

## Samuel Gichuru and Chris Okemu (Jersey)

**Case ID:**

ARW-162

**Jurisdiction of Origin of Public Official or Entity Allegedly Involved:**

Kenya

**Position of Public Official(s) (yrs in office):**

Gichuru: Chief executive of Kenya's power utility, the Kenya Power & Lighting Company (1984 - 2003); Okemu: Former Energy Minister

**Jurisdiction of Asset Recovery:**

Jersey

**Jurisdiction of Asset Recovery ? Description:**

(1) Jurisdiction initiated legal action to recover assets; (2) Jurisdiction of (alleged) asset location

**Asset Recovery Start:**

2002

**Asset Recovery End:**

2018

**UNCAC Offenses Implicated:**

Art.16

Art.23

**Money laundering Implicated:**

Yes

**Legal Basis for Asset Recovery:**

Criminal Prosecution and Criminal Forfeiture

**Intl.Cooperation: MLAT/Letter of Request?:**

MLAT

**Contributing Factors in Asset Recovery:**

"Framework for the Return of Assets from Corruption and Crime in Kenya" (FRACCK) , signed by the governments of Switzerland, Kenya, Jersey, and the UK in 2018. According to Jersey Law Firm Baker & Partners, "a key factor in the Gichuru case was that the current directors of Windward Trading, who were not in position at the time of the alleged wrongdoing, cooperated with the authorities and took the responsible decision to enter guilty pleas on behalf of the company. Where the financial institutions or individuals involved take a different stance, that can change the outlook considerably." (Source: <https://www.bakerandpartners.com/blog/back-where-it-belongs/>)

**Status of Asset Recovery :**

Completed

**Stage in Asset Recovery Chain:**

Assets Returned to Victim or Requesting Jurisdiction

**Assets Returned (USD) - Description:**

December 2018 Asset-sharing agreement between Jersey and Kenya over the return of £3 million in confiscated funds

**Agreement for Returned Assets:**

Yes

**Agreement for Returned Assets - Description:**

?Framework for the Return of Assets from Corruption and Crime in Kenya? (FRACCK) signed in 2018

### **Case Summary:**

In July 2018, Switzerland and Kenya signed a ?Framework for the Return of Assets from Corruption and Crime in Kenya? (FRACCK) to facilitate repatriation of stolen assets to Kenya. This is a framework agreement which was also signed by the governments of Jersey and the United Kingdom later in 2018. The agreement creates a mechanism for recovering and returning money stolen through corruption and hidden in one of the three countries: Switzerland, the United Kingdom, and Jersey.

The framework is in line with the principles on asset recovery of Chapter V of UNCAC and it outlines that ?in the spirit of the Global Forum on Asset Recovery?s Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, returns should proceed in a transparent and accountable manner with the mutual consent of both Kenya and the partner offering the return.? It further states that assets recovered under the mechanism will be used to pursue clearly identified development objectives that benefit the people of Kenya in line with the 2030 Agenda for Sustainable Development and Vision 2030. The agreement also has a provision to allow other countries interested in cooperating on asset recovery to join.

In March 2017, the governments of Jersey and Kenya signed an agreement to pave the way for the return of funds related to this case that were confiscated by the Royal Court of Jersey in February 2016. In December 2018, Jersey and Kenya signed an asset-sharing agreement for the return of around US\$5.2 million from the offshore bank account in Jersey of Mr. Gichuru?s Windward Trading Company. (Some media reports state instead that Jersey returned £3 million to Kenya, closer to US\$4 million.)

Prior to that, Jersey and Kenya had also signed a separate Memorandum of Understanding (MOU) on Financial Cooperation, which sets out initiatives across areas of mutual interest such as asset sharing, collaborating in tackling financial crime, increasing cross-border trade and investment, and enhancing future partnerships in providing high-quality, well-regulated capital to Kenya in the form of foreign direct investment.

In February 2016, the Jersey Royal Court ordered the confiscation of amounts totaling around US\$5.2 million (at February 2016 exchange rates) from the accounts of Windward Trading Limited. The court found that ?the defendant company has benefitted from criminal conduct in the sums of £3,911,227 and US\$4,288,538 respectively; and that the sums recoverable from the defendant company are £3,281,897.40 and US\$540,330.69 respectively.?

The Court?s confiscation order further stated: "The defendant company has pleaded guilty to four counts of money laundering offences involving a total of £2,599,050 and US\$2,971,743 respectively acquired or possessed by the defendant company between 29th July, 1999, and 19th October, 2001. The defendant company received and held the proceeds of criminal conduct perpetrated by its controlling mind and beneficial owner, Samuel Gichuru. The company knowingly enabled Gichuru to obtain substantial bribes paid to him while he held public office in Kenya. The company played a vital role without which corruption on a grand scale is impossible: money laundering. Gichuru was the chief executive of Kenya?s power utility, the Kenya Power & Lighting Company (?KPLC?) from November 1984 until February 2003. He accepted bribes from foreign businesses that contracted with that company during his term of office and hid them in Jersey." The order also stated that the confiscated assets "will be transferred to the Criminal Offences Confiscation Fund with a view to their repatriation

to Kenya, the victim of the offending." (Source: Attorney General v. Windward Trading Limited, [2016] JRC 48A, February 24, 2016.)

According to the April 25, 2008 Jersey Royal Court decision in an action between Samuel Gichuru and Walbrook Trustees (Jersey) Limited, et al (respondents) and Chief Officer of the States of Jersey Police (Party convened), Mr. Gichuru was the chief executive officer of the Kenya Lighting and Power Company, a majority state-owned entity. He stated that in Kenya public servants were not barred from running their own businesses until 2003 and he had wide-ranging commercial and business operations. In 1981, Mr. Gichuru opened a bank account in Jersey. He also stated that the account was opened for the receipt of fees which he earned from business introductions and as a consultant. In about 1986, he was advised by the Jersey office of Deloitte & Touche (forerunner to the respondents, "Walbrook") that his needs would be better served by having a company. Accordingly in August 1986 Windward Trading Limited was incorporated in Jersey. Walbrook is the administrator of Windward and provides its directors and secretary. Windward had bank accounts with HSBC Bank Plc and the Royal bank of Scotland International Limited, to which Walbrook provided signatories to the accounts. The Court stated that Mr. Gichuru is the beneficial owner of Windward and the various Walbrook entities hold the shares as nominees for him. In May 2002, Walbrook filed a Suspicious Activity Report with the police and the police did not give consent to Walbrook making any payments and Walbrook refused to make any payments from Windward to Mr. Gichuru since then. On August 21, 2003, a notice under the Investigation of Fraud (Jersey) Law 1990 was issued by the Attorney General demanding documents and information. In October 2003, Mr. Gichuru was informed that the Finnish authorities had sought information from the Jersey authorities about him and Windward. (Source: Between Samuel K. Gichuru and Walbrook, et al, 2008 JRC 068 (Jersey Royal Court, Samedi Division, April 25, 2008). August 17, 2011 post by the Kenyan Anti-Corruption Commission, "Okemo and Gichuru are wanted in the Island of Jersey to face 53 charges over commissions paid by international and local companies for KPLC [Kenya Power and Lighting Company] business, mostly between 1999 and 2002, totaling 4,459,572 Sterling pounds, 786,853 Danish kronor and 3,207,360 US dollars (Kshs 902 million in total)."

Jersey issued an extradition request to Kenya for the extradition of Chris Okemo and Samuel Gichuru to face corruption and money laundering charges in Jersey. Kenya's High Court validated the extradition but in March 2018, the Court of Appeal stopped the extradition request. Windward trading had pled guilty to four counts of money laundering in Jersey's Royal Court in 2016, which prompted the confiscation of assets in the firm's offshore account. Mr Gichuru contested the guilty plea arguing that he had never instructed anyone to represent Windward in the jersey proceedings and that persons unknown to him had represented his company. (Source: BBC Monitoring Africa, 02 March 2018, "Kenyan Accused of corruption beat Jersey extradition order")

**Disposition of Criminal Case(s):**

According to an October 29, 2013 news article posted on the Kenyan Ethics and Anti Corruption Commission, it had commenced an investigation against Okemo and Gichuru. (Source: " EACC Probes Okemo and Gichuru," October 29, 2013.) Windward Trading Limited - the account holder of the assets deemed to be proceeds of bribery payments received by Mr. Gichuru, entered a guilty plea in the Isle of Jersey to four counts of money laundering. The plea had been entered into by Zedra Trust Company Limited, which acquired the trust business of Barclays Wealth in January 2016 and as a result, provided two corporate directors to Windward Trading Limited. (Source: Attorney General v. Windward Trading Limited, [2016] JRC 048A, February 24, 2016.)

**Jurisdiction of Origin: Investigative Agency:**

Kenyan Ethics and Anti-Corruption Commission

**Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):**

Director of Public Prosecutions; Jersey law firm Baker & Partners acted on behalf of the Kenyan Ethics and Anti-Corruption Commission.

**Jurisdiction of Origin: Courts Involved:**

High Court, Kenya

**Jurisdiction of Asset Recovery: Investigative Agency:**

Attorney General's Office, Solicitor General

**Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):**

Attorney General's Office, Solicitor General

**Jurisdiction of Asset Recovery: Courts Involved:**

Royal Court of Jersey (Samedi Division)

**Documents:**

Blog Entry on the Asset Return by Jersey Law Firm Baker & Partners

**Documents:**

<b>Attachment</b>	<b>Size</b>
 Jersey Royal Court Confiscation Order: Attorney General v. Windward Trading Limited, [2016] JRC 48A, February 24, 2016	115.91 KB
 Jersey Royal Court, Saisie Judiciaire, Betw. Barclays Wealth Directors (Jersey) Ltd et.al. and H.M. AG [2015] JRC230,16 Nov 2015	386.49 KB
 EACC Press Release, 29 Oct 2013, EACC Investigation into Okemo and Gichuru	577.75 KB
 KACC Press Release, 10 August 2011, KACC Files to Join Extradition Suit	149.85 KB
 KACC Press Release, 13 August 2011, KACC told to Wait in Gichuru, Okemo Suit	158.11 KB
 KACC Press Release, 22 July 2011, Gichuru failed amnesty request	197.73 KB
 Between Samuel K. Gichuru and Walbrook, et al, 2008 JRC 068 (Jersey Royal Court, Samedi Division, April 25, 2008)	115.91 KB

**Other Sources:**

Media Reports:

The STAR, "Kenya, Jersey sign pact to return Sh516m graft proceeds", 11 December 2018: <https://www.the-star.co.ke/news/2018-12-11-kenya-jersey-sign-pact-to-ret...>

Daily Nation, "Chris Okemo and Samuel Gichuru win extradition case", 07 March 2017:  
<https://www.nation.co.ke/news/Chris-Okemo-and-Samuel-Gichuru-win-extradi...>

Daily Nation, "Gichuru, Okemo Jersey millions to be returned to Kenya", 07 March 2017:  
<https://www.nation.co.ke/news/Okemo-Gichuru-Jersey-millions-to-be-return...>

Chatham House event, "Recovering Africa's Stolen Assets: Lessons from the Windward Trading Case", 10 July 2017. Audio available here:  
<https://www.chathamhouse.org/event/recovering-africas-stolen-assets-less...>