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Daily NATION / Special Report



**Report of the
Judicial Commission
appointed to inquire into
tribal clashes in Kenya**

The Hon. Mr Justice A.M. Akiwumi

PART II: COAST PROVINCE



CHAPTER THREE:

CLASHES IN THE COAST PROVINCE

he areas most affected by the tribal clashes at the Coast Province were the Likoni Division of Mombasa and the adjacent Kwale District. The Divisions of Kwale District include those of Kubo, Kinango, Matuga and Msambweni.

Likoni, however, is for all practical purposes, an extension of Kwale District with a combined population of about half a million people. Out of these, only about fifty percent are employed. About eighty percent of the half million residents are of the Digo and Duruma tribes with the Digo constituting a very large majority.

The remaining residents who are up-country people and predominantly Christians, are the Kamba, Luo, Kikuyu and the Luhya. The Kamba, some of whose forebears had settled at the Coast even before the colonial era, are farmers in the Shimba Hills of Kwale District.

Many have moved to Ukunda to work in the holiday beach hotels. The Kikuyu who are mainly business men are more scattered with some owning land in Ukunda, Kwale Town, Mkongani and Likoni. The Luo are concentrated in the quarries and stonecutting industries; many of them are also employed in the island of Mombasa. Over time, many of these up-country people became long-term migrant settlers at the Likoni-Kwale area though many own land in their places of origin.

Even though Likoni-Kwale is ethnically heterogeneous, it can be described as dichotomous in terms of the regional and religious background of its inhabitants. The inhabitants are split between the predominantly Muslim coastal majority and the predominantly Christian upcountry minority.

Because of their comparative illiteracy, the Muslim coastal majority constitute most of the unemployed in the Coast including the Likoni- Kwale area, whilst the Christian upcountry minority form the more economically developed inhabitants and who in turn, prefer to employ their own ethnic compatriots rather than the coastal people who are regarded as lazy and undisciplined.

The Digo youth were on the whole, unemployed, idle and hungry. This constituted a fertile ground which was waiting to be exploited to wreak vengeance upon the perceived upcountry oppressors.

Disparities also exist in the ownership of land in Likoni-Kwale. Large and profitable beach plots it is claimed, have been allocated to upcountry and other nor, coastal people



at the expense of the coastal inhabitants. But this is not quite true. Indeed, in many cases, it is the very coastal people who upon being allocated land, have in turn sold it to the upcountry people.

And in any case, and demonstrating that land was not the real cause of the tribal clashes at the Coast, the ordinary upcountry people who were the victims of the tribal clashes, were not the allottees of valuable beach plots. The actual beneficiaries of such plots and the buildings and hotels thereon, were not attacked.

In general though, the coastal inhabitants of Likoni-Kwale have an inferior status in the land of their forebears. Most small scale and large scale businesses are in the hands of the non-coastal people. It is reckoned that the coastal people control less than twenty percent of the commercial and business sector and that only a little of the wealth generated by the lucrative tourist industry in the area is ever used to uplift the social and standing and activities of the local population.

All these factors had led to the desire for majimboism, the desire for the Digo and the coastal people in general, to have greater control in their region, over their own socio-economic and political destiny.

The introduction of multi-party politics in 1991, gave the coastal people a chance to express themselves politically and the result of this, was a serious set back for the ruling Kanu party. Politics had by then become polarized along tribal lines and of all the four coastal parliamentary seats in the Mombasa District, Kanu only managed in the first multi-party general elections held in 1992, to win one seat which was in Mombasa Island.

The other seats were won by the emergent opposition parties which had been established on tribal lines namely, Ford Kenya which was supported mainly by the Luo and the Democratic Party of Kenya (DP) which was supported mainly by the Kikuyu.

This meant that come the next presidential and general elections which were to be held at the end of 1997, Kanu would have to take appropriate steps to ensure that this time around, it did much better in the general elections and secured the twenty five percent Coast Province vote in favour of President Moi.

In the Likoni-Kwale area, the only strategy that in the given circumstances of tribally polarised politics, would yield durable results for Kanu, would be to ensure that the upcountry people namely, the Luo, Kikuyu and Luhya, who were seen as supporters of the opposition parties, did not vote for these parties. And how best to achieve this than to exploit the existing and latent animosity which the coastal people might have, against the upcountry inhabitants which had hitherto, not led to any violence, so that the former can intimidate or drive away the latter from voting for the opposition parties.



After the raid on the Likoni Police station, the members of the Standing Committee of Human Rights went to Mombasa to investigate the raid. In his evidence before us, the Chairman of the Committee, the well-respected academician and jurist, Professor Onesmus Mutungi, told us that during a meeting which was held at the Board Room of the Provincial Commissioner, the veteran and outspoken Mombasa Kanu politician Shariff Nassir, had said concerning the raid, and as set out in the verbatim report of the proceedings of the Judicial Commission of 13th October 1998, that: "This matter was political and it will not end until the elections were over."

Indeed, Wilson Boinett's Report on Flash-points for violence 1997 general elections, Exhibit 30, as already shown, correctly predicted that violence at the Coast would be politically motivated. But, he must have deliberately, wrongly attributed the cause of the violence as appeared in his Report, to the perception by the opposition that President Moi and Kanu will win the next general election and that this belief "... arises from the frustration of the opposition over their own failure lure to forge a united front in their avowed intent to dislodge President Moi and Kanu from power."

This in our view, cannot be an honest assessment of the position at the Coast. The opposition parties were already in possession of three-quarters of the Mombasa parliamentary seats and it would be rather Kanu, which should be fighting to regain these seats which it had lost during the first multi-party general elections in 1992. This intentional mis-representation of the facts could only have been intended to divert attention from what steps Kanu might take in the predicted political violence at the Coast and at the same time, give support to the complacency and connivance of the security forces in the tribal clashes.

It is therefore not at all surprising, that Shukri Baramadi who had taken part in the preparation of Wilson Boinett's Report, Flash-points for Violence 1997 General Elections, Exhibit 30, had in his letter dated 25th June, 1997, to Wilson Boinett, headed Criminal Activities of Possible Security Significance/Alleged Plans by Youths to Perpetrate Political Thuggery/Kwale, and which is contained in Exhibit 89, talked rather about anti-Kanu youths from Kwale and Likoni taking illegal oaths that would bind them "... to cause civil disobedience and other acts of lawlessness during the election period."

About a month later on 28th July, 1997, Shukri Baramadi again wrote to Wilson Boinett a letter headed matters of morale within the Kenya police/O.C.S. Likoni Police station accused of being compromised by a politician/Mombasa, and which is also contained in Exhibit 89, in which, he maintained the stance that anti Kanu youths have threatened to bum the Likoni Police Station. This time, the reason was that Inspector



Peter Kariuki who was then the Officer Commanding Likoni Police Station, had been influenced by Rashid Shakombo, a Kanu and at the time, a Kanu aspirant for the Likoni parliamentary seat, to release his supporters who may be arrested and that:

".....youths who don't support Shakombo allege that they are being unnecessarily harassed by Police who sometimes arrest them on framed charges. This has provoked them and they have threatened to set Likoni Police Station on fire in the near future if the situation remained unchecked."

This report is supported by the following comments, grammatically faulty in parts, of Shukri Baramadi, which appears in the same letter to Wilson Boinett:

"Allegedly, Kariuki is known to be corrupt and has been releasing suspects arrested by his subordinates after being bribed. Similarly, there is no surprise that he has been compromised by Shakombo which has angered the local youths who claim they are arrested on flimsy charges which are aimed at extorting bribes. Moreless it is for the same, some youths have threaten to burn Likoni Police Station."

But whilst this charade was going on and prior to this correspondence between Shukri Baramadi and Wilson Boinett, there had been other Special Branch reports about possible clashes at the Coast.

On 20th May, 1997, a Special Branch Handler, Acting Inspector Joab Ating'a, acting upon information that he had received on 16th May, 1997, made his Information Report, Exhibit 42(A), forbiddingly, headed: Security Aspects of Political Activity/Political Activists in Likoni Urging the Youths to Raid Police Station/Mombasa.

In his report which he gave the high rating of B/2, he passed on, inter alia, information that Digo youths had planned, but which did not take place, a raid on the Likoni Police Station, and that Rashid Shakombo had not only called upon a villager to continue practising witchcraft but had also told the Digo youths to beat up the District Officer who had banned such practices.

In his comments, Joab Ating'a had said that the threatened raid against the Likoni Police Station was intended to stop the policemen from that Police Station from curbing the increasing rate of crime in the area. We find this comment rather strange. Anyway, Joab Ating'a went on to remark frighteningly, that in the past three months, three guns had been snatched, one in broad day light, from policemen from the Likoni Police Station who were on duty in the town. The Senior Officer who was Omar Raisi, and who was acting on behalf of the District Security Intelligence Officer, played the report down, saying in his comments and action that it should: ".....be down graded to B/6. Efforts are being made to come up with a comprehensive report on the alleged political thuggery."



The District Security Intelligence Officer himself, Peter Wilson, said in his evidence before us, and we agree with him, that Omar Raisi should not have down graded Joab Ating'a's report.

On the same day, 20th May, 1997, another Special Branch Handler, Priscilla Kibwia, acting upon information that she had received on 16th May, 1997, and after having made a verbal report thereon, on the same day to Omar Raisi gave him her Information Report, Exhibit 42(B), headed: Criminal Activities of Possible Security Significance/ Digo Youths to Burn Upcountry Houses-Likoni/ Mombasa.

In her report which she gave the rating of B/3, she passed on information similar to that contained in Joab Ating'a's report, Exhibit 42(A), that the Digo youths had because of harassment by the police, planned, but which did not take place, to attack the Likoni Police Station. They had also planned to burn houses of upcountry people. In her comments, Priscilla Kibwia stated: "This is a sensitive report which should not be taken lightly."

The Senior Officer, whose name is given as Mohamed Hamisi, stated in his comments and action, on behalf of the District Security Intelligence Officer, that although those planning to attack the Likoni Police Station had not been identified:

"...there was general fear among the locals who have heard of the plan. At the moment the situation is normal and its being monitored, the security arms have been briefed."

Was this comment a cover up? Priscilla Kibwia in her unchallenged evidence before us, and we agree with her, said that her written report which she had submitted to Omar Raisi, should not have been dismissed the way it was done under comments and action by senior officer, and further, that the comment that there was general fear among the locals, the Digo, rather than the upcountry people, and that all was normal, was clearly misleading.

The situation, in her view, was sensitive as life was at stake. Apart from the evidence of Priscilla Kibwia, which also tends to suggest that even if Mohamed Hamisi, another Digo, was the real author of the comments and action, then this had been contrived so that Omar Raisi would not be seen as the only one who played down the alleged threat to security.

What we also heard from other members of the security forces seems to suggest that Mohamed Hamisi's comment was not only a cover up but one that also, cleverly, sought to diffuse suspicion of Omar Raisi's connivance with the training of the Digo youths to attack the Likoni Police Station and upcountry people.

Indeed, the fact that it was only after a lot of resistance on his part, had been overcome, that Omar Raisi finally made his suspicious statement which is contained in Peter



Mbuvi's Report, Exhibit 8, confirmed Edwin Nyaseda's intuition that Omar Raisi had a role to play in the tribal clashes that took place at the Coast Province.

On 21st May 1997, it was Omar Raisi's turn, to write his information report, Exhibit 42 (C), which was based on information which he had received on 18th May 1997. In this report which was headed: Criminal Activities of Possible Security Significance/ Youths Prepare for Political Thuggery/Mombasa, and which Omar Raisi gave a not so high rating of B/6, he drew attention to the following information that he had received: namely, that an oath was being administered to youths from Kwale at Kiteje sub/location in Ngombeni location in Kwale District to bind them to cause havoc during the electioneering period prior to the December, 1997, multi-party presidential and parliamentary general elections, that six thousand nine hundred and sixty three youths from Likoni and Kwale were to be recruited and given military training by eight hundred service and ex-servicemen to be recruited; that in addition to the two rifles and a pistol which had already been stolen from policemen from the Likoni Police Station, the Kijipwa Police Station would be attacked to get more firearms; and that those planning these criminal activities were advocates of Majimboism and did not support Kanu parliamentary aspirants.

In his comments, Omar Raisi expressing the now familiar sentiments as contained Exhibits 42 (A) and 42 (B) said that:

"Efforts are being made to establish the truth of this report and recover the firearms. Once their leaders are known then it may be easy to dismantle the group."

But Omar Raisi's Senior Officer, R. M. Ademba, in his comments and action and acting on behalf of the District Security Intelligence Officer, stated not surprisingly, since what were involved were warlike activities as opposed to thuggery, as follows:

"This is a very serious development which should quickly be countered. The D.S.C. Kwale and Mombasa are aware of the development and plans are afoot to arrest the culprits."

Needless to say, notwithstanding these encouraging and optimistic assertions, no one was arrested.

There was then Omar Raisi's information report, Exhibit 42 (E), of 26th May, 1997, based on information received by him on 24th May, 1997. This report which he gave a rating of B/3, is headed: Activities by Groups Societies Professional Organisations are or may Become Threat to security/ Youths Taking Oath/Mombasa.

In it, Omar Raisi again reported that an oath was being administered to Digo youths from Likoni and Kwale at a place called Ziwani Miembe Saba every Wednesday at Ngombeni location, to bind them to cause civil disobedience during the electioneering period prior to the December, 1997, multi-party presidential and parliamentary general



elections, and to support Majimboism; that six rifles and four pistols had now been stolen from policemen; that similar activities had taken place in parts of Kwale and Mombasa after the 1992 multi-party general elections; and that his report should be read in conjunction with his earlier information report of 21st May, 1997, Exhibit 42 (C).

The comments and action of Omar Raisi's Senior Officer, this time, again R. M. Ademba, acting on behalf of the District Security Intelligence Officer, was simply that:

"As already pointed out in this office LR 1359/97 dated 27th May, 1997, efforts have been stepped up to identify and arrest those behind the oathing. Anything coming to light in this respect will be communicated."

One would have thought that having obtained more particulars about the place and time of the oath taking ceremonies, the Special Branch would have infiltrated these ceremonies, but, as we were to hear from Omar Raisi, they did not even bother to do so.

This, however, is in contrast, with what Peter Wilson told us namely, that Omar Raisi had personally but unsuccessfully tried to infiltrate the oath taking youths who cunningly, kept moving from one place to another. It is also worth noting that the Copy No. I of each of the Information Reports of Joab Ating'a, Priscilla Kibwia and Omar Raisi namely, Exhibits, 42(A), 42(B), 42(C) and 42(E), were forwarded by Peter Wilson himself, to Shukri Baramadi who on his part, never briefed his colleagues on the Provincial Security Committee or the Provincial Intelligence Committee about them.

Apart from the Information Reports that were produced during the proceedings of the Judicial Commission, we also heard evidence concerning the prior information that the Special Branch officers had.

Omar Raisi admitted that his father was a friend of the notorious Swaleh bin Alifan, who had been charged in court with administering the oath to the Digo youths at Kiteje and who indeed, because of this, was to be used by the Provincial Security Committee which sought and obtained his release on bail from prison custody, to release the militant Digo youths from the oath taken by them, which will also facilitate the surrender of their weapons. But more of this later.

The following excerpts of his evidence from the verbatim Report of the Proceedings of the Judicial Commission of 31st August, 1998, show that even though he incriminated others, Omar Raisi who also falsely suggested that he was the Chief Inspector of Police in charge of intelligence gathering in Likoni, was himself, guilty of conniving at the attack on the Likoni Police Station.

"Mr. Ngibuini: I am putting it to you that Hon. Shakombo gave you that name.

Mr. Raisi: No, my Lords.

Mr. Chairman: What did he tell you?



Mr. Raisi: My Lords, he gave me the information that some youths were at Kiteje area where they were doing some sort of military training with a view of causing disturbances.

Mr. Ngibuini: What kind of disturbances? To burn a police station?

Mr. Raisi: Yes, my Lords.

Mr. Ngibuini: What else do you know?

Mr. Raisi: I know that the youths were preparing to raid the police station, which eventually they raided, my Lords.

Mr. Ngibuini: I am putting it to you that because you knew of the very senior personalities involved, you have been covering tip for them?

Mr. Raisi: No, my Lords.

Mr. Ngombo: You see. You knew as way back as in May, 1997, that, on the 13th of August the police station is going to be burnt down. Didn't you?

Mr. Raisi: No, my Lords. At that time, the dates of the attack had not been mentioned.

Mr. Ngombo: Okay, but nevertheless you knew that there was an attack that was going to be carried against the police station where there are members of staff there; the police officers and they live in the same line and they have got civilian wives and children. You knew this?

Mr Raisi: Yes, Lords.

Mr Ngombo: And you say that the best that you could do is to tell Mr Peter Wilson who was your superior?

Mr Raisi: Yes, my Lords.

Mr Ngombo: Now Chief Inspector, you know you said here on Friday and today when you were continuing that you had information through your covert and overt sources that some youths were being trained to come and attack; that is, they were receiving military training on how to come and attack the Likoni Police Station and some other places. Is that right?

Mr Raisi: Yes, my Lords...

Lady Justice Ondeyo: Is there any time you came to learn of the exact date the raid would take place?

Mr Raisi: My Lords, the last piece of information, which I came across, was on Sunday, four days before the attack.

Justice S. C. Ondeyo: Four days before the attack?

Mr. Raisi: Yes, my Lords.

Justice S. C. Ondeyo: And what was the information?



Mr. Raisi: The information was that the youths had now gathered and they were doing their final touches and they could carry out the raid at any time, my lords.

Justice S. C. Ondeyo: And what did you do, after receiving that information that the raid was going to take place at any time?

Mr Chairman: He said the group had what? Finished their training? I did not get that one quite clearly.

Justice S. C. Ondeyo: Could you repeat what you said?

Mr. Raisi: I got the last information about four days before the attack on Likoni Police Station. I came to learn that the youths were now prepared to carry out the attack any time.

Justice S. C. Ondeyo: What did you do now that they would attack any time?

Mr. Raisi: I just came to learn about that information as the Officer in charge of the area but it was passed direct to the DSIO by another officer, my Lords.

Mr. Chairman: You did not pass it to the DSIO?

Mr. Raisi: No, my Lords.

Mr. Chairman: Who passed it to him?

Mr. Raisi: The person who passed it is Inspector Juma Salim Toza.

Justice S. C. Ondeyo: This is the man who told you or this is the man who passed the information to the DSIO?

Mr Raisi: Could you come up again?

Mr. Raisi: He is the officer who passed the information directly to the DSIO..

Justice Bosire: How did you come to know about that information?

Mr Raisi: I came to know about it as the Officer in charge of the area because whatever concerns your area, you are briefed by e...

Justice S. C. Ondeyo: Who briefed you?

Justice Bosire: Why are you going round and round? Somebody must have told you. And it is the name of that person that we want. Who gave you the information that inspector Juma Salim Toza had informed the DSIO?

Mr Raisi: I came to learn about it because when he was informing, it was in a meeting...

Justice S. C. Ondeyo: Why do you not say the name of the person? You like telling many stories. The answer would be the name of a person.

Mr Raisi: I came to learn about it as Inspector Juma Salim was telling the DSIO.

Mr Chairman: When?

Mr Raisi: That was in August, my Lords.

Mr Chairman: Four days before the Likoni attack?

Mr Raisi: The intended attack, my Lords.



Justice S. C. Ondeyo: So, simply put, what you are saying is that when Inspector Juma was telling the DSIO, you were present? That is what you are saying?

Mr Raisi: Yes, My Lords.

Nr Ngombo: So, between early June, 1997, and when you came back, you did not have much information. Did you?

Mr Raisi: No, my Lords.

Mr Ngombo: But you knew inside yourself that there were some people, whose location you never bothered to check, somewhere at the boundary, who were undertaking military training with the aim of attacking Likoni Police station on an unknown date?

Mr Raisi: Yes, my Lords.

Mr Ngombo: You never bothered to find out how many they were, what they were doing, who was financing them how they were feeding themselves and so on?

Mr Raisi:....I did that but I could not get all the details, my Lords.

Mr Chairman: Thank you. Mr Raisi, on the 9th, when you had your routine meeting and Inspector Toza told you what you have just told us, what did the DSIO decide to do?

Mr Raisi: He said that he would handle the matter with his fellow members of the District Security Committee.

Mr Chairman: The DSIO said he would handle the matter?

Mr Raisi: Yes, my Lords.

Mr Chairman: As things turned out, he did not handle the matter, otherwise Likoni Police Station would not have been burned down.

Mr Raisi: My Lords, I do not know what he did.

Mr Chairman: But whatever he did was not effective?

Mr Raisi: Yes, my Lords.

Mr Chairman: On the 9th, you had been told that these people were ready and would attack at any time. Were you surprised at the attack on the police station on 13.8.97?

Mr. Raisi: Yes, my Lords.

Mr. Chairman: Why? Four days before you had a warning of the attack!

Mr. Raisi: I was surprised because after giving information to the DSIO the attack still took place.

Mr. Chairman: You were surprised that the attack took place because the DSIO had been warned of it several times?

Mr. Raisi: Yes, my Lords."

Peter Wilson said in his evidence as if he had expected Omar Raisi to be at the scene, that during the night of the attack on the Likoni Police Station, he did not see Omar Raisi anywhere. The next day when he asked Omar Raisi said he had been at



home in Likoni. Senior Superintendent Jonathan Koskei was also to criticise Omar Raisi.

Omar Raisi in his cross examination of Corporal Wasike Murumba had tried as the following passage from the verbatim Report of the Proceedings of the Judicial Commission of 3rd September, 1998, shows, to establish that even though he had been seen near the Likoni Police Station shortly before it was attacked, he had a good official reason for being there:

"Mr. Raisi: As the Chief Inspector of Police in charge of intelligence collection in Likoni, had I any limitation of time to be in Likoni?"

Mr. Wasike: No, my Lords.

Mr. Raisi: Corporal Wasike, are you conversant with our mode of operation in the DSIO?

Mr. Wasike: No, my Lords.

Mr. Raisi: No more questions, my Lords. Thank you very much for giving me this opportunity."

The foregoing passage on the face of it, is redolent with bona fides until it is remembered as Jonathan Koskei asserted, and indeed, as Omar Raisi himself, only indirectly, admitted in his untruthful statement to Edwin Nyaseda, that at the material time, he was no longer in charge of Likoni having then been assigned to be Chief Inspector in charge of Mvita. Omar Raisi's clever attempt to give a credible reason for his being near the Likoni Police Station at the time he was seen there, was thus exposed.

But more direct incriminating evidence against Omar Raisi was given by Police Corporal Wasike Murumba who was at the material time, attached to the Likoni Police Station.

He said that early in the evening of 13th August, 1997, at about 6-6.30p.m, on his way to the Police Station, along a short cut, he saw Omar Raisi who was in a brown safari suit, talking to a woman who was dressed like a Swahili woman, with a yellow lessa wrapped round her waist and another one round her neck. Omar Raisi and this woman were about one hundred metres away from the Likoni Police Station and he was about twenty to twenty five metres away from them.

When Omar Raisi saw him coming, he behaved suspiciously and hurriedly left the woman as if he did not want to be seen by Wasike Murumba. Wasike Murumba, who knew Omar Raisi well as he often came to the Likoni Police Station, heard the woman ask Omar Raisi whether he would come back and he answered that he would. It was about an hour or so, before it was raided and burnt down by the Digo. Wasike Murumba managed to shoot his way out and to call for help over the police radio network.

Upon learning that Omar Raisi had been seen near the Likoni Police Station an hour or so, before it was raided, Edwin Nyaseda arranged to have him brought before him for



questioning. He was reluctant to tell all that he knew and would not sign anything that was written without clearance from Shukri Baramadi.

When this clearance came, then Omar Raisi wrote his fraudulent statement which is contained in Peter Mbuvi's Report, Exhibit 8. Edwin Nyaseda, like we do, suspected that Omar Raisi had played a part in the Likoni raid but was unceremoniously transferred before he could get further statements from Omar Raisi. What struck Edwin Nyaseda as most odd, was that Omar Raisi had before he went on his course in July, 1997, known to have prior information about a possible attack on the Likoni Police Station, yet upon his return from his course he was transferred to Mvita rather than having him continue with the investigations that he had started.

What is more, Shukri Baramadi when shown Omar Raisi's statement refused to comment on it, contenting himself, with merely saying that the truth will be known.

But what about Peter Wilson? He was content to rely on his role as a conduit pipe for the transmission of whatever information he might have obtained from his subordinates to his superior and vice versa. He himself did not play any active role whatsoever. He was content to blame the success of the raiders on their either being clever and outwitting the police including the Special Branch, or on links between the raiders and members of the Special Branch which we think could include a Digo like Omar Raisi.

We were not impressed by the "smooth" performance of Peter Wilson. To our mind, this behaviour showed that he had a lot to hide from us and should be investigated. How could a senior officer like Peter Wilson pretend that all he did was merely to play a passive role when life was at stake. Priscilla Kibwia had in her report which Peter Wilson must have read, described it: "a sensitive report which should not be taken lightly", and also, when he told us that Omar Raisi should not have downgraded as he did, Joab Atinga's report, Exhibit 42 (A).

Another aspect of Peter Wilson's evidence which raises suspicion was his assertion that although the prior information about the attack on the Likoni Police Station, which was to our mind, a very, very serious matter, had been discussed at a meeting of the District Security Committee of which Peter Wilson was a member, no minutes of this was taken down by the Secretary of the District Security Committee, who at the time was Senior Superintendent of Police Joseph Wamae, the Officer Commanding Police Division (Urban) in Mombasa, because he had said that he would take the necessary preventive measures.

The failure to include the threatened attack on the Likoni Police Station in the minutes of the District Security Committee meeting, if true, would also mean that since copies of



such minutes are sent to the Provincial Security Committee, the latter would not know through the District Security Committee, what prior information it had about the preparation and threat to attack the Likoni Police Station and the upcountry people.

Paul Olando who was the District Commissioner of Mombasa from August 1996, and was still holding that office on 1st October, 1998, gave scathing evidence before us, against Peter Wilson. Paul Olando stated that as Chairman of both the Mombasa District Security Committee and the more secretive District Intelligence Committee, and this was unchallenged, that Peter Wilson who was a member of both Committees, at no time, informed him or the Committees of his prior information about the attack on the Likoni Police Station and the upcountry people.

Indeed, even after the attack on the Likoni Police Station, Peter Wilson had told him that he had had no relevant prior knowledge. But this was also a blatant lie. Exhibit 42(F) which was the Information Report of Special Branch Handler, Acting Inspector Juma Toza, inter alia, that one thousand Mijikenda youths were taking an oath to violently drive away the upcountry people, was on 12th August, 1997, seen by Peter Wilson who on that date, made his Comments thereon, that:

"A similar report had been received here from a different source confirming that chances are high that oathing is secretly being conducted. Investigations are under way."

This clearly showed that even prior to 12th August, 1997, Peter Wilson had prior knowledge of the impending attack by the Digo youths. Another incriminating act according to Paul Olando, was that a copy of Shukri Baramadi's letter of 25th June, 1997, Exhibit 42(G), to the District Security Intelligence Officers of Mombasa who was Peter Wilson, and of Kwale and Kilifi, concerning alleged administration of an oath to, and military training of, Digo youths to attack police stations, which should have been sent to him, as was done for instance, in a similar letter dated 30th September, 1997, and contained in Exhibit 72 (C), from Peter Wilson to the District Security Intelligence Officer of Kwale, was this time, not sent to him.

Jonathan Koskei who took over from Joseph Wamae, was very firm in his evidence that Peter Wilson did not tell him or the members of the District Security Committee of the prior information that he had about the impending attack on the Likoni Police Station.

If Peter Wilson had passed on this important information to the District Security Committee, it would certainly have been included in the minutes of the District Security Committee. Jonathan Koskei said he examined the minutes of the District Security Committee going as far back as December, 1996, and found no mention of Peter Wilson's prior information in any of them.



Among these minutes were those of the meetings of the District Security Committee held on 23rd and 25th July, and 21st August, 1997, Exhibits 52'(A), 52 (B) and 52 (E), respectively. In Exhibit 52 (E) which dealt with things that happened after the attack on the Likoni Police Station, the minutes, deliberately, avoiding to make an honest reference to what had really happened, referred to the terrible destruction and murders that took place at the Likoni Police Station only as mere "thuggerism", even when in the same minutes, tribal cleaning is referred to in this way:

"Leaflets are still being circulated around urging the upcountry people to pack and leave for their homes of origin."

Not only that. The minutes of the meetings of the Provincial Security Committee of 29th April, 30th May, 10th June, 26th June and 29th July, 1997, and contained in Exhibit 58, are airily silent about the administration of oath to, and the military training of, Digo youths, to cause mayhem.

Jonathan Koskei did not only, and in our view, not unreasonably, express the conviction that the Information Reports namely, Exhibits 42(A), 42(B), 42(C), 42(D), 42(E) and 42(F) were fake reports which had been prepared after the event, but also, that the Special Branch officers did not tell the Judicial Commission the truth. In our view, Jonathan Koskei's theory about the ex post facto preparation of the Information Reports is the most reasonable one under the given circumstances.

This is so because if the prior information was not shared with the members of the Provincial Security Committee, they were bound to be presented to the Provincial Intelligence Committee of which Shukri Baramadi was Secretary, and if this had been done, Shukri Baramadi would have been the first to produce, or refer to the relevant minutes of the Provincial Intelligence committee, which he did not do.

Jonathan Koskei further said, and this was not challenged, that Peter Wilson lied when he said that he had on 9th August, 1997, telephoned him about the prior information he had of the impending attack, as on that day, Peter Wilson was not at Mombasa, having gone home to bury his father. Like the Provincial Intelligence Committee, if the prior information about the impending clashes had been discussed by the District Intelligence Committee, Peter Wilson who was its Secretary, would also have been the first to draw attention to the relevant minutes which he did not do.

Much has already been said about Shukri Baramadi's deliberate omission of information about the possible clashes at the Coast and we need only refer briefly to particular corroborative evidence of some members of the Provincial Security Committee and the Provincial Intelligence Committee.



Timothy Kipkemboi Sirma who was the Chairman of both Committees, said that he was shocked by the contents of the Information Reports of the Special Branch Handlers, Exhibits 42 (A), 42(B), 42(C), 42(D), 42(E) and 42(F) and Shukri Baramadi's letter to the District Security Intelligence officers of Mombasa, Kwale and Kilifi. He confirmed that Shukri Baramadi never brought to his attention or to that of the two Committees, the prior information that he had about the impending clashes. Subsequently, after the attack on the Likoni Police Station, when he complained about Shukri Baramadi's behaviour, at a meeting of the Provincial Security Committee, Shukri Baramadi said he would brief him afterwards which, in spite of his asking him several times, Shukri Baramadi did not do.

John Namai who was a member of the Provincial Security Committee also stated that Shukri Baramadi did not tell him or the Committee about the prior information he had about the training and preparation of the Digo youths to attack the Likoni Police Station and the upcountry people and which are contained in Exhibit 42(A) to 42(G). Apart from these documents, Shukri Baramadi on 25th June and 28th July, 1997, wrote the somewhat diversionary letters already referred to, and which are contained in Exhibit 89, to Wilson Boinett. It is not by a strange coincidence that in the Operation Order "TAFUTA MNAZI OPERATION" to counter the Digo raids dated 17th September, 1997, drawn up by the Provincial Police Headquarters and contained in Exhibit 6, Shukri Baramadi, is given the communications call sign "Sungura", a cunning rabbit.

Though Shukri Baramadi had claimed, which was denied, that he had in their morning telephone call-ups, briefed the members of the Provincial Security Committee, and at the same time, also that the Provincial Security Committee only dealt with criminal matters, he admitted in the course of his evasive evidence given on 8th October, 1998, that the prior information he had was never discussed by either the Provincial Intelligence Committee or the District Intelligence Committee. This is the way he put it:

"Mr Gacivih: Mr. Shukri, before the Commission rose this afternoon, you had told the Commission that everybody knew about those incidences of oathing, threats to the police station and military training. You had said that everyone knew of that. Was this matter ever discussed in the PIC or the DIC?"

Mr Shukri: The contents of the reports were known to individual officers in different capacities because the reports were only not confined to oathing.

Mr Gacivih: Was it ever discussed in the PIC?

Mr Shukri: No, my Lords.

Mr Gacivih: Was it ever discussed in the DIC?

Mr Shukri: My lords, we have not seen any report from the district confirming that.



Mr Gacivih: The oath-taking, the military training and the threat to the police station. All that was never discussed in the DIC or the PIC. And you agree that, in view of the gravity of the matter, this is a matter which should have been discussed in the PIC or the DIC?

Mr Shukri: My Lords, it should have been discussed initially in the DIC. I agree with you.

Mr Gacivih: But it has never been discussed?

Mr Shukri: No, my Lords.

Mr Chairman: Not even in the PIC?

Mr Gacivih: Yes, my Lords, neither of the two. And you agree that, in the view of the gravity of the matter, it affected the whole national security, this is a matter that should have been discussed:

Mr Shukri: Yes, my Lords.

Mr Gacivih: But it was not done?

Mr Shukri: No, my Lords".

Of course, if the matter had been discussed by the District Security Committee, it would be contained in its minutes, copies of which, automatically go to the Provincial Security Committee. It is our view that Omar Raisi, Peter Wilson and Shukri Baramadi were well aware of the illegal oath taking and military training of the Digo youths not only to attack the Likoni Police Station but also, the upcountry people and condoned this by not reporting the matter to their appropriate Security Committees or to the criminal investigation branch of the Police Force so that appropriate action could be taken against the Digo youths.

Not only that, these three Special Branch officers in keeping their prior information of the intended heinous crimes to themselves, aided and abetted their commission. The theory that they all endeavoured to advance that being Special Branch officers, they did not have any obligation to report any suspected crime being committed until they themselves, were satisfied that it had been committed, is rubbish.

They as any one else, had and they knew this, a duty, on being made aware of a crime being committed or about to be committed, to make a report to the members of the "active" Police Force as opposed to the Provincial, District or sub District Security or Intelligence Committees. To hold otherwise, would mean that a member of the Special Branch can arrogate to himself the role of deciding when criminal investigations into an alleged criminal offence should be undertaken and thus be in a position to condone the commission of the criminal offence.

There appears to be sufficient evidence to support Omar Raisi, Peter Wilson and Shukri Baramadi being charged under section 20 of the Penal Code, Cap 63 of being at



the relevant time and when they were not then members of the National Intelligence and Security Service, accessories before the fact in respect of the administration of an unlawful oath, unlawful military training, malicious damage and murder.

But what is more disturbing, is the suspicion that their behaviour had some sort of official blessing. In this regard, and remembering the omnipotent role of the Provincial Administration officers's in security matters, we cannot help but come to the conclusion that in spite of the absence in the minutes of the meetings of the Provincial and District Security Committees of any reference to prior knowledge of the pending clashes at the Coast and the absence of any minutes at all, of the Provincial and District Intelligence Committees, the Assistant Chiefs, Chiefs, District Officers, District Commissioners of the affected parts of the Coast, the Deputy Provincial Commissioner and the Provincial Commissioner of the Coast Province at the relevant time, should on this basis alone, be investigated with the view to charging them with being accessories as proposed for the Special Branch officers.

However, in a summary of his evidence contained in the verbatim report of the proceedings of the Judicial Commission of 13th October, 1998, Onesmus Mutungi told us, and we have no reason to disbelieve him, that at the meeting of his Committee members with Paul Olando, the District Officers, Chiefs and Assistant Chiefs, Paul Olando had told them that the District Security Committee had at a meeting held some time before 13th August, 1997, discussed the oath taking by the Digo youths, though the minutes of that meeting had not then been prepared, and that even though they had the prior information, they could not infiltrate the Digo youths.

But they certainly could have told the police so that appropriate action could be taken. Paul Olando also went on to say that though he was not a member of the Provincial Security Committee, the Committee had prior information on the taking of the oath, which it had discussed and that he had been so briefed by the Committee. This evidence fortifies the proposal that the members of the Provincial Administration referred to above, should be investigated with a view to their being prosecuted.

In the particular cases of Athumani Zuberi Mwakunyapa the Assistant Chief of Pungu Sub-location in Ngobeni Location and Ramadhani Mwalimu Mwaonu the Assistant Chief of Kiteje Sub-location also in Ngobeni Location, there is ample evidence that they were accessories before the fact.

In his evidence before us, and which was not challenged on this issue, David Opala who was the District Officer of Matuga at the material time, stated that these two Assistant Chiefs had confessed to him that they knew about the oathing and the military training of the Digo youths but had kept quiet about it because they feared for their lives.



He had reported this to his District Commissioner, David Jakaiti, whom, instead of reporting the matter to the police, had them only interdicted.

As already noted, these two Assistant Chiefs were ridiculously reinstated later by the Provincial Commissioner, Samuel Limo. Patrick Menza the Inspector of Police of the Special Branch at Kwale, also told us that on 19th July, 1997, when he had gone to investigate the oathing and military training of the Digo youths at Ngombeni Location, it was Athumani Mwakunyapa who had taken him, his Senior Sergeant and driver to the place where the oath taking and training had taken place.

Saidi Sudi Ahmadi who worked on Karmari Pradhan's farm, was another witness who told us that his Sub-chief Ramadhani Mwalimu Mwaonu knew of the oath taking which took place under a boabab tree near Karmari Pradhan's farm. Saidi Ahmadi himself, had on two occasions, in July, 1997, seen about thirty Digo youths with red head bands seated under the boabab tree and taking the oath which it was later explained to him, would make the Digo youths bullet proof.

One of those he saw taking the oath was Juma Hamisi Mwamsele alias Gocco who had also tried to recruit him. And now a touch of irony, Saidi Ahmadi was arrested for his failure to tell the police about the information that he had about the administration of the oath to, and military training of, the Digo youths. Juma Hamisi Mwamsele who has scars on his back like those caused in the administration of oaths, should, if this has not been done, be charged with taking part in the administration of an illegal oath and undergoing military training to cause violence.

The terrifying activities going on near Karmari Pradhan's farm, did not go unnoticed by him, and whilst others remained silent about it, he complained to the authorities. In early July, 1997, he made his first report to the Assistant Chief of the sub location who did nothing. He then on 4th August, 1997, wrote to the Officer Commanding Police Station, the Likoni Police Station that 15 to 20 armed men had made their base at the bottom of his farm from where they were harassing the public and robbing the neighbourhood of food and livestock.

Karmari Pradhan sent copies of this letter about the dangerous security situation on his farm, to the Provincial Criminal Investigation Officer of Coast Province, the Officer Commanding Police Station, Diani Police Station, the District Officer of Matuga Division, the District Commissioner of Kwale District, the Chief of Ngombeni Location and the Provincial Commissioner.

This letter, a copy of which is contained in Peter Mbuvi's Report, Exhibit 8, provoked no response from the Police Force or the Provincial Administration. As Edwin Nyaseda was to tell us, he showed a copy of this letter on 16th August, 1997, to the members of



the Provincial Security Committee which consisted of Francis Gichuki, the Provincial Police Officer, Hassan Mohamed Haji, the Acting Provincial Commissioner, Shukri Baramadi and John Namai, none of whom said anything.

The next day when the matter was raised, this time at a meeting with Duncan Wachira, the members of the Provincial Security Committee looked down in shame. But was this really out of negligence or guilt? We would think the latter. On the morning of 13th August, 1997, Karmari Pradhan wrote a note to Inspector Peter Johnson Kariuki, the Officer Commanding the Likoni Police Station, complaining about insecurity on his farm, but nothing was done. It was that very evening that the Likoni Police Station was attacked and when this happened, Peter Kariuki was at home as he was feeling ill.

He was subsequently dismissed from the Police Force for being negligent in that his failure to make proper protective security arrangement at the Likoni Police Station, had contributed to its destruction on the night of 13th August, 1997. It is also strongly suspected that he had prior information that his police station would be attacked that night and that is why he pretended to be ill and went home.

We feel that this issue should be further investigated with a view of charging him with aiding and abetting the attack on the Likoni Police Station. Karmari Pradhan's farm was attacked and looted on 14th August, 1997 and again on 18th and 19th August, 1997. On one of the walls of his house in the farm, the Digo raiders had written the telltale phrase "upcountry people go away."

The tribal clashes which occurred at the Coast in 1997, unlike those that took place in other parts of the country where tribes or clans fought each other were purely, a one way affair where the Digo youths attacked, killed and destroyed the property of upcountry people. This was supposed to discourage the upcountry people who supported the then opposition parties from voting for them.

Similar incidents occurred at Mtondia in the Kilifi District. The clashes that occurred in 1997, were, however, not only, of a greater magnitude and devastation but were also, the work of people who had undergone some military training including the use of sophisticated weapons.

The evidence that we were given in connection with the clashes that took place prior to the 1997, tribal clashes, is contained in the self written confession statement of Karisa Maitha, Exhibit 79, dated 22nd August, 1997. In this statement, he confessed that in 1991-1992 he had been involved, upon being asked to do so by Joshua Kulei the Personal Assistant to the President, and Rashid Sajjad a KANU nominated Member of Parliament, together with Mohamed Masumbuko, in training African Muslim youths from Kwale District and parts of Mombasa, under the name of the United Muslim Association (UMA)



who successfully, violently silenced the Arab Muslims who were then supporting the opposition Islamic Party of Kenya (IPK) in Mombasa.

In 1993, and just before the December parliamentary by-election at Kisauni, Karisa Maitha stated that he was again, called upon by Joshua Kulei and Rashid Sajjad to employ his UMA youths, but which name he had then changed to the Coast Protective Group (CPG), to this time, violently attack and disrupt the leaders and rallies of the then opposition parties which were supported mainly by upcountry people.

Karisa Maitha went on to say that his actions were supported by Government officials at Mombasa such as the District Commissioner, the Provincial Police Officer and the Provincial Criminal Investigation Officer. Both the District and Provincial Security Committees which he said, sanctioned his actions and indeed, provided necessary funds for them, would often call on him for information that they may require.

It was because of this close relationship that he had with the Provincial and District Administration officials, that Paul Olando had called him at his hotel in Nairobi at 6 am on 14th August, 1997, the morning after the Likoni Police Station had been destroyed and people killed, to ask if he could get him any information that would help in arresting the raiders.

Just as this seems in the circumstances, a natural thing for Paul Olando to do, so in the given circumstances at the time, Karisa Maitha was not at all worried about making the revelations that he did. But things had not stood still. In August, 1997, when he made his confession, he was a KANU parliamentary aspirant for the Kisauni seat, but he later defected to Ford Kenya and by the time of the December, 1997, parliamentary election, had defected again to the Democratic Party of Kenya and as such, had won the Kisauni parliamentary seat.

And so, when he gave evidence before us on 12th October, 1998, it did not come as a surprise when he denied having made the confession statement, Exhibit 84. He did, however, admit that his signature appears on a letter dated 28th June, 1998, which he wrote to the Mombasa District Criminal Investigation Officer, on another letter dated 14th September, 1998, again, to the same officer, and on a Notice of Appointment of Advocates dated 10th February, 1998, addressed to the Registrar of the High Court of Kenya at Nairobi and which are all contained in Exhibit 92.

We are not professional handwriting experts, but in our view, these signatures are the same as that of the person that signed the confession statement, Exhibit 92. And if this is so, then Karisa Maitha has himself, confessed to having organised tribal clashes in Mombasa during 1991 and 1993.



In addition, there is also the following evidence of the Catholic Archbishop John Njenga which we accept. He recalled that during the period preceding the 1992 multiparty general elections, many upcountry people, mainly the Luo, took refuge at the Catholic church in Likoni. They had sought refuge there because they were being attacked and harassed by the coastal people who wanted them to leave Likoni and go back to their tribal homeland so that they could not vote for the then opposition Ford party. According to the Archbishop, it was during this time that he heard Karisa Maitha, who was then standing for election in the area as a Kanu party candidate, publicly incite the coastal people that the upcountry people must go back to their tribal homes. This matter should be investigated with a view to charging him with the relevant offences. To complete the investigation, statements should also be taken from Rashid Sajjad and Joshua Kulei.

According to the police report Exhibit 6, there were altogether between 1993 and 1995, seven sporadic incidents of tribal clashes. There were two incidents in Mombasa Division where three upcountry, persons were seriously injured and seventeen houses of upcountry people burnt, twenty three incidents in Kwale Division where Digo youths stabbed one Kikuyu to death, injured four upcountry persons and burnt thirty one houses belonging to upcountry people; and two incidents in Kilifi Division where Mijikenda youths killed seven and injured fifteen upcountry people, and burnt thirty four houses belonging to upcountry people.

Finally, the traumatic and well organised tribal clashes at the Coast began on the night of 13th August, 1997, when the Likoni Police Station was attacked by about 20 Digo Youths. The damage and destruction they caused was horrendous. The police station was ransacked and burnt to the ground together with all things within it, furniture as well as records and documents. The prisoners being held at the police station were all released.

A VHF radio set and pocket phone were stolen, the armoury was broken into and 43 G3 rifles, one revolver, one thousand four hundred and seventy five 7.62mm and 9mm rounds of ammunition looted. Four rooms of the Likoni Police residential lines, the offices of the Chief and District Officer of Likoni, the Waa Chief's Camp, the Ngombeni Administration Police Camp and the booth of the Tourist Police Unit at the Likoni side of the Likoni channel were also destroyed. Private property including forty three houses, five hundred and twenty kiosks, thirteen shops, seventeen bars and restaurants, ten butcheries and several vehicles were badly damaged. Two churches were also damaged. The crowd that attacked the Likoni Police Station were Digo youths and were armed with bows and arrows.



One of them had a pistol. During the attack, Wasike Murumba managed to shoot his way out, but the raiders killed five police officers one of whom was a woman, and at last three of whom including the woman, had their throats slit having looted the armoury, the Digo raiders set houses on fire and shot into the air.

They then began their violent attacks on people, government buildings, and private property. They also look over the ferry service from and to Mombasa Island and it was in the course of retaking it, that General Service Unit Inspector, Solomon Waweru, was shot dead. Apart from the police officers who had died, ten civilians were killed, twelve police officers injured during the raid and many, many more civilians were also injured. The enormity, nature and objective of this orgy of devastation, can only support the view that it was to obtain arms to be used to terrorise and drive away the upcountry people so that they do not vote for the opposition parties in the forthcoming parliamentary and presidential elections.

The other issues that have been suggested as the motives behind this raid, and which in our view, was merely expounded to divert attention from the real cause of the tribal clashes namely, the alleged harassment of the Digo youths by the Likoni policemen, the unemployment of the Digo youths and the ownership of land by the upcountry people, have only to be mentioned, to be dismissed as the real motive of this and other raids.

Wasike Murumba who first raised the official alarm of the raid over the police communications network (999) told us that he had spoken to Solomon Waweru over the network who had told him that they could not come over to Likoni as the raiders had taken over the ferry.

The Provincial Police Officer, Francis Gichuki, and Shukri Baramadi spoke to him wanting to know what the situation was on the ground, but did not offer him any help. He also overheard John Namai tell the Controller of the police communications network to ask the Kenya Navy for help. The naval base was only 2 km away on the same side of the coast as the Likoni Police Station and from where, the many shots that the raiders were firing in the direction of the naval base, could easily be heard. The Kenya Navy, however, never came to help. This is rather strange considering that a copy of Wilson Boinett's Report on Flash-points For Violence 1997 General Elections, Exhibit 30, was sent to the Chief of General Staff, Department of Defence, who in turn, must have at least conveyed its contents to the Navy Commander. The next morning at 8 am whom did Wasike Murumba see come to the burnt down remains of the Likoni Police Station, but the Navy Commander, Major General Kibwana in the company of none other than Omar Raisi still in the same brown safari suit he had been seen wearing the evening before.



It followed naturally, having regard to the motive which we have discerned as the use of the raid at Likoni, that this raid was not the end, but rather, the beginning of the Clashes.

On 14th August, 1997, the raiders descended on Karmari Pradhan's farm, stole livestock and looted his house. His foreman, a Mkamba, was killed. There were other subsequent attacks on the farm and on one occasion, 15th August, 1997, when Karmari Pradhan took some armed policemen to his farm, they found already there, about twenty armed General Service Unit men.

Across the valley some 130 meters away, armed Digo youths could be seen moving behind trees and when the General Service Unit men asked permission to attack them, their Commander refused, saying that he would rather they were tracked to their hideout by a helicopter which he had sent for. The helicopter did come later only to fly around and then go away. There were intermittent attacks by the raiders who operated in the neighbourhood until the end of August, 1997.

On 14th August, 1997, the then District Officer of Matuga, David Opala, took part in a reconnaissance operation in the Kaya Bombo forest, where the raiders were said to be hiding. He went with fifteen regular and Administration policemen. According to David Opala, the members of the District Security Committee namely, the District Commissioner, Joseph Jakaiti, the Officer Commanding the Police Division, David Joseph Kyalo, and the District Security Intelligence Officer, Francis Maina Njuguna, did not condescend to join them.

Another disturbing evidence this time, of Major John Mberia who was a co-opted member of the District Security Committee, and implying official connivance, is contained in the following passage of the verbatim report of the proceedings of the Judicial Commission of 5 th October, 1998:

"Mr Chairman: Why was Kaya Bombo chosen?"

Mr Mberia: My Lords, during the DSC meeting, it transpired that Kaya Bombo was one area that was avoided by the security men because there were rumours that there is a Kaya where some witchcraft goes on. So, the policemen were scared of getting into that forest.

Mr. Mberia: My Lords, I cannot find an appropriate word for that, but the activities that were happening around there were related to witchcraft.

Mr. Mberia: My Lords, in that DSC meeting what transpired, after the contributions from various members pointed to us that Kaya Bombo as having some activities.

Mr. Chairman: Who was the one who said that the police feared to go there, and that was why they wanted you and the army to go there?



Mr. Mberia: My Lords, it was the DO, Matuga.

Mr. Chairman: Did you get the impression that this was prior information that they had before the attack on the police station?

Mr. Mberia: My Lords, what I could observe about the whole operation was...

Mr. Chairman: Because this is the 14th August, 1997 you are talking about?

Mr. Mberia: My Lords, it raised eyebrows why there was an element of secrecy. Nobody was willing to divulge the necessary intelligence to assist us in the operations.

Mr. Chairman: The members of the DSC were not being frank?

Mr. Mberia: My Lords, I would say that they looked surprised, as if this was something new that nobody had information about.

Justice Bosire: Did they appear to be concealing something, not coming out clearly on this issue?

Mr. Mberia: My Lords, from my own thinking, I felt that there are some things that cannot happen in an area without at least some information reaching the local administration.

Mr. Chairman: In which case they knew that something was happening there, but the police had been too frightened to go there?

Mr. Mberia: My Lords, I could say that."

Apart from David Opala's men, there was also an army platoon of thirty five soldiers under John Mberia who was in charge of the operation. The operation was unsuccessful because though they were able to arrest four suspected raiders, they were outnumbered and outmanoeuvred by over three hundred raiders who emerged from the Kaya Bombo forest firing sophisticated weapons. Upon retreating, and having lost three policemen, they found all their vehicles had disappeared and that the Administration Police Sergeant, Mohamed Juma Kutsola, a coastal, who had been with them, had ordered the driver of David Opala's Land Rover, to drive him and the four arrested suspected raiders, away.

David Opala, John Mberia and their men had no choice but to walk some 8-10km back to Matuga. Mohamed Kutsola, it was later discovered, took only two of the four arrested suspected raiders to Kwale Police Station where, taking advantage of the confusion then prevailing at the police station, he left them without giving any satisfactory details at all about them. He said, and which we found to be a lie, that he had sprained his right knee and was in a hurry to get medical assistance. Mohamed Kutsola as seems to be the custom, instead of being disciplined and dismissed, was promoted to the rank of an Inspector.

In our view, it is not too late to take disciplinary action against him. The evidence of David Opala, his driver Ali Mohammed Bakari and Police Constable Reuben Sumuni of



Kwale Police Station and the relevant entries in the Occurrence Book, constitute prima facie evidence of the offence committed by Mohamed Kutsola.

The next day, 15th August, 1997, after the retreat from the Kaya Bombo forest, a bigger contingent of policemen and soldiers under the command of Lt. Col. Nicolas Ndono who was also a member of the Provincial Security Committee, went to the forest and this time, arrested Swaleh bin Alfani and four other persons. Even though the attacks by the Digo youths continued unabated, suddenly, on 18th August, 1997, and without prior consultation with Nicolas Ndono, a radio message was received from the Provincial Security Committee, ordering the soldiers to return to barracks.

Francis Gichuki was to tell us that the order came from none other than Wilfred Kimalat after Hassan Haji had complained about the dominant role of the soldiers. But Nicolas Ndono did not only think that this was a terrible mistake but was also, convinced that the initial attack at Likoni must have been known to the Police Force and the Provincial Administration who decided to do nothing about it.

What Nicolas Ndono also found shocking, was that the Provincial Police Officer at the time, Francis Gichuki, and who in the absence of the substantive Provincial Commissioner, was the Chairman of the Provincial Security Committee, never once showed his face during the operations that were mounted. This deliberately uncooperative action and attitude of Francis Gichuki was confirmed by John Namai and Hassan Haji the Acting Provincial Commissioner, who told us that he reported Francis Gichuki's misconduct on several occasions to the Permanent Secretary, Provincial Administration and Internal Security, Wilfred Kimalat.

Jonathan Koskei also told us that Francis Gichuki often quarrelled with the other members of the Provincial Security Committee and that on one occasion, Francis Gichuki told him that the whole business was political and did not want to become involved in it. Francis Gichuki's conduct must be investigated to determine if his actions amounted to the connivance of criminal offences or a mere dereliction of duty, and dealt with appropriately. But in this respect, it must not be forgotten that Major General George Agoi who was then in charge of Eastern Command, and who was made the operations commander with Francis Gichuki as his deputy, did not give evidence before the Judicial Commission.

His evidence would be useful in any future investigations into the conduct of Francis Gichuki. Evidence concerning political interference with the work of Francis Gichuki related herein after, will also be relevant.

It is not surprising that after the withdrawal of the soldiers from operations against the raiders of the lackadaisical and conniving attitude of the members of the Provincial and



District Security Committees, the raids that could otherwise easily have been brought to an end within a few days, continued unabated for nearly a whole year. The upcountry people were the main targets of the direct raids as well as the insecurity, which these raids engendered. According to a police report, Exhibit 6, there were altogether, between 15th August, 1997 and 30th June, 1998, twenty five separate violent raids and attacks. These somewhat inaccurate as to specific dates, and as set out in Exhibits 6 are as follows:

"1. On 15.8.97 at about 10.00 pm. a watchman Josephat Mutisya who was guarding Kaunda Bar in Likoni was attacked by a group of ten men armed with rifles. He was shot dead.

On 16.8.97 at about 10.30 pm. at Mtopanga there was an exchange of fire between police officers and raiders as a result one G.3 rifle No. 006936 with 20 rounds was stolen from No. 55168 PC(D) Bernard Okello.

On 17.8.97 at about 7.00 pm. unknown number of raiders set on fire Itoleka Bar which is within Likoni. The bar was completely burnt down.

On 19.8.97 at Kijipwa in Kilifi District there was a fierce exchange of fire between the raiders and the security men. One police rifle a G3 No. 67403 3 3 got lost and one of the raiders by the name Hussein Mokuti was shot dead.

On 22.8.97 at about 7.00 am about 40 armed men raided the Catholic Church where people had taken refuge. An exchange of fire between the raiders and policemen ensued. Two people were killed from the church. None of the Security men was injured.

On 24.8.97 at about 8.00 pm at Safari Bar and Restaurant 20 men armed with G3 rifles attacked and killed the proprietor Samuel Kariuki and seriously injured two others.

On 5.9.97 a group of about 100 raiders raided Sharlon Bar in Likoni. They were armed with rifles, bows and arrows. They killed two (2) people and seriously injured 10 others.

On 11.9.97 at about 4.20 pm. about (60) sixty raiders armed with assorted types of rifles invaded Diani Shopping Centre with intention of attacking Diani Police Station. Security personnel who were very alert engaged the raiders on a heavy exchange of fire, which resulted to three (3) raiders being shot dead and two (2) G.3 rifles recovered. 76 premises were set ablaze by the raiders on this day at Diani Shopping Centre.

On 12.9.97 at about 11.00 am. a contingent of combined forces of G.S.U. and Flying Squad personnel got in contact with some raiders numbering between 30 to 40 at Ng'ombeni area of Kwale District. Exchange of fire ensued and one the raiders was shot dead with no recovery made.

On 26.10.97 at Buda Forest in Matuga area of Kwale District while acting on information security men proceeded to Buda Forest and found raiders camp with two



sentries. Oil sighting the security personnel tile sentries alerted the raiders who fled away into tile forest but managed to shoot one dead and arrested the two sentries.

On 31.10.97 a contingent of combined patrols of officers from the G.S.U and regular police on hot pursuit of the raiders who had committed robbery at Diani encountered with the raiders at Ng'ombeni area. There was a fierce exchange of fire and two raiders were shot dead and two G.3 rifles recovered.

On 5.11.97 at 2.00 pm. a contingent of G.S.U. personnel and regular policemen attacked raiders camp at Kaya Kambe in Kwale and shot dead two raiders and arrested one namely Mohammed Kitenje for interrogation. From the said camp the following items were recovered:- 12 cups, 15 plates, 4 pairs of shoes, 4 bales of maize flour and 3 packets of salt.

On 1.11.97 at 5.00 pm. at Makondeni Forest Matuga area of Kwale District a contingent of 40 men from the G.S.U. and A.S.T.U. confronted a group of armed raiders who engaged them on exchange of heavy firing. Three raiders were shot dead, three G.S. rifles recovered plus one .38 revolver with 74 rounds of ammunitions. One black uniform, one red flag and one register containing names of sponsors and some bows and arrows were also recovered.

On 2.11.97 at Kaya Kambe in Kwale District there was an exchange of fire between security men and the raiders. As a result 4 raiders were shot dead, 4 black 'T' shirts and red/white stripes, pangas, bows and arrows were recovered. One jungle hat, 2 flags with white and red stripes and green raincoat were also recovered.

On 7.11.97 at 2.00 pm. at Ambuko Sokoke Forest in Kilifi District, Police Officers acting on an information proceeded to the said forest and encountered with a group of about 100 raiders armed with bows and arrows. The raiders charged at the Police Officers who opened fire and shot dead two of the raiders. The following items were recovered, two shirts, 13 pairs of shoes, two pangas, one axe, four knives and four jackets.

On 1.11.97 a contingent of G.S.U. men together with regular policemen attacked Similani Caves in Kwale and recovered one G.3 rifle, one SMG Patchet, one pocket phone battery, one senior officers (GSU) tent, seven SMG magazines and 52 rounds of 9mm ammunitions. No death reported but it was believed that several raiders escaped with injuries. One suspect, who was shot, was later arrested and charged before Court. He confessed at length about their illegal activities.

On 23.1.98 nine men armed with rungun, pangas and iron bars attacked businessmen at Mariakani Town. They were confronted by Police Officers on patrol and one of the gangsters was shot and died later at Coast General Hospital while undergoing treatment.



On 5.3.98 at about 9.30 pm three men posing as reportees went to Mariakani Police Station and attacked one of the Station guards No. 37090 P.C. Jactopus Chibo by cutting him seriously with a sword on his head and robbed him of his G.3 rifle No. 6740384.

On 15.4.98 at about 10.30 pm a gang of about six men armed with G.3 rifles stormed into Third World Night Club Likoni and robbed off the owner an unknown amount of money. They also robbed customers of unknown amount of money and shot dead the Bar Manager William Mobutu before fleeing away to unknown destination. No recovery or arrest made.

On 19.4.98 a group of about six armed men raided Harambee Night Club Likoni and robbed off customers some unknown amount of money. Several people were seriously injured and taken to Coast General Hospital, treated and discharged.

On 29.4.98 at about 7.45 pm. at Mazeras Market in Kaloleni area of Kilifi District a group of about 30 men armed with G.3 rifles attacked businessmen and robbed them of unknown amount of money, shop goods and escaped on foot towards Kaloleni area before setting on fire several makuti kiosks. Several people were injured and were treated and discharged at Coast General Hospital. Police Officers from Mariakani and Kilifi acting on information proceeded to Kaya Bomu Forest where they encountered with the raiders numbering 25-30. A heavy exchange of fire ensued and one of the raiders was shot dead and 10 G.3 rifles recovered.

Recovered also were some the shop goods stolen at Mazeras Market.

On 25.5.98 Changamwe Police Station in Urban Division Mombasa District was attacked at 5.45 am by a 6-7 men armed with G.3 rifles. They injured two police officers, freed all 42 prisoners who were in cells and made away with one Bren Gun and a G.3 rifle which were with the station guards outside.

After the Changamwe Police Station attack the raiders were believed to have headed to Kaloleni area within Kilifi District. On 27.5.98 at about 12.30 am they terrorised members of public within the areas of Mwamba ya Nyando in Kaloleni. A contingent of combined patrols of GSU personnel and regular policemen mounted a major operation in this area. On the same day of 27.5.98 the security officers on operation received information that the same gangsters were robbing businessmen at Kaloleni Trading Centre. They proceeded there and encountered with the raiders in action. A fierce exchange of fire ensued and three (3) raiders were shot dead and one seriously injured. Some assorted shop goods, clothings and cash Shs.3,520 were recovered.

On 30.6.98 at 7.45 pm at Diani Chiefs Office about 9 raiders armed with bows, swords and knives attacked the APs quarters by throwing arrows to the AP quarters through the



window. The APs replied by shooting at the raiders and as a result two raiders were shot dead. Others ran and disappeared into different directions. One I/D card No. 20039762 bearing the name of Mohammed Said Jao C/O Mtaa wa Pwani Village Likoni was recovered at the scene. Two swords and two arrows were also recovered."

Edwin Nyaseda was also to add his voice to the deliberate conniving in action on the part of the Provincial and District Committees both before and during the clashes. There were occasions when he would pass on through John Namai, to the Provincial Security Committee information on where the raiders were hiding and their arms hidden, and nothing would happen.

On one occasion, he obtained from newly arrested suspects information that the Digo raiders were hiding in caves in Similani hills in Kwale District. He passed this information on to the Provincial Security Committee on 18th August, 1997, but nothing was done about it until nearly three months after, on 1st November, 1997, when as shown hereinbefore in Exhibit 6, the police attacked the Similani caves and recovered arms and ammunition and a military tent, and shot and arrested a raider who pleaded guilty to appropriate charges in court.

On other occasions, he would advise that the police be sent in a particular direction only to find that they would be sent in the opposite direction. In general, he found the Provincial Security Committee to be unco-operative in that they would not give him any prior information that they had about the Likoni raid. His attempt to obtain statements from Hassan Haji, Shukri Baramadi, Francis Gichuki, David Opala, Joseph Jakaiti, Hammerton Mbogho Mwavisa, and Paul Olando were unsuccessful as they suspiciously refused to give him any. They should now be made to make their statements about what they knew and did about the clashes at the Coast.

The only acceptable reason for the sudden and illogical transfer of Edwin Nyaseda in the middle of his work on 25th September, 1997, from Mombasa where he had on 15th August, 1997 been specially sent to investigate the Likoni raid and related matters, and before he had concluded his assignment, is that, he was getting too close to discovering the conniving role of the KANU politicians at the Coast; the Police Force and the Provincial Administration in the Digo raids, and had to be stopped.

In other words, the Police Force through its very Commissioner, was playing an insincere and dirty game. The Commissioner of Police should make a statement explaining why he ordered the sudden, illogical and suspicious transfer of Edwin Nyaseda the way he did, in order to show that he deserved his honourable discharge from the Police Force.



But apart from Edwin Nyaseda, several other policemen, who were not Special Branch officers, and who were actively involved in the investigation of the raids at the Coast, were likewise, suddenly and irrationally, transferred. These were Francis Gichuki, John Namai, Hammerton Mwavisa, Jonathan Koskei, Jacob Katana the Divisional Criminal Investigations Officer (Kwale) and Joseph Chai the Divisional Criminal Investigations officer (Urban). By now, it would not be surprising, that the material time, none of the Special Branch police officers that have already been mentioned in this Report, were transferred.

As a result of the killing of upcountry people, the burning of their houses and looting of their property, three thousand five hundred of them took refuge within the sacred precinct of the Catholic Church at Likoni. But this did not deter the Digo youths who on the night of 19th August, 1997, attacked the church, but were repulsed by the police on guard duty. On 22nd August, 1997, the church was again attacked and two refugees were shot dead.

According to Jonathan Koskei, he had ordered the arrest of the prime suspect of this attack namely, Mwalimu Masudi Mwahima, a Shika Adabu Councillor, from whose house the raiders had shot into the church compound, for questioning. To his great surprise, Mwalimu Mwahima was released the next day 24th August, 1997, from the Port Police Station where he had been kept, and was in what is more, under the false entry in the police station Occurrence Book, Exhibit 51(B), that he Jonathan Koskei, had ordered the release of Mwalimu Mwahima.

Not surprisingly, the then Officer Commanding the Port Police Station, Chief Inspector Musoso, had in his written comment alongside this entry, complained that those who had come to take Mwalimu Mwahima away, had not, as they should have, identified themselves in the entry.

Another suspect, Hisham Mwidau who like Mwalimu Mwahima, had also been arrested on 23rd August, 1997, by members of Edwin Nyaseda's CID team from Nairobi, and taken to the Port Police Station for questioning the next day, was also under suspicious circumstances, released on that day by Sgt. Oboii and Sgt. Nyagah. This tactics prevented these two KANU politician suspects from being interrogated by Edwin Nyaseda before he was unceremoniously recalled from Mombasa. Not unnaturally, Edwin Nyaseda was upset at these irregular and untimely releases and complained about them to John Namai. This is what was said:

"Mr. Nyaseda: Yes, my Lords, and I asked him the position of the Suspect. He was not willing to tell me much. He just told me that a decision, which he never disclosed to me, had been made.



Justice Bosire: Did he tell you the person who had made the decision?

Mr. Nyaseda: He did not tell me, my Lords.

Mr. Ngombo: Now, it was rumoured that another person by the name of Mr. Mwahima was arrested at the same time when Mr. Isham Mwidau was also arrested. And that he was also released under similar suspicious circumstances. Was that so?

Mr. Nyaseda: My Lords, that was true.

Mr. Nyaseda: He was arrested by orders from the OCPD, Urban, Mr. Koskei.

Mr. Nyaseda: Yes, my Lords. In fact, Isham Mwidau had followed to find out why CIIr. Mwahima had been arrested. When I was carrying out my preliminary interrogation of Mr. Mwidau, I found he was not telling me the truth. There was something he knew which I wanted to dig deeper. So, I placed him in the cell, awaiting further interrogation.

Justice Bosire: You had started interrogating, Mr. Mwidau?

Mr. Nyaseda: Yes, my Lords."

But in his evidence, John Namai clarified matters by admitting that he had ordered Hisham Mwidau's release on the instructions of Duncan Wachira. As regards Mwalimu Mwahima, Francis Gichuki told us that Shariff Nassir was the one who pressurized him, John Namai and Shukri Baramdi to release Hisham Mwidau and they could not because of this pressure, arrest him even though the shots that killed upcountry people taking refuge in the Likoni Catholic Church compound, had been fired from his house and even though it had also been reported that his vehicle had been used to transport Digo raiders.

Francis Gichuki said that it was well known that police officers could be transferred for not co-operating with a Minister and that this frightened officers and stopped them from being adamant. These incidents also demonstrate how the Commissioner of Police himself, was preventing the proper investigation of crime. As regards Sharrif Nassir, this was not to be his last interference with the course of justice.

Francis Gichuki, it appears was under a lot of political pressure. Among this was the fact the Rashid Sajjad came to his office at least once a week. Other Kanu political leaders like Shariff Nassir, Boy Juma Boy and Kassim Mwamzandi as can be seen from the following extract from the verbatim report of the proceedings of the Judicial Commission. of 14" October, 1998, did not leave him alone:

"Mr. Gichuki: As far as this operation is concerned, we had a lot of interference from many quarters.

Mrs. Oduor: Can you give examples?

Mr. Gichuki: Immediately after this attack, I remember telling the PCIO, that it was political. And I still maintain up to now that this thing was political.



Mr. Gichuki: There were politicians who wanted the people who had been arrested released.

Mr. Gichuki: Hon. Nassir intervened on behalf of Councillor Mwahima.

Mr. Gichuki: There were allegations that there was a vehicle that had been seen carrying the raiders and it was suspected to belong to Councillor Mwahima, but he belongs to Hon. Nassir's camp. So, Hon. Nassir had to intervene.

Mr. Gichuki: He was suspected to have transported the raiders.

Mrs. Oduor: That is why I arrested him?

Mr. Guchuki: Yes, my Lords.

Mrs. Oduor: Hon. Nassir came to negotiate with you to release him?

Mr. Gichuki: There were negotiations.

Mrs. Oduor: And what exactly did he ask you and what did you tell him?

Mr. Chairman: What happened?

Mr. Gichuki: After consultation, we agreed that the councillor be released while the investigations would go on.

Mr Chairman: What was the pressure he put on you?

Mr Gichuki: He approached us and as a Cabinet Minister where he approaches we have got to give him a reasoning.

Mr Gichuki: As a matter of public relations, I think we had to ...

Mrs Oduor: You are also saying that without making any investigations or doing any investigations, somebody approached you and you released him.

Mr Gichuki: My Lords, it was not proper.

Mr Chairman: You mean what you did was not proper in succumbing to pressure?

Mr Gichuki: My Lords, it was not proper and I remember also that from Kwale, during the operations, the members of parliament in Kwale, that is Juma Boy Juma and Hon. Mwamzadi used to come to my office because they thought their people were being harassed during the operations. It was very serious because they were raising it even in public barazas. So, that is why I said that there was also that political interference.

Mr Gichuki: With the kind of situation that we had, people being killed and houses being burnt during the night, I did not agree with them, my Lords.

Mrs Oduor: Did you suspect them in any way?

Mr. Gichuki: My Lords, I suspected that they knew more than they were just telling me. I suspected them also, my Lords.

Mrs Odour: So, what did you do about that suspicion?

Mr Gichuki: My Lords because I did not want to hide anything, I think Hon Mwamzandi was a Government Assistant Minister and we were very cautious when we were



approaching these people. Mr Boy Juma Boy was also in the Government. He was an MP and Chief Whip of Kanu and these people were politicians up to the top.

Mr Chairman: Mr Gichuki, are you telling the Commission that although you had suspected these people and you had your reasons, you feared them?

Mr. Gichuki: My Lords, I did not fear them. But I was only cautious.

Mr Gichuki: I was cautious because people like Hon Nassir and Hon Mwamzadi were Assistant Ministers and they were in the Government. Looking at another angle, maybe, arresting them would have been seen as if I was interfering. I did not want to burn my fingers.

Mr Gichuki: My Lords, in a political Government, we have got to be cautious. This is a political government."

The following revealing extract from Francis Gichuki evidence as contained in the verbatim report of the proceedings of the Judicial Commission of 15th October, 1998, also shows that Mombasa KANU politicians who were prime suspects in the Digo raids were protected by the Commissioner of Police himself, who failed to give the required authority for their arrest and interrogation:

"Mr. Namai: Now, what would you say were the cause of not arresting the prime suspects? What would you say was the contributing factor?

Mr Gichuki: My Lords, as I said earlier, we had people who were being mentioned here and there. I do not know which people he is referring to because they were many.

Mr Hamai: Those who were implicated in the clashes?

Mr Chairman: What do you mean by "prime suspects"?

Mr Namai: Like Mr, Shakombo, Boy Juma Boy, Mwamzandi and the like?

Mr Gichuki: My Lords, I said earlier that some of them, were Government we would not have arrested those people without making consultations, or getting instructions from Police Headquarters.

Mr Namai: Would you therefore, say that the PSC or either of its members protected any of the suspects?

Mr Gichuki: My Lords, the PSC did not protect the suspects.

Mr Chairman: Yes, but were instructions sought from the headquarters about what to do with them?

Mr Gichuki: My Lords, we were consulting and those people were known. Even in the reports, they were being reported to the Commissioner of Police, so he knew who was involved. So, it was just a matter of getting instructions that we arrest them. I can



remember that some of those arrests we made, were made with instructions from the Police Headquarters.

Mr Chairman: Which ones?

Mr Gichuki: Like Hon Maitha and Masumbuko. We received instructions that they be put in for further investigations, my Lords.”

The view that the Digo youths underwent military training to attack the upcountry people and to make life insecure for them, is fortified by the discovery of incriminating evidence in one of their training caverns. The extent of this evidence also goes to show that the Police Force and Provincial Administration must have known what was going on.

In this regard, we are reminded of what Onesmus Mutungi said concerning the taking of oath, which we think, also applies to military training. He said and this is contained in the following passage of the verbatim report of the proceedings of the Judicial Commission of 13th October 1998.

"Therefore, given the way the security system is supposed to operate, it is not possible that a group of more than ten people can meet anywhere in this country, and not once, but for a period of time, and discuss or take oath or whatever without somebody in the security system knowing."

However, according to Exhibit 6, which contains a list of the series of attacks by the Digo raiders and police operations that took place after the attack on the Likoni Police Station, until the end of June, 1998, the operations that were mounted by the security forces against the camps of the raiders, did not begin until more than two months after the after the raid on the Likoni Police Station.

The first such operation was on October 20, 1997, at Buda Forest in Matuga in Kwale District. As already narrated, the Similani caves were raided on November 1, 1997. On the same day, the security forces also attacked the raiders at their camp in Makondeni Forest in Matuga in Kwale District. Three raiders were killed and three G3 rifles, a revolver and 74 rounds of ammunition recovered.

But apart from these, there were also recovered one black kanzu-like uniform with red and white diagonal stripes, a white star and crescent and Arabic writing on the back, a red flag, some bows and arrows, and more importantly, two hard cover exercise books. These hard cover exercise books, Exhibits 66(A) and 66(B), contain information which leaves no doubt that a well organised expensive military training over some period, of hundreds of Digo youths, was taking place at the Similani caves.

These exercise books contained in military style, the names and service numbers of the raiders undergoing military training, their attendance at the training course, the length of training, movement of arms including those stolen from the Likoni Police Station,



promotions, demotions, court martial proceedings, and the amounts of money spent on the purchase of food and medical bills. Strangely though, whilst all the other things that were recovered were entered in the Occurrence Book of the Diani Police Station, for October 31, and November 2, 1997, Exhibit 66(C), no entries were made concerning the two exercise books as should have been done.

They were also not entered in the Exhibits Books of the police station. And at a press conference held on November 2, 1997, by the Provincial Commissioner, Timothy Sirma, and the then Provincial Police Officer, Japheth Mwanja, the black kanzu-like uniform was displayed and the press told about the arms, ammunition, medicines, etc recovered; however, no mention at all, was ever made of the two hard cover exercise books. These books we were told by Chief Inspector Flora Tsonzaka, had, on the instructions of Japheth Mwanja, been kept under lock and key. All this was rather peculiar.

Anyway, the whole point of this is, why did it take the security forces such a long time before launching their attacks on the hideouts of the Digo raiders? It would seem that this delay was deliberate. The well organised and complicated procedures involved in the camping and military training of hundreds of Digo youths, as evidenced by the contents of the two hard cover exercise books, could not have escaped the notice of the Police Force and Provincial Administration for such a long time.

Another example of conniving behaviour of the Police Force and the Provincial Administration, concern the arrests and releases of Swaleh bin Alfa, the notorious witch-doctor. Swaleh bin Alfa was first arrested on August 15, 1997, by Nicolas Ndonu with his men at Kaya Bombo. He made a statement, Exhibit 78, in which he admitted administering an oath to the Digo youths who were receiving military training and which was being financed by Rashid Sajjad and Rashid Shakombo.

On August 28, 1997, after his arrest, the following coastal Kanu politicians Kassim Mwamzandi then an MP, Boy Juma Boy another MP, Rashid Shakombo, Salim Mwadendo a councillor, and Ali Mindo went to see John Namai at his office. They were joined by Shukri Baramadi. They claimed that they were in touch with the raiders who were willing to surrender their weapons on condition that Swaleh bin Alfa, who was in police custody, be released.

Even though Shukri Baramadi agreed with them, Swaleh bin Alfa was not released. He was charged with administering an illegal oath, arson and robbery with violence, taken to court and remanded in prison custody. There after several local leaders like Boy Juma Boy, Rashid Sajjad, Katana Ngala, Shariff Nassir, Mathias Keah, Karisa Maitha, Rashid Shakombo, and Kassim Mwamzandi appealed at a meeting with the Provincial



Security Committee on September 22, 1997, for his release so that he could persuade the raiders to stop their attacks.

The Provincial Security Committee having agreed to this, arranged to have the last two charges against him withdrawn. Bail was granted on September 25, 1997, in respect of the first minor charge, and one of those who stood surety for Swaleh bin Alfán, was Boy Juma Boy.

In the existing circumstances, the ridiculous and biased reason for this which at the same time, confirms the influence of Swaleh bin Alfán amongst the Digo, was, as contained in Min 65/97 of the minutes of the meeting of the Provincial Security Committee on September 22, 1997 in Exhibit 58, as follows:

"The PSC revisited the issue of releasing Swaleh bin Alfán who was charged with robbery with violence and administering unlawful oath. To restore trust and cement the relationship between the local leaders and the security."

After his release on bail, there was an informal meeting of the Provincial Security Committee at the house of its Chairman, Timothy Sirma which was attended by Swaleh bin Alfán accompanied by Suleiman Kamolle and Rashid Shakombo. Boy Juma Boy was also present. At this meeting Swaleh bin Alfán admitted having administered the oath to the Digo raiders and promised to release them from the oath so that they can surrender their arms and stop the raids.

As Sharif Nassir was to say on October 21, 1998, before the Judicial Commission, this was outrageous when the attacks by the Digo raiders could easily have been stopped and crushed for good. And so, here we had the Provincial Security Committee aiding and abetting the commission of the offence of the illegal administration of an oath, which in turn, was what instilled confidence in the raiders and inspired them to commit the heinous crimes that they did, for the absolutely nonsensical reason that this would stop further raids.

But what about terrible crimes against humanity that the Digo raiders had committed. They were now to go scot-free after all the evil that they had accomplished, and at the same time, taking pride in a job well done. This unforgivable action will only encourage the unleashing of further blatant violence against the upcountry people, and not as the Provincial Security Committee would like us to believe, that it would bring peace.

And what happened after Swaleh bin Alfán was released on bail? Instead of releasing the Digo raiders from the oath that bound them, he went on administering the illegal oath to more Digo youths. He also, and this he said himself, and was not contradicted, that he addressed several Kanu election campaign rallies where he called on the Digo to vote for



Kanu and during which, he gave out a total of Sh300,000 and some Kanu T-shirts, footballs and lessos.

These, as well as Sh400,000 for himself and the Digo raiders in the forest and two cars to be used for the Kanu election campaign rallies, were given to him by the Kanu chief election co-ordinator at Mombasa, Rashid Sajjad, in his office where he had been taken by Seleiman Kamolle, then a Kanu parliamentary aspirant.

His release on bail was clearly engineered so that he could rally support for Kanu in the impending general and presidential elections. The Provincial Criminal Investigations Officer at the time, Isaac Eliud Ndweyi Okoth, a member of the Provincial Security Committee, recalled that at their meeting with Swaleh bin Alfani, Boy Juma Boy in support of Swaleh bin Alfani's release, said that even politicians standing for elections sought the blessing of witch-doctors.

Obviously then, Swaleh bin Alfani would be most useful to Kanu in the coming elections. When it is considered as Timothy Sirma told us, that the proposal to release Swaleh bin Alfani was approved by the high level Kenya Security Council composed of Wilfred Kimalat, Duncan Wachira and Wilson Boinett, then these top officials also connived at Digo raids

But it must not be forgotten that earlier on, and as shown in Chapter One of this Report which deals with the Tribal Clashes in the Rift Valley Province (covered in Saturday Nation), that Timothy Sirma as a District Commissioner, and a Kalenjin, had shown sympathy for the tribal warriors that attacked the tribes that supported the opposition parties.

But worse was still to come. On November 13, 1997, whilst still on bail, and while the clashes were still continuing, it was reported to Joseph Jakaiti that Swaleh bin Alfani was administering an oath to Digo youths at his home. Joseph Jakaiti then instructed David Opala and the Officer Commanding the Diani Police Station, Chief Inspector John Ndungu to go and arrest Swaleh bin Alfani and those taking the oath. Inspector Peter Mwalali Kiema also went with them.

When they and their team got to the house of the wife of Swaleh bin Alfani, they found him administering an oath to several Digo youths who were only in shorts. Some of them escaped, but Swaleh bin Alfani and about nine of the youths were arrested and taken to Diani Police Station together with typical paraphernalia involved in the administration of oaths namely, charms, assorted herbs, pots full of red liquid, slaughtered chicken and razor blades.

It was then that an outrageous thing happened. No sooner had they been taken to the Diani Police Station than the Provincial Police Officer, Japheth Mwanja, ordered the



release of Swaleh bin Alfa who had been caught again administering an oath which would perpetuate the clashes, and the Digo youths arrested with him. They were then returned in style, together with the oath paraphernalia, in a police Land Rover, to where they had been arrested.

The reason given for this by Japheth Mwanja according to David Opala, was that other policemen were following another lead and that Swaleh bin Alfa could be arrested later. David Opala and Inspector Peter Kiema were both disgusted by this. David Opala feared for his life as he thought that he might have trodden on the toes of some important and senior people. He told Joseph Jakaiti about his fears who, rather suspiciously, kept his comments to himself.

Although Timothy Sirma left Mombasa for medical treatment on August 12, 1997, Swaleh bin Alfa told us that before then he was taken by Suleiman Kamolle to Timothy Sirma's office where they met him and his deputy, Hassan Haji. Timothy Sirma, whom he said, must have known about the military training of the Digo youths, then asked him to help Rashid Shakombo and Rashid Sajjad in their work. Not unexpectedly, and because of this, Swaleh bin Alfa was not arrested again until after the December, 1997, general and presidential elections.

We cannot help but come to the conclusion from the evidence that we had, that the senior most members of the Police Force and the Provincial Administration added and abetted the clashes at the Coast. Apart from those already named, these are in particular, Francis Gichuki, Hassan Haji, Timothy Sirma, Joseph Jakaiti, Japheth Mwanja, Wilfred Kimalat, Wilson Boinett and Duncan Wachira. In the light of the foregoing, they should be asked to make statements on the role they played in connection with the clashes at the Coast so that it can be determined whether criminal charges should be brought against them or not.

The politicians at the Coast were also involved in the attacks against the upcountry people and should be investigated. We have already dealt with Hisham Mwidau and Mwalimu Mwanja. The others are Rashid Sajjad, Rashid Shakombo, Boy Juma Boy, Suleiman Kamolle and Kassim Mwanzandi.

The most important evidence about them is that of Swaleh bin Alfa. We have already dealt with the large sums of money that Rashid Sajjad gave him in the presence of Suleiman Kamolle for the raiders in the forest and to help in the Kanu election campaign. What we must now refer to, is Swaleh bin Alfa's evidence that he knew Rashid Shakombo well and who had told him that they had people secretly undergoing military training in the forest.



Indeed, on one occasion when Rashid Shakombo came to his home, three of the Digo military leaders, came down from Kaya Bombo to see Rashid Shakombo who gave them Sh3,000. Suleiman Kamolle, according to Swaleh bin Alfani, knew of the Digo raiders who were hiding in the forest. In fact, it was Suleiman Kamolle who brought some of their parents to him so that he could talk them into stopping their boys from raiding and attacking the upcountry people.

Boy Juma Boy was one of the Kanu politicians who came to him several times to ask him to get the people in his area to vote for Kanu. The Kanu politicians, Swaleh bin Alfani said, came to him because, though he was not a witch-doctor, he was well known as a herbalist and also as one who when he prayed to God or jinn for things to happen, they did happen. Swaleh bin Alfani concluded that Boy Juma Boy who had stood surety for his bail, like Rashid Shakombo, gave food to the raiders and that their leader, was Rashid Sajjad.

Apart from the statement which Swaleh bin Alfani gave to the police Exhibit 41, there is the statement under inquiry of Mohamed Mdogo, Exhibit 67, which he made to Chief Inspector Flora Tsonzaka when she was the Divisional Criminal Investigations Officer at the Diani Police Station.

In this detailed statement, where Mohamed Mdogo was suspected of having taken part in the raid on, and the burning down of, the Likoni Police Station, the burning down of shops and houses of upcountry people at Ukunda, and the armed robbery and murder of two upcountry people, he named Boy Juma Boy, Rashid Shakombo and Kassim Mwamzandi as those who sponsored and financed the military training of the Digo youths to attack and drive away the upcountry people to their tribal homelands so that the coastals could govern themselves.

On August 15, 1997, Rashid Sajjad brought Karisa Maitha to see Francis Gichuki. Francis Gichuki called in the other members of the Provincial Security Committee and Karisa Maitha told them that the Likoni Police Station had been attacked not because the Digo youths wanted to drive away the upcountry people but because of the harassment of some navy men and Likoni people by the Likoni Policemen. Rashid Sajjad seemed to agree with this, though the members of the Provincial Security Committee thought that this was just a gimmick for them to stop the offensive of the security forces against the Digo youths.

On August 24, 1997, a progress report by Edwin Nyaseda on the investigations into the raid and destruction of the Likoni Police Station and the Likoni Tourist Police booth and the murder and injuries committed and caused on the night of August 13, 1997, and on



the extension of the raids to the Kilifi District and Malindi, was sent to the Commissioner of Police.

This report which is Exhibit 82, lists five politicians and the reasons why they have been arrested for questioning in connection with the crimes enumerated above. They are said Ali Chizondo, the Chairman of the then unregistered National Democratic Union, Karisa Maitha, Mohamed Omar Masumbuko, Hisham Mwidau and Mwalimu Mwahima.

On or about August 26, 1997, Shukri Baramadi informed John Namai that he had information that Rashid Shakombo and Boy Juma Boy were in contact with the raiders. Those whom Rashid Shakombo was in contact with, were willing to surrender their rifles but feared that if they did so, this might be used as evidence against them if they were charged in court.

On the other hand, those that Boy Juma Boy was in contact with, and this re-affirms the important role of Swaleh bin Alfian with respect to the administration of the oath to the raiders, would only surrender their weapons if Swaleh bin Alfian was released. Though some eight guns were surrendered through Rashid Shakombo, this did not stop the raids by the Digo youths, which continued unabated. The police still felt that even though Rashid Shakombo had brought back these guns, he knew much more than he was prepared to say. As for Boy Juma Boy, John Namai felt that he too knew more than he was prepared to say about the Digo raids.

As regards Rashid Sajjad, it appears that in addition to what Swaleh bin Alfian said about him there is other evidence, which implicates him in the clashes at the Coast. There is no doubt that he was the chief co-ordinator and a substantial financier of the Kanu 1997 election campaign at Mombasa. It behoved him that this time, Kanu succeeded fully in the forthcoming general and presidential elections.

One way of achieving this, was by displacing violence, the rightly perceived opposition upcountry people so as to ensure that as few of them as possible, voted against Kanu. The fact that Rashid Sajjad, and we have no doubt about this, had been specially issued with a police pocket phone by Duncan Wachira in 1992, when he was then the Provincial Police Officer at the Coast Province, would enable him to eavesdrop on the police communications network and to know what actions the police were planning to take against the Digo raiders. With such information, the Digo youths could elude as often happened, planned public offensive.

No statements whatsoever, have been taken from any of the politicians mentioned above that is to say, Rashid Sajjad, Boy Juma Boy, Suleiman Kamolle, Kassim Mwamzandi, Hisham Mwidau and Mwalimu Mwahima. This should have been done but no doubt, the police were too frightened to do so. As shown above, evidence implicating



them in the clashes at the Coast exist and statements must now be made by all of them in order that their involvement or otherwise, in the tribal clashes, may be determined.

According to the police report, Exhibit 6, the total number of the persons arrested over the clashes, all coastals, were seven hundred and five. Five hundred and five of them were taken to court out of which, two hundred and eighty five were convicted. These figures show that although, for the reasons that we have already identified, the police failed miserably to prevent or to rapidly stop the clashes, they were able to arrest a large number of people and to charge a substantial number of them in court.

But the sad thing, is that only very few of the leading political personalities who sponsored and incited the unemployed and superstitious Digo youths to cause mayhem, ever faced the law. The conniving senior officers of the Police Force and the Provincial Administration, were also not touched.

If this Report as we are convinced, is taken seriously, then we expect that the actions proposed in this Chapter of this Report, will be taken against the politicians, the members of the Police Force including those who were serving in its Special Branch at the time, and the members of the Provincial Administration who have been adversely implicated in this Chapter. They must not be allowed to get away with murder, otherwise, they will only live to do the same again tomorrow.

- ***Tomorrow: Focus on Western and Nyanza Provinces***