



KENYA SCHOOL OF LAW
ADVOCATES TRAINING PROGRAMME

Instructions

- a) Moot court competitions will be held during the designated hours of moot court on the time table and any other time;
 - b) All participating firm members MUST be dressed appropriately;
 - c) All participants must conduct themselves with decorum;
 - d) All documents must be filed and served in advance;
 - e) Participants must familiarize themselves with the moot court handbook;
 - f) Use of mobile phones is not allowed in moot court.
 - g) Firm 1vs2 (Q1); 3vs4 (Q2); 5vs6 (Q3); 7vs8 (Q4); 9vs10 (Q5); 11(Q6); 12(Q7); 13(Q8); 14 (Q9);
- 1) On 15th January 2011, Mr. Muli Wamusi called his childhood friend, Mr Wario Ochalan the credit controller of Plams International Ltd, and invited him for a drink at Fanya Kazi Bar and Restaurant in Karen, Nairobi. Mr. Wamusi told Mr. Wario that he had been working for Shabs Bank in Eastleigh as a teller for over 33 years and was due for retirement in July 2011. He noted with concern that his third and favourite wife one Ms Praxidice Wamusi had given birth to quadruplets on 8th December 2011 and that he had no solid investment to see the quadruplets through school. To sort out the dilemma, he told Mr. Wario Ochalan that he had devised a plan to make money that would assure him of a joyous retirement and hassle free schooling for his children. Mr. Wamusi needed the assistance of Mr Wario Ochalan in executing the plan. In return, Mr Wario Ochalan would get one third of the proceeds of the deal.

The plan was to run as follows:- Mr Wario Ochalan was to incorporate a limited liability company and then open a bank account with Shabs Bank in Eastleigh. After opening the account, Mr Wario Ochalan would steal cheques from Plams International Ltd deposit them on the company account and then come to the bank when Mr Wamusi is at the cash counter and

then withdraw the cash. Mr Wamusi also proposed that out of the one million accounts they operated in their bank, he would talk to his elder son, one Mr Wamusilet Akili a computer guru, to hack into the bank systems and prepare a computer programme that would deduct Kenya Shillings Five only from all the accounts every month and transfer it to the new company account for eventual withdrawal. Mr Wario Ochalan was initially hesitated to the said proposal but after due consideration he agreed to the plan on condition that he received half of all the cash from the account. After consultations, Wamusilet Akili agreed to prepare the computer programme. He proposed that to avoid being caught, the company directors should use pseudo names. Mr Wamusilet Akili and Mr Wario Ochalan approached Mr Gurudumu Debe, Mr Wamusilet Akili's High School classmate and campus roommate, and gave Mr Debe a brief on the plan. It was agreed that Mr. Debe would incorporate the company but get paid after the first assignment was successfully executed. Mr Debe quickly incorporated a company by the name Pams International Ltd and Mr Wamusilet Akili and Mr Wario Ochalan called on Mr Wamusi on 8th of February 2011 and opened an account in the name of the company. The signatories of the account were described as Mr Aman Ujuzi(Wamusilet Akili) and Mr Njuti Ndogo(Wario Ochalan). The passport photographs submitted to the bank were those of Mr Cowtuni and Mr Kianjura, having lost the said photographs during a carjacking incident along the Kericho-Bomet Road in January 2010 during which incident Mrs Cowtuni was killed.

By coincidence, Mr Wario Ochalan's assistant Mr Wamuya received a cheque of Kenya Shillings Ten Million only on the morning of 9th February 2011 but forgot to bank it. In the evening, Mr Wario Ochalan came across the cheque after office hours tucked away in a book in Mr wamuya's drawer. Mr Wamuya's desk is ordinarily under lock and key but on this particular day, he forgot to lock it. Mr Wario Ochalan picked the cheque and then sent his gardener on 10th February 2011 to go to the bank, fill the bank in slip and bank the cheque. Mr Wamusilet Akili on the other hand had already prepared the necessary computer programme which was installed on Mr Wamusi's computer on 10th February 2011. It was activated immediately. It did not disappoint. It skimmed Kenya Shillings five from each account and credited it on the account of Pams International Ltd. In the meantime, the cheque deposited by Mr Wario Ochalan's gardener cleared immediately as it was an in-house cheque. Mr Wario Ochalan was alerted by

Mr Wamusi on the latest development and on 11th February 2011, he turned up at the bank with the intention of withdrawing Kenya Shillings Ten Million only. The Branch Manager, Mr. Kigen, was alarmed by the huge withdrawal and the apparent lack of security escort to accompany Mr Wario Ochalan. He got suspicious when he noticed that the account had been opened barely three days before the withdrawal. While he was still studying the account before authorizing the withdrawal, a call came in from Mr Wenge, an account holder who claimed he had seen a debit of Kenya Shillings Five from his account without explanatory notes. The Chief Accountant of Rwal Limited also called complaining about a debit of Kenya Shillings Five from the company account without explanatory notes. The Branch Manager scrutinized these two accounts and noted that the customer's complaint was indeed true. He traced the credit to the account of Pams International Ltd. On random check of twenty other accounts, he realized that each account had lost Kenya Shillings Five and the monies credited to the account of Pams International Ltd. While he was still recovering from the shock caused by the discovery, a call came in from the managing director of Plams International Ltd advising that a cheque No.00001 drawn on Shabs Bank had gone missing at their premises and that the same should not be honoured. On checking the account of Plams International Ltd, the Branch Manager realized that the Kenya shillings Ten Million only had been paid to Pams International Ltd and was due for withdrawal. He immediately instructed the Chief Security officer of the bank to detain Mr Wario Ochalan, who was having tea at the Senior Executive Customer's Lounge. Mr. Kigen called in the Bank Fraud Investigation Unit who promptly arrested Mr Wario Ochalan. In the course of interrogation, Mr Wario Ochalan revealed the entire plot on the understanding that he would not be charged with any offence.

- a) Prepare the defence and prosecution files in readiness for trial.

Q2.

On 15th October 2010, Mr. Dawood an employee of Lehman Brothers Bank headquartered along Kirinyaga road Nairobi left his house in Kayole at about 5.30 am so as to beat traffic jam along Jogoo Road arrive in office early enough, open the bank and clean it up. Mr. Dawood is

employed as a Senior Cleaner at the Bank a position he has held for the last 35 years. On arriving at the bank at about 5.45 am, the bank was dark and it appeared to him that the electricity connection to the banking hall was not functional. Before opening the main grill, he approached the night guard one Mr. Papa who was in a cubicle next to the main door grill. To his shock and amazement, he realized that the uniformed man was not Papa but a total stranger who whipped out a Beretta Pistol and placed it on his forehead. Immediately thereafter, three other persons emerged from the shadows each armed with a gun, and ordered Mr. Dawood to open the bank immediately.

The sun was rising fast but it was not clear to Mr. Dawood who the four men were. He could only recognize Papa the security guard who had been stripped off his uniform and his hands bound from behind. He appeared to have been beaten as he seemed unconscious of what was happening around him. Mr. Dawood was forced to open the bank after which the four men made him to lie down next to his desk as they ransacked the banking hall. Unknown to the robbers, Mr. Dawood reached out for the panic button under his desk and pressed it. As the four men were leaving, police from the Central Police Station Nairobi arrived and a shootout ensued. One of the men was shot dead while the other three escaped with all they had collected from the bank. The bank estimated to have lost Kshs. 12,000,000/-.

On 27th of October 2010 Mr. Kondoo, Mr. Rotu and Mr. Pagasi were arrested in Komarock Estate and Kenya Shillings 10,800,000/- was recovered from them. In addition, two AK-47 assault rifles and a Cieska pistol was found in their house. Mr. Kondoo, at the time of arrest, had the following features, a scar on his left jaw and a slight limp while walking. Mr. Rotu stammered in his speech and his left ear was deformed. Mr. Pagasi was short and pot bellied. All these features had been noted by Mr. Dawood. The arresting officer is called Chief Inspector Matata. The investigation officer is Inspector Koigi.

- a) Prepare the defence and prosecution files in readiness for trial.

For quite some time now there have been media reports of a flurry of piracy within or around Kenya's northern and north-eastern coastal corridors, especially around the Kenya-Somalia coastal waters and their environs.

A newspaper article of January, 2010 entitled 'Pirates looted Shs. 45b last year'¹ reported that ship owners paid Somalia pirates over Shs. 45 billion in ransom money in 2009 to secure the release of their (ship owners') 47 vessels and nearly 300 crew members captured by the pirates. The article added that within the first month of this year alone, 12 vessels and their crew had fallen captive as piracy continued to threaten commercial activities in the Gulf of Aden and the Indian Ocean despite existing international efforts to counter piracy.

A February, 2010 newspaper article² entitled 'Pirates free Panama ship after ransom' reported that 'The number of piracy attacks worldwide leapt almost 40% last year, with gunmen from the failed Horn of Africa state accounting for more than half the 406 reported incidents, according to the International Maritime Bureau'.

A newspaper article of May, 2010³ entitled 'Courts set for major boost in war on piracy' made the following disturbing report: 'While a few years ago Somali pirates attacked fishing trawlers, today, armed with automatic weapons and rocket-propelled grenades, they take on oil tankers, cruise liners, and cargo ships. On average, they make \$1 million (Shs. 78 million) per heist. Gangs of Pirates are sometimes linked to other forms of organised crime since they maintain sophisticated intelligence collection networks. They are also engaged in the systematic corruption of local officials'.

Newspaper articles have also chronicled incidents of suspected Somali pirates, including some reported to have been arrested within and even beyond Kenya's and Somalia's exclusive economic zones and territorial waters, have been arraigned before Kenyan courts and remanded in custody; that some have been tried, convicted and imprisoned in Kenyan jails while others still await trial. More specifically, the newspaper article alluded to at Footnote 3 records that as at the date of that article, 10 Somali pirates had been convicted in Kenya while 117 others were in remand awaiting trial.

¹ Saturday Nation of January 30, 2010 page 8

² The Standard of Thursday February 11, 2010 page 33

³ Daily Nation of Tuesday May11, 2010 page 2

A newspaper article of April, 2010⁴ entitled 'Killing of pirates unlikely to reduce attacks on ships' reported an analyst as saying that the killing of a pirate during a shoot-out with private guards travelling on a cargo ship that week was unlikely to deter armed gangs operating in Somalia's coastal waters. The article added, disturbingly: 'There is little to suggest that an increased threat of death will stop young Somalis taking to the seas in search of multi-million dollar ransoms'.

It has been suggested that the aforesaid upsurge of piracy *per se* adversely affects Kenya in a variety of ways; that the trial before Kenyan courts of the suspected pirates and the imprisonment in Kenyan jails of those convicted also add to the adverse effects of piracy on Kenya; and that Kenya should have good cause to be gravely concerned about the menace caused by activities of pirates within and around the Eastern Africa region and its environs.

On 10th January, 2011, the *Mv Msafiri WaBahari*, a cargo ship, flying a Liberian flag, under the captainship of Koja Wa Jadi with a crew of 10, set sail from Yemen towards Mombasa in Kenya. The ship offloaded cargo at Mombasa, loaded new cargo and set off to Dubai. While at sea, about 275-280 miles off the coast of Somalia, in international waters, the ship was attacked by pirates, who approached the ship, in high speed boats as they fired in the air Rocket Propelled Grenades and shoulder launched surface to surface missiles. 6 of the 8 pirates boarded the ship using ladders. They were armed with guns, rocket propelled grenades, bazookas, rifles and revolvers. They accosted the crew on the ship, hit them with butts of their respective guns. They separated the members of the crew and locked them up in separate rooms in the deck of the ship. They took control of the ship and demanded ransom of USD 1,000,000 and a satellite phone. Two of the crew members were Kenyan.

On 26th January, 2011 American Navy officers aboard *USS NIMITZ*, a nuclear powered aircraft carrier patrolling the Gulf of Eden, intercepted the ship and arrested all the assailants. By this time, the pirates had attacked 3 other ships. One of the ships made a distress call that alerted the Americans who came to their rescue. The American navy officers searched the ship and recovered assorted weapons, pistols, rifles, ammunition grenades and rocket propelled grenades. The suspects namely; Matumbai, Kamau, Kiptoo, Onyango, Mutiga and Mwendani (all Somali nationals) from the Hagesi Region were flown to Mombasa for further investigations and

⁴ The Standard of April 1, 2010 page 33

remanded at Majengo Police Station awaiting arraignment in the Chief Magistrates' Court. The suspects have engaged Buda and company Advocates to represent them. They have been in police custody for the last 42 days and have not been presented to court for trial.

- a) Prepare the defence and prosecution files in readiness for trial.

Q4

Belief systems take up different forms. One such form is the belief in a phenomenon called 'Witchcraft'. Various definitions of the phenomenon have been attempted. Some people have consigned it to the primitive state of the human race while others reckon that the phenomenon is alive even today.

Writing in 1946, Montague Summers cited an article carried in the Manchester Guardian described the phenomenon called 'Witchcraft' in the following terms:

'Witchcraft- the religion of wickedness, malice and mischief- as old as the world, and as wide as the world, is as keenly alive today as ever it was in bygone centuries when the wisest and best in Europe legislated and fought against the evil thing. The Cult of Satan, still enthusiastically recruiting in every land, has enormously increased even within the last five-and-twenty years.'⁵

As late as April, 2010 the Daily Nation newspaper carried an article entitled "Witchcraft holds out against modern age". Among other things, the article stated:

'...witchcraft is defined as the wicked use of supernatural powers.'⁶

The media are replete with reports of killings of people suspected of practising 'witchcraft'. For instance, in the same newspaper alluded to above, and on the same page, appears an article entitled: "Gangs have killed 21 over 'black magic'". The article reports that the 21 elderly people who included an assistant chief were killed in Malindi and Magarini Districts on witchcraft claims in 2009 while 50 others received death threats; that many people fled their homes to live in towns or other districts following the threats; that letters threatening the 50 were dropped at their doorsteps one night; and that one such note, handwritten, read: 'We shall come for your

⁵ Summers, M, '**Witchcraft and Black Magic**' (Arrow Books) at opening page

⁶ Daily Nation of Monday April 19, 2010 at page 6

head in three days because you are a witch. Even if you run away, we will get you wherever you are.’

Two months earlier it was reported by the Saturday Nation in an article entitled ‘Alarm as seven are lynched by a gang of youths targeting elderly people over alleged witchcraft’ that elders in Magarini and Malindi had accused the Government of doing nothing as they were killed on claims of witchcraft.⁷ The same article quoted Malindi County Council Chairlady, Elina Mbaru as reporting that elderly people in her Magarini West Ward had turned to using chemicals to hide their age. The article also quoted the outgoing District Commissioner, Anne Ng’etich as appealing to local leaders to find a solution to the murders, saying:

‘Belief in witchcraft is deep-rooted in the local community. It has seriously affected development and caused the deaths of many innocent people. A solution should be found.’

Similar reports of people living in fear for their lives because they have been associated by others with ‘Witchcraft’ have frequently appeared in the media from different parts of Kenya. One noteworthy report was carried by the Saturday Nation in May, 2009⁸. In that case a man who had pleaded guilty before a Kisii court on April 29, 2009 to being found with paraphernalia associated with witchcraft and was sentenced to a one-year jail term or an option of Kshs. 1,000/= fine opted to go to prison instead of paying the fine as he feared for his life (if he went back to his community in Kiogoro Sub-Location)!

Geoffrey Parinder records that Evans-Pritchard defined witchcraft as:

‘an imaginary offence because it is impossible. A witch cannot do what he is supposed to do and has in fact no real existence.’⁹

The courts in Kenya have sometimes treated the killing of those suspected of practising ‘Witchcraft’ as murder and condemned the killers to death while at other times they (courts) have accepted from the killers the defence of legal provocation, such as to reduce the killing from murder to manslaughter.

⁷ Saturday Nation of February 7, 2009 at page 1

⁸ Saturday Nation of May 9, 2009 at page 6

⁹ Parinder, G, in **‘Witchcraft: European and African’** (Faber and Faber Ltd, London, First Published 1958) at page 13

On 25th of January 2011 at Nyamasiora village in Nyomicha District in Nyunja province of the Republic of Kenya Mama Nyakwenga a 96 year old was 'arrested' by a group of villagers for allegedly practicing witchcraft. Several paraphernalia were recovered from her house, among them a gourd, a dried lizard, parts of human body believed to be from an albino and several ostrich feathers. Mama Nyakwenga's granddaughter, Ms Tamu Tamu a 17 year old, was 'arrested' along her grandmother on allegations that she has been her grandmother's 'intern/pupil' in plying the 'trade' of witchcraft. Also arrested was Mr Nyakiuri Mukwere, who was said to have been Mama Nyakwenga's courier.

A 'traditional court' christened the '*Sanhedrin*' was constituted under a fig tree in which the three were 'tried' for various offences. The 'judge' was Mr Onsori, the 'court clerk' was Mr Nyangendo, the 'Prosecutor' was Mr Kalunda. 'Security' was provided by Ms Ukweli, Mr Undugu, Ms Kayumba and Mr Malaa. Mama Nyakwenga was 'sentenced' to death by stoning, Ms Tamu Tamu was ordered to submit to the presiding 'judge's' probationary supervision which would include acting as one of his many wives for what was described as 'full rehabilitation' while Mr Mukwere was sentenced to 20 lashes. In the spirit of swift justice, Ms Tamu Tamu was spirited to the home of Mr Onsori to commence the 'rehabilitation'. She was warned that any attempt to escape from the 'rehabilitation' would result in the enhancement of the 'sentence' by 10 more lashes with a possibility of stoning to death. As for Mama Nyakwenga, she was allowed seven days within which she was supposed to undo all her alleged acts of witchcraft after which she would be executed. Mr Mukwere on the other hand was taken straight to Onguno Park within Nyomicha Town where he received the twenty lashes on his bare buttocks administered by Mr Steve Nujoma. Mr Mukwere passed out. Mr Mukwere was thereafter rushed to Nyomicha District hospital. The Doctor on duty, Dr Akuru Akalong, in the process of establishing Mr Mukwere's medical history got alarmed when he learnt of what had happened to his patient. He quickly informed the local Police chief of what he had gathered from the patient. The Local police Chief, Commander Shujaa immediately set out to save Ms Tamu Tamu and Mama Nyakwenga. On arriving at Mr Onsori's house, Commander Shujaa was told that Mr Onsori had taken Ms Tamu Tamu to Kisumu City for shopping. Commander Shujaa managed to rescue Mama Nyakwenga from the villagers. Mr Onsori and Ms Tamu Tamu returned after one week whereafter Ms Tamu Tamu was rescued by Commander Shujaa and reunited with her grandmother. After about two weeks, Ms Tamu Tamu discovered that she was expecting Mr Onsori's child.

- a) Prepare the defence and prosecution files in readiness for trial.

Q5.

Tony Ludavoch, a Ukrainian national and university lecturer with immense business ideas elected to visit Kenya on 1st June 2010 as part of his destination during his six months vacation. Tony was accompanied during the visit by a Russian colleague, Shuva. Both were hosted by Tony's long time Kenyan acquaintance Zippy, who apparently is a business lady with interests in the hospitality industry. Tony and Shuva are so impressed by Kenya and its abundant economic opportunities to the extent that they have expressed their wish to invest in the country. They proceed to conduct a market research and survey. Their research and survey revealed that there were no efficient automatic car wash plants in Nairobi. They immediately

picked up the idea of setting up a state of the art car wash plant at the up market Lavington suburb of Nairobi.

Tony, Shuva and Zippy accordingly approached Musungu & Co. Advocates situate at View Park Towers and instruct them to incorporate a company whose main objective would be to run the automatic car wash plant, import cars and own a bar and restaurant. Musungu & Co. Advocates, pursuant to the instructions aforesaid, incorporated 'Park Yard Auto Limited', and Tony, Shuva and Zippy listed as directors. It turned out that the eventual setting up and operationalization of Park Yard Auto Limited caused jitters to the rival 'Abantu Limited' who are situate along Ngong Road in Nairobi.

The Abantu Limited directors decide to investigate through their CEO, Ms. Muamba Ngozi on the conduct of the directors of Park Yard and they discover that Tony and his other company director, Shuva, have temporary visitors' visas and they lodge a complaint with the Immigration Office.

Consequently, Tony and Shuva received threatening telephone calls and unannounced visits by two immigration inspectors namely Ms Nyama Choma and Mr Tusker Baridi who arrest them.

- a) Prepare prosecution and defence files in readiness for trial.

Q6.

Mr. Hodari Tajiri is a prominent businessman and proprietor of Jitegemee Holdings Limited. The last 12 months he had been ailing, he had visited doctors and was admitted in hospital. As a result, his family was concerned and his business affected by his absence. Hodari Tajiri was desperate, he spent a lot of money as medical expenses, yet he was not able to work due to ill health.

2 months ago, 2 men visited Hodari, in his office. They introduced themselves to him as Mjanja and Maliza. They told him, they were from his home area and learnt from relatives of his problem. As traditional medicine-men, they could cure him and make his business flourish. Mjanja said they had to go to Tanzania to collect special herbs to treat him and needed Ksh.100,000/- Hodari gave the money. They told him that to divulge the information to anyone would affect their success. The matter was to remain a secret.

After 1 week, Mjanja and Maliza, called Hodari and asked for a meeting at Karibu hotel. They met, gave him some concoction with instruction to drink it every evening for his health to improve. However, they said they had talked to the gods at sea (Indian Ocean) and they were annoyed with him, as a consequence of which he was ailing. He was instructed that he needed

to make a sacrifice and cleanse himself for the medicine to work. Hodari Tajiri was desperate and quickly agreed to the cleansing. They asked for Ksh. 200,000/= to travel, obtain the special items required for the cleansing ceremony; a special white cock, a rhino's horn, special multicolored woven cloth, beads, crystal ball and fly whisks. The ceremony was to be conducted in 2 weeks. They would be taken to the sea for them to carry out the ceremony and he would heal and prosper. Hodari gave the money and waited for 2 weeks.

After 2 weeks, Hodari did not hear from Mjanja and Maliza. He tried their mobile numbers they gave him, but did not get them. At this time, the more he took the concoction as prescribed the more his health deteriorated. His family intervened and rushed him to hospital. Doctor Mwepesi enquired about Hodari's previous treatment whereupon the liquid was produced. Upon examination, it was found to be poisonous.

Mwepesi called the Police. The police interrogated Hodari who told them the whole episode.

The police launched investigations and later the 2 men, Mjanja and Maliza were traced and arrested at Karibu hotel.

- a) Prepare the prosecution and defence files in readiness for trial.

7.

Ushindi and Hodari are directors of Yote Yawezekana Holdings, a steel manufacturing company, on Enterprise Road Nairobi. They have just passed a resolution to expand and distribute steel pipes of a new brand called chuma ngumu in East Africa beginning December, 2010.

On 2nd December, 2010, they flagged off the first consignment of assorted steel bars to their customers in the Republic of Uganda. The trailer Isuzu lorry reg. ZA2351 was driven by Shupavu and the turn boy was Juhudi. They drove from Nairobi towards the border at Malaba border crossing point. On reaching Cheptiret, near Eldoret on the Nakuru-Eldoret highway, at

about 5.30p.m, Shupavu saw a stationary vehicle, parked partly on the road. Two men waved them to stop. Juhudi told Shupavu to drive on, but Shupavu thought the 2 men were in danger and needed help. He stopped.

Immediately, the 2 men came one on each side of the vehicle and shoved them out of the vehicle and demanded for keys to open the consignment. 3 other men appeared on the scene. Shupavu adamantly refused to release the keys. The 5 men pounced on him and beat him, one of them pointed a gun at him. Juhudi shouted to Shupavu to give out the keys, which he did.

Juhudi and Shupavu hands and legs were tied together and thrown into the boot of the stationary vehicle. The steel bars were offloaded from the lorry. After a while all was quiet. They banged the boot and shouted for help. After about 20 minutes, a good Samaritan came to their aid. Jirani Mkweli, broke the car boot lock, opened it up and untied Shupavu and Juhudi and helped them out of the boot. He took them to hospital, where they were treated and discharged. They reported the matter to Eldoret Police station. They called Hodari and Ushindi and informed them about the incident.

The investigations log revealed the following:-

- The trailer Isuzu lorry reg. ZA2351 was towed to the Eldoret Police Station. Scenes of Crime police unit took photos of the said trailer.
- Hodari and Ushindi brought the consignment note for the 20,000 steel bars valued at Ksh. 2,000,000/= of chuma ngumu brand, a new brand in the market that was destined for Uganda.
- On 4th December, 2010, Police officers recovered 5,000 new steel bars of chuma ngumu brand at Haraka Enterprises being offered for sale. Mjanja, the proprietor of the business led the police to the person who sold him the steel bars.
- Mjanja led Police to Hatari, a wheeler-dealer around town. Upon interrogation by Police, he led them to a godown at Mbotela estate.
- At the godown, were 2 men, Mkali and Mukora.

- The police conducted a search and retrieved assorted new steelbars of chuma ngumu brand about 10,000 pieces
 - a) Prepare prosecution and defence files in readiness for trial.

Q8.

Mr. Baraka is the proprietor of Maendeleo Travel Agency in Eastleigh ,Nairobi. He made huge profits recently from several bookings for the Muslim Hajj pilgrimage to Mecca. From the profits he wanted to take a holiday and invest in real property. As he discussed investment prospects with his colleagues, 2 men came in and claimed they had diamonds for sale from the Democratic Republic of Congo. This caught Mr. Baraka's attention and he walked towards the men, Khan and Asif. He asked to see the diamonds. Asif said they could only be seen on agreement to purchase and part payment.

Asif and Khan went with Baraka to Highridge, Diamond Plaza Nairobi and introduced him to Abdallah. After exchanging pleasantries, Abdallah left and came back and from his mouth removed a shiny crystal that he claimed was a sample of the diamond for sale. Baraka asked for proof that it was real diamond. Abdallah called an undisclosed person on his mobile phone. After the call, he said someone was on the way there to demonstrate that the stone in his custody was a real diamond. As they waited, they went to a nearby café for refreshments, which Baraka paid for.

Rukiya, a beautiful lady in her early thirties appeared, greeted them and then walked to Abdallah for a brief conversation. She then sat down, produced a teaspoon and poured some liquid on it, then took the crystal Abdallah had shown Baraka earlier, put it on the teaspoon, and lit the contents with a cigarette lighter. After a short while, she blew the flame off and then asked Baraka to see for himself; the diamond crystal did no change.

Baraka was convinced it was a real diamond and they negotiated the price at Ksh.500,000/= for 500g and Ksh.1,000,000/= for 1000g. Baraka considered this a good price since he would make a huge profit once he sold it to jewelers.

Baraka asked them why they did not sell the diamonds directly to the jewellers to which they claimed that they came from Congo, and as illegal immigrants they were under police surveillance. Secondly, they claimed that authorities in Kenya and Congo were in hot pursuit of gems stolen from Congo and it would have been risky for them to deal directly with jewellery. They wanted to go back home but needed money. The jewelers would want details which they were not ready to provide for fear of arrest.

Baraka believed them and they agreed that Asif, Khan and Abdallah accompany Baraka to the bank and then Rukiya was to bring the 1000gms of diamond to the bank.

They took a taxi and went to Baraka's bank at the city centre. He walked to the manager's office, and after 30 minutes came out and went to the counter. Shortly thereafter he came out with money. They all walked out and entered a nearby hotel, to wait for Rukiya. Abdallah was impatient and kept calling frantically on his phone. Rukiya emerged after a while with a sealed box and told Baraka that in the box contained 1000 grams of diamonds. Baraka paid Ksh.1,000,000 in cash to Abdallah as Asif and Khan looked on. Abdallah left first but as Asif and Khan rose to leave Baraka decided to open the box. Asif and Khan ran off but Baraka held onto Rukiya. On checking the box, there were only pieces of broken glass inside. He called the police who came and arrested Rukiya to help with investigations. The others were arrested and half the money recovered from Asif's house and pockets.

a) Prepare the prosecution and defence files in readiness for trial.

Q9. On 25th of February 2008 at about 4.30pm, Tom Masumbuko, known to his friends and described by the media as a 'business magnate', was driving his new Sedan along Uhuru

Highway in Nairobi Province (near Nyayo Stadium) when he was flagged down by two men in civilian clothes. Unknown to Mr. Masumbuko, the two men were actually under cover police officers (Corporal Janja and Sergeant Wandia) from the Flying Squad division based at Pangani Police station. For fear of his personal security, Mr. Masumbuko drove on to town for a business meeting with Ms Sophakazi and Ms Stilleta at Mamboleo Bar and Restaurant along Tom Mboya Street. Ms Sophakazi is a Zimbabwean while Ms Stilleta is Australian. Meanwhile the two police officers immediately radioed control room and circulated Mr. Masumbuko's car's registration number KKK 000. The police officers decided to follow Mr Masumbuko to Mamboleo Bar and restaurant where they sat a table away from Mr. Masumbuko, Ms Sophakazi and Ms Stilleta. Corporal Janja overheard the business discussion between the three in which Sophakazi was explaining an elaborate plan in hushed tones. She was overheard saying that the 'consignment' was ready for transportation from Uganda. Sophakazi would facilitate its movement from Gulu in northern Uganda up to Lwakhakha border crossing point on 28th February 2008 (on the Ugandan side of the border). Mr. Masumbuko was to take over as soon as the consignment crossed to Kenya facilitate its movement within the country and ensure that the 'consignment' was flown out to Australia by 15th March 2008 through Jomo Kenyatta International Airport. Mr. Masumbuko was given a sum of Kenya Shillings Five Hundred Thousand only to 'facilitate' movement of the 'consignment'. As soon as the 'consignment' lands in Australia, Ms Stilleta was to take over and ensure that the 'consignment' reached their 'Principal', Mr Stonewall, at his godown in the up market Sydney district of Appleton. Ms Stilleta was given US \$10,000 to 'facilitate' movement of the consignment in Sydney.

At the end of their conversation Masumbuko, Sophakazi and Stilleta dispersed. Corporal Janja and Sergeant Wandia decided not to arrest Masumbuko for ignoring their signal to him to stop. Instead, they were curious and wanted to know what the consignment was. On 26th February 2008, Corporal Janja and Sergeant Wandia briefed their immediate boss, Senior Superintendent Fanya Kazi who directed them to travel to Lwakhakha border crossing point by the 28th February 2008 which they did. On arrival at Lwakhakha border crossing point, they saw Mr Masumbuko drive his red Sedan behind a truck (driven by Mr. Noma and Mr. Mkono) which had just been cleared by Ms Babes a Kenya customs officer. The two officers introduced

themselves to the customs officer on duty and on request, were allowed access to the import declaration documents among other documents. The consignment was described as thirty six crates of robusta coffee. The consignee was described as Mr. Mr Stonewall of 4th Freedom Avenue Weppleton Sydney. The consignor was described as Ms Sina Kazi of Post office Box Number 123 Gulu. The officers trailed the truck from a safe distance all the way from Lwakhakha passing numerous police road blocks until they reached Nakuru when the consignment was detained at Salgaa police road block by the local traffic commandant, Sergeant Twiga, on suspicion that the consignment was not coffee but sandal wood (a protected tree species). Sergeant Twiga demanded that the consignment be opened for verification of its contents. Mr Masumbuko intervened, pulled aside Sergeant Twiga handed him some brown envelope after which the truck was released to proceed with its journey without verification of the contents.

On reaching Naivasha, Corporal Janja and Sergeant Wandia called Senior Superintendent Fanya Kazi but were informed that he had been ordered by Commander Ninja to proceed on compulsory leave for 'misconduct'. They called Commander Ninja briefed him on their mission and what had transpired that far. They proposed to have the truck detained in Nairobi, have its contents verified before it can proceed further. To the officers' amazement and shock, Commander Ninja ordered them to leave that matter alone and immediately report to him for disciplinary action for drawing imprest for the journey to Lwakhakha without his written consent. They obeyed the order and drove to their headquarters whereat they were each handed a four week suspension letter for drawing imprest without the Commander's written authority. In the meantime Commander Ninja was seen at the Jomo Kenyatta International Airport on 14th March 2008 in the company of Mr. Tom Masumbuko processing clearance documents for the consignment. The consignment was verified by Mr. Jakwaya of Customs at the airport who had initially refused to clear the consignment on suspicion that it was not coffee. However after being persuaded by Mr Masumbuko to accept a cheques for Kenya Shillings One Hundred Thousand and a return ticket for two to Mauritius on a fully paid holiday, he cleared the consignment for export without verifying its contents.

After loading the consignment on the plane, it was realized by the Captain that the general cargo weight of the plane had been exceeded. Consequently, the Captain and the General Manager in charge of cargo at the airport ordered the off loading of part of the planes cargo. Twenty of the Thirty six crates were off loaded from the aircraft. The other Sixteen crates were flown out. The twenty crates were kept at Tumulu warehouse within the Jomo Kenyatta International airport under the custody of Mr Mutito Goigoi.

The consignment of sixteen crates was flown to Sydney through Dubai and landed on 23rd March 2008. On inspection at the port of entry, it appeared that Twelve of the crates had cocaine while four crates had Robusta coffee. Captain Copvin, the police officer in charge of Sydney International Airport, decided to do what is called in police jargon as controlled delivery where the drugs were removed from the crates and replaced with saw dust then the consignee invited to collect the consignment. On 25th March 2008 Ms Stilleta turned up in the company of Mr. Stonewall. They collected the sixteen crates and were trailed by Captain Copvin and Sergeant Montgomery. Instead of going to 4th Freedom Avenue Weppleton Ms Stilleta and Mr Stonewall went to Appleton warehouse. Captain Copvin called for reinforcements broke into the warehouse and arrested Ms Stilleta, Mr Stonewall and three other persons. Investigations revealed that the drug haul originated from Gulu in Northern Uganda. The five persons in custody were arraigned before a Sydney court pleaded guilty to the charge of conveying banned substances contrary to the Australian Banned Substances Act 1956 and sentenced to thirty years each, in prison. After the conviction and sentence, the drugs were incinerated as required by the Australian law and a certificate of destruction, written in French, signed by the trial magistrate, the Honourable Beaulle.

On 25th March 2008, while Mr Aruba Cheche was loading the twenty crates on to a truck at the Jomo Kenyatta International Airport to ferry them to the plane for onward transmission to Sydney he realized that the contents of one of the crates were leaking. He was surprised to note that the substance did not look like coffee. He became curious and informed his boss Mr Mutito Goigoi. Mr Goigoi was astonished at what he saw as he instantly recognized the cocaine. He called the officer in charge of the Airport Police Station Chief Inspector Kiburi who together

with corporal Obadiah and corporal Mlaji confirmed that indeed the substance was not coffee. They immediately liaised with the duty customs officer Mr Wamafua who signed a notice of seizure in respect of the 20 crates. A sample of the substance was collected by Chief Inspector Kiburi and sent to the Government chemist for analysis.

In the meantime Interpol has launched what is billed in the security circles as a massive manhunt which has netted the following people in Kenya, Mr. Tom Masumbuko, Ms Sophakazi, Commander Ninja, Mr Jakwaya, Mr Noma, Mr. Mkono and Seargent Twiga.

Prepare the prosecution and defence files in readiness for trial.