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When not in use

Ref: NAG/MIB/3/05

11<sup>th</sup> August 2008

Mr. J.W. Wambugu  
Wambugu, Motende & Co.,  
Advocates  
NAIROBI



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Dear Sir

**RE: UNIVERSAL SATSPACE (NORTH AMERICA) VS. MINISTRY OF INFORMATION & COMMUNICATIONS AND POSTAL CORPORATION OF KENYA**

We acknowledge receipt of your letter reference number I/WM/4/06 dated 11<sup>th</sup> August 2008 the contents whereof are noted.

We confirm that the defence was received through internet on 5<sup>th</sup> August 2008 from Messrs. Edwin Coe LLP. Due to lack of enough time for our office to convene a meeting with all the other departments involved in the matter to discuss the defence, the same was sent to the Permanent Secretary Ministry of Information and Communications for his signature. The Permanent Secretary duly signed the same on 6<sup>th</sup> which we faxed to Samantha Phillips of Messrs Edwin Coe LLP and sent another copy through courier. Our actions were intended to comply with the consent order to avoid an application by the Claimants based on default.

Subsequently, on 7<sup>th</sup> and 8<sup>th</sup> August 2008 we reviewed the defence and proposed several amendments therein. We telephoned Samantha Phillips in the morning of 8<sup>th</sup> August 2008 (between 9 a.m. - 10 a.m. Kenyan time) and informed her that several paragraphs in the defence required amendments and or deletion to conform with the available evidence and the requirements of Kenyan Law. She confirmed that the defence had been received but had not yet been filed in Court but it had been served on the opponents. We faxed a copy of the list of our proposed amendments and e-mailed the same. Unfortunately Samantha Phillips later called and informed us that she could not effect the amendments without the approval of 'John' presumably yourself because the defence had been drafted by Counsel. She further informed the undersigned that there was an outstanding fee note due to Messrs Edwin Coe LLP for £48,000. I expressed surprise because our office has not received any fee note from Messrs Edwin Coe LLP. She claimed to have sent the same to John. I informed her to forward all fee notes to the Attorney General who is the Principal Legal Advisor to the government for necessary action. We have not received the fee note and we cannot approve payment without evaluating the services rendered.

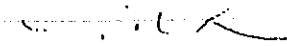
Samantha Phillips sent a further e-mail at about 2.30 p.m. Kenyan time to the undersigned reiterating that the amendments could not be effected in the defence. If the defence was drafted with your input we do not understand on what basis the paragraphs alleging bribery and corruption were included when under our law the standard of proof of such allegation is beyond reasonable doubt. The persons alleged to

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have committed the same have never been charged in court and/or convicted with the offences. As a Kenyan lawyer, your input if any in the defence should have guided the English Counsel on these aspects. Messrs Edwin Coe LLP already have a copy of the paragraphs proposed for amendments and deletion (a copy is attached hereto).

It appears that Messrs Edwin Coe LLP are under a mistaken view that the instructions in this matter are given by your firm and not the government. We do not understand why the law firm which is appointed to represent the Government of the Republic of Kenya has to communicate with the government through a third party. The proper communication channel is for the firm to communicate directly with our office. There are outstanding issues as to terms and conditions of the services rendered by the law firm and yourself which must be resolved to ensure that the public interest is protected and the government gets the best legal representation in the case.

Yours faithfully

  
Muthoni Kimani, MBS  
Senior Deputy Solicitor General  
For: ATTORNEY GENERAL

Hon. Amos Wako, EGH, FCI Arb, SC, MP  
Attorney General  
NAIROBI

Hon. John Michuki, EGH, MP  
Ag. Minister of Finance  
The Treasury  
NAIROBI

(Your Ref: EFN/87/042/A (6))

Hon. Martha Karua, EGH, MP  
Minister for Justice, National Cohesion and  
Constitutional Affairs  
NAIROBI

Hon. Samuel Poghiso, MP  
Minister for Information and Communications  
NAIROBI

(Your Ref: MIC/A 17/25 Vol.F (27))

Dr. Bitange Ndemo, PhD, CBS  
Permanent Secretary  
Ministry of Information and Communications  
NAIROBI

(Your Ref: MIC/A .17/25)

Mr. Wanjuki Muchemi, CBS  
Solicitor General  
NAIROBI

To: Samantha Phillips

Further to our conversation we have reviewed the Defence and we are of the view that the same should be amended. These amendments are in respect of allegations where we do not have evidence of the same.

- Delete Paragraph 6, 7, on page 2.
- On page 2 – particulars of summary delete the last sentence beginning “In fact it had .....
- Page 6 amend paragraph 7.16 as follows: -  
Chapter 9 of the Government Financial Regulations and Procedures required the Minister of Finance to obtain Cabinet approval before agreement was signed.
- Page 6 delete paragraph 7.17
- Page 9 delete paragraph 9
- Page 10 amend paragraph 10 as follows: -  
The Satspace Agreement was brought about by the misrepresentation of the claimant  
Page 10 amend paragraph 10.1 as follows: -  
Paragraph 10.2 – clarify the template referred to  
Amend paragraph 10.3 as follows: -  
My 11 March 2002 Satspace had not even been formed. The claim Satspace and Spacenet were “joint venture partners” was therefore incorrect. The two .....
- Page 11 delete paragraph 10.8., clarify paragraph 10.10, delete paragraph 10.12  
Amend paragraph 10.13 as follows:  
By a letter dated 22 March 2002 Mr. Chahonyo asked Mr. Kyungu to seek authority from the Minister of Finance to contract with Satspace and Spacenet without inviting other tenders. He failed to inform the PCK Board about this request.
- Page 12 paragraph 10.15. delete ‘and spacenet and to the .....
- Delete paragraph 10.16 as follows:  
Once again he concealed the fact that the Defendant had itself already contracted with Satspace and Spacenet, and that its principal concern now was to recoup its costs from PCK.  
Amend paragraph 10.18 as follows: -  
Delete ‘and the Ministry of Finance’
- Page 13 delete paragraph 10.21.
- Page 15 delete whole of page 11.7 to 11.8
- Page 17 amend paragraph 11.14 as follows:  
Add Central before Bank, delete and/or Mr. Mudavadi
- Page 19 delete paragraph 18.
- Page 20 delete paragraphs 22 and 23



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Hon. Martha Karua, E.G.H., M.P.  
Minister

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Ministry of Justice, National Cohesion and Constitutional Affairs

Telephone: 342787  
Fax: 316321  
E-mail: minister-justice@skyweb.co.ke  
When replying please quote

P.O. Box 56057 - 00200  
NAIROBI, KENYA

Ref. No. **MJ/MIN/08**  
and date

19<sup>th</sup> August 2008, 20 .....

Hon. Amos Wako, EGH  
Attorney-General  
Attorney-Generals Office  
**NAIROBI**

Dear

**RE: UNIVERSAL SATSPACE (NORTH AMERICA) VS.  
MINISTRY OF INFORMATION & COMMUNICATION AND  
POSTAL CORPORATION OF KENYA**

I refer to the above matter.

I have noted with concern the Deputy Solicitor-General's (SDSG) letter to Mr. J.W. Wambugu Advocate (copied to me among others) dated 11<sup>th</sup> August, 2008. My concern is caused by the following issues:

1. In paragraph 2 the SDSG states that she authorized the filing of a defective defence because there was no time to consult the relevant departments. I find this strange given the fact that the matter is a long standing one where the Attorney-Generals office has been seized of instructions and the facts throughout. The matter has also, like all the Anglo-leasing type matters, been the subject of many inquiries and various reports have been made on the issues which are the subject of the defence. These reports were all accessible to the SDSG. They include the report by Auditor and Controller-General,

the Kenya Anti-Corruption reports, the Parliamentary Committee report and the Pricewaterhousecoopers report.

2. In paragraph 4 of the letter the SDSG states that the allegations of bribery or corruption in a civil matter require proof beyond reasonable doubt. I am not aware of any requirement for proof beyond reasonable doubt in civil matters. My understanding is that the defense seeks to vitiate the contract on the grounds that were entered into the cause of a criminal transaction.

3. In the same paragraph there is an assertion that our law differs from English law on the standard of proof in civil (and presumably criminal matters) and hence Mr Wambugu who understands Kenyan law should have advised the English counsel who does not understand such standards.

4. In the various committee we have sat in, I have consistently raised the issue that our pleadings should cite fraud and illegality.

5. All along my understanding was that the Government's defence is founded on the fact that the contract was fraudulent and induced by corruption and bribery. If indeed we have no basis for these claims why are we contesting the claims thereby compounding the government's liability?

There is need to address the above issues as soon as possible and hence this letter drawing your attention to the same.

Yours

Hon. Martha Karua, EGH, MP  
**Minister**

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CC: Hon. John Michuki, EGH, MP  
Ag. Ministry of Finance  
Treasury Building  
NAIROBI

Dr. Bitange Ndemo, PhD, CBS  
Permanent Secretary  
Ministry of Information and Communications  
NAIROBI

Mr. Wanjuki Muchemi, CBS  
Solicitor General  
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