19th, 2023, eight years and five months after the first accused persons were arraigned. Mombasa Chief Magistrate, Martha Mutuku, the fourth magistrate (judge) to handle this matter, in a succinct oral statement that lasted 55 seconds, (condensed from a 113-page written ruling), declared that the nine accused persons were acquitted. After well over 100 sittings (combining criminal proceedings and related miscellaneous applications) and testimony from 28 witnesses,

the Office of the Director of Public Prosecutions (ODPP) had not furnished the court sufficient evidence to prove the facts of the charges.

And surely the method of delivery and timing of the ruling was symbolic. Early on a Thursday afternoon, the last working day of the week before a long holiday weekend, delivered virtually while ensconced in her chambers, to a meagre audience of the nine accused, their counsel, Alex Gituma holding brief for lead Mombasa prosecutor, Jami Yamina, and a handful of interested parties, the low of the moment compounded by way of the honourable Magistrate, who twice mistakenly referred to the country of seizure as Taiwan, and not Thailand.

"After considering the evidence that has been adduced by the prosecution, I find that it was clearly stated that Taiwan (Thailand) declined in cooperating with Kenya to provide mutual legal assistance so I find that is a very big gap and weakness in the prosecution case considering the fact that the court never got an opportunity to know or to see what was in the containers and what was allegedly taken to Taiwan (Thailand) in order to connect any of the accused persons with the charges before court. With that said, I find that no prima facie case has been established to warrant any of the accused persons to be placed on their defence and consequently all the accused persons are acquitted under section 210 CPC for lack of evidence."¹⁰

The acquittal was not a shock despite what appeared, in its early days, to be an investigation of promise. In June 2015, Abdulrahman Mahmoud Sheikh (A#1), his half-brother Sheikh Abdulrahman Mahmoud (A#2), his father, Mahmoud Abdulrahman Sheikh (A#3), and six others had been charged with dealing in wildlife trophies, illegal exportation, and engaging in organized crime. It was alleged that the nine conspirators, in addition to exporters, Nicholas and Samuel Jefwa, had been behind the container shipment of 3127 kg of ivory that had been seized in Bangkok, Thailand, two months previous. 511 elephant tusks were found in a sea container from Mombasa, hidden in and amongst bags of tea leaves. Its final destination, after mid-journey consignee changes, was intended to be Vietnam.

In Kenya, there had never been a major ivory prosecution with so many accused. It was also the first ivory case to have an organized crime charge and the first to see a financial crime aspect to the investigation.

The court case received considerable media attention in the early days and months, attention stoked through the involvement of the well-known logistics firm, Siginon Global Logistics (aka Siginon Freight Ltd). Siginon was considered at the time to be one of Kenya's largest and most well-established cargo companies, part of the business empire of ex-President

Daniel Arap Moi and his family. But as is the way of all long winded prosecutions, interest waned in the matter and when the acquittal finally arrived 101 months later, it featured in only one national daily under the banner: '*How state lost Sh570m ivory smuggling case*'.¹¹

If one's knowledge of the case was based on that one media article, one might think that the acquittal resulted from a failed 'mutual legal assistance' between Kenya and Thailand (that included Thailand's refusal to return the 3127 kg of seized ivory) and/or evidence insufficient to implicate the accused. While none of the listed reasons were good, they were somewhat palatable, all circumstances considered. But was it the truth, the whole truth and nothing but the truth? The view from inside the courtroom presented a different perspective.

THE CONTEXT

In 2015, the poaching and trafficking of elephant ivory was more than just a concern. Hundreds of tonnes of ivory continued to exit Africa for South-east Asia. The Great Elephant Census¹² was in the midst of completion but evidence of the plummeting herds was already reaching the public domain. It would be discovered that Tanzania had lost 60% of its savannah elephant population in the past 5 years. Mozambique came in at a 53% decline with significant losses also in Angola. Forest elephant population declines of worrying significance were to be noted in northern Cameroon and north-east Democratic Republic of Congo. These losses were attributed primarily to increased poaching

Not realised in 2015, incredibly and unbelievably, much of this ivory exiting the entire continent, east, west, and south, was being run by a West African crime group based in Kampala, Uganda. Seemingly headed by a Liberian refugee by the name of Moazu Kromah, this group of primarily Guineans and Malians, were despatching ivory (and other wildlife products) utilizing shipping containers and air freight from all points of the African compass.^{13,14}

An indictment written by the United States South District Court of New York, on Kromah's 2019 arrest, headed by the U.S. Fish and Wildlife Service and the DEA, stated that this criminal organization, referred to as the "Enterprise", conspired to transport, distribute, sell and smuggle ivory and rhino horn since at least 2012, to countries including, Uganda, Democratic Republic of Congo, Guinea, Kenya, Mozambique, Senegal, and Tanzania. This indictment was understated. The three others named in the indictment were another Guinean, Amara Cherif, and two Kenyan's, Mansur Mohamed Surur, and Abdi Hussein Ahmed.¹⁵

In 2015, primary amongst the pipelines utilized by the West African TCO, was Tanzanian ivory transported by road into Kampala and then forwarded, either by lorry/container to Mombasa for sea shipment or by way of air freight out of Entebbe airport (Kampala). The Kromah led cartel also had access to the Burundi government ivory stockpile with which he was supplementing his shipments¹⁶. That unfettered access continued until at least 2019.

In 2015, law enforcement activity against the West African TOC was minimal and generally compromised. While some of this group and their shipments were subject to occasional arrest and seizure, the resulting court cases, if they made it that far, typically concluded with either charges being withdrawn, acquittals, or deportations mid-trial to their country of origin. The few convictions registered were characterized by fine amounts in lieu of jail time that could easily be paid from organized crime coffers.

An example of this was a fortuitous ivory seizure made in Nairobi in April 2014 when a tip to police led to the discovery at a local garage of 784 kg of ivory found inside a disabled water tanker truck¹⁷.



Figure 3: On April 17th, 2014, officers of the Special Crime Prevention Unit, acting on a tip, discovered this water tanker truck at a Nairobi garage and found to be containing 133 pieces of ivory weighing 784 kg. A Kenyan and Guinean national were charged. A second Guinean, Amara Cherif, later known to be in the leadership of the West Africa crime group, was released without charge.

Three men were arrested, one Kenyan and two Guineans. One of the Guineans, N’Faly Doukoure, was deported to Guinea on May 8th, 2015, midway through court proceedings (*MCCR/1673/2014* – R. vs. Kenneth Kamau Maina & N’faly Doukoure {784 kg}*) on the signed order of the Cabinet Secretary

for the Interior, Major General (Rtd.) Joseph Ole Nkaisery. The second Guinean arrested was Amara Cherif, who was amongst the leadership of the West African cartel. He was released without charge. The other accused, Kenneth Kamau Maina, after a five-year trial was found guilty by Chief Magistrate Elizabeth Juma of possession of wildlife trophies (one may question how 784 kg constituted 'possession'). Maina was sentenced to pay a one million shilling fine (USD \$10,000) or serve five years in prison in lieu of payment. He had been previously charged (*PCR/2305/2011 - R. vs. Kenneth Kamau Maina {1332 kg}*) and acquitted¹⁸ in relation to an ivory seizure (reported initially as 2160 kg) made at Nairobi's Jomo Kenyatta International Airport (JKIA) in 2010. That was also believed to be a West African TCO shipment.

It was this same West African crime group who was supplying the ivory (allegedly) that was the substance of the charges faced by 'Sheikh's et al' in June of 2015.

Also in 2015, from a global perspective, the Kenyan port of Mombasa was seen as synonymous to the ivory trade, perceived as the primary port of egress for ivory from the African continent. When 'Sheikh's et al' were arraigned in June 2015, there were five other trials involving major ivory seizures ongoing at the Mombasa law courts.

Sammy Ndigirigi Maina, a clearing agent, was facing charges relating to a December 2011 shipment of 727 pieces of ivory that were seized in Mombasa port prior to embarking for Dubai (*MCCR/530/2012*).¹⁹ The initial weight on seizure was reported at 1899 kg but was reduced to 1500 kg by the time it reached court.

Another clearing agent, Fredrick Sababu Mungule, and KRA employee, James Ngala Kassiwa, were being tried in relation to a seizure of 3827 kg of ivory at Mombasa port on January 14th, 2013. (*MCCR/417/2013**).²⁰ Both cases were before Senior Resident Magistrate R. Odenyo.

In another Mombasa courtroom and before Chief Magistrate Stephen Riechi, the same Fredrick Sababu Mungule, James Ngala Kassiwa, and with the addition of Nelson Ayoo, were accused in a sister seizure to the January 14th occurrence, but this time discovered in Singapore. (The charges in *MCCR/754/2013** specified a weight of 1833 kg but the initial reported seizure weight was 1848.5 kg).

In the court of Chief Magistrate J.M. Nang'ea was the prosecution of another clearing agent, Nelson Maweu John, for his part in a 3287 kg ivory seizure that was caught in Mombasa port in July 2013 before departing for Malaysia (*MCCR/3081/2013*)²¹.

And in one more courtroom, the Republic vs Abdul Halim Sadiq Omar and five others including Mombasa businessman, Feisal Mohamed Ali (FMA),²² was playing out over charges relating to 2152 kg of ivory found in the compound of a Mombasa car dealership. At the time of the Sheikh's arraignment, the FMA matter had already witnessed some significant integrity issues and unbeknownst to the presiding Magistrate, Davis Karani, he was just four months from being suspended, also for integrity issues²³.

At this point in time, the number of prosecutions initiated by Kenya against international wildlife traffickers was being lauded and noted internationally with optimism.



Figure 4: July 22nd, 2016, Feisal Mohamed Ali (foreground) was convicted of ivory trafficking in relation to 2152 kg of ivory seized in June 2014. He was sentenced to 20 years' imprisonment and fined Ksh 20 million (USD \$200,000). His four co-accused were acquitted, with presiding Senior Principal Magistrate Diane Mochache telling the court that they had been caught up in FMA's dealings unknowingly. FMA was acquitted on appeal in 2018. (courtesy NTV media)

THE BEGINNING

Thailand was the beginning. On April 25th, 2015, Thai customs announced the seizure of a sea container at Laem Chabang Port containing 3127 kg of elephant ivory. The 511 tusks were found in sisal, 'long grain rice' bags obfuscated through a declared cargo of tea leaves. This Mombasa shipment was the first recorded ivory seizure with tea leaves as the cover load and Thailand's second largest ivory seizure ever.²⁴



Figure 5: Thai Customs officers sort 3127 kg of ivory seized at Port Laem Chabang on April 25th, 2015, that originated in Mombasa. 'Sheikh's et al' were accused of exporting this ivory that was found in a container of tea leaves. (Thai Customs media release)

The significance of that seizure, however, was amplified by Thailand's largest ever ivory seizure seven days previous. On April 18th, authorities in Bangkok recovered four tonnes of ivory in the form of 739 tusks in a container of beans that originated in Matadi, Democratic Republic of Congo²⁵. It meant that Thailand had seized over seven tonnes of ivory in the space of a week, from opposite sides of the African continent, both organised for road transport to the same Laotian destination, the small town of Muang Champassak, an approximate 11-hour drive from Bangkok.²⁶ While the shipments had different consignees, it would be difficult for most to believe that there did not exist, some type of business relationship between the two.

It was reported that both seizures were the result of tip offs. The 'tea leaves' shipment resulting from the 'notify party', Indochina International Group Ltd, forewarning authorities that an unauthorized shipment was moving under their name. A second report, however, and never made public, identified the tipster on both ivory consignments as being one and the same. Clearly significant, if connected, for shipments coming from West and East Africa.²⁶

The investigation into the 'Sheikh's et al' began on or about April 30th, 2015, with the heat being turned up substantially when a second Mombasa shipment of ivory arrived in Singapore on May 16th. This time the seizure consisted of two 20' containers, each with a cover load of tea leaves and found in the same sisal 'long grain rice' bags recovered in Thailand. The total weight of the seized ivory was initially announced at 3.7 tonnes and included four rhino horn and a small quantity of lions' teeth. The ivory weight was later revised to 4600 kg.²⁷

The Kenyan investigation was ramped up with this second seizure and an inter-agency task force was constituted by Francis Muhoro, the head of Kenya's Directorate of Criminal Investigations (DCI). The team included elements of DCI Headquarters Mombasa, DCI officers from Kenya Revenue Agency (KRA), DCI Kilindini (Mombasa port), Kenya Wildlife Service (KWS), the Ethics and Anti-Corruption Commission (EACC), and the Kenya Ports Authority (KPA).

The investigative team was led by DCI Superintendent Alphonse Odhiambo Kamlus, who at the time, was in charge of the Economic Crime Unit based in Nairobi. His point man in Mombasa was Chief Inspector (CI) James Githinji, who was on a secondment to KRA Mombasa Revenue Protection. CI Githinji had been in Mombasa for a few years at this point and had been involved in a number of previous ivory trafficking investigations.

Kenya had been embarrassed by these back-to-back seizures and was keen to exonerate itself or so it seemed. DCI Director Muhoro stated six years later in a video documentary, that "this was tarnishing the good name of Kenya"⁷. Even President Kenyatta made mention of this investigation in an unrelated, nationally televised June address stating; "We will want to know, and I will not stop until we find out those responsible, they will all be arrested for letting us down as a nation."²⁸ By the time those remarks had been made, 15 persons had been arrested and the two prime suspects had been on the run for six weeks.





Figure 6: On May 16th, 2015, approximately 4600 kg of ivory with 4 rhino horn and big cat teeth, originating in Mombasa, were seized in Singapore.. This was the sister seizure of the Thailand seizure, also with a cover load of tea leaves. While it followed logistically the same modus operandi as the Thailand shipment, no charges were ever laid, and the ivory was destroyed one year later. (Singapore Agri-Food & Veterinary Authority and the Singapore Customs media release.)

THE INVESTIGATION - LOGISTICS

There is no complexity to a contraband container investigation, certainly not in the initial stages, and this was no different. There is always a paper (or digital) trail to follow, bills of lading, customs forms, port entry documentation, and various other shipping and clearance documents. Some ports, like Mombasa, have CCTV at the entry gate that captures both registration plate of the entering vehicle and a visual of the persons clearing the consignment. Regardless of the fact that many of the involved business entities may be false, or shell companies, there is a starting point. For this investigation, that starting point was Almasi Chai Kenya Limited and Siginon Global Logistics.



Figure 7: A still from CCTV footage of Fiat lorry reg. KNY 944 entering Mombasa Port on March 23rd, 2015, at 16:47hrs with its container of tea and ivory. There is no indication in the footage that the KRA gate officer checked the status of the container seals as was his duty. (courtesy of documentary – “The Planet Killers – The Ivory Kings”)

Almasi Chai was the documented exporter of this shipment. It was a small Mombasa business registered in 2010 for the purpose of buying and selling tea within Kenya and internationally. While there were three listed company directors, only Hilda Ochola Kome was active in 2014 and 2015. Her manager was Franklin Muthoka Ndova, who, based on his trial testimony, began his employment with Almasi Chai just prior to the organization of these tea shipments.

Signon Global Logistics was the clearing and forwarding agent. Typically, clearing agents are at the top of the investigative target list for one simple reason. Under Section 147 of the East African Community Customs Management Act (EACCMA), clearing agents “*acting on behalf of the owner of any goods shall, for the purposes of this Act, be deemed to be the owner.*” While that section may work well for the EACCMA, it does not hold much water with criminal courts definition of ‘possession’. Between 2010 and 2017, the ODPP had charged clearing agents in seven different major ivory prosecutions and achieved a conviction in only one. (there is still one case before the courts)

The paper trail that began with Almasi Chai and Signon Global, continued next to Potential Quality Supplies Limited (PQS). PQS was set up as a logistics firm and had been registered in September 2013. Its principal director was Nicholas Mweri Jefwa who was known to have worked around the Mombasa Port since the 1990’s. He was a previous employee of Signon Global Logistics and so was known when he first approached them in May 2014 to ship tea.²⁹

The other PQS directors were his brother, Samuel Bakari Jefwa, and Elizabeth Nayeni Kahindi, believed to be related to one of Nicholas Jefwa’s three wives. PQS was the catalyst for the ivory consignment. They illegally contracted Almasi Chai to acquire for them 220 bags of tea for a consignee, Keshav Traders, in Dubai³. It was later ascertained that the business relationship between PQS and Almasi Chai had begun seven months earlier, in September 2014, and there had been three ‘tea’ container shipments prior to this one. PQS made cash payments without receipt through Almasi Chai for the tonnes of tea leaves procured.

Investigators became aware that on Saturday, March 21st, 2015, in the early afternoon, the two Jefwa brothers and an unidentified third person, accompanied a 1971 Fiat lorry/truck, registration KNY 944, with empty container, FCIU5235796, to a Mombasa warehouse of Signon Global Logistics. The container had been organized by PQS through Rais Shipping Services and had been picked up by a local transport firm, also organized through PQS. Signon had taken previous delivery of the tea which they had blended as per instructions from Almasi Chai. The Jefwa’s

were to pick up the 220 bags from Siginon and load it into the container with the process being verified by KRA.

The actual loading of the tea into the container was conducted by Siginon employees in the presence of the Jefwa's and a Kenya Revenue Authority verification officer, Lucy Kahoto. The loading was captured on camera and on completion, the container was sealed shut with two seals, #BCE 089137, provided by Siginon, and seal #728614 from the Jefwa's (through Rais Shipping). At 13:25 hrs, the container and Fiat lorry KNY 944 departed Siginon Global Logistics driven by Kenneth Mwangi Njuguna, ostensibly for Mombasa port, a 30-minute drive away. It arrived two days later.

On Monday March 23rd at 16:47 hrs, the truck and container arrived at Mombasa port, again being driven by Njuguna and escorted by Samuel Jefwa. It was reported that the container now had only one seal, #728614, the seal provided by the Jefwa's.



Figure 8: Photos taken by staff at Siginon Global Logistics of the loading of tea into container FCIU5235796 on March 21st, 2015. The two seals are observed in the upper left and lower right frames. Port documentation indicated an absence of seal 'BCE 089137' when gated into the port on March 23rd.

The container was permitted port entry but was not scanned due to a reported exemption through an earlier agreement made between the East African Tea Traders Association and Mombasa port. The exemption was in place allegedly due to the high volume of Kenyan tea leaving the port and as mitigation against spoilage³⁰.

This consignment was subject to three changes in consignees. Initial documentation indicated that it was going to Dubai for Keshav Traders but that was changed almost immediately on the container entering the port. Nicholas Jefwa emailed Rais Shipping Services requesting that the consignee be altered to Soupha Song Import Export Co Ltd located in Champassak, Laos.³¹ The container was loaded onto the vessel, Cape Moss, on April 6th and began its journey.

On or about April 19th, the container *FCIU5235796*, and now in Singapore was off loaded from the vessel, Cape Moss, to be loaded onto the vessel, RHL Felicitas, now bound for Thailand. This coincided with another email exchange between Nicholas Jefwa and Rais Shipping Services, with the consignee now amended to the Van An Co. Ltd of Da Nang City, Vietnam³. It is more than possible that the Jefwa's (and Sheikh's) were aware that this ivory shipment was on the verge of seizure and made the last-minute change in an attempt to thwart authorities.

Nevertheless, the container continued to Port Laem Chabang with Thai customs opening the container on April 25th, the morning after its arrival.

A week or so prior to this, (exact dates differ depending on source, April 19th and 21st are suggested), the same Siginon tea loading scenario of March 21st, was reprised but with two containers this time. PQS and the Jefwa's had their same transport firm pick up two empty containers, loaded them with tea at Siginon, and on completion, taken again 'indirectly' to Mombasa Port with a similar two-day (some sources say three) lag time. These were the containers, the sister seizure, that was snared in Singapore on May 16th. By that time, the Jefwa brothers had long fled Mombasa.

THE INVESTIGATION - ARRESTS

Samuel Jefwa was one of the first to appear on the investigational radar. Inquiries revealed that he escorted the suspect container to Mombasa Port. The gating in process was captured on CCTV footage showing Samuel passing documentation to a KRA officer at the gate (this evidence was not submitted at trial). It was initially believed that Samuel Jefwa and Nicholas Jefwa were the same person.

With the investigation gaining momentum, it became clear that both Nicholas and Samuel had fled Mombasa. There were indications that they knew their days of freedom were finite as early as April 21st. This was the day the first container arrived in Singapore for Thailand transshipment. Warrants were subsequently issued for their arrest.

The next to fall in the net were Lucy Muthoni Kahoto, a KRA verification officer, and Musa Jacob Lithare, the de-facto owner of the two lorries that had driven the ivory containers into the port. Investigators were aware that Lithare had been contracted by Nicholas Jefwa to pick up the empty containers from the Hakikka Transporters depot, ferry them to Siginon, and then onward to port.

On or about May 20th, the ODPP applied to the court to have both Lucy Kahoto and Musa Jacob Lithare detained in custody for 30 days to enable the police to complete their investigation.

There is a provision in Kenyan law for suspects to be detained in custody for periods of time prior to charges being laid in circumstances where the investigation is not complete. This detention must be judicially approved. Senior Principal Prosecution Counsel Brian Ayodo, on behalf of the DPP,³² told the court: “the respondents are prime suspects having abetted in the commission of the offence.”

More arrests followed. Patience Mali Kahindi was arrested on or about May 25th. She was one of Nicholas Jefwa’s wives whom police reportedly believed to be the third director of PQS. On May 27th, while arguing her bail release, prosecutor Alexander Muteti stated:

“We request that the 3rd accused (Kahindi) remains in custody. We are alive to the fact that she is entitled to bail. But in offences of this nature, I urge the court to take into account the public interest. I rely on Republic versus Feisal Ali Mohamed (supplied). There is a nexus between that case and this one.”³³

This was the last time the court would hear of this nexus.

Patience Kahindi remained in custody until July 6th, 2015, when the charges against her were withdrawn. The investigating officer told the court, through the prosecutor, that they had believed Kahindi to be a director of PQS but she was not.

Employees of Siginon Global were also amongst those captured in the early arrests. Despite Siginon’s protestations and video proof that the ivory was not loaded at their premises, three of their employees were arrested and remained imprisoned until June 29th.

Irene Cheruiyot was the warehouse manager and not in attendance at Siginon on the day the tea was loaded. She had been Nicholas Jefwa’s email point of contact at Siginon. Victor Odhiambo Shikuku was a documentation clerk at Siginon and had attended Mombasa Port Gate 9 on

March 23rd when the container accessed the port. His direct supervisor was Musa Kipkoech Kiptoo, who attended the loading process on March 21st and was believed to have provided the Siginon seal, #BCE 089137, to KRA verification officer Lucy Kahoto for affixing to the container on closing.

These three Siginon employees were joined in a May 26th court appearance by drivers David Ali, Kenneth Mwangi Njuguna, and KRA employee Jonathan Mungoti. Mungoti was the KRA officer who permitted port entry to the lorry KNY 944 and its container. One of his duties was to verify that the correct seals were in place on the container. David Ali and Kenneth Mwangi Njuguna were the two drivers under the employ of Musa Jacob Lithare. Ali was the driver of 1980 Fiat lorry reg. KSM 783 that delivered one of the two Singapore bound containers. Njunga, besides delivering the Thailand container, also delivered the second Singapore container in his de-facto vehicle, KNY 944. Investigators were already aware that both drivers had been involved in previous ivory container deliveries to the port in 2012 and 2013.

CHARGE SHEET

POLICE CASE NO: 0121/02/2015

DATE TO COURT: 26th May 2015

O.S. No. 95 OF 2015

COURT FILE NO.

Christian Name in Full or Name	Surname, OR Father's Name	ID	S	N	A	ADDRESS (include District and Location)
1. NICHOLAS MWERI	JEFWA	NIL	M	K	A	Where applicable
2. SAMUEL BAKARI	JEFWA		N	U		GANZE
3. PATIENCE MALI	KAHINDI		P	N	L	REFUSED TO SIGN THE AFFIDAVIT
4. SAID JUMA SAID	SAID		A	T	N	S

Count 1 CHARGE: DEALING IN WILDLIFE TROPHY CONTRARY TO SECTION 95 OF WILDLIFE CONSERVATION AND MANAGEMENT ACT OF 2013

PARTICULARS OF OFFENSE (See Second Schedule of C.P.C.):
 On diverse dates between March 2015 and 26th day of April 2015 in Mombasa within Mombasa County jointly conveyed wildlife trophies to wit 511 pieces of ivory from Kenya to Thailand without a permit (other copies see inventory)

Value of 516M.

Arrested	Date of Arrest	Without or with Warrant	Date of Apprehension - Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue
YES	25/5/15	W/O		bond	W/A to issue for 1,2,4 accused

Complainant and Address: Republic through CID PORTS KILINDINI

Witnesses: CI GITHUI AND OTHERS

Sentence: CM S COURT, MOMBASA

Officer in Charge PORTS Police Station

Figure 9: Believed to be the first charge sheet before the courts relating to the Thailand seizure and named accused as: Nicholas Mweri Jefwa, Samuel Bakari Jefwa, Patience Mali Kahindi, and Said Juma Said, later alleged to be one and the same as Abdulrahman Mahmoud Sheikh, the first accused.



Figure 10: Irene Cheruiyot, David Ali, Musa Kipkoech, Victor Shikuku, Jonathan Mungoti and Kenneth Njuguna at the Mombasa law court on May 26th, 2015. The ODPP applied to have them kept in custody for 30 days to complete DCI investigations relating to the 511 pieces of ivory seized in Thailand. (Photo Mkamburi Mwawasi for The Star)

THE INVESTIGATION – CONSOLIDATION POINT & MORE ARRESTS

The investigational breakthrough came by way of lorry driver, Kenneth Njunga Mwangi. His interview with police yielded the location of the ivory consolidation point (also known as a collection point). It was a practice of ivory traffickers to set up locations where they could, over time, collect multiple, small numbers of elephant tusks that they would stockpile before dispatching in larger shipments. It was at these consolidation points that traffickers would cut the tusks if required and then package in large bags or boxes depending on means of shipment.

The 'Sheikh's et al' were utilizing a two storey, 4-bedroom house on a one-acre, walled compound, in the upscale Mombasa neighbourhood of Nyali for such a consolidation point. Often, traffickers would locate these consolidation points in areas where they would not be expected. This particular compound was located within kilometres of Indian Ocean, beach front properties.

Driver Kenneth Njunga told investigators that this is where he had been instructed to leave his lorry, KNY 944, and container on the afternoon of March 21st. He also retrieved it from this Nyali consolidation point two days later.

A police search operation was subsequently organized and in the early hours of May 25th, the multi-agency team of approximately 50 officers descended upon the Nyali home. In the ensuing search, more evidence was found; ivory shards and chippings, tea leaves, weigh scales, an electric hand cutting machine, mobile phone scratch cards, and even baby's diapers³⁴.

Also found, and a significant key, was a receipt for goods purchased from a nearby 'Nakumatt' supermarket. A loyalty membership number on this Nakumatt receipt yielded that it was associated to the account of Sheikh Abdulrahman Mahmoud (Sheikh A#2) and that the diapers found in the house appeared to be part of the purchase noted on the receipt. The receipt led to a wife of Sheikh A#2, who advised the investigators that her husband had travelled to a wedding in Tanzania.

This house search also yielded the name of the property agent who was collecting the rent. The agent provided the name of the leasee, a Tanzanian national by the name of Said Juma Said. Said had begun his two-year lease in August 2013 (just weeks before the registration of Potential Quality Supplies) and had provided a Tanzanian passport as identification.



Figure 11: The property in Nyali, allegedly leased to Said Juma Said alias Abdulrahman Mahmoud Sheikh, and utilized as their consolidation point for collecting ivory prior to overseas shipment.

It was not long before investigators formed the belief that Said Juma Said was one in the same as Abdulrahman Mahmoud Sheikh (Abdulrahman A#1), who had also travelled to Tanzania for a wedding. On June 3rd, 2015,

DCI detectives met with Mahmoud A#3 at the Baobab Beach Resort, Diani Beach. During the course of a shared meal, Mahmoud A#3 arranged for his two sons to meet up with him and the DCI investigators to discuss the ivory shipment under investigation. Abdulrahman A#1 and Sheikh A#2 arrived a few hours later from the Tanzanian wedding. All were arrested and taken into custody.

The following day, an identity parade (line up) was held at the Central Police station, Mombasa. At this time, the property agent picked out Said Juma Said as being Abdulrahman Mahmoud Sheikh (Abdulrahman A#1), the person to whom she had leased the Nyali 'home'. He had been selected from seven other available 'suspects'. This identification process was later called into question in court.

Two months later, on July 30th, 2015, a consolidated charge sheet was presented before Mombasa Chief Magistrate Susan. M. Shitubi with the names of nine accused:

1. *Abdulrahman Mahmoud Sheikh – organized/financed shipment*
2. *Sheikh Mahmoud Abdulrahman - " " "*
3. *Mahmoud Abdulrahman Sheikh - " " "*
4. *Lucy Muthoni Kahoto – Kenya Revenue Authority Verification officer*
5. *Musa Jacob Lithare – de-facto owner of vehicle that transported ivory*
6. *Samuel Mbote Mundia – taxi driver who assisted Jefwa's escape*
7. *Salim Mohamed Juma Khamisi – a driver of primary accused*
8. *Abbasi Issa Rashid – a driver of primary accused*
9. *Kenneth Mwangi Njuguna – driver who transported ivory to port*

The arrest warrants for Nicholas and Samuel Jefwa were still in place. In 2016, those arrest warrants were extended globally by way of the Interpol "Red Notice" list, a world-wide alert for police, advising of the Jefwa's wanted status.

The charges before this Mombasa court only related to the 3127 kg seizure made in Thailand. Charges for the two containers seized in Singapore were never laid.

THE PROSECUTION – THE DECISION TO CHARGE

In a 2015 interview with Wall Street Journal's Heidi Vogt, the head of the investigation, DCI Superintendent Kamlus, stated that he was unsure if he would have enough evidence to charge in the Singapore case.⁶ From the outside looking in, the similar fact evidence between the two seizures was compelling. But should charges have even been laid relating to 'Sheikh's et al' and the Thailand seizure?

The decision to charge is a responsibility that falls upon the office of the prosecutor. Typically, they weigh the evidence available and base their decision on the likelihood of conviction. In this case, and bearing in mind the outcome, one may question whether the decision to charge in 'Sheikh's et al', was made prematurely, was based on actual available evidence, was made at a level higher than the DPP, and/or involved factors beyond the scope of justice. And were the same charging criteria utilized for both the Thailand seizure and the sister Singapore seizure? Up to this point in time, Kenya's charging policy on major ivory seizures would have been considered haphazard at best.

On July 3rd, 2013, authorities in Mombasa conducted a verification of container *PCIU1522740* that was bound for Malaysia. It was found to contain 1478 kg of ivory consisting of 778 tusks and tusk pieces amongst a cargo of fish maws. This container was known to have originated from Kampala, Uganda,^{35,36} and was driven to Mombasa via the Malaba border crossing. It is believed that authorities had been tracking it from the moment it had crossed the Ugandan border.

This seizure (also known as the "Little Feisal" seizure), featured in the Kate Brooks film documentary, "The Last Animals"³⁷, and was later discovered, through DNA analysis, to be linked to two major Ugandan ivory seizures as well as a 2012 poaching incident in the Democratic Republic of Congo where 22 elephants were shot by Uganda Defence Force helicopters^{38,39}.

An Interpol 'Operational Intelligence Report'⁴⁰ dated May 15th, 2015, and written as a support to the existing Kenyan/Ugandan investigation, clearly identified a number of strong suspects including an individual who gained unauthorized access to the KRA SIMBA tradex system as well as a shipping agent who attempted to recover the ivory after it had been seized by authorities in Mombasa. Feisal Mohamed Ali (FMA) was a suspect in that shipment. There was no prosecution.

KENYA POLICE
CHARGE SHEET

POLICE CASE NO. 1132/15/2015
DATE TO COURT 27/05/2015
COURT FILE 1132/15/2015

Name in Full of Name 1. ABDURAHMAN MAHMOUD SHEIKH 2. SHEIKH MAHMOUD 3. MAHMOUD ABDURAHMAN 4. LUCY MUTHONI 5. MUSA JACOB 6. SAMUEL MBOTE 7. SALIM MOHAMED JUMA 8. ABBASI ISSA 9. KENNETH MWANGI	Surname of Father's Name SHEIKH ABDURAHMAN SHEIKH KAJETO LITHARE MUNDA KHAMBI RASTIH NJUGUNA	Station Code NH Station Name MUMBAI District NYSIAS Division MOMBASA	Address (include Postal and Location where applicable) CO MOMBASA		
CHARGE	COURT DEALING IN WILDLIFE TROPHIES CONTRARY TO SECTION 34(1) in read with Section 92 OF WILDLIFE CONSERVATION AND MANAGEMENT ACT OF 2013				
PARTICULARS OF OFFENCE (See Second Schedule W.C.P.A.)	1. ABDURAHMAN MAHMOUD SHEIKH 2. SHEIKH MAHMOUD ABDURAHMAN 3. MAHMOUD ABDURAHMAN SHEIKH 4. LUCY MUTHONI KAJETO 5. MUSA JACOB LITHARE 6. SAMUEL MBOTE MUNDA 7. SALIM MOHAMED JUMA KHAMBI 8. ABBASI ISSA KAJETO 9. KENNETH MWANGI NJUGUNA between the 15 th March 2015 and 20 th day of April 2015 in Mombasa within Mombasa County. Ivory with tines not before Court deal with wildlife trophies of an endangered species namely 511 pieces of ivory weighing 30/2000 kgs without a licence from the Kenya Wildlife Service.				
Has/was Arrested YES	Date of Arrest 21/5/2015	Worked or with Wildlife WLD	Date Appraisal Report to Court 22/5/2015	Degree Fine and Imprisonment Nil	Remarks (Specify to which Section of W.C.P.A.)
Remanded or Admitted to Police Station and Address	STATE THROUGH THE NATIONAL POLICE SERVICE 1. C. JAMES GITTHINI 2. OTHERS TO FOLLOW.				
Signature	_____				
Date and Sec	LM'S COURT MOMBASA ON 20/5/2015				

Figure 12: Consolidated charge sheet for 1132/15 'Sheikh's et al'.

Five days after this seizure, more ivory was seized in Mombasa port. This time it was 3287 kg of ivory in a consignment of ground nuts, also destined for Malaysia. Logistical linkages were found with the July 3rd seizure. Six months later, one clearing agent, Nicholas Maweu John, was charged (*MCCR/3081/2013 R. vs. Nicholas Maweu John*).

In October 2013, Mombasa port authorities made two more seizures within days of each other totalling 4854 kg of ivory. The shipments were

transiting Mombasa from Kampala with a destination of Turkey. There is no evidence that charges were ever instituted in those matters.

Charging inconsistency was also noted with ivory shipments seized outside of Kenya but whose origin was from within.

In April 2010, 2194 kg of ivory, in a consignment of seaweed, was seized in Haiphong, Vietnam, that had originated in Mombasa. DCI investigators did charge the Kenyan facilitator but later withdrew the charges when they were unable to secure the required evidence from the Vietnamese⁴¹.

Between 2011 and 2015, there were eight major ivory seizures effected in other countries outside of Kenya that had originated from Mombasa and were not prosecuted by Kenyan courts. One of those seizures was made in Thailand. The seizure most recent to 'Sheikh's et al' was made in Cambodia in May 2014 when 3008 kg of ivory amongst bags of soybeans were seized in two containers that originated in Mombasa. No prosecution.

After failing to secure the required evidence (namely the ivory) from Vietnam in the 2194 kg seizure in 2010, Kenyan authorities made another attempt in 2013. On January 23rd, 2013, 1848.5 kg of ivory was seized in Singapore that had originated from Mombasa. It was the third of three sister consignments, the other seizures made in Hong Kong and Mombasa respectively within weeks of each other (these three seizures all linked to the 'Sheikh's et al').

In this matter, Kenya was successful in repatriating the ivory. However, charges against the respective accused in that matter were not laid until after the ivory had returned to Mombasa, eight months after the initial seizure. Also, prior to that ivory repatriation, a small inter-agency investigative team had travelled to Singapore from Kenya to obtain evidence relating to the seizure⁴². (That investigation/prosecution, **MCCR/754/2013 R. vs. Fredrick Mungule, James Kassiwa and Nelson Ayoo {1833 kg}** was blatantly corrupted, and all three accused were acquitted in 2022 after an 8 ½ year trial.)⁴³

THE PROSECUTION - IVORY AS AN EXHIBIT

Even in 2015, it was perplexing on the logic behind the legal requirement of a criminal court to have tonnes of ivory returned to its jurisdiction as part of the trial process, particularly when the ivory was thousands of kilometres away. That was one of the hurdles that the trial of 'Sheikh's et al' had to jump. The 3.1t of ivory that was sitting in Bangkok was seemingly required in Mombasa for this trial to meet a successful outcome.

The word 'seemingly' is used as there has been an inconsistency within the Kenyan criminal justice system on that very requirement. This specifically relates to major ivory seizures classified at over 500 kg in weight.

Didi Wamukoya, director of the African Wildlife Foundation's (AWF) Counter Wildlife Trafficking program, commented on this subject in a 2021 interview with Kenyan journalist Peter Muiruri. Wamukoya had tenure, having previously been a prosecutor with the Kenya Wildlife Service.

She stated, and referring to the Sheikh's case, "*Such cases are complex...first, the process of repatriating evidence is in itself a long one.*"⁴⁴ And regarding the necessity of the ivory being returned for court, she stated: "*That is the law*"⁴⁴. From the same article, Edwin Wanyonyi, the Director of Strategy and Change at KWS, said "*there is little the department can do regarding the requirement to produce the entire evidence in court.*" (In researching that report, journalist Peter Muiruri reached out to the ODPP for comment, and they did not respond "to our emails or numerous phone calls".)

But while it may be the written law, was it the actual practice?

To date, only four of the nine major ivory trafficking prosecutions in Mombasa courts have had the entire seized ivory shipment available for the court to view. In *MCCR/255/2013**, *R. vs. Fredrick Sababu Mungule and James Kassiwa {1330 kg Hong Kong}*, the ivory was never repatriated from Hong Kong. In *MCCR/3081/2013**, *R. vs. Nicholas Maweu John {3287 kg}*, a Mombasa seizure, the ivory was never displayed or presented to the court as an exhibit²¹ (there is circumstantial evidence suggesting that most or all of this shipment never made it to the KWS stockpile in Nairobi). In *MCCR/754/2013**, *R. vs. Fredrick Mungule, James Kassiwa and Nelson Ayoo {1833 kg Singapore}*, only one of the eight ivory crates seized in Singapore was opened and shown to the court. Particularly significant, in *MCPCR//418/2017**, *R. vs. Yusuf et al {1004 kg Singapore}*, the ivory seized in Singapore had been destroyed prior to charges being laid.

Putting this in another perspective, from an informal study done by the author, and using EIA seizure records between the year 2000 and up to March 2019, there had been upwards of 175 major ivory seizures around the world. Of those 175 seizures, legal avenues were explored to have the ivory returned to the apparent originating jurisdiction in just six of those seizures. All six seizures had Kenyan links.



Figure 13: 3287 kg ivory seized on July 8th, 2013, on display at Mombasa port relating to prosecution MCCR/3081/2013, R. vs. Nicholas Maweu John. This ivory was never presented as an exhibit to the adjudicating Mombasa court.

THE PROSECUTION – EARLY DAYS

The Shitubi Period - June 2015 to August 2015

Officially, the prosecution began with arraignment on June 23rd, 2015, in Mombasa courtroom #5 before Chief Magistrate Susan Shitubi. All but Mahmoud Abdulrahman Sheikh (released on bail for reasons of ill health) had been in custody for some weeks as the police conducted their investigation. They were not aware that they were all going to be on remand custody for at least another 30 days.

It needs to be said that the Kenya Prisons Service has the same integrity challenges as every other department within the criminal justice system and indeed the entire public sector. Therefore, when it is documented that an individual was sentenced to five years in jail or was in remand custody for a period of time, there is no guarantee that it actually happened. In this particular case, it cannot be categorically confirmed that the primary

accused were in remand custody for the entire period or perhaps just a few hours prior to a court appearance.

The first six accused, Abdulrahman Mahmoud Sheikh (Abdulrahman A#1), Sheikh Mahmoud Abdulrahman (Sheikh A#2), Mahmoud Abdulrahman Sheikh (Mahmoud A#3), Lucy Muthoni Kahoto (Lucy KRA A#4), Musa Jacob Lithare (Lithare A#5) and Samuel Mbotia Mundia (Mundia A#6) all answered "Not True" to the charges as read to them:



Figure 14: Arraignment on June 23rd, 2015, in Mombasa court (L to R) Abdulrahman Mahmoud Sheikh, Sheikh Mahmoud Abdulrahman, Mahmoud Abdulrahman Sheikh, Lucy Muthoni Kahoto (KRA officer), Musa Jacob Lithare (lorry owner) and Samuel Mbotia Mundia (taxi driver). [Photo: Kelvin Karani/Standard]

“That between the 15th day of March and 26th day of April 2015 in Mombasa, within Mombasa County, with others not before court dealt with and exported to Thailand wildlife trophies of an endangered species namely 511 pieces of ivory weighing 3127 kilograms without a licence from the Kenya Wildlife Service: with counts as follows:

Count 1: **Dealing of wildlife trophies** contrary to Section 84 (1) as read with Section 92 of the Wildlife Conservation and Management Act, No. 47 of 2013 (WCMA).

Count 2: **Exporting wildlife species** contrary to Section 99 (1) as read with Section 99(3) Wildlife Conservation and Management Act (WCMA).

Alternative Count to Count 2: **Exporting restricted goods** contrary to Section 200 (c) (ii) as read with Section 208 of the East African Community Customs Management Act (EACCMA).

Count 3: **Engaging in organized criminal activity** contrary to Section 3 (c) as read with Section 4 of the Prevention of Organized Crime Act No. 6 of 2010.

The prosecution, represented by Deputy Director of Public Prosecutions Alexander Muteti, advised that an affidavit had been filed requesting that all accused remain in custody, at least until the completion of the investigation. Defence counsel requested to cross examine the affiant, CI Githinji, and this was scheduled for the following day⁴⁵.

On June 24th, the six accused represented by five lawyers, learned details of the investigation through the affidavits submitted by CI Githinji, his subsequent testimony, and cross examination.

The multi-agency team had evidence⁴⁶ alleging that:

- 1) Abdulrahman Mahmoud Sheikh (A#1) was in possession of a Tanzanian passport in the name of Said Juma Said and a Kenyan identity card in the name of Abdulrahman Mahmoud Sheikh. They were one and the same person. An investigation through mutual legal assistance with Tanzania had been commenced regarding his possible criminal activities in both countries.
- 2) Investigations had been commenced into the assets/properties of the three primary accused and there was reason to believe that the assets were proceeds of crime attained through money laundering. In particular, Abdulrahman A#1, and Sheikh A#2, were unable to account for the sources of "huge cash amounts" and transactions in their accounts.
- 3) Communications data indicated a link between Abdulrahman A#1, Sheikh A#2, and Musa Lithare #A5, on March 23rd, 2015, when lorry KNY 944 was delivering the container of ivory from the Nyali consolidation point to the port.
- 4) The two Fiat lorries owned by Lithare A#5 had delivered containers of ivory to Mombasa port as follows:

- a) Fiat lorry reg. KSM 783:
 - i) Container NYKU2749373 with 1099 pieces of ivory seized in Mombasa and subject of an ongoing prosecution *MCCR/754/2013 Mombasa*. (this fact was mis-stated as the seizure had been made in Singapore.)
 - ii) A container of 1273 pieces of ivory exported out of Mombasa and seized in Singapore (May 16th, 2015).
- b) Fiat lorry reg. KNY 944:
 - i) Container FCIU5235796 with 511 pieces of ivory from consolidation point at Nyali (related to the present charges).



Figure 15: Fiat truck KNY 944 depicted on entry to Mombasa port on March 23rd, in this instance, with Samuel Jefwa identified on the lower left.

- 5) Lucy Kahoto A#4, KRA customs officer, with 30 years' experience, attended the tea loading at Siginon Global Logistics and unprocedurally failed to input any message into the online system regarding this consignment on that date.
- 6) In a subsequent affidavit⁴⁷ relating to Samuel Mundia A#6, it was alleged that Mundia, who was a close friend of Nicholas Jefwa, had facilitated the brothers escape by driving them initially in his taxi to Uganda and then later into Tanzania. He also, while knowing that the Jefwa's were on the run from authorities, assisted in the disbursement of funds to Nicholas Jefwa's girlfriend, his mother, his three wives, an apparent roommate, and a younger brother. It was believed that those funds were proceeds of crime.

- 7) Kenneth Mwangi Njuguna A#9, was the driver of Fiat truck KNY 944 and advised investigators of the location of the ivory consolidation point in Nyali.
- 8) The three primary accused, Abdulrahman A#1, Sheikh A#2, and Mahmoud A#3, resided in the south Mombasa area. They were business people engaged in multiple enterprises as follows:
 - a) Construction work including at least two past tenders at Mombasa port.
 - b) Sales of polythene bags imported from China and exported to Tanzania.
 - c) Export of soda ash from Magadi (Kenya) to Tanzania.
 - d) Owned/operated a petrol station in Msambweni (south Mombasa coast) under the name of Chemchem Investments.
 - e) Engaged in property brokerage.
 - f) Previously imported vehicles for re-sale.
 - g) Owned a flagship company known as Funzi Island Co. Ltd.
- 9) The three primary accused denied all involvement and more specifically, Abdulrahman A#1, strongly denied that he was also Said Juma Said.

Over the course of the next six weeks, CM Shitubi ruled against bail release for all accused except Mahmoud A#3. She was overruled by Justice Martin Muya of the High Court regarding Abdulrahman A#1 and Sheikh A#2. On July 27th, Justice Muya approved their release provided they met bail conditions.

On July 30th, the ODPP amended the charge sheet to include all nine accused and admitted to the court that the ivory exhibits were not in the jurisdiction. While defence counsel must surely have been aware of such, it did not prevent them from requesting that the ODPP withdraw the matter on behalf of their clients who had been under charge for almost two months and in custody for most of that time.

Also, during that period, Musa Jacob Lithare (lorry owner A#5) and his second driver, David Mwaroli Ali, of lorry KSM 783, were charged in relation to the 1833 kg ivory seizure in Singapore in January 2013.

(MCCR/754/2013, R. vs. Fredrick Mungule, James Kassiwa and Nelson Ayoo {1833 kg Singapore})*

Chief Magistrate Shitubi's assignment in presiding over this trial came to an end literally overnight. On August 13th, 2015, she made a ruling that the trial would continue, that the remaining accused in custody could be released if they met bail conditions, and that it was time for this matter to be set down for trial. She set the first hearing date for November 10th, 2015. (It would be almost another two years before this trial heard from its first witness.)

The following day, Senior Principal Magistrate (SPM) Simon Rotich Ruto was the new presiding magistrate of 'Sheikh's et al' for a related bail matter. The reason for CM Shitubi's sudden re-assignment can only be speculated.

SPM Rotich had come to Mombasa Law courts under a cloud. The previous January 2015 while assigned to Kwale law courts, he had been suspended "for being habitually drunk during working hours and which compromised the petitioner's (Rotich) integrity and capacity to perform judicial duty".^{48, 49} The suspension was lifted in early July through a letter by the Hon. Chief Justice David Maraga with SPM Rotich being transferred to Mombasa and put on the equivalent of a 6-month probation.

FINANCIAL INVESTIGATION and ASSETS RESTRAINT

Coincident to the criminal charges being dealt with in the Chief Magistrates criminal court, the financial investigation and assets restraint was being dealt with in Mombasa High Court under Miscellaneous Criminal Application 62/2015 (MCA 62/2015). While not the purpose of this study to delve into the intricacies of the financial aspects of this matter, the salient facts are presented.

MCA 62/2015 was an application by the ODPP for judicial authorization to restrain/seize/freeze motor vehicles, bank accounts and property of persons involved in the two ivory seizures. There were nine respondents.

1. *Abdulrahman Mahmoud Sheikh*
2. *Sheikh Mahmoud Abdulrahman*
3. *Mahmoud Abdulrahman Sheikh*
4. *Musa Jacob Lithare*

5. *Nicholas Mweri Jefwa*
6. *Samwel Bakari Jefwa*
7. *Potential Quality Supplies Limited*
8. *Funzi Island Company Limited*
9. *Samuel Mbote Mundia*

It was from another sworn affidavit⁹ of CI Githinji that the following was ascertained:

1. The investigative team "had established a strong link between the Thailand seizure and Singapore seizure as having been organized by an identifiable well organized and well financed criminal cartel.
2. That the 4th respondent (Lithare) and his driver, David Ali, had been linked (and later charged) relating to the conveyance of 1099 pieces of ivory into Mombasa port in December 2012 that was seized in Singapore a few weeks later. (*MCCR/754/2013**, *R. vs. Fredrick Mungule, James Kassiwa and Nelson Ayoo {1833 kg Singapore}*)
3. Financial intelligence indicated suspicious financial transactions in the accounts of the first and second respondent and who, to date, have been unable to account for the transactions as legitimate business.
4. The 8th respondent, Funzi Island Company Limited, was registered in Kenya and the first two respondents are its directors. It had been awarded two different construction tenders by the Kenya Ports Authority in 2014. The business is believed to have committed offences under the Proceeds of Crime and Anti-Money Laundering Act 2009 and tax evasion offences.
5. There is reasonable cause to believe that all vehicles listed (nine) are proceeds of crime and derived from the illicit trade of ivory.

The application was successful. On August 25th, 2015, Justice Martin Muya of the High court issued a restraint order in relation to nine motor vehicles, thirteen bank accounts, and one piece of property valued at approximately Ksh 50 million (USD \$500,000). This was believed to be the first time that bank accounts and land had been restrained relating to a prosecution under the Wildlife Conservation and Management Act.

It was anticipated that upon the conclusion of the criminal trial, should a conviction be registered, that a confiscation inquiry would be commenced under the Proceeds of Crime and Anti Money Laundering Act relating to the restrained assets.

During the course of the criminal trial, the three primary accused made a number of applications to vary the terms of the August 25th restraint order. Some were successful and some were not. On January 28th, 2016, the High Court ordered that each of the first three respondents be permitted to draw a total of Ksh 300,000 (USD \$3,000) per month, for living expenses from the accounts that were deemed frozen.

In April 2016, under High Court Miscellaneous Criminal Application 37/2016 (later consolidated with MCA 62/15), counsel for the Sheikh's applied to the High Court to substitute the restrained assets (motor vehicles and bank account access) with another piece of property. It was their contention that the value of the restrained assets was approximately Ksh 36,000,000 (USD \$360,000) compared to the offered substitute that was valued at Ksh 50,000,000 (USD \$500,000). That application was denied by Justice P.J. Otiena on September 30th, 2016.

In December 2017, the court permitted the 3rd respondent, Mahmoud Abdulrahman Sheikh, access to his two accounts to pay for medical bills and air tickets for his wife to travel to India for medical treatment. She was to be accompanied by the second respondent, Sheikh Mahmoud Abdulrahman. The requested application for account access was made after the two had departed for India.

With asset forfeiture dependant on a conviction, MCA 62/2015, was in the end, all for naught.

THE PROSECUTION – SPINNING WHEELS

The Rotich Period – August 2015 to February 2017

SPM Rotich presided over this matter for nine of the 81 total sittings. Six of those sittings were set for hearing (trial) but not one materialized, all adjournments the responsibility of the prosecution.

The first scheduled hearing was set for November 10th, 2015. The ODPP was not ready and advised the court that an investigative team was to travel to Thailand. They requested two months to get the related exhibits to court.

Two months later, on February 2nd, 2016, with the matter set again for trial, prosecutor Mr. Muteti gave his opening address to the court. It bears remembering that the State, through Mr. Muteti, told the court that they "will endeavour to show that all the nine accused jointly acted in the commission of the offence" and that the prosecution will prove that a

syndicate operated in Kenya, Thailand, Vietnam, Singapore and United Arab Emirates.”

The scheduled hearing set for three days between April 26th to 28th did not take place with the prosecutor advising the court he was unwell. The matter was set over again for trial to May 4th and 5th. That also did not proceed, the court record not clear as to the specific cause, or if defence counsel were in attendance.

If SPM Rotich was in court on May 4th, (it is not uncommon for court clerks to provide alternative court dates to accused without the magistrate present in court), that was the last time he was seen in Mombasa court in relation to ‘Sheikh’s et al’.

On August 25th and August 26th, 2016, it was reported that SPM Rotich reported for duty under the influence of alcohol and was again suspended⁴⁸. ‘Sheikh’s et al’ would remain in limbo, seemingly unassigned, for the next six months.

MUTUAL LEGAL ASSISTANCE and JOURNEY REPULSED

With the ivory and container in Thailand, Kenya was obligated to obtain the related evidence through a process known as ‘mutual legal assistance’ (MLA). This is a cooperative process whereby one country requests the assistance of another country, through diplomatic channels, for the purpose of gathering evidence for criminal investigations. It is typically initiated through a formal letter by the requesting country.

In ‘Sheikh’s et al’, Mombasa prosecutors drafted a letter for the appropriate Thai authorities requesting the following evidence:

- Statements from customs officers and police officers involved in the seizure.
- Particulars of the seized container, the container seals and their state.
- Details on the container contents and any expert reports relating to such.
- Information relating to the ‘notify party’ of the consignment.
- Assistance in the extraction of DNA testing to ascertain origin of the ivory.
- The return to Kenya of the seized container of ivory.

This letter was forwarded to the Director of Public Prosecutions, Keriako Tobiko, who forwarded to the Attorney General of Kenya, Professor Githu Muigai, then forwarded to his counterpart at the Kingdom of Thailand. The Kenyan Principal Secretary of Foreign Affairs, Ambassador Dr. Monica Juma, was also part of that communication thread. This was initiated on June 8th, 2015.

The reply from Thailand was received on October 28th, 2015, in which was written (translated from Thai language):

“criteria in our law permits only the request for DNA of the recovered ivory to ascertain its origins but declined at paragraph 4 to return the ivory with the seized container. Items 2 and 3 are the subject for further mutual assistance requests⁵⁰”.

It is believed that items 2 and 3 refer to container contents, seals and state thereof.

Subsequent to this reply, in a letter dated January 14th, 2016, and addressed to the Director of the DCI (Kenya) from the Deputy Attorney General in Bangkok, it was stated that a DNA analysis had been conducted on samples taken from the 511 pieces of ivory seized and it was confirmed that the suspected elephant tusks did consist of ivory from African savannah and African forest elephants.^{34,50}

Independent of this MLA request process, the Lusaka Agreement Task Force (LATF), based in Nairobi, began organizing travel for an inter-agency investigative team to journey to Bangkok to gather evidence for the prosecution. The Freeland Foundation, an international NGO based in Bangkok, with a satellite office in Nairobi, was supporting the Bangkok trip.

The team was to consist of nine persons, including DCI investigators, prosecutor Jami Yamina, Moses Otiende of the KWS forensic lab, and Dr. Samuel Wasser of the University of Washington. Dr. Wasser had conducted DNA analysis on over 50 previous major ivory seizures, including all but three major Kenyan ivory seizures.

It was reported from a source that DPP Keriako Tobiko was not keen on the trip going ahead due to the existing uncertainty of the MLA negotiations.

Regardless, the team arrived in Bangkok on February 15th, 2016. One of the attendees describing their reception as though they had arrived for a workshop. Initially, it appeared that there was going to be cooperation, and that DNA sampling would take place. The Kenyan team assembled on a set date to examine the ivory with Thai Customs and the Attorney General’s

office. Media representation was also on hand. However, nothing could proceed without a representative of the Department of National Parks (DNP) and they never attended. The testing could not proceed without the authorization of the DNP which never came.

The Kenya ambassador became involved, but the impasse could not be resolved. Some witness statements were offered to the Kenyan team on an informal basis (could not be used as formal evidence in court) but were declined. In the end, the team left Bangkok for Kenya on February 19th, 2016, with no access provided to the ivory for DNA sampling or any other related evidence.

The exact cause of the failed mission was never made public. MLA negotiations continued with another letter dispatched on May 24th, 2016.



Figure 16: The Kenya investigative team, including prosecutor Jami Yamina and DNA analyst Dr. Samuel Wasser, meeting with Thai officials and The Freeland Foundation in Bangkok, Thailand in February 2016. The investigative team was attending to obtain the necessary exhibits for the prosecution of ‘Sheikh’s et al’. The trip was not successful, and the required exhibits were never made available for the prosecution in a format acceptable to the Kenyan courts. (courtesy Lusaka Agreement Task Force)

It is understood that at some point in the negotiation process, the Royal Thai Police requested to conduct their own investigation, including the interviewing of witnesses in Kenya. The ODPP did not agree, believing that it may compromise witnesses and their prosecution.

The continued diplomatic exchange of correspondence between Kenya and Thailand continued with a second mutual legal request submitted. It is believed that no reply was received. Testimony from CI Githinji indicated

that the last communication between Kenya and Thailand relating to the MLA was in June 2018.

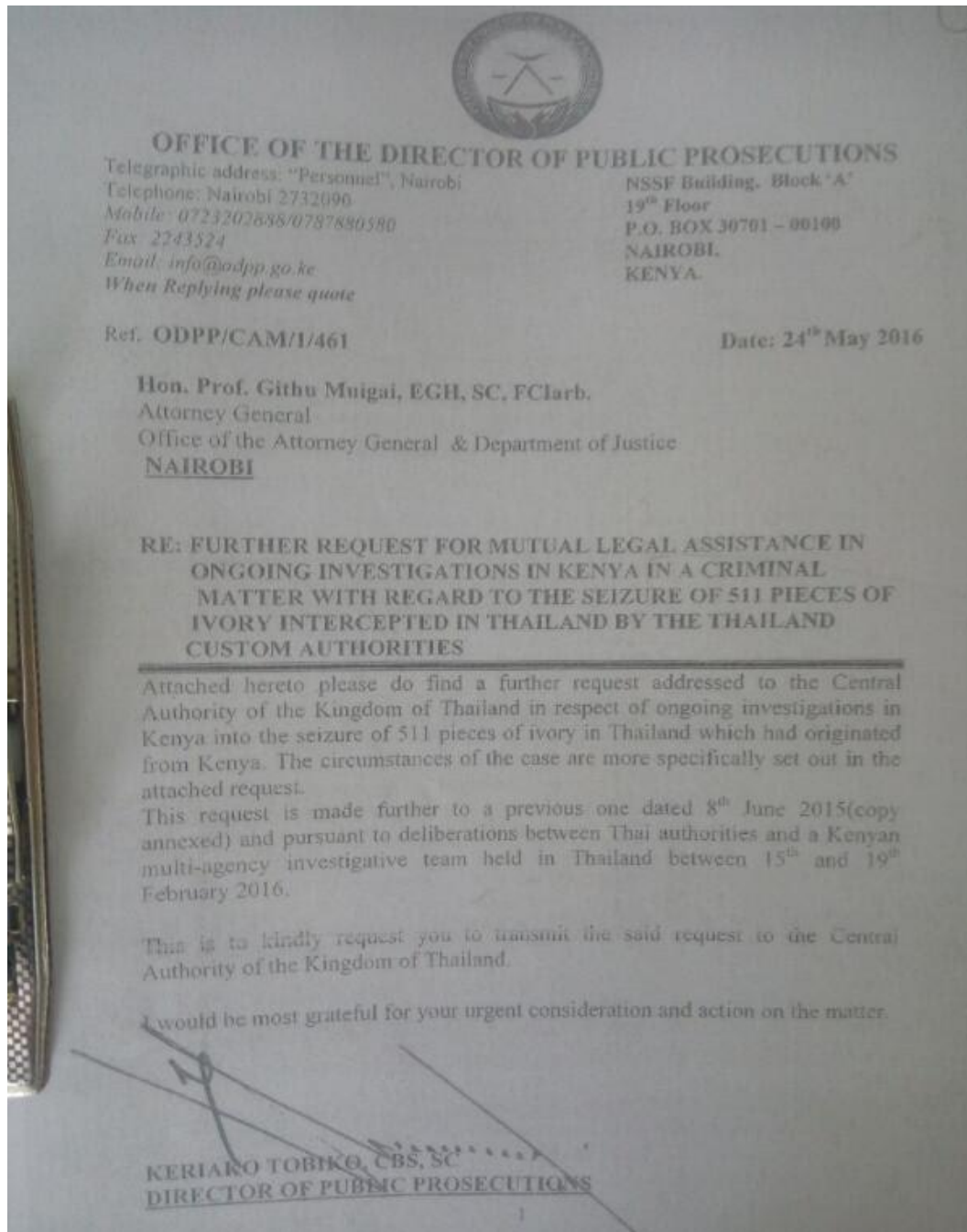


Figure 17: May 2016 letter from the DPP, Keriako Tobiko, to the Attorney General, Prof. Githu Muigai regarding the MLA request to Thailand.

At that point in the trial, witness testimony had already commenced. On July 17th, 2017, Prosecutor Muteti, on being challenged by defence counsel on the lack of exhibits and documents from Thailand, told the court that a decision had been made to proceed with the evidence they had. (that was

Alex Muteti's last day in court for 'Sheikh's et al' as he was transferred to Nairobi shortly thereafter.)

The final nail in the coffin of the seemingly hoped for MLA surely came in December 2019 with the two-day visit to Thailand of Ambassador Dr. Monica Juma, now the Cabinet Secretary of Foreign Affairs, and there to discuss bi-lateral relations⁵¹. One would think, recalling President Kenyatta's 2015 words, about bringing justice down on those responsible for "letting Kenya down as a nation", that if the MLA was that important, this would have been the opportunity to discuss. There was no evidence of any such discussion and there was no movement again on the MLA.

In the end, the MLA was unsuccessful on all counts with a minor exception. Thailand did provide a DNA analysis to Kenyan authorities proving that the seizure was comprised of elephant ivory. The report, however, was not in a format acceptable to the court as real evidence.

This was not the only MLA to fail.

THE JEFWA'S – THE FIRST CRACKS

The first clear indication that forces outside the justice system were working to derail the prosecution came through the Jefwa brothers. As has been identified, Nicholas and Samuel Jefwa, fled Kenya almost immediately after the discovery of the ivory in Thailand. Warrants for their arrest were issued through Mombasa court on or about May 26th, 2015.

In the ensuing months, attempts were made to arrest the brothers but to no avail. An investigator with Kenyan NGO, Wildlife Direct, (Wildlife Direct was monitoring the trial at the time) was personally aware of two arrest attempts that failed due to the Jefwa's being forewarned. To corroborate, the author received the following message in 2019 relating to the Jefwa's: "I found them twice, gave the location to authorities and nothing ever came of it. I was at Interpol at the time".

It wasn't until October 2016 that the existing Kenya-wide arrest warrants for Nicholas and Samuel Jefwa were extended globally by way of the Interpol "Red Notice" list, a world-wide alert for police, advising of the Jefwa's wanted status. It was believed that they were in either Uganda, Tanzania, South Sudan or other central African countries. A senior police officer stated at the time: "It is difficult to find them because of the war in South Sudan. They may also find refuge in the Central African Republic and DR Congo."

The head of investigations for all of Kenya, Directorate of Criminal Investigations (DCI), Director Francis Ndegwa Muhoro, however, had different ideas. He stated publicly at the same time that “*security agents suspected the brothers were being protected⁵² by wealthy individuals behind the killing of elephants and rhinos in many parts of Kenya.*”

He expanded on that statement in a 2021 interview while working in another capacity outside Kenya:

"I will not mention names but I saw some names and I told the (DCI) team, somebody is protecting these guys.....from analysis of the names involved, there is a political angle to this, in terms of protection....corruption, I can say that without a fear of doubt."⁷

Late in 2017, Wildlife Direct, discovered that the Jefwa’s had been removed from the Interpol Red Notice List. Appropriate authorities were contacted and Wildlife Direct were informed that the arrest warrants had not been renewed. There was no indication who might have been responsible for that warrant renewal, or even if it was the truth. The veracity of explanation was not challenged with the Jefwa’s being returned to the Red Notice list shortly thereafter.

The Jefwa’s were never arrested. In November 2022, the Jefwa brothers turned themselves under the protection of a High Court anticipatory bail order, meaning they could not be incarcerated on providing a statement to DCI. It appeared that their benefactors made them aware that ‘Sheikh’s et al’ was all but moribund.

Is it a logical extension to believe that if the Jefwa’s were being protected by those with substantial political clout, that others were protected as well?

TESTIMONY- The Tea, Siginon Global, and Other Witnesses

The Makori Period – February 2017 to September 2021

In February 2017, Chief Magistrate Evans Makori took over the trial. He had recently transferred to Mombasa having spent just a few months previously at Milimani Court in Nairobi and the Meru Law Courts prior to that. He was to hear testimony from 25 of the 28 witnesses.

For the ODPP, prosecutors Alexander Muteti and Jami Yamina were still the leads. Mr. Muteti would lead only one witness on the first day of actual

testimony on July 17th, 2017, before he would be transferred to Nairobi to head the Human Rights Division. Mr. Jami would continue for another year before he too would also be transferred to Western Kenya. He would introduce evidence through 20 more witnesses before his transfer.

For the defence, Jared Magolo and Gikandi Ngibuini were the leads for the Sheikh's brothers and father. Both had represented ivory trafficker Feisal Mohamed Ali. Mr. Magolo had a reputation as one of the top criminal lawyers in Mombasa and was particularly well versed in major ivory trafficking trials. He would take over from Mr. Ngibuini in 2019 to represent Mahmoud A#3, in addition to the sons he already represented. There were five other advocates representing the remaining six accused.



Figure 18: Defence counsel Jared Magolo (forefront) represented (L to R) Mahmoud Abdulrahman Sheikh (A#3), Abdulrahman Mahmoud Sheikh (A#1) and Sheikh Mahmoud Abdulrahman (A#2) pictured here at Mombasa court. [courtesy KTN news]

The list of scheduled witnesses was as much about who was included as who was not. Grouped by categories; six of the witnesses were testifying in relation to the purchase of tea, five witnesses were from Siginton Global, three of whom had spent over one month in jail as suspects. Musa Kipkoech Kiptoo, the Siginton supervisor on duty when the first container was loaded with tea, was scheduled to testify but was reported to have passed away. From another perspective, 39% of the total witnesses to be called were presenting testimony in relation to the tea, the cover load for the ivory. The word 'tea' was not a fact in issue in the listed charges.

Two witnesses testified for the shipping company that did business with the Jefwa's, four witnesses were called from the Kenya Port Authority and three from the Kenya Revenue Agency. The witness list was finalized with an employee of the involved container depot, an agent who participated in the leasing of the Nyali home (ivory consolidation point), the head of Osteology at the National Museum of Kenya, and three DCI investigators. As will be shown, three other scheduled DCI investigators did not testify and there were some notable omissions for a prosecution intent on prosecution.

The first two prosecution witnesses (known within the court as PW1 and PW2) were Franklin Njoka and Hilda Koome, the manager and one of the directors of Almasi Chai Kenya Limited respectively. Franklin Njoka was initially a suspect, a fact indicated by way of the three statements taken from him by DCI, one being a statement under inquiry (cautioned statement).

Njoka and Koome could have been charged as part of the ivory trafficking conspiracy, but the prosecution believed the evidence they would provide to be of a greater value against the accused. Franklin Njoka was the first to testify, taking the witness stand on July 17th, 2017. His evidence, aside from detailing Almasi Chai's involvement, implicated only the Jefwa's.

Njoka, who had apparently been in the tea business since 1980, joined Almasi Chai just prior to Nicholas Jefwa approaching Siginon Global for clearing and forwarding services. That proximity in time, relative to Jefwa's approach to Siginon, raises the possibility that Njoka may have been a Jefwa plant and/or an associate. It is not known how the Jefwa's selected Almasi Chai to be their 'proxy' for the tea shipments.

Both Njoka and Koome stated that they first met Nicholas Jefwa in September 2014 after his initial phone contact. As per their testimony, there was a gentleman's agreement in place with no written contract between N. Jefwa and Almasi Chai. Almasi Chai would ship tea on behalf of the Jefwa's and Njoka would source the tea. Over the course of the next eight months, several tea shipments were made from Mombasa.

Relating to the 'Sheikh's et al' shipment, Njoka stated that it was the fifth consignment for N. Jefwa. He had met with N. Jefwa on or about March 15th, 2015, and consequently sourced tea from a number of different brokers to complete the consignment of 220 bags for shipment to Dubai. As was now routine, Siginon collected the tea from the brokers and then blended. For the March shipment, the Jefwa's paid approximately USD \$12,000 for the tea through Njoka. There were no receipts in the transactions between Jefwa and Njoka. Njoka told the court that he had never heard of Jefwa's business name, Potential Quality Supplies, until after the ivory had been discovered in Thailand.

What did not come out in testimony was that this loose business arrangement between Almasi Chai and the Jefwa's was contrary to trade regulations. Specifically, Almasi Chai was contravening the Crops Act 2013 as well as Tea Licensing Registration and Trade Regulations prohibiting the exportation of tea for an unlicensed third party. It was reported that the government revoked the licence of Almasi Chai to conduct further business. In addition, as East African Tea Traders Association managing director

Edward Mudibo explained to the press: "We have stripped them of our membership for contravening the code of conduct that governs EATTA."⁵³

On the same day that Hilda Koome testified, so did a Rais Shipping Services employee responsible for shipping and marketing. Known to the court as PW3, she had been with the company for four years and knew Nicholas Jefwa as a regular customer. She recalled dealing with two containers of N. Jefwa's, one was relating to the Thailand seizure and the second, to the sister Singapore seizure.

PW3 confirmed that for the Thailand seizure, Almasi Chai was the exporter, Keshav Traders of Dubai was the original consignee and N. Jefwa was the forwarder. She stated that the first application by Jefwa to change consignee from Keshav Traders, Dubai, to Soupha Song Import Export of Laos, was on March 24th, 2015, (the day after container entry into port) and she was aware that another change had been requested on April 21st, 2015, for a new consignee in Da Nang, Vietnam. She testified that documentation indicated that the cargo had been loaded onto the vessel Cape Moss in Mombasa. She also stated that one container seal, #728614, had been provided to Nicholas Jefwa.

Her manager, PW4, confirmed in his testimony on March 5th, 2018, the change of consignee and location, from Laos to Da Nang, Vietnam, and that Nicholas Jefwa paid for that change to be undertaken.

PW4 had been scheduled to testify four months earlier on October 23rd, 2017, a hearing that was adjourned due to Sheikh A#2 having travelled to India with his mother due to her health concerns.

The four witnesses who followed were all tea brokers, their lack of significance denoted through the absence of defence counsel Magolo. Even Prosecutor Jami was absent for one of them. Through their evidence, it was identified that significant purchases of tea had been made by Almasi Chai in 2014 and 2015. The quantity of tea purchased by Almasi in 2014 would call into question whether in fact the relationship between Almasi and the Jefwa's did not commence prior to September 2014.

The tea broker group were followed by PW9, a cameraman from Siginon Global. He took photos of the container as it was being loaded with the bags of tea and its being sealed on completion (Figure 8). He stated that Samuel Jefwa was present at the loading and was also taking photographs of that process. PW9 had seen Jefwa at Siginon more than four times previously.

Irene Cheruiyot, PW10, was the next to testify. She was the Siginon warehouse manager but not at the Mombasa warehouse on the day of the

tea loading. She spent 34 days in jail as a suspect. On May 15th, 2018, she testified that her first email correspondence from Nicholas Jefwa was on May 30th, 2014. He had visited the office shortly prior to that date. His final correspondence to her was on February 17th, 2015. That would appear to correspond with an Almasi tea shipment to Singapore made for the Jefwa's on February 28th, 2015. One would question as to why there was no correspondence between Jefwa and Cheruiyot for the March Thailand shipment, if that was indeed true.

Irene Cheruiyot was also responsible for Siginton's tea blending and became the point of contact for N. Jefwa. She presented in her testimony, an overview of the process that was followed, from tea sourcing to loading, and identifying her staff that were involved. She had documents indicating that truck KNY 944 left Siginton at 13:35 hrs on March 21st, being driven by Kenneth Mwangi Njuguna (A#9) and that it arrived at the Port on March 23rd at 16:30hrs.

Not in her testimony was the fact that she was aware that N. Jefwa had been previously employed with Siginton Global. It was also not revealed in open court that the Jefwa's had previously exported tea through Siginton but under the name of Mombasa Tea Traders Limited.

PW10's testimony was followed by three more witnesses from Siginton. From PW11, it was learned that he was the one who contacted KRA verification officer, Lucy Kahoto A#4, to attend the tea loading process. She was based at Mitchell Coutts container freight station in Mombasa. PW12 was Victor Shikuku, the export clerk who had also spent a month in jail. He had attended at the port on March 23rd when lorry KNY 944 was permitted entry. He stated that it was being driven by Kenneth Mwangi Njuguna (A#9) and accompanied by Samuel Jefwa.

The Siginton export clerk's testimony, which was undoubtedly significant in relating how the lorry/container gained entry into the port considering the 48-hour loading/arrival delay, was rendered ambiguous through the Hon. Makori's poor note taking and/or poor transcribing of testimony. It was also not clear when exactly Kahoto A#4 lodged her required message into the online system relating to the March 21st loading. It is clear that she did not enter it on the system on March 21st as dictated by customs protocol. The input date was either March 22nd or 23rd.

PW13, a Siginton blending clerk, was the last to climb the witness stand on that day. He testified that he was at the Siginton warehouse on March 21st and it was he who physically placed the two seals on the container after it had been loaded with tea.

The Container

The following eight witnesses, with the exception of one more Signon clerk, were all from the Kenya Revenue Authority or the Kenya Port Authority. They provided testimony primarily relating to the container and its entry into the port. From these witnesses, it was learned that the container, *FCIU5235796*, did enter the port and was loaded onto a ship. The name of the ship (Cape Moss) was not specified in testimony.

The court also heard evidence relating to the supply of container customs seals and the seal documented to be securing container *FCIU5235796*, when it entered Mombasa port. It was learned from a KPA security officer (PW19) that he recorded on March 21st, seal #728614, was on the subject container in an unbroken state. There was no mention of the second seal, #BCE089137.

Thailand Witnesses

On or about November 12th, 2018, (the date was not captured in typed proceedings) the ODPP, through Jami Yamina, told the court that it was planned to present five Thai witnesses to testify. Amongst the five were an ivory analyst and those involved in the container seizure. The statements from these witnesses would be recorded within 90 days.

“The witnesses we intend to bring in are very important to this case and it is important for the court to allow their testimony,” Jami said.

Defence counsel objected, their position being that it was too close to the end of the prosecution to bring in foreign witnesses. CM Makori told the court he would decide on this matter after the scheduled witnesses had testified. It was believed at this time that there were 10 witnesses remaining. Prosecutor Jami was transferred to a western Kenya law court sometime after this date and would not appear again on this matter for another 2 ½ years.

FIRST EVIDENCE - Primary Accused

On April 29th, 2019, the court heard evidence for the first time that was relative to one of the primary accused. The previous 21 witnesses presented evidence that suggested possible involvement of only three of the accused and none relating to the three Sheikh's.

PW22 was the owner of the leased Nyali property identified as an ivory consolidation point. He stated that he had been approached by a man at his mosque and subsequently leased his Nyali compound to this man, Said Juma Said. The lease for a two-year period commencing August 2013 for a monthly payment of ksh 105,000. He did not recall the face of Said Juma Said. The agent, Nelly, prepared the documents. He stated that the rent was always paid on time, and he never went to the property during the tenancy.

PW23 was an employee of Hakikka Transporters, who through documentation, advised the court that the empty container, *FCIU5235796*, had been picked up from the Hakikka container depot on March 20th. As per submitted documents, the driver was Kenneth Mwangi Njuguna A#9. The witness had not seen the driver.

On the same day, testimony was heard from the first police witness of the trial. Chief Inspector Barnaby Chumo, PW24, told the court that he conducted an 'Identification Parade' on June 4th, 2015, the day after Abdulrahman A#1 was arrested. An identification parade is an investigational process whereby a criminal suspect is stood in a line with a number of other physically similar persons for the purpose of establishing whether the witness can identify the perpetrator⁵⁴. This is also referred to as a 'line up'.

The purpose of this parade was to establish, through the property agent who had dealt with the leasing of the Nyali property, if Abdulrahman A#1 was the same person as Said Juma Said, the lessee of the property. CI Chumo told the court that he conducted the parade according to protocol and it consisted of eight persons. The members all closely resembled Abdulrahman A#1. CI Chumo stated that the witness, PW27 (property agent), did identify Abdulrahman A#1 as the person she knew as Said Juma Said, the individual who paid her the two month deposit and with whom she left the keys. CI Chumo stated that defence counsel Jared Magolo was in attendance.

The property agent, PW27, was also scheduled to testify that day but could not due to illness. Prosecutor Eugene Wangila, who had now taken over from Mr. Jami, advised the court that he could not confirm if the statements from Thai witnesses were available. He told the court that he has nine witnesses remaining. Seven of those witnesses were to come from the DCI, KRA, and Immigration. It was the intent of the ODPP for all remaining witnesses to testify over a two- day period on the next scheduled hearing dates.

At this point in time, by Kenyan standards, the pace of the trial was progressing comparatively well. CM Makori had heard testimony from 24 witnesses in under 21 months.

Unnecessary Delay

That tide was going to turn on June 17th and 18th, 2019, two days set for witness testimony. On the first day, two witnesses were present but did not testify as their statements had not reached all defence counsel. Mr. Wangila advised the court that the witness list had been pared by three and now stood at six remaining.

The following day, June 18th, with four witnesses present, the court was advised that prosecutor Eugene Wangila had been transferred and would not be continuing with this prosecution. It was later learned that Mr. Wangila had not been transferred, but had been let go from the ODPP for reasons unknown. Within months, he would be seen in the halls of Mombasa law courts but now acting as defence counsel.

The next date set for trial was August 26th, 2019. It did not proceed and the 'Sheikh's et al' made headlines again. A media report, "*DPP accused of delaying Sh576m ivory case*",⁵⁵ was critical of delays that had plagued the four-year prosecution, placing the blame on the shoulders of the ODPP.

The newly assigned and more junior prosecutor, Edgar Mulamula, had told the court: "*I have just arrived in Mombasa, I have been told the case is complicated hence I need time to go through the file before I start prosecuting the matter.*"

Mr. Mulamula told the court that he needed a month to familiarize himself with the complex file. CM Makori granted the adjournment although it was reported that his efforts to conclude this case had been frustrated by the prosecution.

By the numbers, the media report was correct. As of August 26th, 2019, there had been 24 scheduled hearings of which 10 had proceeded with witness testimony. Of the 14 hearings that had been adjourned, the ODPP was responsible for 10.

It would be 18 months and seven court sittings later before the next prosecution witness would testify. COVID was part of that equation.

The House Search

On February 16th, 2021, the prosecution was scheduled with two witnesses. The hearing was postponed for a day, however, with a reported illness of

one of defence counsel. This nullified the expected testimony of Dr. Ogeto Mwebi from the National Museum of Kenya who was to testify regarding the ivory shards and particles found in the Nyali consolidation point. The court was told that Dr. Mwebi was not available for the second day of this hearing, being required to testify elsewhere in another court. In theory, there should not have been another ivory prosecution in Kenya with a higher priority than 'Sheikh's et al'.

The following day, Inspector (IP) Stephen Kibagendi, PW25, presented evidence on the house search conducted on the Nyali compound being used as an ivory consolidation point. Not realized at the time, this would be the only witness that Mr. Mulamula would be guiding through testimony.

IP Kibagendi told the court that he had been notified at 05:00 hrs on May 25th, 2015, to attend the house search in Nyali. He arrived, with his driver, to find many officers already present, officers from the DCI, the Flying Squad, other specialty units, and the KRA. Found in the house were various items including bags of tea leaves, pampers (diapers) and credit cards. Everything was loaded into a lorry and taken to the port police station. He referred to an electric cutting saw and weigh scales that had been seized but could not presently be located. He attributed this to the passing of the officer in charge of the investigation at the time, Senior Superintendent Odhiambo Kamlus.

IP Kibagendi was the primary seizing officer of five small envelopes, four of which contained white particles/chippings and one envelope with animal hair. These exhibits were presented to the court. The envelope of animal hair had the date May 23 written on it and another envelope had written: *"100 gms, different spots in room, entrance left front door."* It was not known which specific officers had seized any of the envelopes. His testimony was also not clear as to whether he took possession of the envelopes at the Nyali property or at the police station after the search.

IP Kibagendi continued that he took the envelopes and contents with CI Githinji to the National Museum of Kenya in Nairobi and handed them over to Doctor Mwebi. He retrieved them five or six days later.

In cross examination, he stated that he was not part of the investigative team and he was unsure why 'May 23' was written on one of the five envelopes. He told the court that there was no exhibit inventory, and he could not specify which officers had seized which exhibits. There were over 20 officers involved in the search. Mr. Magolo questioned whether in fact, the ivory chippings had been taken to the house by police instead of being found therein.

Upon conclusion of testimony, CM Makori ordered the prosecution to close its case. In his ruling, he stated that “*the spectrum of the case is being lost*” and the “*only remedy is to bring this to a closure*”⁵⁶. He ordered that the prosecution should bring all remaining witnesses to testify for hearing on April 7th, and 8th, 2021, and that their case should be concluded at that time. There were five more prosecutions witnesses scheduled. It would be another two years before the court heard from any of them.

MLA II – NEW EVIDENCE APPLICATION

COVID intervened. On April 7th, 2021, prosecutor Mulamula and Lucy KRA A#4 found themselves amidst a Nairobi COVID lockdown and could not attend the scheduled hearing in Mombasa.

Fate intervened a second time within days. The ODPP office in Mombasa, through an April 9th letter from their Nairobi headquarters, was advised that new information had been received (informally) from the United States Office of the Attorney General. The information was specifically relating to the Sheikh’s and the Jefwa brothers involvement with Moazu Kromah of the West African crime group. ‘Informally’ meant that the evidence would have to be transferred to Kenyan authorities in a format that would make it admissible evidence in court and through a mutual legal assistance request process.

Subsequently, on May 20th, 2021, the ODPP made an application to the court (in CM Makori’s chambers), with a supporting affidavit, requesting the new evidence be admitted as part of the trial. It was stated that it was evidence that the police and prosecution believed was, “*new, credible, relevant, and admissible evidence to the offences now before the court*”.⁵⁷

Inserted into the same application was also a request to avail to the court a forensic analysis report from Thailand relating to the seized ivory. This report had been received from Thailand during the initial stages of the Kenya Thailand mutual legal assistance negotiations. The report had yet to be entered into evidence.

From an evidentiary perspective, the new evidence motion had three key paragraphs:

13. *THAT this intelligence information follows the successful extradition of one **Mansur Mohamed Surur** alias **Mansur** to the United States of America from Kenya in relation to illicit Narcotics trade and the illegal exportation of a wildlife product knowing it to be in violation of the Kenya Wildlife Conservation and Management*

Act, East Africa Customs Act , Uganda Wildlife Act and the United States Lacey Act and is part of the transnational criminal enterprise with operations in the said countries

15. THAT upon reviewing the said intelligence, it is apparent that the person of interest “Kromah”, and the some of the accused persons with others not before the court are directly linked with the preparation of the bill of lading relating to the consignments of 511 pieces of ivory seized in Thailand, container and the subject of this case to the extent that they are seen giving or receiving instructions as to the place of final destination of container no. FCIU5235796.

*16. THAT intelligence discloses that the said **Moazu Kromar** currently facing Ivory Trafficking Charges in the USA used to receive Instruction from Accomplices in Thailand and thereafter transmit the same to accused One and Two in this case. It is necessary to receive the said information in the form of admissible evidence in a court of law in Kenya before it is relied upon.”*

Mansur Mohamed Surur, was one of the four, including Moazu Kromah, named in the 2019 United States South District Court of New York indictment, and known as the key decision maker in Kenya for Kromah and the West African crime group. Surur had been arrested in Mombasa in July 2020, having just landed on a flight from Yemen. He was extradited as per rule of law to the U.S. the following January.⁵⁸

The ODPP application was authored by now Senior Principal Prosecution Counsel, Jami Yamina, re-assigned the ‘Sheikh’s et al’ portfolio after a 2 ½ year absence. He would be handling this matter while also the head of the ODPP office in Malindi, a coastal town and resort destination three-hour’s drive north of Mombasa. He had not long returned from the United States, having achieved honours while attaining a Master’s degree in animal law at the Lewis and Clark Law School.

The supporting affidavit had been drafted by Superintendent (promoted from Chief Inspector) James Githinji. He had also been apparently re-assigned the file for the DCI, having been transferred out of Mombasa in mid-2016. He was based in Nairobi at this time.

Conversely, Chief Magistrate Makori was pending transfer. Despite his having heard all prosecution witnesses, it was clear at this point that he would not see the trials conclusion. He was on a 2019 list of 40 Judges to be promoted, promotions that had been unprocedurally delayed by President Kenyatta⁵⁹.



Figure 19: C/clockwise from top right: Amara Cherif, Moazu Kromah, Mansur Mohamed Surur, and Surur having just landed in the U.S., being led away by federal agents in January 2021.

There were no changes with defence counsel who were now waiting for a scheduled hearing date to present their oral arguments in opposition to the proposed application. July 5th, 2021, was the date set.

But the hearing to argue this application of new evidence was never to materialize. Just over one year later, on July 14th, 2022, and now before Chief Magistrate Martha Mutuku (who had transferred in eight months previously), Prosecutor Jami stood before the court and withdrew the application.

He prefaced his remarks by telling the court that when the case had commenced in 2015, his seven-year-old son had not yet been born. It was time now to allow this trial to continue to its logical conclusion. He continued that the reasons for the withdrawal and the one-year delay in hearing this

application, was not on the shoulders of the ODPP but due to complexities of the mutual legal assistance request. Mr. Jami further advised that there would be an updated statement relating to the matter from Superintendent Githinji. A court date of September 5th was set for CM Mutuku to provide further directions. The court was advised that there were six more witnesses to testify to conclude the prosecution's case.

THE PROSECUTION – THE LAST DAY

The Mutuku Period – October 2021 to October 2023

It was a further eight months before the last witnesses testified. An apparently legitimate attempt to conclude the prosecution had been made on November 16th but was adjourned by the state as four of the five witnesses were unavailable; the lone civilian witness was out of the country, Dr. Mwebi of the National Museum of Kenya was again testifying at another court in northern Kenya, one police witness was on leave, and another was unwell.

Coincidentally or otherwise, on the same day, Nicholas and Samuel Jefwa were turning themselves in to the Mombasa DCI under the protection of the Mombasa High Court anticipatory bail order signed the day previous by Lady Justice Ong'injo.

March 6th and 7th, 2022, were the last two days of the prosecution's case. Dr. Ogeto Mwebi, PW26, of the NMK was the first to testify. He is a very familiar face in ivory trials within Kenya, produced severally as an expert witness to confirm through scientific examination, that the seized ivory is actually ivory. He told the court that he had been at the NMK for 32 years and had a Ph.D. from Aix-Marseilles. He specialized in animal remains identification. He continued by telling the court that he had done many ivory examination reports over his career, over four per month.

He relayed that on May 25th, 2015, he received an exhibit memo and five exhibits from DCI investigators, CI Githinji and IP Kibagendi. The exhibits were in the form of five small envelopes, four containing white fragments and a fifth containing animal hair. He told the court that he determined through microscopic analysis that the fragments were elephant ivory. He could not ascertain whether they were from savannah or forest elephants.

The second and final witness on March 6th, was PW27, the property agent involved in the signing of the Nyali lease with Said Juma Said. In 2015, she was working as a property agent for Mombasa Investments. She was

managing the property owned by Mr. Attamimy. Said Juma Said (aka Abdulrahman A#1) was the tenant.

She confirmed that the lease agreement was for two years from August 2013 to July 2015, the rent was paid in advance with 2 months deposit. Said Juma Said produced a Tanzanian passport as identification. She was asked if she could identify Said Juma Said in court but she could not, stating that it had been sometime since she had seen him. She did state that the tenant, Said Juma Said, did take physical control of the property and was given the keys. All rent was paid in cash.

The Last Day

March 7th, 2023, was the last day of the prosecution's case. It can be encapsulated through a comment from defence counsel, Jared Magolo, during his cross examination of Senior Superintendent (SSP) James Githinji:

"You have no ivory, no witness that received or discovered ivory or seized, the only thing you can avail are correspondence, showing how you have tried and they (Thailand) have let you down. This is a criminal proceedings - you are asking the court to sympathize with your efforts you made but failed" but we want evidence, right?..... looking at these documents you are crying".³⁴

For all intents and purposes, the day was devoid of real evidence. The true character and integrity of the case was to be presented to the court.

The hearing was meant to begin at 11:00 hrs. Mr Jami arrived 12:04 hrs. The case was called at 12:20 hrs but there were no police witnesses present, including SSP Githinji. Mr. Jami asked for the courts indulgence telling the court that SSP Githinji was enroute. CM Mutuku retired to her chambers and the packed courtroom waited. He arrived at 13:14 hrs, without other police witnesses. The hearing commenced.

One needs to bear in mind that at this point in the trial, while significant evidence against the absent Jefwa brothers has been heard, the only direct, solid, and legally admissible evidence of any wrongdoing was in relation to Lucy Kahoto, the KRA officer.

SSP Githinji took the witness stand in Mombasa courtroom #1 and introduced himself. He was now the IO of this investigation, having taken over from the deceased, Senior Superintendent Alphonse Kamlus.

His testimony lasted approximately two hours, a hybrid of an investigational summary, an intelligence briefing, and a public relations exercise. The

evidence was directed from time to time with specific questions from Mr. Jami. SSP Githinji submitted a number of exhibits to the court, primarily documents and reports, but their relevance to the specific facts in issue were limited at best. It was noted that defence counsel did not challenge any of the submissions even though the officers that authored the reports were absent and had never testified.

SSP Githinji spent 30 minutes of his two-hour testimony presenting details of the failed mutual legal assistance process with Thailand. He presented various correspondence which were submitted to the court as evidence of failed negotiations. The last document tendered into evidence relating to the failed MLA was a letter dated January 2023, (two months previous) from the Solicitor-General of Kenya, Kennedy Ogeto, to the Director of the DCI, detailing chronologically, all steps and actions taken by the central authorities of Kenya in trying to get assistance from Thailand. SSP Githinji was specifically directed to paragraph 12 of the letter that related to ODPP concerns over the reciprocity requested by Thailand authorities. (this was in reference to Thailand's wish to conduct their own investigations in Kenya.)

Of more relevance to the case and submitted to the court (despite its inadmissibility), was the DNA analysis report authored by the Thailand authorities confirming that the seized ivory was that of African savannah and forest elephants.

The court heard (and being made public for the first time), through direct questioning by Mr. Jami, that the Jefwa brothers, had five months previously, turned themselves in to the Mombasa DCI.

SSP Githinji submitted to the court photographic evidence and a related crime scene report dated June 2015 regarding the search of the Nyali consolidation point and the items seized. The crime scene officer who took the photographs and authored the report was not in court, reportedly unwell. This is the same officer who was unwell for the last attempted hearing on November 16th, 2022.

The report and photos had been provided to defence counsel only the day before. As an explanation for the seven-year disclosure delay, SSP Githinji told the court that it was due to a breakdown in communications between two investigative teams, his transfer from Mombasa (in 2016), and the passing of IO Kamlus.

The cybercrimes report, (relating to email correspondence between Siginon Global Logistics, the Jefwa's, and Rais Shipping) also dated 2015, was also submitted to the court without the author present and without comment

from defence counsel. SSP Githinji advised the court that the police officer who wrote the report was absent as he was unable to travel.

A third scheduled and non-attending witness, an officer of the DCI Flying Squad (since disbanded) whose relevance was not ascertained, was not present due to an operational necessity in Lamu.

In the last ten minutes of his examination-in-chief, SSP Githinji spoke of the restraint/freezing of assets from a number of the accused persons, and touched on the role of Samuel Mundia, A#6, the taxi driver who was alleged to have conspired in the Jefwa's escape from authorities. No admissible evidence was produced for the court to substantiate Mundia's involvement.

CROSS-EXAMINATION – THE LAST DAY

The examination-in-chief of SSP Githinji appeared to be an attempt to deflect the weakness of the investigation and prosecution away from Kenya and onto Thailand. On the surface, and for those not aware of the intricacies of the case, the tactic was successful.

That was to change under the cross-examination of Jared Magolo, and co-counsel. The following was revealed through the cross-examination:

- A. No financial transactions were identified or traced as having come from or being specifically tied to any aspect of the ivory shipment under investigation in relation to any of the accused.
- B. SSP Githinji wrote his statement pertaining to this case in 2019. The reason for the four-year delay was due to the death of lead investigator SSP Kamlus, who he believed to have died in 2017. Supt. Kamlus had not written a statement for the file.
- C. SSP Githinji's written statement included a list of items that were seized at the Nyali consolidation point; a bag containing tea leaves, a weigh scale, a consignment of baby diapers, a Nakumatt receipt, assortment of scratch cards, and several gunny bags. There was no exhibit inventory made by any officer at the time of the initial search that included these or any other items.
- D. There was no document or statement from any officer as to who the Nakumatt receipt was associated to and no statement was taken from an employee of Nakumatt. (this was the sole evidence linking Sheikh A#2 to the Nyali property and it was not submitted as evidence.)

- E. The third accused, Mahmoud A#3, was charged on the basis that he had been seen at the Nyali consolidation point on one occasion with the first two accused. This fact was not included in SSP Githinji's statement.
- F. There was no attempt to investigate the authenticity of the Tanzanian passport of Said Juma Said, if he was an actual Tanzanian, or if the identification was linked to other criminal acts in Kenya or Tanzania.
- G. Samuel Mbote Mundia's involvement (6th accused), alleged to have assisted the Jefwa brothers in escaping arrest, is not captured in SSP Githinji's statement.
- H. SSP Githinji did not know why Salim Mohamed Juma Khamisi (7th accused) or Abbasi Issa Rashid (8th accused) were charged, stating that charging decisions were made by the ODPP.
- I. Evidence that lorry KNY 944 went to the Nyali consolidation point after being loaded with tea at Siginon is based solely on a statement taken from the driver, Njunga A#9. There was no other corroboration. (Njunga's statement was not entered into evidence)
- J. SSP Githinji was not sure who was coordinating the search of the Nyali consolidation point that was comprised of 50 officers from a number of different units and agencies. Considering that at the time, SSP Githinji was the affiant, the author of all affidavits, this is something he should have known.
- K. There was no evidence of any written contract or any agreement between Musa Jacob Lithare and the Jefwa's in relation to the transport of the container.
- L. Supt. Githinji told the court that he could not disprove that ivory was put in the container after it left Mombasa port and before it was opened in Thailand as he did not know the conditions of the seals in Thailand.

There was no re-examination by the prosecution and the day ended at just after 16:00 hrs.

The court would sit eight more times before the acquittal ruling was delivered. The proceedings had to be typed, submissions had to be written by both prosecution and defence, Chief Magistrate Mutuku went on leave twice, and she wrote a 113-page ruling although much of it was a re-cap of witness testimony. The final acquittal was read on October 23rd, 2023. Chief Magistrate Mutuku was transferred the following week.

That, however, was not the case conclusion. Chief Magistrate Alex Ithuku took over the matter and there would be 15 further sittings relating to arguments over the returning of the accused's vehicles and assets under restraint. The file did not finally culminate until September 2024.

CASE MANAGEMENT & TRANSFERS

The trial of 'Sheikh's et al', would sit on 81 occasions between June 23rd, 2015, and October 23rd, 2023, the day of arraignment to the final acquittal ruling.

From those 81 sittings, 40 sittings did not achieve their intended purpose, resulting in adjournment. Of those 40 sittings, 28 were for scheduled hearings that did not take place. Overall, the court itself was responsible for 14 adjournments, defence counsel/accused for seven, and the ODPP for 17 adjournments. Two adjournments were for reasons not specified in the court file.

The causes of the adjournments were varied and not limited to; transfer of magistrates or prosecutors, absent witnesses, prosecutors absent in another court, sickness, training, incompleteness of submissions or rulings, and annual leave that was not factored into case management.

The matter was handled by four Magistrates; Chief Magistrate Shitubi for 11 sittings over 2 months, and Senior Principal Magistrate Rotich for 9 sittings over ten months. There was a nine-month hiatus where the file appeared to be unassigned although Chief Magistrate Matheka did set hearing dates on October 27th, 2016. Chief Magistrate Evans Makori had the file from February 2017 for 4 ½ years that included 37 sittings and testimony from 25 witnesses before his tumultuous transfer⁵⁹ (over a delayed promotion) in September 2021. Chief Magistrate Martha Mutuku had the file for just over two years and 17 sittings up to the acquittal ruling.

For the ODPP, the case was handled by five primary prosecutors with a number of others stepping in from time to time regarding bail matters or holding brief for various reasons.

Alexander Muteti (now a High Court judge) appeared in court on eight occasions before his transfer to Nairobi in 2017. He led one witness. Jami Yamina appeared 28 times, split between 2015 to 2018 and then on his return from 2021 to conclusion. He led 24 witnesses. Eugene Wangila led three witnesses in his four appearances before his abrupt 'transfer' in mid-2019. He was followed by Edgar Mulamula with 10 appearances prior to Jami Yamina's return. There were five other Mombasa prosecutors who sat

in from time to time when trial testimony was not being heard which totalled 20 occasions. Prosecutor Alex Gituma, the regularly assigned prosecutor for Mombasa courtroom 1, held brief on 11 occasions.

As has been observed, transfers of magistrates and prosecutors figured prominently in the eight-year trial process.

Transfers, or the re-location of personnel from one law court, one station, one post, to another, are part and parcel of Kenya's criminal justice system. In a yet to be completed study by the author, of 93 ivory cases under observation, at least 41 of them have been subject to disruptions associated to mid-trial transfer of presiding magistrates.

The Judiciary, the Office of the Director of Public Prosecutions, the National Police Service, and the Kenya Wildlife Service are all national agencies and so all employees know that re-location is in the job description. The author has observed that it is not uncommon for persons within the criminal justice sector to work in one area of the country while close family members live in another. A bureaucratic, inflexible, and compromised education system⁶⁰ contributes to the challenges faced by affected staff with families and children.

On paper and in theory, the reasons for transfers are logical; organizational gaps due to promotions, retirements, re-alignment of services, to name but a few. The "enhancement of efficiency and effectiveness in the delivery of service" is part of the transfer policy of the ODPP. For the NPS, it is stated that considerations for transfer should include that they be justified, financially viable, cause minimal disruption, be considerate to gender and ethnic representation, and that an officer must have served in a duty station for at least one year and maximum of three years to be considered for transfer. That time factor can be bypassed in exceptional circumstances.⁶¹

The policy also states that transfers should be "fair and just and does not allow corruption including soliciting or offering money or other services to acquire or avoid a transfer." There is also a Bribery Act, Chapter 79B, Revised edition 2022, that reads as per Section 6 sub-section 1 that it is an offence to receive a bribe.

One has only to read the Kenyan news on a moderate basis to understand that transfers in the criminal justice sector are often implemented as a punishment. It is regularly reported and observed that transfers are used as a penalty for professional misconduct, perceived or otherwise, and in lieu of criminal charges.⁶² They may also be affected to provide to the public the perception that action is being taken against a rogue offender.

As example, Chief Inspector Peter Mbuu, who was the point police officer in the Feisal Mohamed Ali 2252 kg ivory case, was re-assigned when it appeared that his integrity had been compromised in relation to the investigation/prosecution. He was transferred as the officer commanding one of the larger Mombasa police stations to a supervisory post with a traffic unit in rural central Kenya.²³

Transfers have also become weaponized, used as an overhanging threat or as incentive to coerce or promise actors within the different criminal justice sectors to engage in or turn a blind eye to, unjust, illegal, and/or corrupt acts. They may also result from the non-execution of an unlawful or corrupt directive, or a transfer may appear as a promotion for facilitating an unlawful or corrupt directive. A targeted employee may be re-assigned for the sole reason that another wants his/her position and has favour with a superior who can affect it.

Transfers can result from doing one's job too well, or from doing one's job poorly, and it may come on the basis of one phone call. There is little recourse. A scheduled transfer may also be delayed if an individual due for re-assignment contributes and enhances the economic well-being of his/her superior(s).

The weaponization, this 'sword of Damocles', is made even more effectively malevolent due to the utter lack of employment opportunities within Kenya, and especially within the government and public service. A transfer that impacts the economic stability could be devastating for those who find themselves supporting extended family, as is often the case. Single mothers within the criminal justice sector are particularly vulnerable, especially in circumstances where they have close family 'in situ' of their present posting or station and involved in child upbringing.

The current transfer process and its misuse does raise concerns and questions when re-assignments are affected during investigations or trials of significance or at significant points during a trial. There is no evidence that any magistrate, prosecutor, or investigator involved in this trial were transferred for reasons untoward. The transfer process did, however, have an impact on the duration of the trial. Perhaps that was the point.

ANALYSIS OF EVIDENCE

In her acquittal ruling, Chief Magistrate Martha Mutuku wrote the following on the three charges before the court.

There was **no evidence**, no photographs, no witness testimony adduced by the prosecution to substantiate the claim that the accused persons were dealing, selling, or purchasing the said wildlife trophies.

There has been **no evidence** produced that the nine accused persons were in any way exporting specimens of wildlife species contrary to Section 99 (1) of the WCMA.

None of the witnesses connected the accused persons or produced any telephone conversations or minutes of a meeting where the accused persons structured themselves to acted together and in concert with others.

She continued with other key facets of prosecution. There was **no evidence at all** to prove that the subject motor vehicle (KNY 944) left the yard (Siginon Global) with the container once it had been stuffed with tea, was driven to the compound at Nyali and stuffed with ivory before being driven to the port to deliver the container.

There was **no evidence at all** as to when the said container was stuffed with ivory, neither is there any eyewitness who saw the motor vehicle at the compound of the plot at Nyali (ivory consolidation point) with the container.

A breakdown follows on the evidence presented to the court in relation to each accused and the key components of the investigation.

1. Abdulrahman Mahmoud Sheikh aka Said Juma Said A#1 - The evidence of Chief Inspector Barnaby Chumo, whereby the Nyali property agent, in an identification parade process, identified Abdulrahman Mahmoud Sheikh and Said Juma Said as one and the same person, was significant. This would indicate he was the person leasing the property where the ivory was allegedly being collected. However, from the court's perspective, there was no further evidence on details concerning the regular lease payments (by cash) over the two-year period and no apparent investigation on the Tanzanian passport of Said Juma Said produced as identification. **LIMITED CIRCUMSTANTIAL EVIDENCE**
2. Sheikh Mahmoud Abdulrahman A#2: A receipt found during the search of the Nyali property was alleged to have included a Nakumatt client number that was traced to A#2. This receipt was never entered into evidence nor was any statement ever taken from an employee of the Nakumatt store that produced the receipt. **NO EVIDENCE**

3. Mahmoud Abdulrahman Sheikh A#3: The alleged evidence against A#3, came out through testimony of SSP Githinji that the three (primary accused) were seen going together to the (Nyali) house. There was no witness testimony to this fact. **NO EVIDENCE**
4. Lucy Muthoni Kahoto, Kenya Revenue Authority, A#4: She was the verification officer who attended the loading of tea into the subject container. Witness testimony indicated that she did not enter required customs information into the KRA system relating to this shipment on the date and time required. There was no evidence that she communicated with any of the co-accused. **EVIDENCE OF PROCEDURAL INFRACTIONS**
5. Musa Jacob Lithare A#5: Was the de-facto owner of the vehicle that transported the ivory into the port. This was not admissible evidence before the court as his spouse was the actual owner. There was no evidence before the court showing that Lithare had any connection to the Jefwa's or the primary accused or had any knowledge relating to the ivory. **NO EVIDENCE**
6. Samuel Mbote Mundia, taxi driver, A#6: Mundia was alleged to have been complicit in the escape of the Jefwa's. His name did not come up in court until the last five minutes of SSP Githinji's testimony. That evidence was apparently based on a statement given by Mundia to police that was not entered into evidence and the facts of which were not corroborated. **NO EVIDENCE**
7. Salim Mohamed Juma Khamisi A#7: The court was provided no evidence in relation to this accused. The lead investigator could provide no reason as to why he was charged. **NO EVIDENCE**
8. Abbasi Issa Rashid A#8: The court was provided no evidence in relation to this accused. The lead investigator could provide no reason as to why he was charged. **NO EVIDENCE**
9. Kenneth Mwangi Njuguna, driver, A#9: The driver of the container was identified by witnesses as having delivered the container to Siginon and departing with the loaded container. He is also identified as having delivered the container to the port. The report of his having taken the container to the Nyali compound is based on his statement provided to police. It is not known if it was a statement under caution, but regardless, no attempt was made to enter it into evidence and the facts contained therein were not corroborated by other independent admissible sources. There is no evidence of any

communication with any of the other accused parties. **LIMITED CIRCUMSTANTIAL EVIDENCE**

10. The container was confirmed through evidence to have entered the port and its being loaded onto the vessel, Cape Moss. There is circumstantial evidence through emails between the Jefwa's and Rais Shipping that indicated that the container did arrive in Singapore prior to trans-shipment to Thailand. There was no admissible evidence before the court that the container arrived at Port Laem Chabang.
11. There is evidence through testimony and photographs that the container left Siginon with two seals, one provided by the Jefwa's (through Rais Shipping) and a second seal provided by the Siginon through the warehouse supervisor. Testimony from a KPA employee indicated that the container arrived with one seal. No evidence or testimony was provided to indicate what may have happened to the second seal. No evidence was before the court as to how the ivory was placed in the container or specifically where that occurred.
12. The CCTV footage of the truck and container entering the port, also depicting a document transaction between Samuel Jefwa and three other individuals within a two minute and 26 second time frame was not produced for the court. There was no indication in that footage that the container seals were visually checked. That footage was still available in 2021 and used for the film documentary, "The Planet Killers – The Ivory Kings"⁷.
13. From evidence provided by IP Kibagendi and SSP Githinji, the following items were found during the Nyali house search; suspected ivory shards and particles, a bag containing tea leaves, children's diapers, weigh scales, a cutting machine or saw, a Nakumatt receipt, airtime scratch cards. There was no exhibit inventory relating to this search. The bag of tea, weigh scales, the children's diapers, and the Nakumatt receipt (the only piece of evidence linking the second accused to this case) were not submitted as exhibits nor were explanations provided as to why.

The ivory shards/particles were in small envelopes. There is legible writing on only one envelope as to the location found. It is not known which of approximately 50 officers present, found these ivory particles. These exhibits were submitted for analysis to the National Museum of Kenya. In his testimony, IP Kibagendi had only a copy of the exhibit report and no knowledge as to the whereabouts of the original.

The cutting tool seized in the Nyali compound was not initially produced by IP Kibagendi as he told the court that it was missing. A cutting tool was produced two years later with the testimony of SSP Githinji. Considering the compromised search and handling of the exhibits, the legitimacy of the tool would be questioned.

The airtime scratch cards were submitted as evidence. It was stated that there was evidence of communications through the use of these cards but the officer who authored the particular report did not testify.

14. Financial evidence was produced in relation to the cost of tea and the associated shipping costs of Siginon Global Logistics and Rais Shipping. There was no evidence relating to any financial transaction that had any bearing on the purchase and delivery of the ivory or any asset owned by the accused's as being proceeds of crime. An affidavit of July 3rd, 2015, drafted by then CI Githinji, stated that there were reasonable grounds to believe that all seized vehicles and several assets/properties under investigation were proceeds of crime and derived from the illicit trade in ivory. Which statement was correct?
15. While reference was made through early affidavits provided to the court indicating that one of the accused, Musa Lithare, had been charged in relation to another ivory seizure, no similar fact evidence was provided the court as to how the matter under investigation was linked to other ivory seizures. Mr. Muteti had also told the court that there was a nexus between 'Sheikh's et al' and the ivory seizure involving Feisal Mohamed Ali. Evidence of this was never provided.
16. No arresting police officers of accused persons and no officers involved in taking statements from those accused persons were called as witnesses.
17. Siginon Global Logistics declared their absolute innocence to all. This was not correct. While it was clear that the ivory was not loaded into the container at their warehouse, the fact that one of their clerk's attended at the port with the gating in of lorry KNY 944 and its container 48 hours after its loading, indicated impropriety within their organization. The same impropriety was noted with the Singapore sister seizure.
18. While early affidavits indicated that some evidence had been gained though the analysis of phone/communications data, there was

logs on seven Safaricom accounts relating to the accused. This instruction was received on July 3rd, 2017, within a week of the original arrests. A chart was produced depicting the calls between all accused.

The 2016 prosecution of a Mombasa clearing agent, *MCCR/2511/2016**, *R. vs. Ephantus Gitonga Mbare {1098 kg}*, also utilized phone data. He had been charged regarding his involvement in the 1098 kg shipment of ivory that had originated in Kampala, Uganda, and was destined for Cambodia.

And in a fourth instance, in a matter investigated prior to 'Sheikh's et al', the January 2013 Mombasa seizure, *MCCR/417/2013* - R. vs. Fredrick Sababu Mungule and James Kassiwa {3827 kg}*, the IO submitted to the courts a phone data report that included persons who were suspect but not arrested.

But in 'Sheikh's et al'? No phone data evidence was submitted to the court. This, despite the fact, that early affidavits relating to bail arguments made it evident that a phone data analysis in some capacity had been initially conducted.

Chief Magistrate Martha Mutuku also made mention of the absence of phone communication data in her ruling, stating:

"The Prosecution called a total of 28 witnesses and none of the witnesses connected the accused persons or produced any telephone conversations or minutes of a meeting where the accused persons structured themselves to acted together and in concert with others to deal in game trophy namely 511 pieces of ivory weighing 3,127 kg without a licence."

There have been two other major ivory prosecutions where phone data was not utilized in the prosecution. *MCCR/754/2013**, *R. vs. Fredrick Mungule, James Kassiwa and Nelson Ayoo {1833 kg Singapore}*, the corrupted acquittal, had no evidence of phone communications. The other matter was *MCCR/1673/2014 – R. vs. Kenneth Kamau Maina & N'faly Doukoure {784 kg}*, where two of the involved parties were Guinean nationals, one being Amara Cherif, the second in command of the West African crime group.

When one is waiting in the halls of law courts for long periods of time (which is almost always the case when monitoring court trials) people talk and things are heard. In 2015, in the halls of Mombasa law courts, it was overheard that one of the primary accused of 'Sheikh's et al' had made a phone call very soon after his arrest to a person within government circles. No name was mentioned.

At the time, it was just a titbit of interest, and a titbit that was of no surprise. Rumours had been floated in Kenya from the 1970's to the present day of ivory trafficking involvement by persons of prominence including, Rift Valley governors,⁶³ Cabinet Secretaries', MP's, and even President Joma Kenyatta's fourth wife and President Uhuru Kenyatta's mother, Lady Mama Ngina.^{64,65} In 2013, ivory stolen from the Mombasa State House was found in a seized ivory shipment in Mombasa port.⁶⁶

In February 2016, four policemen were arrested while in the process of selling a 5 kg ivory tusk from their government Land Cruiser Prado to an undercover KWS buyer. Peter Kuria Kimunyu, bodyguard of NARC leader Martha Karua, negotiated with the KWS 'buyer', and Francis Kioi Karanja, the driver for the Minister of the Interior, Fred Matiang'i, presented the hidden tusk. The vehicle from which they were conducting the transaction was assigned to the Principal Administrative Secretary to the Office of the President, Kennedy Kihara. Martin Mwiti Marangu was one of his assigned drivers and Stephen Chege Ngawai was a bodyguard. After trial they were convicted and sentenced to a 20 million shilling fine or in lieu, life imprisonment. On appeal, the conviction was upheld but the penalty reduced to a 1 million shilling fine (USD \$10,000) or in lieu 5 years imprisonment.⁶⁷ (*MCCR 994/2016**, *R. vs. Francis Kioi Karanja, Stephen Chege Ngawai, Martin Mwiti Marangu, and Peter Kuria Kimunyu*).

In more recent times, three police officers and a civilian were arrested in June 2024, while ferrying 29 kg of ivory in a government Subaru. One of the officers was attached to the Presidential Escort Unit of President Ruto, another was assigned to a senior politician from Eldoret, and a third was reported to be attached to the Judiciary at Milimani court (*MCCR/E071/2024* Kahawa, R. vs. Charles Nzuki Mutua, Ben Kipkosgei and 2 others*).⁶⁸ This matter is still in the early stages in Kahawa court with the delay game having already commenced.

In November 2017, Mongabay published an article, "*Four senior politicians investigated for wildlife trafficking*" that included interviews with the DPP Keriako Tobiko and a senior DCI investigator. It detailed how three sitting Governors, Mike Mbuvi Sonko, Anne Waiguru and Ferdinand Waitutu, were under investigation for involvement in the trafficking of wildlife trophies to fund their election war chests (The story was retracted within days for 'inconsistencies'.)⁶⁹ There has never been any indication that the reported investigation bore fruit although Sonko and Waitutu were both impeached and removed from office in 2020 for integrity issues.

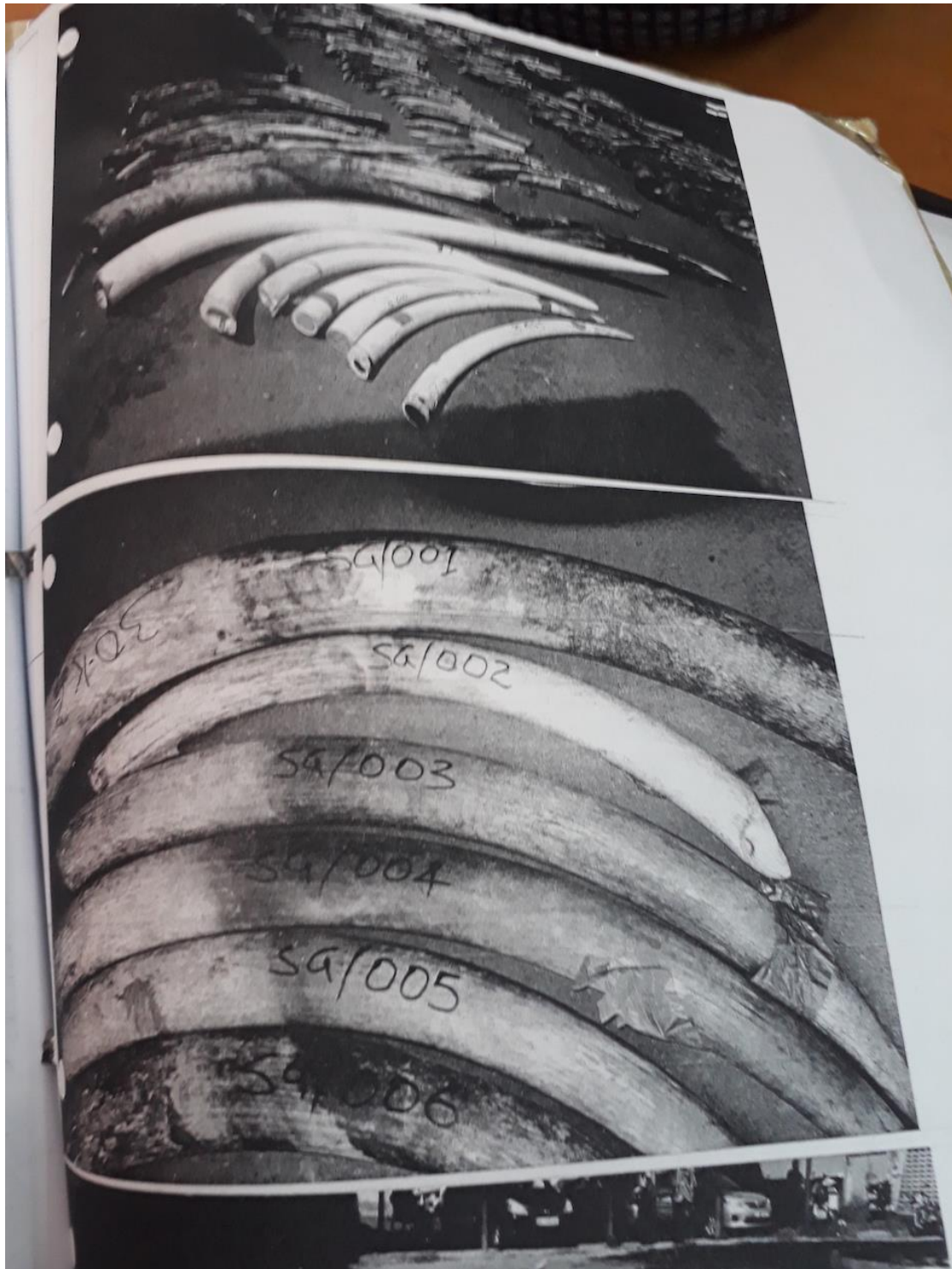


Figure 21: Police exhibit photos submitted to the court re 3081/13 Mombasa R vs. Nicholas Maweu John, a 3287 kg seizure that included 7 tusks (top) reportedly stolen from the Mombasa State House. The accused was acquitted.

The clearing agent involved in Sheikh's et al, Siginon Global Logistics, was part of the business empire of ex-President Daniel Arap Moi. It was not the only Moi business entity connected to an ivory seizure.

Documentary evidence indicates that the consignor of the July 2013 Mombasa 3287 kg seizure, (*MCCR/3081/2013**, *R vs. Nicholas Maweu John*) was 'Fresh Produce Limited', a company reportedly owned by Gideon Moi,⁷⁰ a son of ex-President Moi and a sitting Senator.

The magistrate who made the acquittal ruling in that matter stated:

*“The consignment’s customs entry form exhibit herein gives the exporter consignor as **Fresh Produce Ltd, Nairobi**, yet no one from the company was charged or called to testify. Even the driver of the vehicle used to deliver the cargo at the port has not testified. Clearly, the case was poorly investigated and also, the accused was only charged about 6 months after the incident with no explanation for the delay.”*

A third affiliated business to the Moi business empire, 'Lukiza Limited, South Sudan'.⁷¹ was listed as a consignor in the initial shipping documentation in a 2016 Mombasa ivory seizure. The seized container was found contain 1098 kg of ivory hidden in hollowed out teak beams that began its journey in South Sudan with stops in Kampala and Mombasa. The second listed consignor, 'Ispina Trading Company' of Kampala, Uganda was never investigated.⁷² (*MCCR/2511/2016**, *R. vs. Ephantus Gitonga Mbare {1098 kg}*)

It has been demonstrated that in the early stages of this trial, phone data in some form was analyzed. Paragraph 13 of Chief Inspector Githinji's affidavit relating to bail opposition and signed on June 23rd, 2015,⁴⁶ stated "that communication data has shown a coordination linking the movement to the port from Nyali of the ivory container between the first, second and fifth accused persons and one of their respective drivers accused in this matter."⁴⁶ This was significant evidence, the only evidence, in fact, implicating two of the primary accused with the suspect container and its movement to the port. This evidence did not make it to trial.

Telephone conversations were also indicated to have taken place between one of the Jefwa brothers and the second accused, Sheikh A#2. These allegations were found in the supporting affidavits of the Jefwa brothers to their application for 'Anticipatory Bail Pending Arrest' dated November 3rd, 2022.⁷³ It was divulged that there had been a minimum of four telephone conversations between the Jefwa's and 'Sheikh Ahmed Abdulrahman' relating to the discovery of the ivory in Thailand and Singapore. While the veracity of the Jefwa's statements may be suspect, it is realistic to believe the high likelihood of a phone conversation taking place between the two on the discovery of the ivory in Bangkok and Singapore.

It is also highly likely that the intelligence linking the Sheikh's to the Jefwa brothers, Moazu Kromah, and Mansur Surur originated from a mobile phone(s). A known modus operandi of the West African crime group was the relaying by mobile phone, bill of lading information to their 'exporters'.

Is there any inference that can be drawn from phone data omission that is not synonymous with compromise?

WHEN DID THE COMPROMISE BEGIN?

The answer to this question may well be found in the answer to the last question. Who did the primary accused first reach out to?

In any event, the first obvious indicator of outside interference was not until October 2016. This was on the occasion of DCI Director, Francis Muhuro Ndegwa's, statement to the media that the Jefwa's were being protected by wealthy persons behind the killing of elephants and rhinos. There were, however, indicators that the derailing had commenced well before.

Prior to the arrest of the three Sheikh's on June 3rd, 2015, the investigation appeared to be moving forward smoothly. The multi-agency investigative team had found the ivory consolidation point and seized exhibits that subsequently led them to the three primary accused. During the various bail processes, there were references made in court, either verbally or through affidavit, as to how 'Sheikh's et al' was linked to the FMA prosecution, had a Uganda connection, how investigative efforts were being made through MLA to contact Tanzania on the real 'Said Juma Said', and how communications were being initiated with Singapore to obtain suitable evidence relating to the sister seizure. Nothing actionable came from any of those statements of intent. In fact, there is no evidence to indicate, from that observed in the courtroom, that investigators did anything after June 30th, 2015, to solidify their case for the prosecution.

In court on July 30th, when the two associated arrest files, 1086/15 and 1190/15, were consolidated with 1132/15, the ODPP told the court that their investigation from the international aspect was incomplete and that it was premature to proceed to a hearing date under the circumstances. Defence counsels were strongly opposed and requested a hearing date or withdrawal of charges.

In her ruling on August 13th, CM Shitubi made it clear to the court that she was not going to permit, what in her opinion, was unnecessary delay in this trial. Her position was that *"at the point of preferring charges the prosecution is supposed to be armed with all the evidence that can go to trial."* She further stated regarding the mutual legal assistance request, *"the prosecution must come out*

clearly or seek other avenues of resolving the issue."³¹ It was clear that Chief Magistrate Shitubi was not going to allow her court to endure a long and protracted trial. She was replaced the next day with a Magistrate on 'probation' and battling an addiction.

WAS THERE EVIDENCE TO CHARGE?

It has been shown that this prosecution was, on reaching its conclusion, practically devoid of admissible evidence. Considering that the charging decision is made by the ODPP, it is of interest as to how they reached their initial decision to charge. In theory, the decision to charge is based on the likelihood of conviction. From what has been observed, once the witness selection had been finalized, there was never any likelihood of conviction in 'Sheikh's et al'.

This would indicate that one of two things occurred. The ODPP were duplicitous and made a decision to charge for reasons that had nothing to do with evidence. Conversely, their decision to charge was based on actual evidence that was later withheld or not made available by the DCI.

The DCI were in the same boat. Initial affidavits indicated an investigation with substance, but it disappeared in dust. The logical conclusion, therefore, the DCI and CI Githinji were either walking a line of perjury in their initial affidavits and testimony or the investigation was being stifled as the prosecution progressed.

WHO WAS MAKING THE DECISIONS?

Who was really making the major prosecutorial decisions? It was not the prosecutors of the Mombasa office.

Two letters between the DCI, the ODPP regional office in Mombasa, and their headquarters, provide some insight on the ODPP decision-making process, and perhaps their workload and/or the importance of these wildlife trafficking cases.

On June 30th, 2015, a charge sheet was presented to Mombasa court under file *MCCR/1197/2015* alleging that David Ali and Musa Jacob Litare had conspired with others to contravene the East Africa Community Customs Management Act through the conveyance of the 1833 kg ivory into the port two years previous. This was in relation to the seizure in Singapore in January 2013 of 1099 pieces of ivory that had originated in Mombasa. File *MCCR/1197/2015* was to be consolidated with *MCCR 754/2013* R. vs. Fredrick Sababu Mungule, James Kassiwa and Nelson Ayoo {1833 kg}*.

In a letter from the head of the DCI office at Kilindini (Mombasa Port) to the ODPP regional office in Mombasa on March 16th, 2016, advice was requested relating to Lithare and Ali, who despite being persons under charge were now being described by DCI as “crucial witnesses” in that same prosecution. The letter stated the matter was coming up for hearing on May 19th, 2016.

Four months later, on July 18th, 2016, the Senior Assistant Director of Public Prosecutions Mombasa, forwarded the above request with a copy of the police file to the ODPP HQ Nairobi requesting input. ODPP Mombasa received a reply eight months later (March 27th, 2017) from the Deputy Director Public Prosecutions, Nicholas K. Mutuku, for the Director of Public Prosecutions, Keriako Tobiko, advising that the charges against Lithare and Ali should be withdrawn so they can testify as prosecution witnesses.

Lithare and Ali did subsequently testify as “crucial witnesses” for the prosecution and provided no evidence of substance that would prove any of the facts in issue against any accused in that matter.

The question follows that if the ODPP HQ are making the decisions such as described, what was the range of their involvement in this prosecution?

The Second Failed Mutual Legal Assistance Request

The failure surrounding the ‘new evidence application’ was never explained. The court was told after a one year delay, that it was due to complexities of the mutual legal assistance request, and through no fault of the ODPP. One would surmise that, prior to making the ‘informal’ evidence announcement, that backroom discussions would have ensued between the U.S. government, the U.S. Fish and Wildlife Service (USFW), the ODPP, and perhaps Kenya’s Attorney-General’s office, on the feasibility of utilizing the new evidence.

Details of the application and affidavit, alleging the evidence of direct collaboration between the Sheikh’s, the Jefwa brothers, and Moazu Kromah, made it to Kenya’s three major daily’s on or about the same day. As the application had been made in closed chambers in Mombasa, the indication of a planned media ‘release’ was evident.

Were decision makers using this as an opportunity to present in the public forum a strong inference of guilt against the accused with the full knowledge that the evidence would never reach the admissible stage? Or perhaps some other political game was being played? Considering that the application never made it to open court for arguments, the most rational conclusion to be reached was that the process was blocked at a level above that of the

DPP and the Attorney General. In the end, after eight successive adjournments, the trial was delayed by over a year and another mutual legal assistance request by Kenya for significant evidence against the accused did not materialize.

DEATH OF THE IO AND OTHERS

The passing of the initial lead investigator, Superintendent Alphonse Odhiambo Kamlus, was provided as mitigation to explain the absence and/or very late submission of exhibits to the court. It has been determined that around the time of his death as head of the Economic Crime Unit and Financial Investigation Unit, amongst the cases he was responsible for was an internal investigation of traffic officers who had an accumulation of unexplained assets and who had been dismissed through a related vetting process. In other words, if his death was of a suspicious nature, there were no shortage of suspects.

There is nothing to suggest that his death had anything to do with the 'Sheikh's et al' investigation or even anything to do with his policing duties. He was not, however, the only significant person to reportedly die in this investigation or even in other major ivory prosecutions.

Musa Kipkoech Kiptoo was an employee of Siginon Global Logistics and the warehouse supervisor on duty on March 21st, 2015, when the container was loaded with tea. He was the individual who provided the Siginon seal that was affixed to the container on its closing. He was selected as a witness but reportedly passed away before he could testify.

In two related Mombasa ivory prosecutions, a co-accused to Fredrick Sababu Mungule also died before trial commencement. Gideon Naftali Onsinyo Nyangau was a KPA employee of 27 years' experience and held the position of Berths Record clerk at Mombasa Port when the three January 2013 seizures were discovered. One of his duties was the preparation of the container loading list. It was through an anomaly on one of these lists, that the discovery of the Mombasa 3827 kg ivory shipment had been realized. It was alleged that he was the author of the specific anomalies that enabled the loading of prohibited containers onto the ships. It is likely that he had 'adjusted' many previous loading lists allowing ivory and other contraband cargo to be exported out of Kenya.

In January 2014, just under a year after his arrest, it was reported that he had died at Kenyatta Hospital in Nairobi from a pulmonary embolism. He was obviously a very key person in the investigation and prosecution. In 2017, while Wildlife Direct was monitoring the 'Sheikh's et al', they launched an investigation as to whether Nyangau was actually deceased, deceased

through natural causes, or just reported as such. Their findings were inconclusive.

Lastly, in a Kibera (Nairobi) court case, *MCCR/1649/2017**, *R. vs. Julius Abluu Adika & Abdinur Ibrahim Ali & 5 others {217 kg}*, the first accused in that matter, Julius Abluu Adika, who was renting the home where the 217 kg of worked ivory was found, also reportedly passed away mid-trial.

TEA SCANNING EXEMPTION

It was widely reported that the container subject to this report was not scanned due to an exemption made through an agreement between the East African Tea Traders Association and the KPA Mombasa. No official details of that agreement were ever provided.

At the time, (and likely nothing has changed to date but the price) it was known that one could get a container into the port and onto a ship, no questions asked, ^{6,7} for a fee of USD \$5000.

The tea scanning exemption was saving ivory traffickers significant bribe money that would otherwise have been paid as a scanner avoidance charge. Would it not be of investigative interest to ascertain how, when and who was the architect of that proposal?

HOW DID THE IVORY GET INTO THE CONTAINER?

This question has never been answered. Chief Magistrate Martha Mutuku in her ruling stated:

“All the prosecution witnesses who inspected and sealed the container told the court that by the time the container was loaded and sealed it had not been tampered with.”

She overlooked one fact.

While there was photographic evidence as well as testimony from more than one witness that the container left Sigonon with two seals affixed, the testimony of a KPA security guard at Mombasa Port indicated the presence of only one seal.

There were ambiguities surrounding this testimony.

This evidence should have come from KRA officer, Jonathan Mungoti, who was manning port entry Gate 9, on March 23rd. It was one of his duties to record and verify seals on containers entering the port. Jonathan Mungoti was, in fact, amongst the first to be arrested alongside Sigonon Global

employees. He was a witness selected to testify but never attended court despite a summons to do so.

With his absence, planned or otherwise, it appeared that his replacement to get the seal evidence into court, was through KPA security guard, Haddson or Haddison (or perhaps Harrison) Kathogo. The notes taken on his testimony by CM Makori and/or its transcription are nebulous at best. It was not clear as to Kathogo's exact duties on that date, whether he was on the entry gate or exit gate, but he did produce a copy of a page from a book register that recorded vehicles and containers entering the port. The page copy produced as evidence was not dated and it was explained that it was a page continuation. Kathogo stated on cross examination that seal #728614, was affixed to the container brought in by Samuel Jefwa and Kenneth Njunga and had not been subjected to tampering.

If Kathogo was being deceitful and there were no seals on the container when it entered port, then it is easily surmised that the two seals were cut off prior to the loading of the ivory at Nyali.

If Kathogo was being truthful and seal #728614 was on the container, alternate theories need to be considered. A media report published shortly after the seizure stated: *"An X-ray of the container in Thailand showed that the ivory was put into the containers after their bottoms were cut."*⁷⁴ There was no indication as to the original source of this information although it likely derived from law enforcement or someone inside the investigation. But was it true?

From the photos taken of the fully laden container at the Siginon warehouse, it would seem labour intensive to cut out the bottom, remove 11 tonnes of tea, re-stock with over 3 tonnes of ivory and more tonnes of tea, and then replace and re-secure the bottom of the container. More so, without the assistance of heavy equipment, and within a compound situated in proximity of Indian Ocean beach front properties.

The far more plausible explanation, an explanation that the KRA, KPA and DCI have been reticent to admit publicly, is that the shipper's seal in this seizure and many other ivory shipments, involved the use of counterfeit seals. That information was provided through an investigator of Wildlife Direct in 2015.⁷⁵

That information was corroborated by a G4S report of the same time period, reporting that criminals could counterfeit a security seal in less than 10 minutes through the use of 3D printers.⁷⁶

In this particular case, seal #728614, was received by the Jefwa's from Rais Shipping four days before the container went to port, ample time to source a replacement seal. Alternatively, if Rais Shipping Services or an insider was in the loop, two identical seals could have been provided initially.

The most likely hypothesis, therefore, is that on the container's delivery to the Nyali consolidation point, the two seals were cut off prior to re-loading. The Sheikh's/Jefwa's had a counterfeit seal replacement for only the one provided by Rais Shipping. They were unconcerned with KRA 'gating in' protocols on port entry as that had already been 'covered'.

A similar discrepancy with container seals arose in prosecution ***MCPCR/418/2017 Shanzu* - R. vs James Kinyua Njagi and 6 others (1004 kg - Singapore)*** that is still before the courts. During cross-examination, SSP Githinji was questioned as to the circumstances surrounding a missing container seal. He simply replied that he did not wish to speculate.

THE IVORY

The actions of the ODPP relating to Kenya's failure to repatriate the Thailand ivory raised the question as to the importance or necessity of having the actual seized ivory as an exhibit before the court for a successful conviction.

By 2019, and surely on the conclusion of Kenya's Principal Secretary of Foreign Affairs, Ambassador Dr. Monica Juma's visit to Thailand, it would have been clear to all, that this ivory was not going to be returned. If the ivory was an essential prerequisite for prosecution, should not the charges have then been withdrawn? One is left to speculate as to existence of other circumstances.

In early May 2015, Thai Minister of Natural Resources and Environment, Dapong Ratanasuwan, in a joint press conference with the Director-General of Customs, Somchai Sujjapongse, advised that the ivory that they had seized in Bangkok had been previously reshipped to Kenya to be used as evidence against ivory traffickers. General Dapong was quoted as saying:

*“ most of them were the tusks earlier seized and sent back to their origins in Africa whereas some were those having been kept as evidence in some countries. ”*⁷⁷

Kenyan authorities responded that they would investigate, and two weeks later a denial was issued from the Mombasa port police boss, Zachareus Ngeno. He advised that all seized ivory exhibits were intact, not that

refutation of criminal wrongdoing of the National Police Service was necessarily credible.

Nevertheless, the subject of stolen stockpiled Kenyan ivory was never broached again. In the public realm, and years preceding this seizure, Thailand had made two major seizures of ivory that had originated in Kenya; one in 2011 of 2033 kg (later reported as 881.81 kg⁷⁸) in a shipment of frozen fish and involving Fredrick Sababu Mungule, and a second seizure in July 2012 involving an air freight consignment of 456 kg of ivory declared as handicrafts.

There is no public record of either shipment, or portions thereof, being repatriated to Kenya. This does not mean that it could not have transpired surreptitiously through back channels. The 2011 seizure weight reported as both 2033 kg and 881.8 kg, with the number of tusk pieces remaining unchanged at 247, may have some significance. Minor differences in reported ivory seizure weights are not uncommon, however, a difference of over one tonne is atypical.

In 2020, Dr. Wasser returned to Bangkok and was permitted access to the seized ivory for the purpose of taking appropriate samples for DNA analysis. He was also requested to conduct DNA sampling of the 4t ivory seizure that had originated from Matadi, DRC, the week prior to the 'Sheikh's et al' shipment.

The entire DNA sampling process was completed as a collaboration between Thai customs, the Attorney General's office, the Department of National Parks (DNP), and the Thailand office of U.S. Homeland Security Investigations. All samples were packaged by the Wasser team for shipping to the University of Washington lab pending the release of the required export permits. Inexplicably, the permit issuance was blocked by the DNP.

Five years later, the exhibits are still languishing in Thailand.

The circumstances surrounding the origins of this ivory is still sensitive to someone.

ORGANIZED CRIME - IT BEGAN WITH TWO LORRIES

Container/ Vessel	Court File	Seizure	Date	Location	Vehicle	Driver	Organizer	Shippers
FCIU5085401 Cape Madrid	Sheikh's not prosecuted	SGP, 05-15, 4.6t	2015-05-19	Singapore	KNY 944	Kenneth Mwangi Njuguna	Sheikh's + Jefwa's	Rais Shipping
TEMU3975227 Cape Madrid	Sheikh's not prosecuted	SGP, 05-15, 4.6t	2015-05-19	Singapore	KSM 783	David Ali	Sheikh's + Jefwa's	Rais Shipping
FCIU5235796 Cape Moss	1132/15 Mombasa	THA, 04-15, 3.1t	2015-04-25	Thailand	KNY 944	Kenneth Mwangi Njuguna	Sheikh's + Jefwa's	Rais Shipping
FCIU4798199	N/A	Unverified tea leaves	2015-02-28	Singapore	KNY 944	Kenneth Mwangi Njuguna	Jefwa's	U/K
CAIU3663190	N/A	Unverified tea leaves - not seized	2014-12-12	Sri Lanka	KNY 944	Kenneth Mwangi Njuguna	Jefwa's	U/K
HJCU2354639	N/A	Unverified tea leaves	2014-10-06	Unknown Location	KNY 944	Kenneth Mwangi Njuguna	Jefwa's	U/K
NYKU2744973 Cape Moss	754/13 Mombasa	SGP, 01-13, 1.8t	2013-01-23	Singapore	KSM 783	David Ali	Mungule	East Africa Commercial & Shipping
FSCU7615602	417/13 Mombasa	KEN, 01-13, 3.8t	2013-01-14	Mombasa	KSM 783	David Ali	Mungule	East Africa Commercial & Shipping + Rais Shipping
GESU1271362	255/13 Mombasa	HKG, 01-13, 1.3t	2013-01-03	Hong Kong	KNY 944	Kenneth Mwangi Njuguna	Mungule	East Africa Commercial & Shipping
U/K	No Prosecution	THA, 03-11, 2.0t	2011-03-30	Thailand	U/K	U/K	Mungule	U/K

Figure 22: The same two vehicles and drivers delivered six containers of ivory to Mombasa port, three in 2012/2013 and three in 2015. **KNY 944** also delivered 3 containers, reportedly containing tea (contents never verified) under the direction of the Jefwa's, in 2014 and 2015. Fredrick Sababu Mungule was the freight forwarder charged in relation to the three January 2013 seizures. He had also been involved in a 2011 2t ivory seizure made in Thailand that had originated in Mombasa.

At various times during various proceedings, the court heard from the prosecution that there was evidence of a structured organization behind the movement of the subject ivory. During bail arguments, the court was told “clearly a syndicate (is) operating in this country and in Uganda.”³³ In the opening arguments of the ODPP made on February 2nd, 2016; “the prosecution will prove that a syndicate operated in Kenya, Thailand, Vietnam, Singapore and the United Arab Emirates.”³¹ In the application for new evidence it was written; “(the Thailand seizure) involved an organized criminal enterprise that enabled the partially successful illegal exportation of the elephant tusks from the source locations within East and Central Africa” and that the “respondents are members of an organized criminal network.”

To reiterate, a Fiat lorry, reg. **KNY 944**, driven by Kenneth Mwangi Njuguna (A#9), delivered into Mombasa port on March 23rd, 2015, the ivory/tea container that was seized in Thailand.

A few weeks later, he drove the same vehicle pulling another container of ivory/tea into port. This container was seized in Singapore on May 16th. This was container #1 of the two-container sister consignment. The second container was delivered to the port by Fiat lorry, reg. **KSM 783**, driven by

David Ali. These deliveries were made under the direction of Musa Jacob Lithare (A#5), and the Jefwa brothers.

This was not the first time that these two vehicles and these two drivers had delivered ivory to the port. In late 2012 (the actual seizures were made in January 2013), on three different dates, KNY 944 and KSM 783, driven by their respective drivers, delivered 'ivory' containers to Mombasa port. These shipments all contained a cover load of mazaras stones. The deliveries were made under the direction of Musa Jacob Litare, and freight forwarder Fredrick Sababu Mungule. For these three shipments, Mungule was acting in the same capacity as the Jefwa's. Over a three-week period in January 2013, these three containers carrying a total of 6994 kg of ivory between them, were seized in Hong Kong, Mombasa and Singapore respectively. Mungule was arrested and charged in relation to these three shipments.

Summarizing, the same two vehicles and drivers, of the same owner, had delivered at least six containers of ivory into Mombasa port. That did not include three other containers, purportedly containing tea, delivered to port that had gone through Siginon Global Logistics and the Jefwa's in the same manner as the Thailand and Singapore seizures.

These were the overt and obvious signs of an organized ivory trafficking cartel. The evidence of such would accumulate through three very different sources.

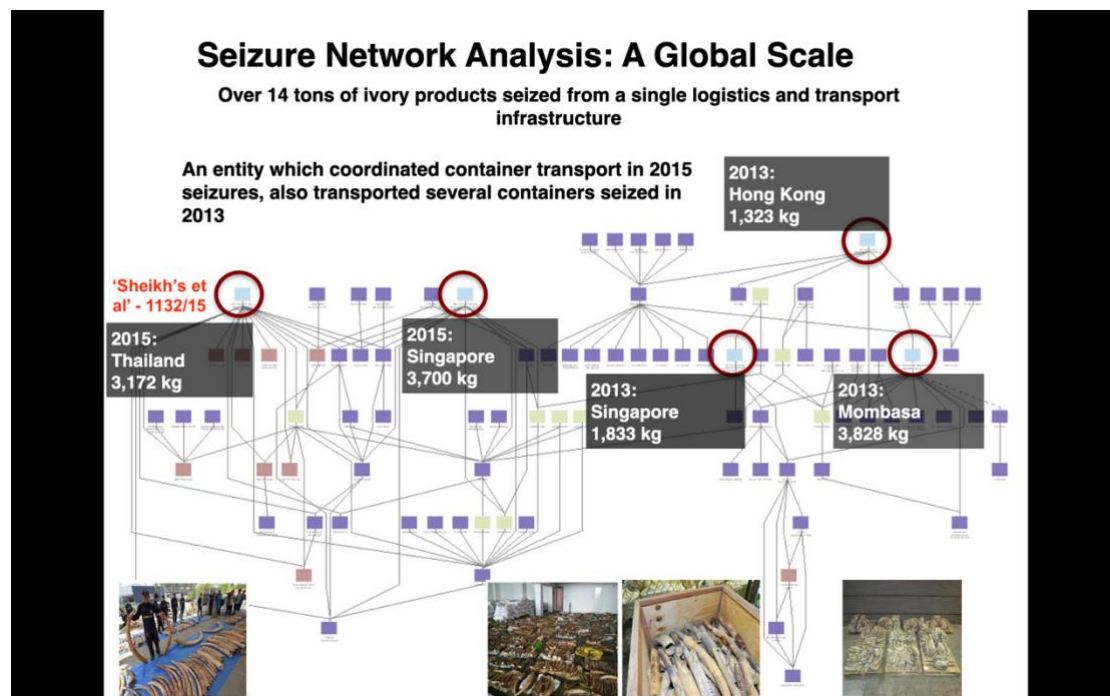


Figure 23: The logistical connections between five different seizures that all originated in Mombasa. (Courtesy of C4ADS.)

ORGANIZED CRIME – ON HOME TURF

After the three January 2013 seizures, the DCI continued their investigation and discovered an extensive ivory trafficking network with Mombasa Port at the centre.

This evidence, perhaps surprisingly, came through what appeared to be an administrative letter from the Head of DCI Kilindini (Mombasa Port) to DCI Headquarters, Nairobi, dated March 15th, 2013. The following paragraphs were found in the body of the correspondence entitled:

“REQUEST FOR AUTHORITY TO TRAVEL TO HONG KONG & SINGAPORE.”

“.....As a result of the three seizures in Hong Kong, Singapore and Mombasa, Kenya and the pursuant investigations a common pattern facilitating the smuggling and shipping of Ivory has been identified.

In the three shipments, a number of purported clearing agents are involved in sourcing of the empty containers for stuffing of the ivory and subsequent smuggling into the Port using fake customs entries and subsequent irregular loading into vessels in collusion with employees of the Kenya Revenue Authority and Kenya Ports Authority.

It is imperative to state here that it takes a lot of planning and preparation for one to compromise the systems put in place by both the K.P.A and the K.R.A. for acceptance and shipment of export containers.....

*In the process of these investigations we did expand the scope of our enquiries and have established that the same forwarder (referring to **Fredrick Sababu Mungule**) has successfully shipped and delivered a total of thirty three (33) containers to various consignees in Vietnam, Thailand, Singapore and China between the year 2011 and 2012 through East African Commercial and Shipping C. Ltd.*

All this shipment were exported using fake customs entries and bypassed the established protocols put in place by both the K.R.A. & K.P.A. It is our considered opinion that all these containers contained prohibited cargo mostly Ivory. These points to an alarming state of affairs which needs to be addressed urgently.

It goes without saying that there is indeed an International Criminal gang operating between some Asian and African countries specializing in poaching of endangered Wildlife species like the Elephant and Rhino.....”



Figure 24: The Singapore seizure of January 23rd, 2013, showing the mazarin stones in a wooden crate with the wrapped ivory.

It cannot be ascertained if the observations of the DCI author were converted into further investigation, but it can be stated that the substance of the correspondence relating to the organized criminal element within the port and involving Fredrick Sababu Mungule, never found its way into any courtroom relating to any prosecution for a Mombasa related ivory seizure.



Figure 25: Singapore seizure January 23, 2013 - ivory from one crate laid out. This ivory was repatriated to Kenya in August 2013. The three accused, Fredrick Sababu Mungule and two KRA officers, were acquitted after an 8 year, compromised trial.

ORGANIZED CRIME – DNA and OTHER ANALYSES

Two years later, an unrelated investigation was initiated that had its origins on the other side of the Atlantic. A U.S. based consultancy, 'The Satao Project', and headed by Gretchen Peters, was awarded a contract by the U.S. Department of State to conduct research relating to transnational supply chains moving ivory off the East African coast.

In their research, they conducted 67 structured interviews with those who had knowledge of ivory trafficking in East Africa, from diplomats to national and international law enforcement experts, to members of local crime networks and everyone in between. Interviews led to further investigations of involved companies, brokers, transporters, freight forwarders, and the local drug trafficking networks.

The Satao Project concluded that the Akasha Brothers drug family based in Mombasa, of which Feisal Mohamed Ali was a part, were the major network involved in ivory trafficking and that 13 different ivory shipments dating back to 2013 could be linked.⁷⁹ (The Akasha brothers and two others were 'spirited' out of Kenya to the U.S. for trial in January 2017 on realization that the extradition process in the Kenyan courts had been de-railed by bribes.⁸⁰)

DNA ANALYSIS

While Gretchen Peters and Satao Project were conducting their research, they became aware of Dr. Wasser's ivory DNA analyses work. At this point in time, Dr. Wasser had analysed the ivory from approximately 40 major seizures made in Africa and Asia. On comparing notes in 2016, Peters and Wasser found that they had both discovered linkages in multiple ivory shipments but through their totally different methodologies.

Dr. Wasser continued and expanded his study. In his 2018 report entitled "Combating transnational organized crime by linking multiple large ivory seizures to the same dealer"³⁸, Dr. Wasser et al, revealed more connections between ivory seizures whereby one tusk from a specific elephant was found in one seizure and the matching tusk from the same elephant was found in another seized shipment, often months apart. This indicated a high probability that the ivory was stockpiled at the same location but separated on loading, an attestation to TCO involvement.

This was the case with the January 2013, 3287 kg, Mombasa seizure, (*MCCR/417/2013* - R. vs. Fredrick Sababu Mungule and James Kassiwa*) where two

tusks in that shipment were found to be an exact match to two tusks analyzed in the 1478 kg ivory seizure made in Dubai four months later. This Dubai shipment was linked directly, by tusk exact matches, to a 2898 kg seizure made in Mombasa in October 2013 that was in turn directly linked in the same manner to a 6034 kg seizure made in Malaysia in December 2012 and an 1838 kg seizure made in Uganda in May 2014.



Figure 26: 1478 kg ivory seized in Dubai in May 2013 believed to have originated in Kampala and transited Mombasa. DNA analysis of this shipment indicated that two tusks were an exact match to two tusks found in the January 2013, 3287 kg Mombasa seizure associated to freight forwarder Fredrick Mungule. This Dubai seizure also had exact tusk matches to ivory seized in Mombasa in October 2013. (photo courtesy Caline Malek The National UAE⁸¹)

In a subsequent 2022 study, *"Elephant genotypes reveal the size and connectivity of transnational ivory traffickers"* Dr. Wasser et al, expanded the scope of their DNA analysis to include familial genetic matching of tusks of close relatives, parent-offspring, full and half-siblings. The study was based on data from ivory samples taken from 49 major ivory seizures made in Africa, the Middle East, and southeast Asia between 2002 and 2019. Samples were taken from over 4300 elephant tusks. It was found that:

"The consistency of genetic matches among large numbers of shipments containerized in, and transiting through, the same African port implies that a very small number of TCOs are responsible for the bulk of these shipments, even when shipments are containerized in separate nearby countries. The TCOs operating in Mombasa, Kenya, and Kampala, Uganda, may in fact, represent a single large network as was suggested by a report based on over 400 contacts from the Uganda TCO's phones, covering many countries and continents, most notably in East Africa and Southeast Asia."^{16, 82}

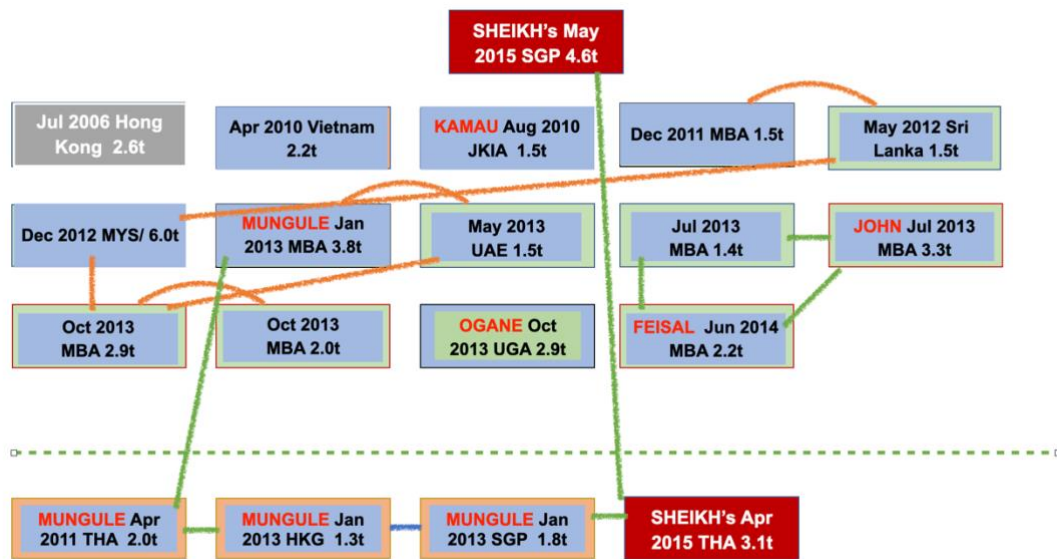


Figure 27: Connectivity between the 'Sheikh's et al' sister Singapore seizure and 17 other seizures based on genetic comparisons and evidentiary factors. Each box represents a major ivory seizure and includes the date and location of seizure, and the reported weight of ivory seized. Eight seizures include the name of the primary accused person. The upper 14 seizures are linked through DNA factors. Seizures that have exact tusk matches are linked through solid orange lines. The lower four seizures are linked through other evidence and links between shipments are indicated through solid green lines.

MBA: Mombasa; **JKIA:** Jomo Kenyatta International Airport; **MYS:** Malaysia; **UAE:** United Arab Emirates; **UGA:** Uganda; **THA:** Thailand; **SGP:** Singapore; **HKG:** Hong Kong. A solid blue box indicates a shipment that was containerized and/or transited Mombasa, a blue box with green border indicates containerized in Kampala, Uganda. The green box with blue border indicates a Uganda seizure what was to transit Mombasa. The lone grey box indicates a shipment that originated in Tanzania. The blue box with orange border indicates the Mombasa connection with no DNA analysis. The Mungule Singapore seizure of January 2013 was one of only three major Kenya ivory seizures that was never DNA analyzed^{16,39}

Figure 24 depicts the connectivity of the 4600 kg sister Singapore seizure with other seizures based on DNA familial matching and common logistical and suspect elements. The DNA analysis indicates links to fourteen other seizures as depicted. Seven of those seizures had exact tusk matches with others in the group.

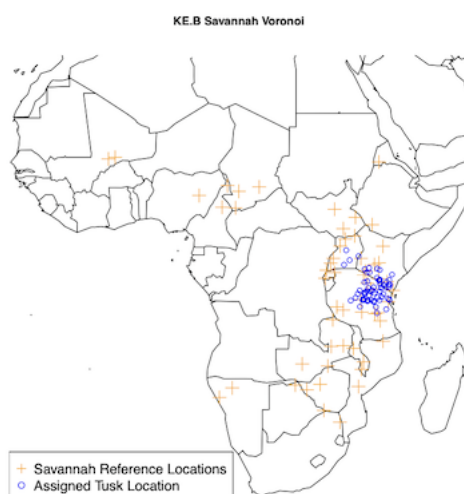
While the ivory seizure subject to this case study was not DNA analyzed within the same parameters as in the Wasser study, there is a likelihood of strong similarities between the two seizures considering the ivory came from the same Nyali ivory consolidation point.

The only seizure in Figure 24 with no apparent Mombasa connection is the July 2006 Hong Kong shipment that originated from Dar-es-Salaam, Tanzania. At that time, all major ivory shipments out of East Africa were exiting via Dar-es-Salaam. The strategy change making Mombasa the preferred East African point of egress did not shift until approximately 2009.

However, the 2006 Hong Kong seizure was identified as having a heavy concentration of ivory from the Selous Game Reserve (now Nyerere National Park) and north Mozambique as did the 'Shiekh et al' Singapore seizure.

To date, DNA analysis evidence has been used only once in an ivory trafficking prosecution in Kenya. That was in relation to the prosecution of Mombasa clearing agent, Ephantus Mbare. (*MCCR/2511/2016**, *R. vs. Ephantus Gitonga Mbare {1098 kg}*).

As per the written judgement on that matter⁷², (Mbare was acquitted) testimony relating to the ivory origins did not include that at least 10% of the 1098 kg ivory shipment came from Kenyan elephants or that the shipment was related to at least nine others organized through the West African crime group and a Vietnamese cartel.



*Figure 28: DNA assignment of savannah ivory seized in Mombasa on December 20th, 2016. This was the only known prosecution where DNA analysis was utilized in the evidence before court. The blue circles depict an approximate area to within 300 km of where the elephants originated. Most of the ivory in this shipment came from elephants in Tanzania, followed by Kenya to the north, and a much smaller amount from Uganda. According to trial transcripts, and relating to ivory origins, there was no reference made that a quantity of the ivory seized came from within Kenya. (*MCCR/2511/2016**, *R. vs. Ephantus Gitonga Mbare {1098 kg}*) (Map courtesy of Center from Conservation Biology)*

NO DNA ANALYSIS

DNA analysis is unfortunately conducted on only a small number of ivory seizures, typically those whose weight exceeds 500 kg, and only if the seizing country agrees to submit them for testing. As example, the last time that Thailand agreed to have ivory DNA analysed through Dr. Wasser, was a 2011 seizure that originated in Mozambique. Vietnam has historically been

resistant to DNA analysis although in 2010, through a serendipitous opportunity, they submitted for analysis an ivory shipment from Mombasa and then nothing until 2019.

Connectivity between seizures can obviously also be realized through regular investigative processes and particularly when examining the logistics chain. In 2015, TCO's were operating with virtual impunity and would not change an established logistical route unless a shipment had been seized. To clarify, they would use the same faked documentation, same transporters, same shipping lines, same shippers, same shell company names (consignors and consignees), and often a similar cover load, until a shipment was seized. When this occurred the TCO would consider the chain broken and everything would be changed. If, however, a shipment was seized and the TCO had other shipments on the high seas at the time, there would be a high likelihood of customs authorities picking of these shipments. This can be seen with the three January 2013 Mombasa related shipments that were seized within a three-week period. The Hong Kong shipment was detected first and then based on logistical similarities, authorities were able to detect the Mombasa and Singapore seizures. It is highly likely that the DCI used a logistical chain to determine that Fredrick Sababu Mungule, while utilizing the East African Commercial and Shipping Company Ltd., had made 33 successful container shipments to China, Vietnam, Thailand and Singapore within a two-year period.

Another example of this can be found through the last consignee involved in 'Sheikh's et al'. When the vessel, Cape Moss, arrived in Singapore, and prior to its transshipment to Thailand, the Jefwa's attempted a third change of consignee to that of the Van An Co. Ltd. of Da Nang, Vietnam. Four months later, the Van An Co. Ltd. of Da Nang, was the consignee for more shipments of wildlife trophies. Within a two-week period, Vietnamese authorities seized six containers, spread over three different dates, whose contents totalled 3685 kg of ivory, 115 kg of rhino horn, and over 4000 kg of pangolin scales from Mozambique, Nigeria, and an unnamed West African country whose shipment transited Malaysia (Figure 30).

It was later learned that the Vietnamese director of Van An Co Ltd., Nguyen Van Sau, had entered into an agreement with a Chinese national to ship his product under the Van An Co. name. Nguyen Van Sau was later charged with offences relating to only one container and served 15 months 23 days in custody as his sentence. He was also fined the equivalent of approximately USD \$200.00.⁷⁸

The individuals who actually kill the elephant or rhino for their ivory or horn are very rarely arrested in the act. Arrests are typically more prone to occur

while the ivory is being transported from the killing site or initial hidden cache to the consolidation point. The consolidation of thousands of kilogrammes of ivory to make a 3127 kg shipment takes time, organization, and multiple ivory deliveries by motorcycle or motor vehicle. It is not uncommon for those who are transporting, to look for other buyers who will give a better price. This is when the various intelligence services really earn their salary. Almost all KWS arrests, as observed by the author's study, derive from intelligence and/or informants. The ivory that is seized is essentially never analyzed. Regardless, linkages have been noted through the various prosecutions in Kenyan courts and particularly those that are identified as having a TCO element.

The first indication of a working relationship between the Sheikh's and the Guineans of the West African crime group was evidenced in a small 2014 seizure.

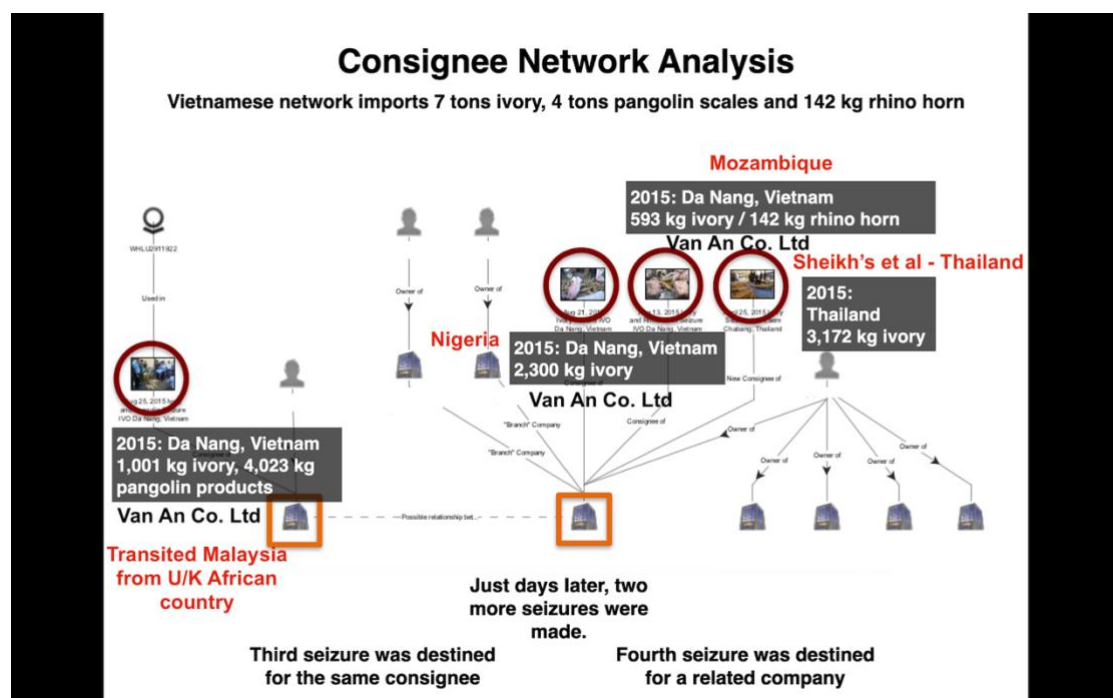


Figure 29: The intended consignee of the 'Sheikh's et al' Thailand shipment, was Van An Co. Ltd of Da Nang, Vietnam. Four months later, Van An Co. Ltd. was the intended consignee of three more shipments during a two week period, from Mozambique, Nigeria, and an unnamed West African country. (Courtesy C4ADS with additions by author)

On May 19th, 2014, at approximately 02:00 hrs, a Nissan Van was travelling east, about one hour outside of Mombasa, when it was intercepted by police acting on intelligence. A subsequent search revealed that the vehicle had two ivory tusks, total weight of 25 kg, strapped to the undercarriage of the

van. The driver and passenger were arrested. It was further ascertained that the vehicle had been supplied to the occupants by a Bernard Musau Mailu. At the time, Mailu had two other ivory trafficking charges proceeding in two other courts, one of them involving two Guinean nationals.

The investigating DCI officer continued with a controlled delivery into Mombasa. In the process, two more persons were arrested, Mohammed Kuoruoma aka Mohamed Nkoroumah, and Haji Faki Ali. Mohammed Kuoruoma was the son/nephew to Moazu Kromah of the West African crime group (the reports are conflicting on the exact nature of the relationship). It was discovered years later, through court documentation⁸² that Haji Faki Ali was the nephew to Mahmoud Abdulrahman Sheikh (A#3).

The charges against Faki Ali were withdrawn during the first few weeks of the prosecution. Bernard Musau Mailu was arrested in Nairobi court while attending on his other charge, also within weeks of the incident. When the final judgement was rendered in 2016, Kromah's son/nephew was acquitted along with the other vehicle occupants and Mailu was convicted and given a ksh 100,000 fine (USD\$1000.00) or in default a 1-year jail sentence. The sentence as per the Wildlife Conservation and Management Act was minimal and outside sentencing guidelines. (*MCCR/384/2014**, *R. vs. Daniel Kilingua Wambua, Nzole Mumba Chileta & 2 others {25 kg}*)

Mailu's Nairobi case (*MCCR 3543/2013**, *R. vs. Traore Lancini and Bernard Musau Mailu (55 kg)*) was proceeding in much the same manner as discerned in other ivory trafficking prosecutions involving Guinean nationals. KWS investigators had arrested Mailu and Traore Lancini in a motor vehicle in Nairobi transporting 55 kg of ivory. In the course of that investigation, Kone Kouroume, another Guinean national was also arrested. He was later released without charge, and Lancini was reportedly deported mid-trial. Mailu was acquitted on appeal.⁸³

Traore Lancini was also publicly linked to a Fredrick James Muchina, a publicly recognized local kingpin in the ivory and rhino horn trade.^{84,85} In January 2016, Muchina was shot six times in a targeted extrajudicial killing. It is not known if he met his demise at the hands of those who were aggrieved at his continual evading of justice or from business colleagues over a deal gone wrong.

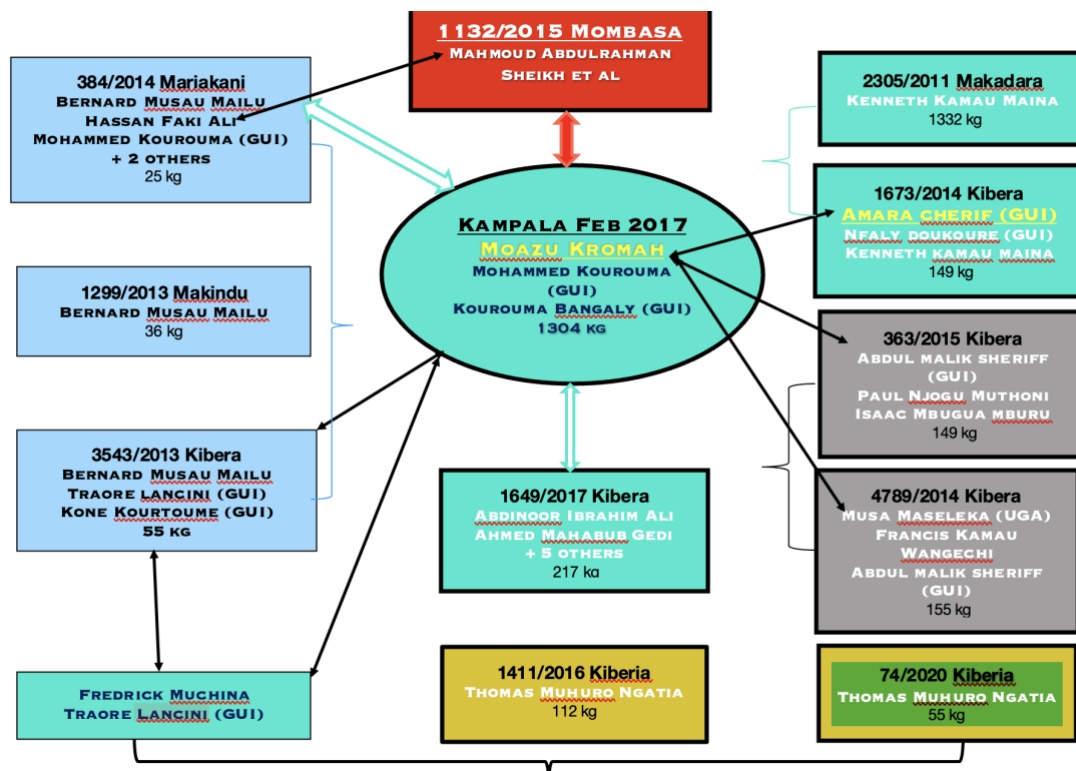


Figure 30: Connectivity between ‘Sheikh’s et al’ and the West African crime group through smaller ivory seizures. Every case displayed was compromised in some manner with the exception of the bottom right, 74/2020 Kibera, highlighted in green. That matter is still before the courts.

Three months after the Muchina murder, Thomas Muhuro Ngatia was arrested in his family home with 112 kg of ivory hidden under his bed. The home had been rented to Fredrick James Muchina. In his statement to police, Ngatia said that he had been in the ivory business since 2008, recruited by Muchina. Ngatia was arrested with ivory again in January 2020 and made bail again.

Figure 31 depicts a number of Nairobi area ivory seizures indirectly linked to ‘Sheikh’s et al’ through Moazu Kromah’s West African crime group. One of those seizures, the 1332 kg ivory capture (also reported as 2160 kg) at Jomo Kenyatta International Airport in August 2010 (**PCR/2305/2011 - R. vs. Kenneth Kamau Maina {1332 kg}**), was linked by DNA analysis to the ‘Sheikh’s et al’ Singapore seizure (Figure 24).

Since 2013, there has been an accumulation of intelligence from several different sources; internal, international, and scientific, leading to two undeniable conclusions. Kenyan TCO’s have been working hand in hand with the West African TCO to transport massive amounts of ivory from Mozambique, Tanzania, Uganda and Kenya to Southeast Asia. Not even a scintilla of this organized crime evidence has been produced for a wildlife trophy prosecution in Kenya.

DÉNOUEMENT – **‘FAILED’**

This was a ‘fail’. The acquittal of *MCCR/1132/2015**, *R vs. Abdulrahman Mahmoud Sheikh and 8 others*, was also pre-ordained. The failed negotiation in the mutual legal process between Kenya and Thailand was inconsequential to the final outcome.

The evidence is unequivocal and beyond a reasonable doubt. Balancing the scales of justice was not in the equation for this prosecution, one in which the trajectory had been pre-determined in the early months. This was a corrupted prosecution.

From one perspective, this conclusion is a relief. It is a relief for proponents of law enforcement or the prosecutorial process to realize that their brethren involved in this case could not have been as calamitously inept as has been portrayed.

It explains all the evidence seemingly amassed in the early stages of the trial that never made it into court as actual evidence. It explains how early affidavits revealed linkages between accused through phone data analysis that never made it to trial as admissible evidence. It explains the loss of a Nakumatt supermarket receipt that would have connected Sheikh A#2 to the Nyali ivory consolidation point. It explains the irrelevant ‘tea’ witnesses and the absent witnesses who were unwell, or unable to travel, or just not called.

It explains how in relation to the sister Singapore seizure, China charged and convicted the consignee of that shipment to 10 years’ imprisonment. Singapore fined the involved freight forwarder the equivalent of USD \$5000 for failing to exercise due diligence.⁸⁶ In Kenya, it never made the charge sheet.

It explains the smoke and mirrors surrounding the failed mutual legal assistance with Thailand and the second failed mutual legal assistance with the United States involving new evidence that never made it past the magistrate’s chambers.

It explains the two-year delay before the first witness testified. It explains why expert witness, Dr. Ogeto Mwebi, of the National Museum of Kenya, on two occasions, forwent testifying in ‘Sheikh’s et al’ for seemingly lesser cases, because ‘Sheikh’s et al’ was, in reality, the lesser case. It explains how the Jefwa brothers, having evaded capture for seven years, knew exactly when it was safe to turn themselves in.

It explains how in the early stages, the financial investigation found evidence of a “well financed criminal cartel” and unexplained suspicious financial transactions in the accounts of the primary accused, only to retract on the final day, leaving the court with the belief that there was an absence of any financial connection between the primary accused and the trafficked ivory.

It indicates that the last day of the prosecution was never intended to tie up evidentiary loose ends but was instead, an orchestration. An orchestration to deflect blame, primarily onto Thailand, away from the DCI and ODPP, while at the same time, exonerating the accused. This orchestration involved defence counsel and almost certainly with the knowledge of the sitting magistrate.

The orchestration is explained by the court’s and defence counsel’s acceptance of countless documents, without the respective author’s present, many being irrelevant to any of the charges before the court.

It explains why the IO could provide no reasons for the charging of two accused, and trivial reasons for three others. It explains why his statement on the investigation was written four years after the fact and missing seemingly significant evidence. It explains how he could not eliminate the possibility that there was a real Said Juma Said sitting in Tanga (Tanzania) or the possibility that the ivory went into the container after it was loaded onto the Cape Moss.

This ‘failed’ prosecution, besides identifying that there were elements of corruptive practises involving Almasi Chai, Siginon Global Logistics, and lower-level officials within Mombasa port, could not have been subverted in the manner that it was without state actor involvement.

Past and Present Indicative of the Future

On the morning of Wednesday, November 16th, 2022, Yang Changgui, a 58-year-old Chinese national, was found dead by a roommate in his Lavington (Nairobi) apartment. Hoang Thi Diu, an apparently transient woman of Chinese/Vietnamese origins, contacted the police.

Investigating authorities attended the apartment and in the process of investigating the death (believed to be of natural causes), found a number of game trophies and other evidence of wildlife trafficking including: 80 cut pieces of ivory weighing 145 kg, 2 worked pieces of ivory, 2 rhino horn weighing 4.2 kg, 116 lion claws, 65 lions’ teeth and an electric saw. All

evidence pointed to the police serendipitously discovering a consolidation point for wildlife trophy exports.

A number of these wildlife trophies and documentary evidence were found in the bedroom of a third party, named by DCI investigators as Egyptian national, Ali Hussein. Testimony indicated he also had a home in **Machakos** and stayed in the Lavington apartment only on weekends. Ali Hussein was arrested at Jomo Kenyatta International Airport (JKIA) prior to boarding a flight out of Kenya. He was taken to Kahawa court, but the ensuing investigation absolved him of any involvement in the possession or trafficking of wildlife trophies. The court was also told that nothing of relevance to the investigation was found on the three mobile phones of the deceased Chinese national. The female found-in, Hoang Thi Diu, who made bail despite a contradictory immigration status, was acquitted.⁸⁷ (*MCCR/E113/2022**, *R. vs. Hoang Thi Diu*)

On May 7th, 2023, the NPS and Kenya Wildlife Service intercepted a car in the **Machakos** area, approximately 90 km south of Nairobi, and found 81 kg of worked ivory in sacks. The ivory had been cut into disc like pieces and painted black and brown. The driver, Samwel Muisyo, and rear seat passenger (sitting beside the sacks of cut ivory) was Bashir Kasim, a Tanzanian national. Sitting in the front passenger seat was an unknown person who managed to escape. As the investigation continued, a third individual, Lazarus Kinyumu Mativo, was also arrested. It was ascertained that the vehicle was heading to JKIA with the ivory and almost certainly for international exportation. While the size of the seizure could be considered small, it was clearly the work of a transnational criminal organization (TCO).

Within weeks, this prosecution, *MCPCR/E049/2023** – *R. vs. Lazarus Kinyumu Mativo {81.7 kg}*, had all the hallmarks of a case whose fate was already cast. The trial was going to be held in Machakos instead of Kahawa, a specialized court established in 2021 to hear terrorism and other more serious cases including environmental crimes. The case was given a 'petty criminal case' designation. The decision was made to withdraw the charges against the vehicle driver and his passenger, Samwel Muisyo and Bashir Kasim respectively, and instead have them testify for the prosecution. Kasim was at the time in Kenya and working illegally.

His August 2023 testimony was inconsistent and contradictory. There were significant differences between his statement to the police and that given on the witness stand. His evidence was more weighted against the vehicle driver, Samuel Muisyo, (now a prosecution witness) than the actual accused.



Figure 31: Ivory tusks cut into disk shaped pieces and painted black and brown in preparation for export out of Jomo Kenyatta International Airport. Police and Kenya Wildlife Service officers arrested three men in the process of transporting 81 kg of this worked ivory from Machakos area to the airport. (MCPCR/E049/2023, R. vs Lazarus Kinyumu Mativo)*

In short, his evidence was not credible. To date, no other hearings have taken place and the matter is now on its 3rd Magistrate.⁸⁸ Clearly, yet another prosecution on a pre-determined trajectory that is not synonymous with justice and deterrence.

On August 21st, 2024, police in Molo town, (South Rift Valley) arrested two men on a motorcycle in possession of five pieces of ivory weighing 10 kg. The ivory was inside a black bag that also contained a Scorpion Evo 3, 9mm carbine loaded with a 30-round magazine.

The carbine was Kenya government issue and in the possession of one of the accused, Ben Muiru Mwangi, a police officer attached to the Nakuru Central Police Station.⁸⁹

The following day, both accused were arraigned on charges relating to the ivory. Eleven days later, the charges were withdrawn for reasons never divulged. Prosecutors in Molo and Nakuru region advised that the directive had come from ODPP HQ in Nairobi. ODPP HQ pointed the finger of responsibility at their regional office in Nakuru.⁹⁰ The magistrate that initially took the plea was coincidentally transferred to Nyeri within days. While the withdrawal of charges may have been legitimate, that legitimacy was cast into doubt based the ODPP response. *MCCR/E1697/2024*, R. vs. Maina Gichure Kamus and Ben Muiru Mwangi {10 kg}*

This case study has provided evidence on 23 other wildlife cases with TCO and/or corruption indicators for the purposes of revealing connectivity and comparison of process. Nine were major ivory seizures. All those marked by an asterisk (22), even those whereby a conviction was registered, were corrupted in some manner. This would tend to suggest that wildlife crime cases involving TCO's or cases of significance will continue to be subject to compromise.

This would also signal that while Kenya on the surface appears to be an "ivory looks better on elephants" or a "Hands Off our Elephants" type nation, continually compromised outcomes in ivory prosecutions involving TCO's or police, signifies the opposite. There is a state actor(s) within government who has no compunction in utilizing the resources of the judicial system for six, seven, or eight plus years to further an invalid perception that Kenya is tough on ivory traffickers while amassing personal wealth.

By extension, if compromise is an element of essentially all ivory related TCO prosecutions, what of the integrity in the prosecutions involving smaller amounts of ivory? The author believes that while KWS and the NPS execute many impactful arrests and seizures, there are also, amongst their ranks, a number higher than would be classified as 'rogue', who are executing arrests that are characterized by illegal entrapment, planted evidence, and perjured testimony. Innocent persons are being imprisoned for offences they did not commit.

The recent study in Uganda, "*You walk on glass if you are in that space: Risks and harms of corruption in wildlife justice pathways in Uganda*",⁹¹ identified, on a wider scope and different methodology, many of the vulnerabilities observed in this report. That study paints a very clear picture

as to the effect and extent of corruption within the Uganda criminal justice system in relation to wildlife crime. It is stated that:

“Based on the results of expert interviews, this study found different types of institutional and individual corruption risk exist at every stage of the wildlife justice pathway in Uganda, including detection, arrest and arraignment, investigation and prosecution, judicial process, and incarceration.”

A similar study in Kenya would likely yield similar results.

Uganda has had a similarly poor performance over the years in their prosecution of major wildlife traffickers

In January 2019, Ugandan authorities seized 3299 kg of ivory and 423.7 kg of pangolin scales that were set to transit Mombasa before a sea journey to Southeast Asia. The excellent initial investigation resulted in the arrest of three Vietnamese nationals in Kampala within a matter of days. However, the case fell apart when two of the primary accused were released on bail by Chief Magistrate Sarah Namusobya Mutebi in highly suspect circumstances. They successfully fled Uganda with their passports still in the custody of the police. DNA analysis tied this seizure to the West African crime group.

In 2016, Kampala was the epicentre of a number of ivory shipments in what appeared to be a collaborative effort between a local Vietnamese cartel and the West Africa TCO. One of these shipments formed the basis of the Mombasa prosecution of clearing agent, Ephantus Mbare, (*MCCR/2511/2016**, *R. vs. Ephantus Gitonga Mbare {1098 kg}*). Despite the overwhelming evidence of Kampala origins, a Uganda investigation never materialized.

The 2017 arrest of Moazu Kromah, Kourouma Bangaly, and Mohammed Kourouma (the same individual arrested in Mombasa in May 2014 with a nephew of Mahmoud A#3) in Kampala, was the epic example of the challenges faced in prosecutions after arrest. Found in a home that was not theirs, an apparent wildlife trophy consolidation point containing 1303 kg of ivory, Kromah offered investigators over USD \$50,000 in bribes which they refused. He told them that if they did not accept the money, he would simply pay it to someone else within the judiciary, to release him. And that is what happened.^{92,93} That matter has never been dealt with by the Ugandan courts.

The West African crime group has been the common denominator in many of these corrupted prosecutions going back to 2010. Is it even conceivable that Kenyan state actors and Uganda state actors had a common interest in the connection and trade?

What is certain is that without some significant changes in the status quo, the forever trials, the acquittals, withdrawals, apparent deportations, convictions overturned on appeals, convictions with affordable fines in lieu of imprisonment, will continue. The mountain of evidence indicating TCO involvement will continue to be ignored, the DNA analysis that buttresses that evidence will continue to be ignored, the continued compromise of investigations and prosecutions involving TCO's will persist and likely escalate and lip service will continue to be paid to the observed corruption and compromise that surfaces in essentially every wildlife crime prosecution with TCO involvement.

While this case study has been focused on just one prosecution, a prosecution that began in 2015, the identified process vulnerabilities when examined against similar major ivory prosecutions, linked through logistics or DNA analysis, presents characteristics and symptoms that still exist to date. If these vulnerabilities cannot be addressed, there is no reason to believe that a conviction of justice, deterrence, or integrity is attainable in a major ivory trafficking prosecution in Kenya. (the initial conviction of Feisal Mohamed Ali does not fall within the category of conviction of integrity)

The Battle Needs to Move to the Courtroom

The basis and foundation of this case study comes from hundreds of hours spent in the courtrooms of Kenya, observing, tracking, and recording, the prosecution of wildlife crime cases.

The evidence is clear that it is in the courtroom where cases against high level offenders, even mid-level offenders, are being lost. This is not, however, where even a small fraction of conservation justice and international support is being funnelled. That funding and support is being allocated against anti-poaching and anti-trafficking training, classroom work and seminars on investigative and prosecutorial capacity building, and through the provision of up-to-date equipment, technical support, and advice. There is also significant involvement from international investigative NGO's, comprised of highly trained operatives who, while primarily in the shadows, have led local enforcement agencies in serious and impactful transnational arrests. All this work, however, typically stops at the point of arrest and seizure. There is nobody, not a soul, in the courtroom while a re-enactment of the 'Titanic hitting iceberg' scene is quietly played out.

Metaphorically, when compared to a football match, the international conservation justice community is throwing all its resources and expertise into playing just one half of the match. They field their first team, including world class strikers, and are far superior to its opponent. The team attains a significant half time lead then walks off the pitch and out of the stadium. They are jubilant, believing that they have carried the day and won a significant victory. But there is a second half to play. The second team reserves are fielded, and the assistant manager is left to coordinate and strategize. The second team does have some very skilled players, but their level of commitment is lacking.

The second half is not going to end well. The assistant manager has been given USD \$18,000, deposited into an offshore account to make sure a loss ensues. The captain of the second team, the centre back, has been promised a slot in an elite national school for his daughter, if he gets 'red-carded' and sent off early in the second half. The goalkeeper had to be coerced, threatened with a transfer to a small-town side, away from his family, should the team win. The referee is promised international assignments and a future promotion to the league directorship to make the 'correct' calls. The VAR staff (video assistant referee) have had family members provided with employment, one with the Kenya Revenue Service at Mombasa port and another with an international wildlife NGO. In the end, the team suffers a decimating loss. It does not understand why.

The team strategy, however, remains unchanged. The team continues to play an exemplary first half, only to ultimately lose, and badly, in the second half. Over time, some of the team strategists understand what is happening but their responsibility is only the first half of the match. The second half is the responsibility of someone else. There is no available funding to rectify the second half implosions.

The team wins a match. There is elation. Weeks later, the decision is quietly reversed as a member of the second team reserves, a player of minimal skill, is found to have contravened league drug policy. The 'win' is rescinded.

The team ownership is of the belief that they are only required to win the first half. They are eloquent and persuasive and attract more financial backers from sources who have little comprehension as to real end game.

And the cycle continues.

The international conservation justice sector is playing the 'first half'. They may, from time to time, speak of the relevance or importance of the 'second

half', but the money is rarely where their mouth is. Perhaps there is a tenet amongst 'first half' strategists, that the various criminal justice systems are capable of carrying the 'second half' to victory. That is incorrect. The criminal justice system of Kenya and those of many other elephant range states are compromised at will, particularly when involving TCO's. There will be no final victory until those playing the 'first half' either get personally involved in the 'second half' or find others of skill and integrity to complement their 'first half' performance.

For the status quo to be reset, for there to be even a glimmer of hope in attaining a conviction of justice and deterrence in a major wildlife case, before even contemplating an attempt to circumvent the omnipresent corruption and state actor involvement, it is imperative for there to be a significant presence in the courtroom. This is also applicable to ancillary investigations relating to asset forfeiture or money laundering, investigations that require significant time and accuracy.

The courtroom presence necessitates independence, persistence, and commitment to the long term. It requires to be fashioned in such a way that the principles of the rule of law, integrity, transparency and accountability, are not sacrificed to political expediency, to garner trust, or through acts of collaboration with organizations that may compromise such independence. It needs to go beyond the collection and study of data.

The courtroom is the choke point of a criminal justice process where investigation, prosecution, judicial process, and often corruption, merge together for all to see. But somebody needs to be present to see it.

It took the court 8 ½ years and 81 sittings to reach the determination that in the case of Republic vs. Abdulrahman Mahmoud Sheikh and eight others, "no evidence has been produced by the prosecution to substantiate the claim that the accused persons were dealing with wildlife trophies." In this case 'no evidence' literally means no evidence. And the public believed that Thailand was to blame.

Isn't it time to start playing the second half?

APPENDIX

When this case study was in the planning stages, I knew it was going to be a long one. I had been asked if it could be written in the range of 6000 words. That was not going to be enough. There were too many elements, too many story lines. I envisaged 30 pages.

I underestimated.

The deeper I researched, went over transcripts, testimony, audio recordings, the more I came to the realization that the corruption was not local. In 2019, I received information from within DCI that the Sheikh's case was over and to let it be. This study would seem to put credence in the story.

I am a staunch believer in a courtroom monitoring initiative. Compromised cases are not uncommon occurrences, discussed like the weather, an almost every day happening, and not treated as seriously as seen from a more western perspective. On the other side of the coin, however, investigations of integrity and commitment are still seen to regularly occur. The fact that in the past year, KWS have affected the arrests of 10 police officers transporting ivory in seven different incidents speaks to that. That also speaks to what should be seen as a worrying trend.

While there are many dedicated and honest rangers and police involved in combatting wildlife crime, there are just as many who are not. Is it not owed to the honest ones to do what can be done to assist them post arrest to mitigate corruptive influences?

I believe that courtroom monitoring executed in a manner whereby there is attendance in the courtroom in a consistent manner that includes the recording, audio or written, of the testimony of witnesses and accused, can mitigate against corruptive influences.

It cannot be based on data gathering, and/or attending a court station for a day or two every few months to check the court registry and perhaps sit in and observe a relevant case. Data may indicate irregularities in the justice process but will not indicate compromise. It will not indicate flaws or inconsistencies in the arrest process. It will not indicate areas of opportunity in improving the handling of evidence or exhibits.

In 2023, I was fortunate to receive a grant from the Elephant Crisis Fund, an initiative by Save the Elephants and the Wildlife Conservation Network, to attend courts on a regular basis to observe, track and record what was

happening in ivory related prosecutions. Two of the more significant findings related to the handling of exhibits and the arrest process.

It was observed that the seized elephant tusks were produced for the court on every occasion that a witness was testifying on such. If there were four KWS rangers involved in the arrest and seizure, the ivory would have to be produced for the court on each occasion that they took the witness stand. It would also have to be present when the expert from the National Museum of Kenya testified. This meant that the seized ivory was typically having to be removed from secure custody and transported to court on at least four or five occasions during the course of every trial. For the larger amounts, it meant that extra transport or security would have to be arranged accordingly.

Secondly, it was noted in the arrest process, that there was an uncommonly high number of arrest incidents executed by KWS where one of the 'perpetrators' escaped. The number suggested the use of an 'agent provocateur' or another third-party, perhaps indicative of illegal entrapment tactics.

These types of indicators are not realized through the infrequent gathering of data. They are also significant challenges and need to be addressed.

The courtroom monitoring equation would benefit with two other components to complement the process: mainstream media support and an NGO Support Structure in Wildlife Investigations and Prosecutions.

Mainstream media coverage is requisite to mitigating the corrupted processes and rulings in wildlife court cases. Silence plays into the hands of involved state actors and those within the judicial process who are coerced to do their bidding. While cases are routinely compromised in the criminal courts in situations where an interested party has the fiscal resources to subvert, no magistrate, prosecutor, law enforcement officer, or defence counsel likes to see their name come up in a google search associated to a corrupted ivory or rhino horn prosecution.

Kenya media are reticent in writing articles that portray the challenges faced by wildlife crime cases in the courtroom. As expected, there is no shortage of articles trumpeting arrests and seizures of wildlife poachers and traffickers. Follow up is wherein the problem lies.

Over the past six years, I have attempted to facilitate engagement with media for related coverage achieving but minimal success. A number of engaged journalists took stories of substance to their editors to have them nixed. Many journalists believe there is a safety concern by covering ivory

and rhino horn cases. That speaks to state actor involvement and needs to change.

Published reports by Wildlife Direct in 2014 and 2016 on their courtroom monitoring activities included a number of recommendations. One of those recommendations, included in both reports, was the necessity to have an “NGO support structure to support wildlife investigations and prosecutions”. The aim of the structure was to “collaborate with government on investigations, arrest operations and prosecutions” and would also assist in “fighting corruption within the enforcement and justice system, ensuring good governance and transparency.”⁹⁴

It took seven years for that recommendation to be realized when in 2021 the DCI and international NGO, Focused Conservation, entered a partnership to combat wildlife crime in Kenya through collaborative investigations, arrests and prosecutions. Focused Conservation, led by retired Drug Enforcement Agency, Special Agent William Brown brought into the mix a team of highly experienced advisors, mentors, trainers and analysts with extensive international law enforcement experience (a prosecutorial element added to their repertoire would have been welcome). The unit was known as the Kenya Wildlife Task Force (KWTF) and came into being in July 2021⁹⁵.

The collaboration, however, only lasted for three years when in October 2024, the unit was disbanded, ostensibly for lack of funding. The KWTF enjoyed success with significant arrests in both sandalwood and ivory operations. Just as importantly, it added an integrity component to the investigations and prosecutions of wildlife crime within Kenya. The disbandment came at an unfortunate time, a time when within Kenya, both the number of ivory seizures and the involved weights of each seizure, are slowly climbing and particularly in the coastal region.⁹⁶ (Focused Conservation presently maintains similar high-level units in Uganda, Liberia and Nigeria.)

Some of you may be aware that I have signed off emails for some years with *"there will be no justice when the hyenas are investigated by the hyenas"*. It is my belief that the particular hyenas to which I refer are at a level at which their prosecution is highly unlikely. However, we do now know their location. The courtroom monitoring element with a more active media participation can mitigate their activities.

GLOSSARY & CASE LIST

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): an international agreement between countries to regulate and protect the international trade in endangered animals and plants.

Directorate of Criminal Investigation (DCI): The investigative arm of the National Police Service. The DCI has been the investigative lead in all major ivory seizures in/and relating to Kenya.

East Africa Community Customs Management Act, 2002 (EACCMA): Prior to January 2014 and the implementation of the amended Wildlife Conservation and Management Act 2013, traffickers exporting ivory in shipping containers from Mombasa were charged under this Act. The maximum penalty for an offence under this Act is five years imprisonment.

Elephant Trade Information System (ETIS): A data tool mandated by CITES that tracks the illegal trade in ivory. It is intended that countries submit for ETIS, amounts of ivory that have been seized within their jurisdiction.

Kenya Wildlife Service (KWS): The Kenya Wildlife Service is a comparatively small organization of approximately 4500 staff that falls under the Ministry of Tourism and Wildlife. It has a wide mandate to manage and protect over 40 national parks and reserves across the country, which includes enforcing the Wildlife Conservation and Management Act 2013. The elimination of poaching and the protection of wildlife through enforcement and investigation is just one of its many responsibilities.

Lusaka Agreement Task Force (LATF): The operative arm extending from a 1994 treaty amongst seven members to combat the illegal wildlife trade. The members are Republic of Congo, Kenya, Liberia, Tanzania, Uganda, Zambia and the Kingdom of Lesotho. There are three signatories, South Africa, Ethiopia, and Eswatini. They are headquartered in Nairobi on the same grounds as the Kenya Wildlife service. The mission includes reducing and eliminating the illegal trade in wildlife through facilitation of inter-agency law enforcement cooperation, investigations, dissemination and exchange of information and capacity building.

Major Ivory Seizure: An ivory seizure where the recovered weight is more than 500 kg.

PCR/2305/2011* Makadara - R. vs. Kenneth Kamau Maina:

KWS seized 2160 kg of ivory and 5 pieces of rhino horn at Jomo Kenyatta International Airport in August 2010. Kamau was the lone individual charged at Makadara court and **acquitted** in 2016. The charge sheet only read 1332 kg of ivory while KWS reported 2160 kg to ETIS. This shipment was linked through DNA analysis to the 'Sheikh's et al' Singapore seizure (Figure 24). Kamau was charged three years later regarding MCCR/1673/2014* Kibera (see below). **{Trial Duration 5+years}**

MCCR/530/2012* Mombasa – R. vs Sammy Ndiqirigi Maina:

Maina, a Mombasa clearing agent, was **acquitted** of offences under the EACCMA relating to an ivory seizure of 1500 kg in Mombasa. There was evidence of a fraudulent KRA verification document used in the container processing. This was one of three Kenyan major ivory seizures that was not submitted for DNA analysis. (KWS reported to ETIS that the weight of the seizure was 1899 kg) **{Trial Duration 7 years}**

MCCR/255/2013* Mombasa - R. vs. Fredrick Sababu Mungule, James Ngala Kassiwa, and Gideon Naftali Onsinyo Nyangau (died January 2014):

These two charges under the EACCMA were in relation to the Hong Kong seizure on January 3rd, 2013, of 779 pieces of ivory weighing 1323 kg that originated from Mombasa. This case was **consolidated** with 417/13 on March 21, 2013, before Senior Principal Magistrate Hon. R. Odenyo. The specific charges relating to the Hong Kong seizure, however, were not carried over to the 417/13 charge sheet, so in essence, the 255/13 charges **became null and void**.

MCCR/417/2013* Mombasa - R. vs. Fredrick Sababu Mungule, James Ngala Kassiwa and Gideon Naftali Onsinyo Nyangau (died January 2014):

These two charges under the EACCMA were in relation to the Mombasa seizure on January 14th, 2013, of 638 pieces of ivory weighing 3827.5 kg. On March 23rd, 2022, Mungule and Kassiwa were **convicted** and sentenced to two years imprisonment on one of the charges. On December 22nd, 2022, Kassiwa was placed on a **non-custodial probation** by Lady Justice A. Ong'injo, having served only 9 months of his 24-month sentence. This shipment was linked through DNA analysis to the 'Sheikh's et al' Singapore seizure and more directly to a seizure in Dubai in May 2013 (Figure 24). **{Trial Duration 9 years 1 month}**

MCCR/754/2013* Mombasa - R. vs. Fredrick Sababu Mungule, James Ngala Kassiwa, Nelson Ayoo, and Gideon Naftali Onsinyo Nyangau (died January 2014):

All three accused were **acquitted** of charges under the EACCMA relating to this 1833 kg of ivory seized in Singapore and repatriated to Kenya. This trial featured a number of integrity issues. The seized ivory weight in Singapore and on repatriation to Kenya was signed off by investigators as 1848.5 kg. The charge sheet before court read 1833 kg. Near the end of the prosecution, the charge sheet had to be amended to include a hippo tooth, the indication being that at some point before verification by NMK, an ivory tusk had been swapped out for the hippo tooth. During the prosecution, some legal staff of Wildlife Direct, who were monitoring at the time, were threatened with bodily harm should they continue attending. On the final day of the prosecution, the Investigating Officer became a de facto hostile witness. This was one of three Kenyan major ivory seizures that was not submitted for DNA analysis. **{Trial Duration 8 years 4 months}**

MCCR/1299/2013* Makindu - R. vs. Bernard Musau Mailu and Joshua Kioko Peter:

This was the first of Mailu's three separate ivory trafficking charges. It was alleged that he and Kioko Peter were arrested after a vehicle pursuit in the Kibwezi area (Tsavo East National Park area) and found with 33.5 kg of ivory. The case was initially heard in Makindu court. Mailu filed an application against the presiding Magistrate for open bias and hostility that was found to be without merit. The final disposition of this prosecution is not known. During this trial process, Mailu's wife, Mary Musau Mwikali, was charged and pleaded guilty to Neglecting to Prevent a Felony in regard to her husband receiving ivory on a separate date.

MCCR/3081/2013* Mombasa - R. vs. Nicholas Waweu John:

He was a clearing agent and charged under the EACCMA six months after 3287 kg of ivory was seized in Mombasa and slated for exportation to Malaysia. He was **acquitted** four years later. Abdul Halim Sadiq Omar, a co-accused in the FMA trial one year later, owned the lorry that delivered the ivory to port. As per the judgement, "the case was poorly investigated" and the ivory was never produced as an exhibit. This shipment was linked through DNA analysis to the 'Sheikh's et al' Singapore seizure (Figure 24) and through logistics to the Feisal Mohamed Ali shipment (MCCR/1098/2014) and a July 3rd, 2013, seizure that was never prosecuted. **{Trial Duration 4 years}**

MCCR/3543/2013* Kibera - R. vs. Traore Lancini (GUI) and Bernard Musau Mailu:

This resulted from a motor vehicle search in the Nairobi area when 55 kg of ivory was found under a sack of coal. Bernard Musau Mailu was initially **convicted** of trafficking 55 kg of ivory, but the conviction was **overturned** on appeal. Traore Lancini was reportedly **deported** mid-trial but supporting documentation of such was not produced for the court. A third Guinean national, Kone Kourtoume was arrested in the investigation and **released without charge**. **{Trial Duration 5 years 6 months}**

MCCR/384/2014* Mariakani - R. vs. Daniel Kilingua Wambua, Nzole Mumba Chileta, Mohammed Kourouma (GUI), Haji Faki Ali, and Bernard Musau Mailu:

Wambua and Chileta were arrested enroute to Mombasa with 2 tusks (25 kg) strapped to the undercarriage of a vehicle provide to them by Mailu. The DCI affected a controlled delivery and arrested Mohammed Kourouma (son/nephew to Moazu Kromah) and Haji Faki Ali (nephew of Mahmoud Abdulrahman Sheikh). Bernard Musau Mailu, was later arrested and **convicted** and handed a ksh 100,000 fine (USD\$1000) or in default one year in prison. This was his 3rd ivory trafficking offence. The charges against Haji Faki Ali were withdrawn in the early stages of trial. Mohammed Kourouma and the vehicle occupants were **acquitted**. **{Trial Duration 1 year 10 months}**

MCCR/1098/2014* Mombasa - R. vs. Abdul Halim Sadiq Omar, Ghalib Sadiq Kara, Pravers Noor Mohamed, Abdul Majeed Ibrahim, Fiji Motors East Africa Ltd, and Feisal Mohamed Ali alias Feisal Shabal:

FMA was initially **convicted** of trafficking 2252 kg of ivory that was found in a shed within the walled compound of Fuji Motors East Africa Ltd in Mombasa. He was **acquitted** on appeal in 2018. All co-accused were **acquitted**. This shipment was linked through DNA analysis to the 'Sheikh's et al' Singapore seizure (Figure 24) and through logistics to MCCR/3081/2013 and the July 3rd, 2013, seizure that was never prosecuted. **{Trial Duration 1 year 7 months from FMA arrest or 2 years 1 month from seizure date}**

MCCR/1673/2014* Kibera - R. vs. Kenneth Kamau Maina & N'faly Doukoure (GUI):

Maina was **convicted** of possession of the 784 kg ivory found in a water tanker lorry and sentenced to pay a ksh 1 million fine (USD\$10,000) or in

default 5 years imprisonment. Nfaly Doukoure was deported mid-trial. Amara Cherif (GUI) was **released no charge**. Maina had been acquitted of the 2160 kg seizure at JKIA in 2010 (PCR/2305/2011). This was one of three Kenyan major ivory seizures that was not submitted for DNA analysis.

{Trial Duration 5 years 5 months}

MCCR/4789/2014* Kibera - R. vs. Musa Maseleka Kitembo (UGA), Francis Kamau Wangechi, Mary Wangechi Kienyi, and Paul Njogu Muthoni:

This was a seizure of 143 kg of worked ivory being transported from Kampala in a vehicle registered in Uganda to a male from the Democratic Republic of Congo. The vehicle and occupants (Maseleka and Kamau) were arrested outside of Nairobi and a controlled delivery was affected. Kienyi and Muthoni were arrested in that process. The charges against them, however, were later withdrawn. The investigation also revealed the involvement of Abdul Malik Shariff (GUI) who was not arrested. Ten years and 4 months after arraignment, Maseleka and Kamau were found guilty in absentia and sentenced to 10 years' imprisonment for possession and dealing in wildlife trophies to be served consecutively, if ever arrested. There is evidence suggesting that they were in custody in December 2022 and were either released or escaped and that court documents were falsified to cover it up.

{Trial Duration 10 years 4 months}

MCCR/363/2015* Kibera - R. vs. Isaac Mbugua Mburu, Paul Njogu Muthoni, and Abdul Malik Shariff (GUI):

This matter stems from a Nairobi house search in January 2015 that led to the discovery of 155 kg of worked ivory. This seizure was related to MCCR/4789/2014 (above). Phone data that was not utilized as court evidence indicated links between the two seizures and to the West African TCO. Mburu and Muthoni were each **sentenced** to eight years imprisonment. The charges against Shariff were **withdrawn** and he was reportedly **deported**. **{Trial Duration 3 years 4 months}**

MCCR/1197/2015* Mombasa - R. vs. Musa Jacob Lithare and Kenneth Mwangi Njuguna:

The two were arrested in 2015 as part of the 'Sheikh's et al' investigation and then charged in relation to 754/2013, the January 2013 seizure. These charges were later withdrawn to enable Lithare and Njuguna to testify for the prosecution. In their trial testimony, they provided no incriminating evidence against any of the accused.

MCCR/994/2016* Kibera - R. vs. Francis Kioi Karanja, Stephen Chege Ngawai, Martin Mwiti Marangu, and Peter Kuria Kimunju:

In February 2016, four policemen were arrested while in the process of selling a 5 kg ivory tusk from a Land Cruiser Prado to an undercover KWS buyer. The four were utilizing a government vehicle assigned to the Principal Administrative Secretary to the Office of the President, Kennedy Kihara. Two of the accused were assigned to Kihara's staff, the third was a driver for the Cabinet Secretary of the Interior, Fred Matiang'i, and the fourth a bodyguard to NARC leader Martha Karua. They were initially convicted and sentenced to a 20 million shilling fine or in lieu, life imprisonment. The fine was **reduced on appeal** to 1 million shilling fine or in lieu 5 years imprisonment. While the initial sentence sounded severe, it **guaranteed an appeal** due a defective section in the WMCA, a defect that had been judicially reported mere months after the WMCA 2013 implementation. **{Trial Duration 3 years 6 months}**

MCCR/1411/2016* Kibera - R. vs. Thomas Ngatia Muhoro:

This prosecution stems from a house search on March 22nd, 2016, in the family home of the accused on the outskirts of Nairobi. At 03:00 hrs, police found 112 kg of ivory under the bed he had been sleeping in. Muhoro was a known role player in an East African criminal network. He told police that he had been in the ivory business since 2008, having been recruited by local businessman, Fredrick James Muchina. Muchina was a lead figure in the poaching and trafficking of ivory and rhino horn throughout Kenya with links to Guinean traffickers of the West African TCO. Muhoro was convicted and **sentenced to two years jail**, five years below the seven-year minimum. While this trial was ongoing, he was arrested again while trafficking 55 kg of ivory and made bail again. **{Trial Duration 6 years 9 months}**

MCCR/2511/2016* Mombasa - R vs. Ephantus Gitonga Mbare:

The prosecution of clearing agent Mbare, stems from a 1098 kg consignment of ivory and timber that originated in Kampala, transited successfully through Mombasa, and was then recalled on the high seas on approaching Singapore. The hallmark of this seizure, and nine others, was the manner in which the ivory was hidden in hollowed out timber beams. These 10 seizures, destined for either Ho Chi Minh City, Viet Nam or Phnom Penh, Cambodia, were the work of a Vietnamese TCO working in conjunction with the West African TCO. Mbare was found **not guilty**, the court concluding that the investigation was poor and the real culprits had not been brought to court. This shipment contained ivory from the Burundi government stockpile and was linked through DNA analysis and logistics to

Moazu Kromah in Kampala and a seizure made in Cote d'Ivoire in January 2018. **{Trial Duration 2 years 4 months}**

MCP/CR/418/2017* Shanzu - R. vs James Kinyua Njagi and 6 others:

These charges relate to a Singapore seizure of 1004 kg of ivory in March 2014 that originated in Kampala and transited Mombasa. An initial investigation never got off the ground but was resurrected in 2016 through an investigation by Freeland and the LATF that began in West Africa. The prosecution was compromised from the initial stages with it being classified as a "petty criminal offence" and charges being laid under the EACCMA instead of the Wildlife Conservation and Management Act. **{Trial in progress since April 2017 and now awaiting judgement; 7 years 9 months to date}**

MCCR/1649/2017* Kibera - R. vs. Julius Abluu Adika & Abdinur Ibrahim Ali & 5 others:

Officers of the Special Crime Prevention Unit raided a home on June 27th, 2017, and found 217 kg of cut ivory, much of it being packaged for air freight out of JKIA. Five men were arrested on site, with Abdinur Ibrahim Ali, and Ahmed Mohamud Salah alias Ahmed Mahabub Gedi, arrested later. Both these accused had links to the West African crime group. Salah was given a highly irregular bail release considering he had no Kenyan ties, was a Somali national with residence and employment in Mozambique, and was arrested at a border crossing while fleeing the country with fraudulently obtained travel documents. **{Trial in progress since June 2017, 7 years 7 months to date}**

MCCR/74/2020 Kibera - R. vs. Thomas Ngatia Muhoro, Joel Kariuki Njeru,

and Daniel Wachira Muya: This prosecution is based on an arrest and ivory seizure of January 14th, 2020. KWS received a tip and stopped a vehicle on Nairobi's Eastern Bypass and found 28 pieces of cut ivory tusks weighing 55 kg. The first two accused were vehicle occupants. The third accused was arrested a few weeks later. This was Thomas Ngatia Muhoro's second offence, and he was out on bail at the time. (see MCCR/1411/2016 above) **{Trial in progress since January 2020, 5 years 1 month to date}**

MPCPCR/E049/2023* Machakos - R. vs Lazurus Kinyumu Mativo, Samwel Muisyo Mutune, and Bashir Kasim (TZA):

This prosecution relates to a May 7th, 2023, arrest and coincident seizure of 81.7 kg of worked ivory from a vehicle enroute to Jomo Kenyatta International Airport in Nairobi. It has received a 'petty criminal case' designation. The driver and passenger, Mutune and Kasim, have now been turned into witnesses for the prosecution. Kasim has testified and was not credible. The trial is on its 3rd presiding magistrate. **{Trial in progress since May 2023}**

MCCR/E071/2024* Kahawa - R. vs. APC. Richard Kipleting Kuto, Cpl. Ben Kipkosgei Kiplangat, Charles Nzuki Mutua, and APC. Philip Lubanga Adembe:

In June 2024, KWS investigators followed a government Subaru Legacy from Eldoret to Kitengela (over 300 kms) before stopping it and finding five tusks weighing 29 kg. The four occupants were arrested with three found to be serving police officers. One was attached to the Presidential Escort Unit of President Ruto, another was assigned to a senior politician from Eldoret, and a third was reported to be attached to the Judiciary at Milimani court. Two loaded handguns were also seized, presumed to be police service weapons. **{Trial in progress since June 2024}**

MCCR/E1697/2024* Molo - R. vs. Maina Gichure Kamus and Ben Muiru Mwangi:

The two accused, one a serving police officer from Nakuru, were arrested by police on August 21st, 2024, in Molo town. The two men were on a motorcycle in possession of five pieces of ivory weighing 10 kg. The ivory was inside a black bag that also contained a government issue Scorpion Evo 3, 9mm carbine loaded with a 30-round magazine. Twelve days later the charges were withdrawn. The ODPP could not provide an explanation for the withdrawal of charges. **{Trial Duration - Withdrawn}**

Miscellaneous Criminal Application 62/2015 (MCA 62/2105):

This application was made by the ODPP seeking judicial authorization to restrain/seize/freeze motor vehicles, bank accounts and property of involved persons in the 'Sheikh's et al'. There were nine respondents including the three primary accused. This was separate and apart from the criminal proceedings.

Mutual Legal Assistance (MLA): Meant as a cooperative process whereby one country requests the assistance of another country, through diplomatic channels, for the purpose of gathering evidence for criminal investigations. It is typically initiated through a formal letter by the requesting country.

National Police Service of Kenya (NPS): A national body in charge of law enforcement in Kenya. It has a total strength of approximately 100,000 personnel. Under the NPS umbrella is the Administration Police Service of approximately 25,000 personnel who are primarily tasked with border and infrastructure security. The General Service Unit (GSU) is a paramilitary arm of the NPS and numbers approximately 10,000. The Directorate of Criminal Investigation (DCI) is a sub-unit within the NPS.

Office of the Director of Public Prosecution (ODPP): The national prosecuting authority of Kenya with a headquarters in Nairobi and eight regional offices.

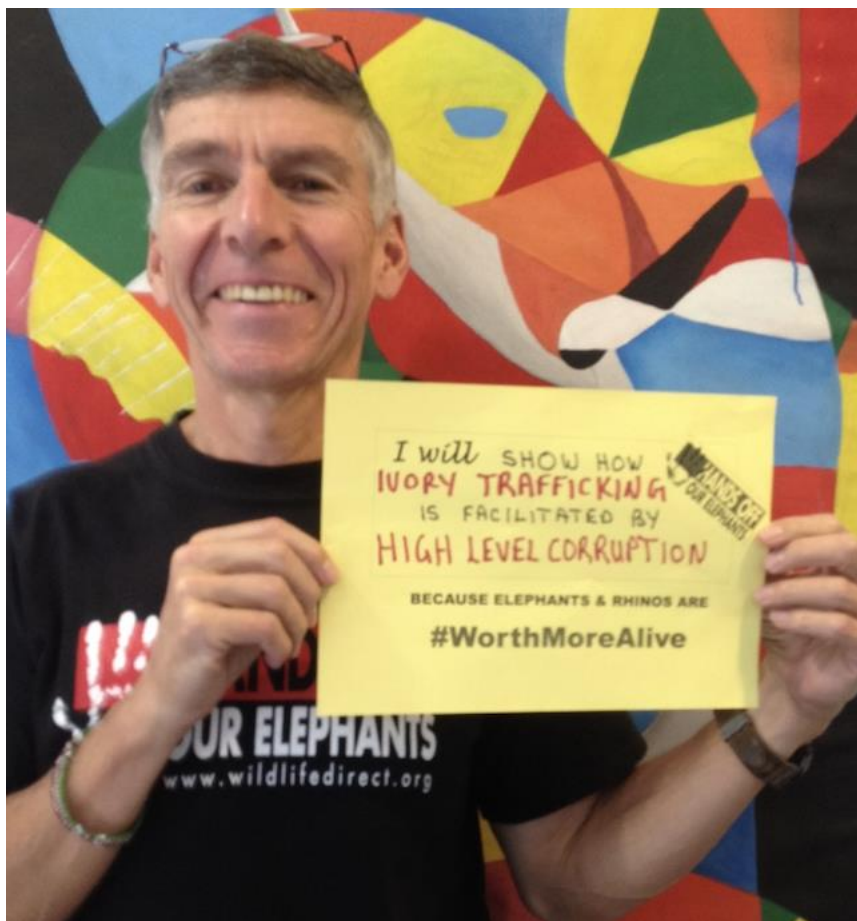


Figure 32: The author attending a brain storming session in April 2016 and having completely no idea as to the direction this road was taking.

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