

3-5-2012

Public Hearing Transcripts - Thematic - Assassination - RTJRC05.03 (NHIF Board Room) (Political Assassinations)

Truth, Justice, and Reconciliation Commission

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/tjrc-core>

Recommended Citation

Truth, Justice, and Reconciliation Commission, "Public Hearing Transcripts - Thematic - Assassination - RTJRC05.03 (NHIF Board Room) (Political Assassinations)" (2012). *I. Core TJRC Related Documents*. 150.
<https://digitalcommons.law.seattleu.edu/tjrc-core/150>

This Report is brought to you for free and open access by the The Truth, Justice and Reconciliation Commission of Kenya at Seattle University School of Law Digital Commons. It has been accepted for inclusion in I. Core TJRC Related Documents by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

**ORAL SUBMISSIONS MADE TO THE TRUTH JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY, 5TH MARCH,
2012, AT NHIF BOARDROOM**

(Thematic Hearing on Political Assassinations)

PRESENT

Berhanu Dinka	-	The Presiding Chair, Ethiopia
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Patrick Njue	-	Leader of Evidence

(The Commission convened at 9.35 a.m.)

(National Anthem and Opening Prayers)

The Presiding Chair (Commissioner Dinka): Good morning. This morning, the theme of our public hearing is political assassinations, and this is an extremely important topic. We have heard a number of people before when we were holding public hearings in the country and also looking forward to the speakers who will present to us this morning and this afternoon.

(The Presiding Chair (Commissioner Dinka) introduced himself and the other TJRC Commissioners)

I would like to appeal to everyone as this is a very important hearing, we would like to reduce any commotion that would distract the witnesses or members of the audience who would be listening attentively. Therefore, I would like to appeal to you to switch off your mobile phones, and not to make too many movements. If you want to take still pictures, you can do so but without flash lights while the testimony is going on. But they can use flash lights and take pictures before and after the witness has completed his or her testimony.

At the same time, the procedure is; the witness will testify and once the testimony is over, the leader of evidence will ask questions to fill certain gaps in the testimony. After the leader of evidence, the Commissioners will also ask certain questions and make comments on the testimony again to make it more complete.

With that, I think we will be hearing the testimonies of four people before lunch and two people after lunch. I would, again, appeal to you to listen to the testimony with the respect and the dignity that the witness and testimony deserves.

I thank you very much and I will now call on the leader of evidence to call his first witness.

Mr. Patrick Njue: Thank you, Presiding Chair and the Commissioners. Our first presenter is coded No.15 on our cause list and he is seated right next to me. I want to welcome you, Jennifer and, please, for the record, introduce yourself to us.

Jenifer Shamalla: Mr. Presiding Chair, Sir, Commissioners, good morning. My name is Jenifer Shamalla and I am an advocate of the High Court of Kenya. I come here before you today as a Kenyan to address this extremely important and great thematic hearing on political assassinations. I want to thank you for giving me the opportunity to be here this morning and to be able to address you.

Mr. Patrick Njue: Welcome, indeed, Madam Shamalla. I notice you have prepared a memorandum that you would like to present to this Commission today.

Jenifer Shamalla: Yes, Mr. Presiding Chair.

Mr. Patrick Njue: I will now invite you to begin making your presentation, after which we will be asking you questions to clarify the same.

Jenifer Shamalla: Thank you very much. I shall start my presentation with a quote from an Irish Statesman and philosopher. He says:-

“When the leaders choose to make themselves leaders at an auction of popularity, their talents in the construction of the state will be of no service. They would become flatterers instead of legislators; the instruments, not the guides of the people.”

For the truth to be established, it must be guided by leadership which has certain characteristics. Integrity, I submit to you today, is one of the most important. Accuracy of one's actions is an indispensable characteristic vital for leadership. It requires that we are consistent concerning history and truthfulness. It is important that when we record the correct history of our country and not the history of a particular group or political class will be reflected. To achieve this, we must take into account that good leaders are leaders that serve the good of a nation and its posterity; and the attributes are courage and firmness. They are prepared to go against the popular sentiments which are spread by attention seeking short-sighted individuals. Leaders of excellence steer their country along the path of truth and, most importantly, encourage the historians to record history factually and truthfully. As the scripter has narrated, for a nation's history is not only egoistic; it is mercenary; it is unpatriotic. In a quest for good leadership, we too as a people have to be good; have to be honest in order to recognize and value a fine leader. If our leaders and we are not prepared to exercise the same standards on all the issues at hand and honestly analyze them, then the quest for truth and justice remains futile.

I state this because as recently as 2003, Prof. Makau Mutua, in his Report on a task force for the establishment of a truth commission specifically stated that corruption and misappropriation of public funds should be confined during Moi's era. I, therefore, ask; is this rational? Is this honest? Is it even acceptable in a thinking society that recognizes that corruption is a human failure and takes place in every regime and notably took place

during the Kenyatta regime as it does in the post-Moi regime? Was Mutua suggesting that we set up a political enterprise with diverse motives? If he was, it is ironic and sad that it finally took the events of the post election violence of 2007/2008 for our nation to realise that we need absolute truth, healing and reconciliation; and this healing and reconciliation can only be achieved if history is written correctly.

I now want to submit that as a prisoner of hope, we must have faith that this Commission will ensure that the true history of Kenya is told. I say this against another great quote by a British Statesman and leader, and in his wicked sense of humor and wisdom, Winston Churchill said that history will be kind to him because he intends to write it. He understood the power of documented history.

One of the important components of documented correct history is the truth.

But before we even delve into the truth, are we a nation that values the truth? That is the question that I will ask today, because our values determine our nation and fundamentally, our values define our culture. Values are the concepts of worth. In other words, how much do we attach to it and why? It is very crucial because they build a national character and they determine our characteristics collectively. If we value the truth, then it will define how we are going to cope with it once it is presented to us. Truth is very important a concept that it has been affirmed and it goes hand in hand with access to information. It is the bedrock to document the correct history of a nation and ensure that it is not distorted. What purpose will it serve to distort the history of a nation? Once you distort the historical facts, then you have control over the historical justices which bring about historical rights. In political terms, historical rights are the benchmark and the parameters that we navigate in. If we change history, we also alter rights and we begin to allow political events to influence the shaping of the so-called new history and new rights. An example is that, do Jews have a historical right to the land of Israel? Another example is that, between Britain and Argentina, who has territorial control over the Falkland Islands?

So, the obligation to honestly investigate and identify victims and perpetrators of serious human rights violation correspond with the right to truth and it is against this backdrop that I will now address the background and patterns to political assassinations.

We know and it is a fact that the truth is rarely pure and never simple. I want to go into the background of the geopolitics of which the assassinations occurred in our beloved country. South America and Africa have been the amphitheatres for the influence and control of foreign super powers. After the death of Tom Mboya and on the second day of the hearing, a Senior Superintendent of Police, Nahashon Isaac Njenga Njoroge, the man charged with killing Tom Mboya; it emerged that Njoroge had said: "Why do you not go after the big man?"

My question is: Is the big man an embodiment of a convergence of structural and institutional dimensions or interests? If, as a nation, we choose to see through the narrow lens of parochialism while attempting to understand the wider patterns of the assassinations in Kenya, then we may never arrive at the truth.

My overview is of four assassinations. The first one is that of Pio Gama Pinto of 1965. Two assassinations in Kenya in the 1960s had significant consequences for Jaramogi Oginga Odinga. One was the assassination of Pio Gama Pinto. It has been said of him that he had three political passions: Serving Africa, socialism, and helping Jaramogi Oginga Odinga. The second assassination was that of Tom Joseph Mboya in 1969. He was an ethnic compatriot of Jaramogi and also his political rival. The fourth assassination was in 1975 of J.M. Kariuki another African socialist whose body was found in the Ngong Hills. He was popularly known as the spokesman of the peasantry and the poor and memorably claimed that we do not want a Kenya of 10 millionaires and 10 million beggars. All the above-mentioned politicians were assassinated during the cold war. With exception of Tom Mboya, both Gama Pinto and J.M. Kariuki were defined as socialists. This was not a politically correct word for that particular time in Kenya's history. Kenya was the bastion of capitalism and western political thoughts and ideals in the strategic horn of Africa - a country that would be the bulwark in an increasingly red region (communism).

While Tom Mboya was aligned to the capitalist school of thought his death had a direct bearing on the Luo leadership and the Luo tribe. It unleashed riots and demonstrations among the Luo and led to Oginga's detention and the banning of his political party and effectively the introduction of a de facto one party State. When the National Assembly convened ten days after Tom Mboya's death, the then Vice-President and Minister for Home Affairs, Moi, gave a long speech. I cannot go into it today because of time, but I will read the last part of his message and speech.

He said: "There was no hidden warning or ominous portent within the remarks he had made that the enemies of Kenya would now discern that the supreme constitutional instruments of the State was standing together in the face of the challenge and this outrage."

With regard to the death of Dr. Robert Ouko it is an undisputed fact that his death was a catalyst for multi-party democracy in Kenya. The background was that the last bastion of communism had fallen – it was the Berlin Wall on 9th November, 1989. The cold war proxy in the USA and the former USSR had ended. There was a wind of change and a new brand of African leaders dubbed the African Renaissance who, were going to change the African continent. Dr. Robert Ouko died just a few months after the fall of the Berlin Wall in February, 1990. In December of the same year multi partyism was introduced.

I want to talk about the death of Patrice Lumumba. He was not a Kenyan, but a Congolese. He was a major figure in Congo's liberation. In February, 2006 the Belgian Government expressed its profound and sincere regrets and apologies for the role it played in the assassination of Patrice Lumumba, the first Prime Minister of the former colony of Congo. Some members of the Government accepted that they bore an irrefutable part of the responsibility in events that led to the death of Patrice Lumumba. The Belgian Government then announced the creation of a 3.25 million fund to promote democracy in Congo. It further stated that the assassination had been carried out with the complicity of Belgian officers backed by the CIA. It concluded that Belgium had a moral

responsibility for the killing. Now, this astonishing news begs three questions: Is it okay for Lumumba's death to be settled by payment from the Belgian Government? Should the known individuals not be charged, convicted and sentenced even if posthumously? What justice is it for Africans and is the justice for Africans retributive or restitutive?

As Kenyans, we must ask ourselves in the search for truth some important questions. Why is it that it took a western newspaper to break this news? Why was the story not pursued from Congo or Africa? Against this backdrop of the news of the death of Lumumba, what does it mean for us as Kenyans? How do we attempt to establish the truth around political assassinations in Kenya? Could there be conspiracies surrounding all or some of the assassinations in Kenya? Is the suggestion too far-fetched and outrageous? We know it is a fact that an African leader was assassinated by foreign powers. However, what is even more interesting is that the murder of a great American President became the subject of a select committee of the USA House of Representatives on Assassinations. They did not rule out conspiracy. In fact, their exact words were that it did negate some specific conspiracy allegations and the key word here is "some".

What has been the role of the civil society in shedding light on the truth? Only a few days ago it was reported in the papers that some Nyayo House victims had disclosed that they had received guerilla training and help from the slain Libyan leader and Uganda's Yoweri Museveni. I asked myself what the consequences would have been had these people succeeded. We would just be another African State steeped in civil war. We would not have been the only country to have enacted detention and anti-espionage laws. America has done it in the fear of Bolshevism. As I talk today, Americans have coined a phrase, "Enemy Combatants". They are dealt with so severely and mercilessly without access to natural justice and not even tried on American soil.

In this context, I want us to ask profound questions. What do we feel about certain Nyayo House victims and certain people who attempt to overthrow our legitimate Government and then wear it as a badge of honor? Do we punish our leaders for protecting us from them? Do we impose on them higher standards that are imposed on the leaders of the USA? What is fair? I hope that this is a matter that the TJRC will guide us on so that we can understand it finally.

I also hope that the TJRC will school us on the background and true circumstances on all the dimensions of Kenya's political prisoners and why the State did what it did. We need the accurate history. I also want to ask that the civil society takes the responsibility to act honestly, publish facts accurately so that Kenyans have a true legacy. With regard to the legislature, the majority of us watched the Gor Sungu's proceedings and we noted that it was an unfair process and members of that select committee resigned in the process. The public reactions to Gor Sungu's behavior when he shut down Nicholas Biwott and refused that he should not testify confirmed that natural justice is a human value. It is so profound that when it is denied, we ourselves will protest because it goes against the grain of humanity.

It is important that perjury which is a criminal offence in this country needs to be taken seriously. In the USA the 42nd President of the USA, Bill Clinton was impeached for

committing perjury. We must ask ourselves if we value truth for truth's sake. We must ask this because we love our country and that is why we are here today. We cannot allow ourselves to be judged as a nation that refuses to be convinced by the facts. As a confident nation, we should be able to stand by our past and fairly assess it and acknowledge its mistakes.

There is a group of people that control the nerve centre of how events are defined and how information is disseminated in this country. Since they control the information, they inevitably influence and dictate what we think and what we say. The TJRC must stand above the shoulders of this group. It must overshadow them with truths based on facts and unbiased recommendations. It must send the message to Kenyans that you cannot bury the truth because the patriotic and the well-intentioned will always uncover it. Kenyans of goodwill are pegging their hopes on the TJRC in the hope that the TJRC will keep our history safe and honestly recorded.

Thank you very much.

Mr. Patrick Njue: Thank you, indeed, Madam Shamalla for your presentation and setting that general overview on political assassinations in our country. Do you have any suggestions on the kind of recommendations that you would want done for the victims thereof?

Ms. Jennifer Shamalla: I would like to suggest that because the TJRC is a statutory body, it makes applications to various governments against the backdrop of what I have just presented requesting them under the Freedom of Information Act to provide any information that may shed light on these assassinations.

Mr. Patrick Njue: Did you say the various governments or---

Ms. Jennifer Shamalla: I mean the various interested governments not only the Government of Kenya against the backdrop of geopolitical situation of this country and against the backdrop of the case example I gave you of Patrice Lumumba.

Mr. Patrick Njue: I want you to confirm whether the memorandum with me here is part of the presentation you have made here today.

Ms. Jennifer Shamalla: Indeed, it is.

Mr. Patrick Njue: Would you wish to submit it formally to the record of this Commission?

Ms. Jennifer Shamalla: With a few corrections that I will make on grammar and not content, yes, I would.

Mr. Patrick Njue: Presiding Chair, with that undertaking, could the said document be admitted?

The Presiding Chair (Commissioner Dinka): It is so admitted.

Mr. Patrick Njue: I have no further questions.

The Presiding Chair (Commissioner Dinka): Thank you Leader of Evidence and Ms. Shamalla for your presentation; I will ask my fellow commissioners to ask questions or give comments.

The Acting Chair (Commissioner Namachanja): I have no questions, but to thank Madam Shamalla for coming to share her truth from her perspective. Thank you so much.

Commissioner Chawatama: I have no specific question other than to say that I have listened to you in the same way I have listened to many Kenyans share with us their truths. Some of these truths have been hard and difficult and heart-breaking truths. We have heard from simple Kenyans who have done certain things because they love this country.

Your presentation, in a sense, will serve as a foundation on what we will proceed to hear for the rest of the day. Thank you for making time.

Commissioner Farah: I too do not have a specific question for you. Mine is to thank you for having given us a different perspective and angle. On the civil societies side you raise a pertinent issue where some of the victims of Nyayo torture chambers confessed of having got training from Gaddafi, but they were few. There were a lot of others who were innocent. So, two wrongs do not make a right. I think at that time they were fighting for what would have been the clamor for multy-partysm. As divergent views were being suppressed so they coined any means to try and overcome this. Of course, you were right that some of them went overboard, but that still is not a reason for assassinations. We thank you for that different perspective.

The Presiding Chair (Commissioner Dinka): I want to thank you for your testimony which is a general background for us now as we listen to other individuals. Your different perspective will help us filter the testimonies that we here. It will put us in a good state in writing our report.

Leader of Evidence, you may stand down the witness and call the next one.

(Mr. Mark Mwithaga was ushered in)

The Presiding Chair (Commissioner Dinka): Welcome Mr. Mark Mwithaga.

Mr. Patrick Njue: Good morning, Sir.

Mr. Mark Mwithaga: Good morning Commissioners led by the Acting Chair.

Mr. Patrick Njue: Please, for the record, tell us your names and what you do for a living?

Mr. Mark Mwithaga: My names are Honorable Mark Waruiru Mwithaga. I happen to have been a Member of Parliament for over 15 years serving Nakuru Town Constituency that is 1966 to 1969; 1969 to 1974; and 1975 briefly before I was ejected from Parliament and imprisoned in Kamiti Maximum for two years. After prison I went back to Parliament in 1979 until 1983. I was then appointed an Assistant Minister for Labour and later moved to the Ministry of Tourism and Wildlife in the same position.

The purpose of being here today is to address this Commission and bring out certain facts which were important for everybody thinking about the assassination of J.M. Kariuki. It was a long story that needed proper examination. You would probably bear with me that I have to read some parts of it.

I knew J.M. Kariuki in 1950 at Kerugoya Boys in Kirinyaga before he moved to Kings College, Budo in Uganda. We met in 1960 when he was released from detention camp by the British Colonial authorities. We teamed up to go through his manuscript on Mau Mau and his place in detention. We used to meet at Athusi near OTC in Nairobi. He later joined KANU Party in Nyeri. I was already the KANU District Chairman in Nakuru and we became intimate. We consulted a lot on politics. Our happiest moment was when we eventually met in Parliament as MPs. However, before J.M. Kariuki contested for a Parliamentary seat, he had been appointed by Jomo Kenyatta who had also been released from detention as his private secretary for political affairs. The late hon. Achieng Oneko had been appointed the personal secretary.

The purpose of my preamble is to convince the Commission that in many ways I happened to know J.M. Kariuki well and that we were privy to a number of issues hence my qualification to present the following petition for and behalf of the family of the late J.M. Kariuki, MP for Nyandarua North.

Immediately after this country became a republic, it was found necessary to set up a mechanism of facilitating the training of youth who had no skills and deploy them all over the country to develop the road network and agriculture. The National Youth Service Act was passed to establish the National Youth Service for the purposes aforementioned. The Act provided for positions of National Youth Leader, Director of Youth Service, Deputy Director of Youth Service and Assistant Director of Youth Service. President Jomo Kenyatta appointed Mr. J.M. Kariuki, his earlier private secretary for political affairs, the first National Youth Leader. He wore uniform and ranks of a service commander. As such he attended meetings with other service commanders of the forces. However, he still kept his seat as MP for Nyandarua North. On several occasions he appeared in uniform as he went round doing his work as the National Youth Leader.

He had a car with a flag denoting his position. He would pass through Parliament and register his presence before the rise of the House at 6.30 p.m. Even in uniform, if going to

remove it, it would affect his Parliament day. Several of his colleagues asked him why he was in uniform while he was an elected honorable Member. They murmured that he was earning two salaries forgetting that Ministers equally had two salaries. When this became a big issue, Mzee Kenyatta appointed JM as an Assistant Minister for Agriculture as special duties and he relinquished the position of national youth leader. This position was now combined with that of Director of Youth Service; the incumbent then was Mr. Geoffrey Griffins, the founder of Starehe Boys Centre.

On the Harambee spirit, it was Mzee Jomo Kenyatta who came up with the word “Harambee” which meant “let us pull together”. He called on Kenyans to contribute money and materials towards development projects and asked leaders to show the way. JM Kariuki took up the spirit with great zest and in that way, was able even to educate a lot of young Kenyans in schools, colleges and universities by paying the fees for them without favouring any one community. Many MPs and leaders found it hard to conduct Harambees or even give their money towards it. Once again, new vendetta to tarnish JM’s name was hatched and Kenyatta would be made to agree that for JM it was a means of campaigning for the office of president and as so oust Mzee Kenyatta.

On land distribution, JM Kariuki owned land in Nyandarua and bought a farm in Gilgil which he called Kanyamwe Farm. However, he decided to share out the Ol Kalou land with the needy and he called upon other landowners to do likewise. This worked seriously against him as the move was to be termed subversive and socialistic. He organized his constituents and formed groups to raise money to buy land in Kamiti area but they were blocked. He toured the country helping new groups to buy land and settle themselves on such land, thus posing a challenge to the Government on matters of settlement of the millions who were landless. JM Kariuki came up with a statement on how Kenya had become a country of ten millionaires and ten million beggars. This was seen as causing “actual bodily harm to the body of politics in the country and the time would be opportune he would be made to pay for it. Mark you, all this time JM was engaged in all those plans to settle the people and educate the young throughout the country; he was still an Assistant Minister for Agriculture and Special Duties. To disengage him from the land matters, he was removed from Agriculture to the Ministry of Tourism and Wildlife.

On corruption and ivory trade, coming to this Ministry gave JM a golden opportunity to uncover corrupt business which involved highly placed political and other personalities. He found there were many armed agents to kill elephants for their tusks which were being exported to the Far East and Europe. JM started speaking against such acts. He may not have known he was now rubbing the wrong shoulders. He wrote documents though never published them on these matters and some of his European friends are known to have warned him against publishing them. He heeded but a number of copies escaped and ended on the desks of authorities.

The parliamentary term 1969-1974 was the roughest time for JM as he was making efforts to put many wrongs right. He was deemed to be fighting the system and was accused of plotting to overthrow Kenyatta. This raised the question of Kenyatta

succession as the president was now approaching towards the 90s in age. JM Kariuki was banned from addressing gatherings in colleges and in rallies in his constituency. JM was still an Assistant Minister but even then he was banned from addressing his constituents. In 1974 as the country was approaching a general election, the then District Commissioner, Mr. Thuo had been given strict instructions to impose the ban. He went even further and took away JM's pistol. Whichever route or road the administration knew he would be passing, had a road block manned by the Kenya Police personnel. JM found it very odd for a Government Minister to be treated this way while still in office. He chose to resign from that post of Assistant Minister and joined the backbenchers in Parliament. He gave reasons for his prompt action as being pushed too far. However, he remained a candidate for his seat and even without campaigning; he won the 1974 general election with a landslide.

It will be unfair to forget one very important event of the family that was to celebrate James Kariuki's birthday at his home in Kanyamwe Farm at Gilgil. The orders to the police and DC to ban all JM's gatherings were applied and the roadblocks were on all ways which led to Kanyamwe Farm. All those who had managed to make it to the farm were ordered to leave. Many foreign friends of JM and the Press were not spared. The press reported the happenings but no one owned up. Human rights, freedom, justice and family privacy were all abused and to this day, no healing has ever taken place. The family had to bear the trauma.

President Kenyatta formed his Government after the 1974 general election but this was a very difficult exercise and politics of succession was in very high gear. Mzee Kenyatta's very close advisors wanted a popular government to be formed, which was to include JM Kariuki, Charles Rubia and Seroney as full Ministers; it was to have population Assistant Ministers GG Kariuki, Mark Mwithaga, Dr. Waiyaki, Martin Shikuku, Burudi Nabwerra and many others. The move for popularity was blocked and the move for power in succession was adopted. All of those aligned to JM Kariuki were left out of Government to remain backbenchers.

I would like to state here that this, as I called it earlier, was a preamble; I have said that this was a beginning of an end. I want to keep aside the written statement in order to move to the parliamentary report of the select committee. This committee dealt with matters that were affecting JM, especially matters of security and eventual assassination. I do not know the opinion on this because you already have a copy yourselves on the same; if you would like us to go through it--- Or, you have questions to ask me because I was the Vice-Chairman of the committee, I would be prepared to recall verbatim what is in the book and help the commission to advance.

The Presiding Chair (Commissioner Dinka): Thank you, hon. Mark. You have given us a fantastic background to the story and as you said, we have the document from the parliamentary report; as you were the Vice-Chair, and somebody closely associated with this matter for years, I think a summary of your views and what happened in Parliament would be useful to the commission and to the audience as well. So, if you can, briefly but

clearly inform us of which are the two difficult alternatives to reconcile; we will be very grateful.

Mr. Mark Mwithaga: Thank you Chair and the Commission. It is true that I wanted to update you on the background, so that those who are in this audience who did not have the background about JM Kariuki may now be able to follow keenly what we are going to move to now. JM Kariuki was a popular Member of Parliament and became a backbencher since he was not reappointed to the Government in 1975 after the general election of 1974. In Parliament, we were able to sense a danger on the swearing in day when hon. Members were sworn in as MPs for their respective constituencies. All were present including the late President Jomo Kenyatta because he was MP for Gatundu. When JM was called to swear the oath of an MP, the whole House became almost chaotic. There was banging of benches and disturbing noise. There was shouting and echoes of hailing JM and appreciating his return to the backbench; this was in the presence of the late President Jomo Kenyatta. I looked at Jomo Kenyatta's eyes and no doubt as a politician, he noticed something was not well; let me tell this commission the bitterest truth, Kenyatta and JM were very intimate the reason being that their background was that of freedom fighters and Kenyatta had at all times loved brave men and women.

What Mzee Kenyatta did not realize was that the team he was with in detention was being destroyed one by one by forces he thought were on his side but he was being isolated. Therefore, immediately after the swearing in of MPs, JM Kariuki went back to Gilgil and started contacting other MPs so that we could now prepare how we were going to elect House committees. It was obvious we were going to elect House committees which were from the popular side and this would be deemed to be an affront to the late Kenyatta. So, when this exercise started, we had to first of all elect the Speaker and the Deputy Speaker. We had a big problem because we wanted hon. Seroney as Speaker but the Government system and the President wanted the then Speaker Fred Mati to return and Dr. Waiyaki to be elected Deputy Speaker. We spoke to Dr. Waiyaki and he was not ambitious. Then eventually we succeeded in getting Seroney as Deputy Speaker. Within no time, security of the country started certain movements visiting our constituencies in very suspicious circumstances. There were a number of movements in Nairobi, in hotels and other places, and we came to know about them. There were some community meetings which discussed JM Kariuki and others and they would not invite us to their meetings. So, we sensed things were not well. Then all of a sudden, JM Kariuki, who was a free man, decided as usual to go to the Ngong Racecourse to attend the races. During our investigations as a committee of the House, we were able to discover that, indeed, security system was organising something against JM; one person called Kinyanjui or Mark Twist had been arrested, convicted and sentenced to two years and jailed in Kamiti Prison only to be released on a Sunday at 9.00 a.m. in a magistrate's house. He was assigned to check on JM's movement. This was because people knew this man was in jail and, therefore, you would not expect him outside. When we summoned him to the committee, he actually agreed with us that he had been released from Kamiti and his assignment was obvious because he followed JM even to the Ngong races; what was even more disturbing was that even before this happened, JM Kariuki had reported to the

police at Central Police Station, Nairobi. It used to be very popular as Kingsway Police Station. I do not know which king had passed through that place. JM reported that his car had been riddled with bullets near the City Mortuary one night at about 11.00 p.m. The police reluctantly told JM that even their cars were also being attacked that way.

Definitely JM, who had also been trained well as a national youth leader, was conversant with the security mechanisms; he understood quickly that the police had something to hide or to cover up. So, he decided to report this to the Speaker and he was allowed to make a statement in Parliament. You can check the HANSARD and you will find it. Even then no one took action and, therefore, when JM Kariuki was reported to have disappeared, not through the Press but through rumours which reached us in Parliament, we started wondering whether it could have been true and for a day we were not able to explain what was happening because his car was parked at Hilton Hotel. I still remember it was a white or cream Mercedes Benz No.143. Then as we decided to go round looking for the truth, a newspaper said that JM was in Zambia. We were wondering why he should be in Zambia secretly, without any Member of Parliament, including his confidants knowing anything about it. Then information came to us that the story was not true. So, we were asked by our friends to start investigating.

As questions were raised in Parliament about his whereabouts, the then Vice-President, later President Daniel arap Moi, was given written statements, and this is a fact, by his officers trying to help to answer the parliamentary questions as to the whereabouts of JM Kariuki. The statements he read were all denials of any knowledge or any substance pertaining to the disappearance; on that day he gave us an astonishing statement that he had now gotten the report that JM had left Zambia, Lusaka, and gone to Tanzania; the report indicated that with other unknown people he had embarked on an aircraft with foreign registration which took off from Tanzania and flew westwards to an unknown destination. It was so shocking that Parliament was being treated to these Government lies. I do not know what they wanted to achieve other than to cover up something. We were helped by the late JM Kariuki's wives led by Nyambura who had been to the City Mortuary as a result of some mysterious information by a police constable, who did not want to be identified then and who had suspected the body he had seen at the City mortuary was of JM Kariuki. As a Select Committee of Parliament, we eventually got the constable and we summoned him to give evidence which he did and confirmed that he had known JM, and that he had some very deep information from Ngong police about JM and that was why he had thought of passing at JM's home and asking the wives to investigate what was happening at the City mortuary.

The ladies came to Parliament without showing any emotions and we commended them very highly for behaving that way; it was too intelligent of them to avoid traumatic behaviour; they were composed and came to Parliament to let us have the information. They sat in the Speaker's Gallery and heard the Vice-President narrate the story of the aircraft flying westward to an unknown destination. They screamed and told him not to tell lies because the body was at the City mortuary. The whole House became unruly. The Speaker could not control anybody anymore and Moi realized that if that statement was not true, it was a terrible statement to the nation; he had told the country lies which he

had been given officially; he took out a white handkerchief and wiped out tears. I saw it myself and he made a statement that this country was going to be in danger should that be the truth. So, we all walked out of the House without following the normal procedure and followed the ladies to the City mortuary. When we reached the City Mortuary, we were not allowed to enter except the compound. It was now obvious that the Government had started a kind of self defence mechanism in fear of the truth that was now coming out. One senior superintendent of police in charge of Nairobi CID and who was on leave found us there. He knew many of us and he wanted to find out why we were all there. It appeared he was also in the dark over this issue. We told him we knew JM Kariuki's body was in the mortuary and nobody wanted to open the place for us to view that body, and there was one police officer from Parliament who had been attached to the Special Branch and who was identified by hon. Grace Onyango and asked why he had a label of a mortuary attendant on his coat. The special Branch officer attached to Parliament was now an attendant. The senior superintendent of police was known as Mr. Kibera. So, he asked this attendant to open the place for us, so that MPs could view the body if it was true it was there. He said he had instructions not to open for anybody. I am sure the commission can now understand when such instructions are issued that is an implication of something; an implication which the government could not disown.

Mr. Kibera ordered the officer to open the place for us as a senior officer and the other fellow was adamant not to open. So Mr. Kibera produced his police card to show his rank and authority in charge of the CID so the young officer opened the doors. What do we find? Mr. J.M's body on a stretcher; It was his body because many of us had known him closely. Because I do not want to take a lot of time narrating this, I want to introduce how we got in contact with the situation to go back to Parliament and form a Select Committee.

As we were watching over the body, some inside and others outside, others behind the mortuary, we discovered a Peugeot 404 Station Wagon with some women mourning and weeping. They were seriously weeping and whether they were real or not, we did not know. But they were preparing to receive the body from the mortuary and drive it away in that vehicle. On one of the legs of J.M. Kariuki, we discovered a written label tied to it which read: "A body of unclaimed Luo gangster" and then there was that vehicle with Luo women, I do not know whether they were Luo, but it was a cover up waiting for the body. Since the body was unclaimed, we asked ourselves straightaway how that group would now claim it and take it where. They had removed some of his teeth, the lower teeth, so that he could appear as naturally a Luo. Fortunately, that never happened because we went to Parliament with a clear and official position that his body was going to be there.

The following morning, we moved in Parliament to appoint a Committee and on 14th March, which was a Friday, we tabled a Motion and eventually passed a resolution to appoint a Committee. We invoked the National Assembly Powers and Privileges Act since this was going to give us quasi-judicial powers as we were going to investigate the way Parliament wanted us to do it. Many of the details and what we went through, the witnesses we interviewed, what they said and denied; what they confirmed, including

officers of the Government and including Ministers, is all recorded verbatim and that report is in Parliament. However, our official report to the House which was derived from the verbatim report is also, I believe, the property of this Commission. All I would like to say without going into details is that we expected the Government to take action after Parliament had adopted this report. That is because we had made recommendations which were based on facts and the truth. Parliament in Kenya by then - and I think even now - did not have powers of arrest or even powers to order arrest like it is in the House of Commons in Britain. That is because if we had, we would not have stopped at reporting to the House only. We would have moved the House to order the arrest of the persons we highly knew would have been implicated in the actual murder.

We tried to get the assistance of the CID and the Special Branch but we realized that, as Mwangale had put it one time in Parliament – he was our Chairman and I the Vice-chairman... He made a very historical statement about a stone which was spoken to by some Luhya elders being invited to join them to walk to a certain place, but the stone did not move. So Mwangale cited that Luhya saying that the stone had refused to join him and he had told the stone what he told it and it was not answering. In any case, it had heard what it was being said. So, we regarded the Government then as a stone. It had heard and read the report but refused to act. Our question which has made us to come before this Commission remains one: The act of eventual murder of J.M. removed a husband from his wives and father from his children. It removed the MP from his constituency that had rightly and legally elected them; removed a leader from the country, who had served this country with complete sacrifice, fighting for freedom and spending his nine years in detention, serving the then President as Private Secretary, which meant confidentiality, being seen all over the world with the President, to meet and negotiate with foreign leaders on his behalf, developed the National Youth Service (NYS) and organized it in a such commanding way to become a national asset in the structures of the nation and being able, at the same time, to serve in the Ministry of Agriculture with special duties; to remove all expatriate workers who were earning a lot of money from this county. The people he sacked one morning using his special duties authority and replaced them with natives who had education enough to run those corporations; a man who moved into all communities of the country, removing him from efforts of uniting the country. Therefore, the House felt so sad. Although we told the stone it had heard what we said, we were left with a lot of pain and shock but we were determined that, that system was not going to kill another politician in our time. We did not mince our words.

I would like the Commissioners to know that the country was shaken and some of the leaders were in hiding; they did not know what would follow because the spirit of JM was very strong in the country. Mr. JM was the only fellow outside the Luo community who attended Tom Mboya's graveside funeral service and he contributed Kshs3, 333.30. We did not know what that meant and it became a media issue because he did not explain why he had to contribute that amount when he visited Tom Mboya's grave in Nyanza.

In conclusion, my accepting to be present in this Commission with my family, the family I have never abandoned even once and I will not try it because this is the truth one cannot

run away from--- The present President had told us at the burial of JM - because he was the only Cabinet Minister to attend the funeral and former PC Nyachae - that even if it took 100 years, we shall be told who killed JM Kariuki and why. Those two issues; who killed him and why! Those are matters I would like the Commission to take seriously. Since the President is still with us, before he retires, when he will be busy doing his private matters, could the Commission seek an appointment with him and try and get more out of him on this matter, in order to help the country come up with a permanent solution and restitution for the family; embark on the removal of trauma they have gone through and which nobody has attempted to remove from and reinstate them in their dignity which their father and husband had worked for? That way, we will do some justice both to the family and the history of this nation. Also, ask him to cause his Government to remove the myth which still surrounds the mind of many that JM was an enemy of somebody in the system to the extent that you cannot name a street in this country after JM; you cannot name a school in his name. It has never been heard in any part of the world that people who have made such history that JM made for this country would continue to be treated this way as a non-entity. The history of this country will never be true without the history of JM Kariuki in the struggle for freedom and in the national reconstruction of the nation. That should be known and heard loudly.

We expect the Commission to help us in this nation by talking to the President as he did with the Mau Mau who had been banned by the British and even the Kenyatta Government. He lifted the ban and allowed them to form associations. Since he set up this Commission, he had faith in it. He knew what it would come up with would be the best for this nation; both for now and posterity. I am, therefore, inviting the Commission to make efforts to talk to him. He had said something about the 100 years and about the finding out who the murderers are and why they did so. He has the responsibility to restore this family to its original status and protect them as citizens of this country, which they have not had. Mr. JM committed no crime because even if he had wanted to become a president, it was the right of any Kenyan citizen to be ambitious. I would like any lawyer to tell me whether ambition is a crime. Many of you professionals are in that area. If there is any other crime he committed - which we did not find as the Select Committee of Parliament - could the Commission invite others who have such information to come and state it here so that truth, justice and reconciliation may be accomplished?

Thank you.

The Presiding Chair (Commissioner Dinka): Thank you very much for that complete and lucid presentation on the background to the life and the events that led to the assassination of JM Kariuki. Thank you because, as a friend, you never betrayed him.

Mr. Patrick Njue: I have a quick question, what were your findings briefly as the Select Committee as to the cause for the assassination of JM and in so saying, give us your recommendation that you made as the Select Committee.

Mr. Mark Mwithaga: As a Committee of Parliament, we did not find anything that would have justified the murder or assassination of JM Kariuki. As Members of

Parliament, we were sworn to uphold and defend the Constitution. We were legally and constitutionally bound and if JM had committed certain crimes, we would not have stood by him because he had also been sworn in like we were and there was that spirit of collectivity. But because we were interested in finding out - as you are asking - whether he had committed any crime, we invited the Vice-President to appear before the Committee. We invited the Minister of State in the Office of the President, Mr. Mbiu Koinange. We invited the Attorney-General then, Mr. Charles Njonjo. We invited the Commissioner of Police, Mr. Hinga, the Director of CID, Mr. Nderi, the GSU Commandant, Mr. Gethi and Special Branch Director, Mr. Kanyotu and his Deputy. We called them so that they could testify if they had anything they knew JM had done, either against the President as an institution of State or against the system, they were free to tell us. If they knew and were convinced that, that is what JM had done, probably the period we took as the Select Committee would have been shortened. But I remember now that you have asked that question. The Deputy Director of Intelligence, Mr. Stephen Mureithi told the Committee - and it is on the HANSARD - that the JM's issue was a time bomb in this country. That was his statement! As such, because he was not telling us the very crime, our deduction is that he was talking about politics and there was no political crime.

Mr. Patrick Njue: Briefly on your recommendations as a Select Committee.

Mr. Mark Mwithaga: As a Committee, we made recommendations and they are all contained in this Report. A number of people we thought needed to be investigated further, we mentioned them and they all listed. That is a historical fact! The question was: This stone we were addressing; was it going to open investigation files? Was it going to act? No doubt they never did anything. Why they did not do it, you only need some little common sense. Any person who was implicated or who was conversant with the plot or such moves against the system or an individual politician whose body had been dumped in the forest so that nothing would be known thereafter and so that his disappearance is never found out--- Those who could not join in the investigating embraced cover up and that is exactly what happened. Many of those we recommended to be investigated are now dead. They must have gone with the information they had. But since they were all Government officers and they were linked to this issue by a number of things which included the findings of JM's Kariuki watch in Makongeni Police Line hidden in a packet of cigarettes. It was placed on a toilet's rooftop only to be found by a boy who wanted to play with the cigarettes packet. It was a child of a police sergeant and the child who gave the father the watch bearing the names of JM Kariuki. That kind of link, obviously, linked Government agents in the act. Even when we went to see the Director of CID, Mr. Nderi, he pretended not to know about the watch and referred us to Superintendent Soki. He had the watch but they did not release it to us. So, they said they were investigating how it reached Makongeni Police Line and in the house of a police sergeant. As such, I would like to say we made our own recommendations. Nobody acted on this report but we will ask the Commission; since the President appointed this Commission with one mission, to unearth the truth, do justice and reconcile all the people, would the Commission ask him to act on this document because somebody somewhere--- The Government would have to act on these kinds of recommendations which were adopted by majority of Members of Parliament which made it an official document. How would it

be official in the archives of Parliament yet nobody is acting on it? That is the question I am bringing to the Commission.

Mr. Patrick Njue: Very well put. I have no further questions.

Commissioner Farah: Thank you very much for your good presentation. We have heard from you before and so I have no questions.

The Acting Chair (Commissioner Namachanja): Thank you Mheshimiwa for helping us understand this case of one of the Kenyan sons, a hero in this country. There may be no streets named after him but after his death, I was wondering why where I come from some children were named JM Kariuki who are not Kikuyu. I think the rest of Kenyans recognize his work especially in supporting the poor but, yes, he still needs to be recognized nationally. With the sensitive job that you were doing, I would like you to share how you were impacted by this job that you were given by your Parliament as one of the people asked to investigate the death of JM Kariuki.

Mr. Mark Mwithaga: We definitely had to pay some price and this exactly why I feel that the Commission has a job to do. When we presented the report to the then President Kenyatta, as a matter of procedure and courtesy, we were doing so, so that we do not table the report in Parliament before he knew what the contents were. I remember he looked at us and he was fuming. But then we were able to develop some elementary psychology and cooled him down because I remember telling him: "Mzee, throughout the time we sat in this Committee, nobody mentioned your name; nobody wrote to us with evidence containing your name and that having been the case, surely, it would have been witch-hunting to introduce your name in the report when you had not been mentioned. But all the others we have mentioned here, Ministers and public officers, we have many documents which were sent to us by people as proof of their evidence. Others came in person, recorded and stated what they knew about them." At that point, I remember Mzee looking at me and he felt convinced. So, at least, we had time to discuss a few other things. It is at that point he asked Mr. Mwangale, the Chairman: "Why do you have my Minister's name here and my bodyguard? These are in the Office of the President. It appears if it had not been for politeness, then you would have put my name because leaving my name and putting these names here is the thing I am questioning you." Before Mwangale responded, Mzee cancelled those two names himself with his own pen and he asked Mwangale to initial the concurrence. I remember that Mr. Shikuku had warned us before we went to State House because he refused to join us to go there. Even Mr. Seroney did not join us. He had told us: "It is better that you go a few of you because you may never return and if you do not return, we will tackle this issue outside here before we are also picked up." So, anyway after Mzee had done that, he called us out and he said we should have a group photograph. I felt that the group photograph was going to implicate us; the Press might say we had agreed with Mzee on some things and there would be no way of refuting it. His Office would have said the same and, therefore, we had reasons to worry and I refused to stand for that photography. What surprised me is that he refused to have that photograph taken without me. He asked: "Where is Mwithaga? He is one of the mothers of this issue!" I did not know what he meant by that. Mrs. Grace Onyango

called from the rear to stand by Mzee and Mwangale, only to be asked to put out our KANU salute fingers. This was high politics!

We were with hon. Mwangale. We were asked to stop and flash our fingers with the KANU salute. This was high politics. I sensed, therefore, that the system was at war with itself as to how to conclude this matter without it being affected adversely or otherwise.

Having realized this, when we went back to Parliament, I approached my chairman, hon. Mwangale and I told him let us move quickly. Let us table this report now even if it is for five minutes. Mwangale tried, but the Speaker Mati refused to accept the move. He said there is no hurry. We can wait for another day or two. He did not realize that we were sitting on a very hot bath.

I told Mwangale if he was not able to table it, he allows me to do so as his vice-chairman. When Fred Mati refused us to table it, we had no choice but to wait for the Deputy Speaker, Mr. John Seroney. When the Speaker went for tea and hon. Seroney took the Chair. Mr. Seroney read all the papers which Speaker had left behind, but there was nothing about this move. So, when Mwangale tried again table the report, Mr. Seroney allowed him to do so. He said since there were no instructions by the Speaker on this matter, he decided to exercise his authority as the Deputy Speaker. The Deputy Speaker put the question to decide whether Mr. Mwangale was in order to table the report and the House allowed it to be tabled. Mr. Mwangale was now allowed to table the report. He moved the Motion and I seconded it. Fortunately or unfortunately, my conscience told me that to save this nation, we cannot just write a report so short and expect the people to be satisfied. So, not going out of the terms of reference of the Committee, I took about two days to second the Motion. I was then joined by Burudi Nabwera who also took a day. This time we were now sending quivers in the minds of the system. They got so furious that we were trying to influence the society to pay the price. By that time, my election as a Member of Parliament had been petitioned. The petition was rushed and I lost my seat in Parliament in 1974. With no evidence whatsoever, the three judges accepted the petition and made the findings. They stated categorically that I had not committed an election offence. The biggest question was about the difference between the votes of the person who came second to me and mine. They ruled it was fair to go back to the electorate and find out convincingly who actually won. I had the right to seek re-election. So, I went out to seek re-election. The system was not happy when they discovered that I was going to be elected anyway back to Parliament. I am glad the late Njenga Karume has written all this in his book. So, when the system realized I was going to be re-elected, they arrested me and took me to AFTC military barracks where police could not access. Later, I was transferred to Kamiti Maximum Security Prison where I stayed for two years doing hard labour. I was released in 1977. Mr. Seroney and Mr. Shikuku were picked up from Parliament Buildings in pretext of breach of parliamentary privileges. They were also sent to Kamiti Maximum Prison. They were detained for many years. All of us and others suffered a lot. So, we paid the price for being in this Committee. In fact, I should have brought my case to this commission but, probably, I will handle it in other mechanisms.

The Acting Chair (Commissioner Namachanja): My last thanks are to the widows. Mama Nyambura, thank you for controlling yourself at the time you went to Parliament. Probably, if you went to Nyeri or any other place, maybe the body of your husband would not have been found. It would have been taken away by the women who are alleged to have been ready to pick it. Thank you for being strong for your family. I have no further questions.

Commissioner Chawatama: Thank you very much for your testimony. My line of questioning will be based on the fact that I am a foreigner. So, maybe some things that my colleagues either know, I may not be aware of them. The only connection here is the fact that I come from Zambia, and J.M. Kariuki was said to have gone there. Since I have been on this Commission, I have met his friends in Zambia who still remember him.

My questions would be based on institutions such as the Legislature, Executive and even the Judiciary. I also have question as relates to the police and to the Press at the time. What was the composition of Parliament then? Were there any Members of Parliament who were in the opposition? Just give me a short “yes” or “no” and the numbers.

Mr. Mark Mwithaga: The parliamentary system was based on a *de facto* one party State. Therefore, there was no opposition. The Back Benchers were acting as an opposition. They were trying to keep the Government on its toes.

Commissioner Chawatama: The reason for my first question was to understand. You described the late Member of Parliament as a popular person and also the fact that when he was called to be sworn in, the whole House became chaotic. In becoming “chaotic”, was it in support of the late Member of Parliament? If it was, my feeling is as you testified, there were times when Parliament could have actually intervened, but they failed to do so. A popular Member of Parliament was being so harassed and he was banned from addressing meetings. He could not even celebrate his own birthday party. If he was so popular in Parliament, why were parliamentarians quiet at very critical times when they could have spoken?

Mr. Mark Mwithaga: Those are very good questions. When the country is in a one party State, like we all know about many countries even in socialist East or Europe; that party becomes government for all purposes. Therefore, Kenya was no different although it was a *de facto* State and not *de jure*. I think I should not have used the word chaotic. I used the word “chaotic” because of the kind of jubilation there was seeing one of their heroes being sworn in, in the presence of the President who was deemed to be his rival. The House had accepted J.M. Kariuki, especially when we were voting for the adoption of this Report because a number of Ministers, first of all, stood up and spoke in the House in support of the Motion. One such was hon. John Keen. He was an Assistant Minister for Public Works. He remarked and I quote: “Since the hyenas of Ngong Forest did not eat the body of J.M. Kariuki, they should be honoured with EGH State medals and what have you.” It is on the records of the House. That evening, he was sacked as the Assistant Minister for Public Works.

On the day of voting for the report, hon. Masinde Muliro who was a Cabinet Minister and hon. Peter Kibisu, who was an Assistant Minister, voted for the adoption of the report. In the evening or at round 6.00 p.m., they had lost their positions in the Government. Both sides of the House, the Back Benchers and the Front Bench in spirit respected J.M. Kariuki's stance with regard to this nation's wellbeing.

The other question was that when the parties and other meetings were being banned, why did Parliament not take action? I remember when, especially during the birthday party, a Motion was to be tabled before the House. However, something happened and it was not debated. There were manipulations. In politics, those things are obvious. Therefore, the matter was not discussed, but the Press highlighted the whole issue.

Commissioner Chawatama: You have served in Parliament as an MP for a number of terms. I am sure you are still following the workings of Parliament in this country. Are you aware of any reports that have been adopted by Parliament and have not been acted upon? What happened in this case? Was this something that had happened in the past? Has a report adopted by Parliament not been acted on and did this continue in the future? Are you aware whether this is still obtaining?

Mr. Mark Mwithaga: Parliamentary procedure like many know is that if a resolution is adopted by the majority in the House, it becomes the property of the House. Therefore, it invites the relevant Government departments or Ministries to examine it and find out whether it can be implemented through a Bill of Parliament or any other mechanism like a Government Motion. Nobody has ever touched this one. However, a number of others before it had been tackled through Government Motions or Bills to enable them to be implemented, probably, as a whole document or just piecemeal. But this one not a single Minister, even the Attorney-General ever attempted to act on it. It must have been the failure of the then Attorney-General, hon. Charles Njonjo. This is something that he should be asked to answer for. I would like the Commission to invite him and ask him why Parliament passed a Motion on a report like this one pertaining law and State security, but he failed to act although he was in charge of law in this country. He just wished it away.

Commissioner Chawatama: I just have one question on the Executive. In your testimony, you said that you presented the report to the President first before the same was taken to Parliament. Are you aware whether or not the Executive; that is, the Cabinet, had an opportunity to consider the contents of your report and whether or not they had some thoughts or recommendations on the same?

Mr. Mark Mwithaga: Our information which was privy to us is that the Cabinet never discussed it. Nobody dared take the paper to the Cabinet because they did not know how divided the conscience of the Ministers were.

Commissioner Chawatama: Then what does this tell us about the Cabinet then? It is one thing for the report not to be discussed, but it is also another thing to have a Cabinet

that reads newspapers and watches television and they were obviously aware that you had presented the report.

You took a photo which I am sure appeared in the newspapers. Just by way of some activism, the Cabinet just kept quiet.

Mr. Mark Mwithaga: We understood the mood of the day because the President and his Executive had regarded J.M. Kariuki's issue as an affront; as if it was aimed at him. I am sure he would not have allowed any Minister to initiate the discussion in Cabinet. In any case, the Ministers then could not even try to show that they wanted to go against the wishes of Kenyatta then. Having seen a Member of Parliament assassinated, they were all afraid.

Commissioner Chawatama: As you gave your testimony, being a judicial officer, one of the questions that I asked myself is why no initiative was taken for a private prosecution? Do you think that given the environment then, this is something that could have been impossible or the thought did not cross anybody's mind?

Mr. Mark Mwithaga: I will tell you something I almost omitted. The political activities in the country immediately after we had set up this committee were very volatile. I remember the President staying in Mombasa then and Ministers, some Members of Parliament and other dignitaries were being summoned to Mombasa to go and support the Government against our committee. They would be given microphones on television to state how they stood by Mzee Kenyatta in that scenario. This was meant to fighting us. The late Kihika Kimani who was the MP for Subukia, being the organizing secretary of the GEMA association, started organizing rallies in Nakuru, Naivasha and all over arming youth with spears and bows to demonstrate in support for the President as if Kenyatta was going to be defended with arrows and bows when he was the Commander-in-Chief of the Armed Forces but this was politics. So, they addressed meetings everywhere. This even forced me to be brave enough to invade their meeting in Nakuru. I took up the microphone to challenge them in their presence which brought me a lot of problems, but I had to do it. Since we were new, they were rallying the people to turn against us and join them in the cover-up. I told them the best thing is to go back to Parliament since a number of you are honorable Members and speak there; fight for your truths there and do what you want to do, but do not incite the people. That was the actual situation prevailing at that time. What would you have done?

Commissioner Chawatama: We have been asked in accordance with our Act to come up with a complete and accurate historical record and this is a tall order. As the truth begins to unfold before us, one cannot help, but be overwhelmed. The question that is at the back of my mind, based on what we have heard that has taken place in the past and the way Kenya is right now with all their reforms that are taking place and also the fact that you are now enjoying multipartyism, in your opinion, has it come of age for Kenya to hear and accept the truth and to move on in unity?

Mr. Mark Mwithaga: I would like to say that Kenya has come of age against the new Constitution which many do not even seem to understand, including the leaders. They are

struggling to understand it. One leader says one thing today; another one says another thing tomorrow. They are not referring specifically to various sections and provisions of the Constitution to justify what they are saying. It is an election year. You are here in this country happily. You know everybody now is talking about elections. They have even forgotten the implementation of the Constitution. They want implementation of the elections. Their minds are there. Many of them are aiming at the possibility of becoming President or capturing power. There is no time to teach the nation the new Constitution, so that the population may go with them on the basis of the new provisions of the Constitution. Probably, it will come after elections. That is the hope. But the structures institutions and whatever which have been set up by this Constitution are complicated and it will take time before they are properly understood. Even when the offices are occupied, it will take time before implementation takes place.

Commissioner Chawatama: All I can say is that God should just bless this great Republic. When I came here I think one of the things that I quickly settled in my mind is that Kenya is the first born and the first born has a lot of responsibilities. There is a sense in which some of these responsibilities which we have seen and some we are yet to see. But we are grateful to you and to other Kenyans who appeared before us and who have equipped us to help us come up with that complete and accurate historical record. Hopefully, with generations to come, we will read in history about a great man like J.M. Kariuki. They will know the truth of the person that he was and what he did for this nation and the circumstances that led to his death. Even generations to come will know that they need to celebrate his life and know that the cost of freedom and so many other rights have not come easy. There has been blood that has been shed and the blood speaks. Thank you.

The Presiding Chair (Commissioner Dinka): Thank you. I too, being a non-Kenyan, I have some questions on details. The principle questions have been asked by my colleges. Before I pose my questions, I would like to recognize the presence of Commissioner Margaret Shava who joined us quite a while ago, but I did not want to interrupt the witness to introduce you. Would you like to ask any questions?

Commissioner Shava: Thank you. Unlike my colleagues who are not Kenyans, I am Kenyan. Hon. Mwithaga, I would like to thank you for your testimony. I have no questions for you. But I would just like to assure you that although I was rather younger than I am now, I do understand the kind of times that you are talking about. You are talking about the time of the mini-general election that was called after the problems within the ruling party. You are talking about ostracization of Jaramogi Oginga Odinga. You are talking about the time of the assassination of Pio Gama Pinto and Tom Mboya. So, I understand the kind of times that you are talking about. I would like to be on record that the kinds of actions that you took required a lot of courage and this Commission recognizes that. We thank you for your testimony.

The Presiding Chair (Commissioner Dinka): The first question is: What happened to this person, who was supposed to follow wherever J.M. Kariuki moved, including the racecourses? Whatever happened to him later on? What happened to the so-called

mortuary attendant who refused you entrance and also the senior police officer who forced him to open the mortuary gate for the three of them? They played quite critical roles in this issue.

Mr. Mark Mwithaga: This person was released from prison. He was called Kinyanjui alias Mark Twist. After we had made our report to Parliament and the high tempers in this country cooled down a bit, he left the country for Tanzania. He lived in Tanzania for quite a long time. Later on, he came back. I believe he is living somewhere in this country. I do not know where he stays because I am no longer interested anyway. He must have been serving a purpose or a mission when he was released from prison. That is why he had trailed J.M. Kariuki at the Ngong racecourse. He eventually wrote a statement at the CID office. When we asked Mr. Nderi to give us statements of those people they had taken down because they said they had found James' which later on turned to be fake; he refused and went to him. We wanted to see those statements. One statement we saw was Mark Twist's statement indicating that he had been instructed by the same office, the Director of CID, to trail J.M. Kariuki. He saw them running away from the eventual murder and then having gone to James' house very early in the morning the same day, would treat us like fools. Anyway, I do not know what Kinyanjui does today. Kibera, the Senior Superintendent of Police eventually died out of sickness. We do not know where the mortuary attendant went. He has never been heard of anywhere else because he was then in the Special Branch.

The Presiding Chair (Commissioner Dinka): The second question that I have is, the then Vice-President was actually taken for a ride by someone when he made that statement about J.M. Kariuki going to Zambia and then taking the flight from Tanzania heading west. After he found out the truth, what was his reaction? Did he express it publicly or in Parliament?

Mr. Mark Mwithaga: I would like to state categorically that he had no capacity or ability or conscience to talk about J.M. publicly. That one we knew. Being the Vice-President of Kenyatta was not easy. There were no jokes about it. Therefore, Vice-President Moi must have chosen to play his cards to zero because he did not want to appear to be querying or questioning anything.

The Presiding Chair (Commissioner Dinka): My last question is; you mentioned about the watch with the name J.M. Kariuki written on it which was found in the police lines in one of the houses belonging to a sergeant. What happened to it? Did they give it back to the family or they kept it in the national archives?

Mr. Mark Mwithaga: The Committee left the watch with the Director of CID, Mr. Nderi. After we finished our programme and wound up the Committee by reporting to the House and we were imprisoned and others detained, I cannot tell what happened. I hope the family members will tell you about it. It had clear inscriptions of hon. J.M. Kariuki's name. It was a very expensive watch. I do not know why the policeman took it away and went to hide it there. Probably, he was waiting for the day he could get somebody to rub off the inscriptions.

The Presiding Chair (Commissioner Dinka): Perhaps, someone up there sent a child to pick it up. I have no further questions. I just want to salute your courage again and really thank you for your presentation today. The Commission is very grateful. Your presentation will help us extremely in our investigations and in writing our final report. The Commission will be very grateful to you and to the family if you could give to the leader of evidence any record that you might think would assist the Commission in further investigation and also in preparing its final report.

Mr. Mark Mwithaga: Yes, I will undertake to do that.

The Presiding Chair (Commissioner Dinka): Thank you very much. You may step down the witness and call the next one.

Mr. Patrick Njue: Commissioners, we will now be hearing from the family of the late J.M. Kariuki.

The Presiding Chair (Commissioner Dinka): Before you do that, Leader of Evidence, I will use my judge here to ask a question to somebody else.

Commissioner Chawatama: Leader of Evidence, the Commissioners would like to know if there are any counsels present. They could draw their presence to the Commission for us to know them. Are there any lawyers present? Could counsel, not only identify themselves, but tell us if there is a client that counsel represents? Could they also tell us who that person is?

Mr. Njenga Mwangi: My name is Mr. Njenga Mwangi. I do act for the family of the late J.M. Kariuki.

Commissioner Shava: Thank you very much. The record shows that you are present. I am sure you know the role of counsel in this Commission.

Mr. Njenga Mwangi: Presiding Chair, fellow commissioners, my names are Njenga Mwangi and I do act for the family of the late J.M. Kariuki.

Commissioner Chawatama: Thank you very much. The records show that you were present and I am sure you know the role of the counsel in this Commission. If there are any issues that arise that you wish to bring to our attention, you will let us know and we will give you an opportunity. Are there any other lawyers; even if their clients are not here? We would like to know if there are any other lawyers present.

Let me know who the lawyers are.

We are done, Presiding Chair.

The Presiding Chair (Commissioner Dinka): Thank you very much, Commissioner Chawatama. You have come to the memory of your colleagues.

I would like to welcome Rosemary to the Commission. We have met you several times before and we hope that your testimony today will contribute to solving our problem and understanding of this issue, particularly as far as the impact or the effect of the assassination on the family; and the children who were growing up; the widow and the management of the property of their late father and spouse. You are welcome.

Mr. Patrick Njue: Good afternoon to you all. I suggest that we shall proceed in this manner and that; Rosemary will first begin to make her presentation.

But before she can do that, I would kindly ask that she introduces to us the gentleman seated on her immediate left. Perhaps, we also want to recognize the other family members who are present. Could you, please, quickly introduce them to us and ask them to rise up wherever they may be and wave to the commissioners and the public before you can proceed with your presentation?

Ms. Rosemary Machua: Thank you very much. I will begin with my mothers and I will begin with my father's first wife; she is Joyce Nyambura; she can wave, the second one is my mother, Esther Mwikali Kariuki, she will also wave, then my uncle Mr. Ben Waweru and my brother Golden Che, they can wave. There is also my other elder brother, John Kariuki, and the gentleman on my left is my youngest brother, Tony Kariuki.

The Presiding Chair (Commissioner Dinka): Thank you very much, Rosemary, for introducing to us your family members. We heartily and warmly welcome all the members of your family, particularly the mothers and your brothers who are here. Please, feel at ease. We all empathize with your loss and the suffering that you have gone through. So, you are welcome and we recognize your presence. We value your contribution and your presence and you are welcomed by the Commission.

Thank you very much.

Ms. Rosemary Machua: Okay. Presiding Chair, commissioners, Government officials who are present, human rights activists, families, victims and survivors of human rights violations, my fellow Kenyans; ladies and gentlemen, my name is Rosemary Machua. I am the second born daughter of the late JM Kariuki, who was assassinated on 2nd March, 1975.

We are here to present our story of what happened focusing on its grave effects to our family and measures we would like this Commission to take in addressing our prayers. These prayers will be lead by my brother, Antony Muchiri Kariuki. When he will be done, we would like our lawyer to give you a brief conclusion.

However, before he reads, I would like to put to notice to this Commission the efforts we, as the family, have undertaken in immortalizing the contributions made by our late father during the freedom struggle and after Independence.

Having found that there have been efforts to suppress the legacy and the contribution that our father made to the freedom struggle and national development, we have struggled to keep the flame burning. We have done this by holding annual memorial services, taking part in civil society activities and we have also founded the JM Kariuki Foundation for Peace and Development. We have also taken time to document the life and times of JM Kariuki, as told by his colleagues, fellow freedom fighters and family. It is entitled: "In Search of My Father."

As you can see, we have been pro-active in our quest for justice by keeping the memory of JM Kariuki alive among Kenyans. We also took part and gave our report to the Makao Team that was a taskforce to investigate whether we will need a Truth, Justice and Reconciliation Commission (TJRC).

I will now hand over to my brother Antony to read our recommendations.

Mr. Antony Kariuki: Thank you, Rosemary.

Ladies and gentlemen of the TJRC, other esteemed guests, all protocols observed. My name is Tony Kariuki, the third born son of the late JM Kariuki. My topic today is in line with the TJRC's mandate on political assassinations.

My sister and I, intend to do so very much. Before going to the second part of our presentation, I would ask you to allow me a moment to paraphrase the report that we had prepared for your esteemed Commission for thoughts and observations.

I will begin with posing a scenario to your learned selves. It is a question as well as answers and it asks as follows:

"What do you think would be going through your mind as you realize, that if your captors had gone this far? There was no way that they would allow you back in the public domain to show the callous marks that they had left on you. Through your broken and tortured ribs, what would be in your mind? I wonder whether you would be thinking and believing that members of a nation, now as sovereign republic which knows more paths was due to nationalistic efforts being done to you."

It is painful to imagine, to say the least, as a family, we have woken up of these tortures, thoughts which we have nurtured for the last 37 years. Actually, if one was to consider that in the years prior to James' death; JM, it was a life filled with fear, threats and all manner of intimidation by forces known to all, but previously outspoken out rightly. We do so today. It was the Government and its various operators. It is no doubt in our minds; we hope you will be as convinced by the end of this day. I ask; will you not be scared the same fear that you have lived through for years; on the end of what we would call a free nation? Would you not wonder if it was worth it, perhaps, you think that your death, which truly open the eyes of many blind Kenyans? What would happen to them if they let this dark cloud of oppression continue to rein their propaganda, circular victimization, deprivation of rights, tribalism and corruption?

I know I would not stop for one moment to think about what would soon be one of my last heart beat; that 37 years down the road, we will have the collective “we” as a nation; and ask: “Who killed him? Well, here I stand to say that this is the case, and it is the sole reason why I stand here.

I stand here with my head held high. I, Tony Muchiri Kariuki can. I can because I am my father’s son and all the cover ups and words of comfort, were all well intentioned and appreciated; not the absolute reason, but more so, that I stand here because as a Kenyan, I am taking part in the process that may doll out some sort of deserved albeit delayed justice; some sort of closer to these shameless solutions to this mystery. I hope by the end of your timeous and prolonged sittings on the various topics that are within your mandate, you too can stand with your heads high; and indeed, I give you a challenge to ensure that you do.

In your hearts and minds, please, take into consideration that as we must, your long days and nights, whether here in your offices or in the field gathering information, after compilation and completion, you present the report. How short has that time been as compared to our 37 years of seeking justice, redress, acknowledgement and recognition of JM and service to his mother nation?

This last Friday was the anniversary of my father’s death. As we always do, we had some events to commemorate his departure, or as my mother, his first wife, Doris Nyambura Mwangi, so kindly puts on his tomb stone, the day he fell asleep. As part of the events, my elder sister, Rosemary Wanjiku Kariuki or Rosemary Machua, had a DVD launch. I believe copies will be provided to your esteemed Commission.

It was in line with the book that she had previously written; I my father’s daughter and the DVD entitled: “In Search of my Father.” I was looking at this DVD in the auditorium, last Friday, as I decided to wait until its actual launch so that I could watch it with everyone else who would be present.

It was very powerful and I commend my sister for the tenacity to go through the proverbial trials and tribulations that went into making the documentary and the bravery to expose a very personal part of her live to all. I am not sure if I would have had the same courage to bear my story like that. I am sure from the way JM looks, he is as proud in heaven as we are here on earth.

In that documentary, my elder brother, John Sheku Kariuki, as well as Rosemary, spoke of the holidays, them and me...When I came around, as the younger one; we would take at around Christmas time. The holidays were only allowed after they were all put through a series and all sorts of chores and little jobs around the house. I think how much JM loved his country, but he was showing it to us. But also in his way, teaching that a strong work ethic usually leads to positive outcomes. So, work hard and you shall be rewarded.

Little but important life lessons that the “grand immune” and, I say immune and impunity; but immune of the past and the present impunity do not go into practice. Perhaps, they are not even understood.

I must move one step to what the family called the second assassination of JM. By definition is the raid on JM’s legacy, his businesses, and potential contributions to the Kenyan Republic. We will speak some of this but it was prepared by one of the attorneys out of many that this second assassination has necessitated. I know at this point I am probably being given pointed stakes to finish. But imagine for once we are finally being given a chance to address the public nearly 40 years of wrongs. How late can we learn that this one chance in the aforementioned 40 years for a family of the JM Kariuki to have a public sanction hearing. The family that has been sidelined cannot be allowed to overrun for a few minutes. We have been sidelined for a long time, so please, indulge us.

On another side and on the same vein, indeed time has run out, let it be for the people whom we hope, when you finish your report and even before, we will feel what it feels like, to live in fear; always looking over your shoulders. I hope that fear shall remain, always wondering when the past deeds will catch up with them. When we are vindicated in our long hell-believe in Government involvement and the Commission comes as a correct conclusion, as we know, they will, then those in question should begin to look over their shoulders for us, in conjunction with you, the TJRC, are here to unearth and air their dirty ways.

We have lived in that dark place, unwittingly so. But there is a vast difference between us and them, and it is that we are innocent and this situation was trust upon us and they are guilty and they are the ones who were entrusted on us.

In talking about time, in your investigations and compilations, I want you to remember - and this is on record - James’ Time Piece which was earlier mentioned and we engraved it with his name after curiously looking for it and finding it at Makongeni Police Station.

Mr. Patrick Njue: Sorry, commissioners for cutting him short. The witness is reading the last page of the document entitled: “Ladies and Gentlemen”.
Sorry for that interruption.

Mr. Antony Kariuki: That is okay. I was saying that it was found at Makongeni Police Station a few days after he was found. How?

Many more unanswered questions coupled with many pertinent clues, one of the many that we asked and which you are helping and unraveling is: How and who was involved in the assassination and subsequent cover-up? Are these timely questions? Perhaps, not! Therefore, we humbly ask you to please, help us make it not so. As well, I humbly ask for your indulgence for few more minutes and promise not to take 37 years to wind up.

Finally, we will table an attempt of what we believe as some, not all, as the list may be incomplete, of the atrocities trust upon the family, by various opportunists under the P9I of the previous as well as subsequent Governments of Kenya. We live with the promise

that, be it in our generation or the next, we will know the truth. While the truth is important, supremely so, we will be asking that the report should be given equal weight and compassion.

Thank you, TJRC as a body and as commissioners; fellow human beings with families and loved ones; in attempting to assist us in ascertaining what happened to JM. We appreciate and commend your efforts. We thank you again, and I now read the report.

You did not show me how you would like me to proceed. They all have copies. Would you like me to read that as well?

Mr. Patrick Njue: May be the Presiding Chair can give us directions. He is referring to the second document titled: “Public Hearings of the Assassination of the late Hon. JM Kariuki.

The Presiding Chair (Commissioner Dinka): If you could, perhaps, leave the preamble out and just read the active clauses. There is no need of the rest, just a short preamble.

I have consulted with the other commissioners; you may read the whole thing so that it goes into record.

Mr. Antony Kariuki: Okay, thank you, Commissioner Dinka and your fellow commissioners.

We, the children of the late hon. Josiah Mwangi Kariuki, would like to state as follow:

1. Our dear late father was brutally tortured and assassinated on 2nd March, 1975 thereby robbing us of, not only a father’s love, but also a mentor, confidant and provider, and above all a great leader.
2. At the time of his death, he was a Member of Parliament for Nyandarua North Constituency, a nationalist and a freedom fighter who was detained during the struggle against colonialists and he was held in various detention camps at the time.
3. That, after attainment of Independence, he held several positions in the Public Service, including the Director of National Youth Service, directorship of public bodies, and institutions, Assistant Minister for Tourism and Wildlife and a Member of Parliament. Also for a period, he was a private secretary of the President of the Republic of Kenya.
4. That, the Government of Kenya over the years, including 6th March, 2000, has refused to carry out comprehensive and thorough investigations into the disappearance and murder of our late father, despite complaints made to the authorities by us and other members of the family, just contravening our rights to secure protection by law.
5. That, we have never received an account, including progress made on our difficulties encountered in any investigations carried out by the police or the Government as a whole.

6. That, we have a right under the law for the complaints we have made to the police to be investigated, taking action against those who murdered our father.
7. That, instead the Government has contravened our right to the secure protection of the law, by abusing the law and the oath of allegiance in office, subscribed to and taken by respective officials of Government to defend and protect the Constitution, as by law established.

In furtherance of such views, the Government and its officials have been engaged in a mass cover-up of the circumstances surrounding the disappearance and subsequent murder of our father and the interference with various attempts, to investigate the murder, including the inquiry conducted by the Parliamentary Select Committee in 1975.

8. By failing to investigate the murder, and or by covering up the circumstances surrounding the disappearance and subsequent murder of our father, the conduct and action of the Government of Kenya has caused intense suffering and severe mental torture and inhuman treatment to applications who have to live a long life of anxiety and not knowing the truth.
9. That, various land and properties belonging to the estate of our late father, and in which we have a legal and beneficial interest, were invaded by squatters and, the Government of Kenya has failed to provide this estate with security and protection by the institutions or organs of law and order so that our right to peaceful and quiet enjoyment of property and the right for protection of the property can be enforced.
10. That, in regard to paragraph nine, the squatters have invaded and settled on the property belonging to our father's estate in Ol Kalou which is 800 hectares and Gilgil Town, 811 hectares. And, despite the court orders to vacate, the squatters still occupy the land at Gilgil. The Provincial administration has neglected its duty to enforce the court order issued in 1984 to evict the squatters.
11. That, in order to clear outstanding loans from the estate of the deceased, we have been forced to sell a huge chunk of the estate, which loans could have been effectively financed, if our father could have lived the whole of his natural life and not brutally murdered.
12. On 14th March, 1975, the National Assembly passed the following resolution:
"The House being extremely disturbed by the manner of the disappearance and murder of our late colleague, the Member for Nyandarua North, Mr. JM Kariuki, the House resolves to appoint a Select Committee to conduct an investigation into the circumstances of the said disappearance and murder and to report to the House its findings with a view to securing and preserving evidence relevant to bringing to justice those concerned before such evidence is destroyed."

The Parliamentary Select Committee made *inter-alia* the following findings and conclusions:

- (i) The Government and the police were engaged in a massive cover-up. The police did not carry out satisfactory investigation into the disappearance and murder of the late hon. Josiah Mwangi Kariuki. The Commissioner of Police, Director of the Criminal Investigations Department, Chief Investigating Officer and the Senior Assistant Commissioner of Police, Rift Valley Province; these are: Mr. Hinga, Mr. Nderi, Mr. Singh and Mr. Mungai respectively, persistently refused to co-operate with our sister Parliamentary Select Committee in any way whatsoever in the Committee's work. Besides the efforts made by the said Parliamentary Select Committee, there is no evident Government initiative, commitment or attempt to bring to justice those responsible for the killing of our late father.
- (ii) That the Attorney-General has not directed or ordered that an inquiry or inquest be conducted to determine the cause of death or the person who is responsible for the murder of our late father.
- (iii) That we are not aware, nor has any evidence been availed to ascertain the Attorney-General has in the exercise of his powers required the Commissioner of Police to investigate the murder of the late hon. J.M. Kariuki. We are not aware nor has evidence been availed to us to show that the Commissioner of Police has complied with any such request from the Attorney General and made a report to the Attorney-General upon investigation.
- (iv) That we made an effort to obtain orders from the Nairobi Magistrate in Miscellaneous Criminal Application No.44 of 2000 for an inquest to be held into the circumstances and the cause of death of our father with or in addition to the investigation being held by the police, but the Chief Magistrate declined to give any such order.
- (v) That the late hon. J.M. Kariuki's right to life, security of the person and the secure protection of the law were contravened in violation of the Constitution of Kenya. His life was tragically cut short and the choice of life and freedom including family parenthood and liberty were thereby denied to him.
- (vi) That our late father, evident from the condition of his body when the same was found at Ngong Hills, was tortured and subjected to inhuman and degrading treatment, had his limbs broken and was extensively and grievously assaulted before he was murdered.

Our late father worked hard for Kenya and the people of this country. He was one of the great achievers of his time. He had built lucrative business and farming enterprises that would have blessed him with the full benefits of life, happiness and wealth, and would have guaranteed his family comfortable and prosperous lives at the end of his natural life.

- (vii) That the estate of our late father in the form of properties in Nairobi, Rift Valley and Central Province have been invaded by other persons unlawfully causing loss to the estate and the interest of us and other members of the family.
- (viii) That some of us have been deeply traumatized and forced at times to seek medical attention and treatment due to depression and hypertension which has cost our family a lot of money in seeking treatment and counselling.
- (ix) That subsequently, we have found it difficult to live and work in Kenya and have been displaced or forced at times to relocate to other countries outside Kenya. That life has

been difficult for us and our families. They have bitter experiences which have made it difficult for them to pursue further education or reach the heights of the respective academic ambitions because of lack of financial resources or ability.

- (x) That the brutal murder of the late J.M. Kariuki denied us our inherent rights to family, parental care and happy childhood, optimum education, health, welfare and reasonable standard of living, measurable or commensurate with our father's economic and financial ability.
- (xi) That the Government has not taken any steps to act on the findings and to implement the recommendations of the Parliamentary Select Committee established in 1975 to inquire into the death of our father.
- (xii) That each of us truly believe that had our father lived his full natural life, he would have risen to great heights in political career, expanded his business enterprises and increased his income for the benefit of the applicants and other members of the family.
- (xiii) That each of us truly believed that had the late J.M. Kariuki lived his full natural life; his family would have enjoyed stability, unity, integrity and prosperity.
- (xiv) That no public official has ever in the cause of duty and in pursuance of the obligations and responsibilities of Governments called on us, or invited us or any family members of the late hon. J.M. Kariuki to a meeting, session or dialogue with the object of demonstrating the Government's commitment to bring to justice those murdered or were responsible for the murder of my father, or simply to show the family investigations undertaken or the difficulties encountered.

Part of our father's property has not been traced to date and this includes 400 acres of land in Kasarani and Gathecha, a plane, shares in the international casino, lorries belonging to Carcane Limited, shares in KK Tours and Travel Company limited.

- (xv) That we would plead to be given an opportunity to adduce this evidence at the public hearings.
- (xvi) That among other things, we would like the Government of Kenya to be compelled to give a public apology via print media on the way they have handled the investigation of the late J.M. Kariuki's murder, and the involvement of the state in the numerous cover-ups that have ensued. Evict squatters from Olkalou and Gilgil farms herein mentioned and restore the land to us, and the family of the late J.M. Kariuki.

In the alternative, the Government can buy the lands from us at prevailing market rates and resettle the squatters there. Pay the late hon. J.M. Kariuki's salaries due as a Member of Parliament from 1974 to when Parliament was dissolved. Refund to us all expenses incurred from treatment and counselling as a result of illnesses related to our father's death and uncertainty of why he was killed and who killed him. We pray that 20 acres of land in Ngong be given to the family to build schools and other institutions in memory of our late and a hero of this country. There should be a memorial street or monument in memory of the late hon. Josiah Mwangi Kariuki. Thank you. I believe that was it.

Mr. Patrick Njue: I also want to thank Rosemary and Tony for what I see as a very able presentation on behalf of your family. Following that presentation, I would ask a couple of follow up questions to just clarify your presentation. My first would rather be an observation under class 31; it is good that as a family, you be given an opportunity to

appear in public or during the public hearings. I wish to observe you having appeared today, do you feel okay?

Mr. Tony Kariuki: Yes, we actually changed some parts. The general stage when we changed that part, we changed to we thank for our prayers to be answered. We also thank you for give us a chance. But just the wording...

Mr. Patrick Njue: I am glad that you are happy that now you have finally been accorded the opportunity to appear in public.

My other question would be again from the same document that you are reading 32 C, where you said that your wish is that your family be paid the late J.M. Kariuki's salaries due from 1974. Is it to say that he was not paid his salaries then?

Mr. Tony Kariuki: No. Sorry, to clarify, he had won the general election in 1974. The next election would have been in 1979. So, that is what we are asking for. We are not asking for after 1979 because at that point, there would have been no guarantee he would have won but in 1974, he had.

Mr. Patrick Njue: Thank you for that clarification. Again, I take you back to the same document, Clause 30, where you talk of your father properties that have not been traced up to today, and you listed them accordingly. Is this information that has come to your position as a family, or how did you arrive at this?

Mr. Tony Kariuki: Yes, we have the information, some of it is sketchy, some of it stronger. If you remember in the earlier presentation, I said we would present this as an attempt to give what I term as almost an incomplete list but an attempt at it, because we keep finding out more and there are some things which are not here. So, just to give an idea to the Commission, we thought, at least, instead of just throwing out a lot of property, we thought we should try to be a bit more specific. I hope I have answered your question.

Mr. Patrick Njue: It is, indeed, but also perhaps, I wish from your end that, for example, if it is on the 400 acres of land in Kasarani, if you had any title deeds or when you talk of shares in a certain company, if there are share certificates to that effect, if there are any such documents that are in your possession in order to help us be able to take the matter further up for investigations, you could always furnish us with such copies.

Mr. Tony Kariuki: Thank you, Commissioners. Since I came on board acting for the family, we have tried to trace properties that were owned by the late hon. J.M. Kariuki. What has come out is that there was a lot of cover up and some of the properties held jointly by him and some of his confidants were never disclosed. So, you would talk of the 400 acres in Kasarani, the land is known that it was in the name of Kariuki and Gathecha, but the said partner has denied and being the person who was in custody of the documents, we have not been able to fully investigate.

Our investigations also reveal that from media reports, that the hon. J.M. Kariuki owned horses at Ngong Race Course. That was one of his best past time during the weekends. From the media and in evidence also, he was also known to own a private aeroplane. That one also we have not been able to trace. We know also that he had shares at the International Casino. Again we have not been able to fully get evidence of the extent of shares he had in that company.

We know he had a company called Kaken Transporters which had loans from Kenya Commercial Bank. But after his demise, we do not know what happened to those loans, although the widows were forced to sell part of 400 acres in Gilgil to pay for these debts that were owned by that transport company.

We also know that he owned shares with KK Tours and Travel which is a company that he owned jointly with an Israeli citizen, who subsequently relocated to Uganda---

Commissioner Shava: Can we have proper translation?

Mr. Tony Kariuki: So, the KK Company was owned by J.M. Kariuki and an Israeli citizen.

Mr. Patrick Njue: I thank you for that clarification.

Mr. Tony Kariuki: Also in addition to our counsel, what you are asking us is the difficulty we have gone through. This is why we call it the second assassination of J.M. Kariuki. You see all these almost vague answers we have to give you. It is taking almost 40 years and we still cannot get clarifications.

People are disappearing from offices and what you know was in your name, you can no longer find it. Like you correctly pointed out about Kaken, everything disappeared except the debt. They had to sell another asset to pay off a ghost company's debt. No asset was available or apparently so, that is the second assassination aspect.

Mr. Patrick Njue: Thank you for that input. My other question would be in line with what the Presiding Chair had asked earlier. As a family, do you know what happened to the famous watch?

Mr. Tony Kariuki: Yes, we do. Eventually it got parcelled down to us years later. We have it and it is in my mom Nyambura's custody. It still has imprints on the back with his name and the attempts that are on the back of the watch to scratch out the name but it was so deeply engraved. It could not be scratched. We believe that is why it was put aside for later attempts otherwise, it was completely gone. Luck would have it that that we found it. Thank you for asking that.

Mr. Patrick Njue: Talking of the land that was given back to you, was it the land at Olkalou and Gilgil? You were here when hon. Muthaga was making his presentation and in his testimony, he said that it was the Olkalou farm that J.M. had donated. Could that

be the farm or this is a different farm and why would you ask that it be given back to you and yet you know that he had donated it?

Ms. Rosemary Machua: Okay, to answer that question, J.M. died before he could do the transfers. Other people than the ones that he initially intended tried to take the farm forcefully. So, the family was forced to go to court to get the land back. We were successful and the court ordered that the land should be returned back to the family. But when we got those orders to evict those people, the administration did not honour it. So that is the same piece of land but the transfer was never completed. Also, he had not intended to give out the whole land. It was just part of it, because that is where all his family members are; from his father, mother, relatives and even his living sister.

Mr. Patrick Njue: That answers it. My next question is actually directed to you, Rosemary. In writing your novel: “My father’s daughter” and in launching the documentary in search of your father, what were your inspirations for these two projects?

Ms. Rosemary Machua: There were very many reasons. The first one is actually I started the documentary even before I wrote the book. It started off by wanting to know who J.M was, plus also something that we could pass on to future generations beginning with the direct family and their children and the children’s children.

So, after I had started the documentary, I became inspired because as a growing up child, I thought only bad people are the ones that are killed. For very many years, I thought that J.M. was a bad man. But through the documentary, I got to know he was not bad. If he was bad, it was because he loved his country too much. Therefore, I got inspired to write what Kenyans may never know. So, that was my inspiration.

Mr. Tony Kariuki: Just to add; I keep adding. What Rosemary has just said in her book, the youth of today; those born maybe 30 years and younger have no idea who J.M. was. In search of my father, it is a good start. But our school curricular needs to embrace more of our fallen heroes because they would be forgotten so quickly. Tom Mboya and Pinto Gama are people in history books. We need to educate our people. We need to get this into the school curricular in the history books. There is no way you would find many heroes from Zambia or Ethiopia being mentioned. We do not find that. So, that is maybe something you can incorporate in your recommendations.

Mr. Patrick Njue: Talking of that generation, Tony, I am part of that generation. I would really get to benefit from the time I watch that DVD. I was there during the launch and I must commend you for a job well done. It is my wish that you would share this with the Commission.

Lastly, I would ask that you have presented a memorandum and of course, a statement of claim. Do you wish this to be formally being admitted to the record of the Commission?

Mr. Tony Kariuki: It is very much so.

Mr. Patrick Njue: Presiding Chair, if this can be formally admitted.

The Presiding Chair (Commissioner Dinka): So admitted.

Mr. Patrick Njue: That is all from me. Thank you.

The Presiding Chair (Commissioner Dinka): Thank you very much, Leader of Evidence and thank you very much all of you. Now, Commissioner, Tecla, we would start with you.

The Acting Chair (Commissioner Namachanja): Thank you, Rosemary and Tony. I would like to ask each of you some questions. How old were you and where were you when you heard about the death of your father? Maybe Rosemary and then Tony...

Ms. Rosemary Machua: I was 11 years old. I was in a boarding school in Eldoret. We used to read newspapers every weekend. That weekend, we had seen the article that J.M. is missing. So, I was a bit concerned because I knew that it was not his habit to go anywhere without saying where he had gone.

I had also grown up knowing that there were people who did not like him. So, when the news came that he died, that morning I was in the Convent School and the headmistress called me and she said: "Remember, your father is missing. They have found him but unfortunately he is dead".

There was no counseling and so each one of us was forced to deal with our emotions and our feelings in our own separate ways. That is why you heard my brother talking about depression and other social cycles that affected us.

I would like to confirm that I understood exactly what had happened to my father, even though I was 11 years old.

Mr. Tony Kariuki: I was six years. I cannot remember much. I was in primary school and had just started, Hospital Hill, in Westland's, Parklands. They came and picked me up from school at the wrong time. I did not know why but they just came, they whispered at the teacher but before that they had been whisperings throughout the time when he was missing.

People were acting a bit differently in school and I did not know why. I think we must have gone with the one who is directly ahead of me. She was a couple of years older with the driver. I have memory gaps but I remember being in town. For some reason, there was tear gas. But I am not sure if it was at the time or during the demonstrations that occurred the following year. The next year, there were demonstrations by university students and they shut down the University of Nairobi. It was not expected because it was the First Anniversary.

Later, the Government learnt how to deal with it. They recalled the universities early and made sure no one was in the university at that time. But as for me, personally, I did not

know what was going on. We used to live down the valley from the mortuary. I remember our cousins or house help or whoever was around standing up to try to look over at the bottom of the valley which was where the mortuary was and there was a crowd there. I was trying to see what was there but no one had actually told me.

So, for a long time, following his falling asleep, somehow the story of him going on a secret mission is the one that stayed with me. On his funeral day, I did not recognize him. I did not know who that was. He had physically changed being out in the weather condition. So, I had just to wait for him to come from his secret mission. So, I did not know. When I realized, it was kind of more traumatic because I realized what I lost.

Again like she says, it causes a lot of trauma to a young person. I was raised by one person in essence. I did not know any other person although I have another mother here. That is where I was that day.

The Acting Chair (Commissioner Namachanja): Thank you for coming to represent your family. You have not just spoken on your own but you have represented the families who lost their dear ones; their parents, husbands in the manner in which you lost your parents and the trauma you went through, because we heard a lot about J.M. and other people who were assassinated. What we do not get to hear is what the families they left behind went through. So, I just wanted us to get that small clip of it but I know there is much more.

Thank you so much, Rosemary and Tony.

Commissioner Chawatama: Thank you Rosemary and Tony. As I was looking at the documents you had submitted, a lot of thoughts crossed my mind on the impact the death of your father had on you. I looked at the names and assumed that all the children are still alive. I looked at the late Jane, yourself Rosemary and your growing up and what was expected once you came of age was a father to walk with you down the aisle and give you a way because that is what we look forward to in life. I look at the names of your brothers like John, Gordon, you and Mark and see that someone should have told you what it is to be a man, husband and a father. It saddens me that death comes very easy in Kenya. I do not know and I will really keep my eyes and ears open as this is what obtains in my country as well. As children, having appeared before us, it also reminded me of other children who have also testified before us, some through their mothers. I remember testimonies of children who have seen their fathers hacked to death and children who have seen their mothers gang raped. I remember one particular story of a very young widow. She could have been 22, who found her husband's head and put it in a carrier bag and carried it home and the children asking her what was in the bag. She was unable to tell them. For all they knew, they could have thought that mummy had brought back some sweets or shopping and that mummy does not want to give us what she has. She did not have the heart or courage to tell them that this is the head of your father. If these children got to learn what their mother carried when they grew up, what would they think? I also recall the testimony of a nine-year-old who told us how she jumped over bodies of dead people, how she lost her clothes, the home that she loved and the loss of a

lot of family property, leaving the school that she used to go to and becoming an IDP. She said to us that she did not even vote. She was referring to the incident of the post election violence. So, we continue to hear from children who have suffered very much that sometimes you cannot find the correct words to give them comfort. The only thing that goes through your mind is that I have heard their testimony. What can I do or what can we do as a Commission to ensure that the truth comes out and that justice is done and that to some extent, the healing takes place? It is with that commitment that we have continued to work and to be focused.

I thank you so much for sharing with us this day. There are a lot of things I have heard that I will not forget for as long as I live. Hopefully, I will be a better judge and a better human being. I thank you very much and hope that by coming to speak to us, we have not caused you pain because that was not our intention. Our intention is to get to the bottom of things and hear the truth from you and your experiences and our prayer is that this does not happen in Kenya again. Thank you very much.

Commissioner Shava: Thank you, Presiding Chair. I want to associate myself with the comments made by my fellow Commissioners and adopt them as my own. I also would like to do something that I have not done and which is to state that I knew this family, I went to school with this family, I was probably in school on that day when they were picked up from school. I know John, Rosemary and Tony. Therefore, I recognize what it means to you to come and bear your souls like this in public. It is not easy and many of us do not have the courage to do that. As the judge has said, when we are doing our work in this country, I have come to realise that we have very many walking wounded people. Everybody is walking around as if everything is okay in the world but it is not. The people we are today are very much formed by what has happened to us and what we have experienced and what your mothers have experienced. There is some injustice in the termination of life in such a manner. This is something that people read about in the newspapers but when you go home, you are supposed to face it every day and it has an impact on your lives. So, I would like it to be on record that we do recognize your courage and commitment to this process in coming here to give texture to these stories. J.M has been written about but nobody really knows what his family has gone through and that is really a great contribution that you have made in coming to speak to us today.

I just have few questions. Perhaps Tony, you can tell us, you referred to the kind of life you have to go through and what has caused some of your family members to choose not to live in this country. So, I would like to ask you, where is Jane, Anne and Mark?

Mr. Tony Kariuki: Jane lives in California, Anne lives in South Africa, Mark lives here in Kenya and I just returned after 19 years in the States. So, my step-mother is up there. My mother lives in California and I do not think we have had a job, even with our qualifications with any Government entity. A lot of corporations will not take us and we do not feel comfortable here. A lot of doors are closed to you when they find out who you are because they are scared. Whether it is real or imagined, it is there. So, I do not think that any of the three who are currently out, we were four, have any plans of returning. The quality of life that they can live and not be associated with JM and their families---

They do not want their families to go through what they went through. That is what I see because for them it is really worth it. I asked in my first part of my presentation when everything was going on around me, I knew that JM was my late father and that he would not be released and I asked if it was worth it because he left everything. There was a period between the torture and the final execution and of course, we had thoughts that were going through them. So, I think my sisters and my step-mother, I cannot speak for her but I think my two sisters will probably be here for a short holiday.

Commissioner Shava: Rosemary, if I can take you back to the comment in Eldoret and how you received the news, you had to go back to school later on. What was the reaction of your classmates or schoolmates? How did they treat you? What was the reaction of your teachers and support staff?

Ms. Rosemary Machua: I had not been in that school for very long. I had only been there for two terms and after my dad died, I felt that I did not want to go back there because it would remind me of the bad news. At the same time, I also missed being in the school I was before. Since it was a day school and the school in Eldoret was boarding, I preferred to be where I would be in touch with whatever was going on. My biggest fear was that my mother would be next. I felt that if I was close, it would be much easier. When we came back to the school in Nairobi, I had not realized that I had somehow slipped into some denial. The reason I am saying this is because when I was given the news by the nun, I got a shock, I cried and after crying, she told me that we had to go and call my sister. She was much younger than me and I felt that I had to be strong for her. So, I asked the nun if it was possible that I tell her. So, I composed myself and in composing myself, I started acting like this thing had not happened. So, when my sister came, the nun did not agree to what I had said to her but when she entered into the room that I was in, she was already crying. So, I knew that she had been told. But she was confused when she saw me because I was smiling. I told her that it was okay and that we would be okay. So, when I came to Nairobi, I thought that my former classmates did not know. So, I decided that I would not discuss it. I decided that life must go on and whatever these people were saying, just like my brother had said it was not true and that my dad would come back. When we were in convent, we used to write letters to our parents. I used to wonder when I would write the letter, where I would send it so that I could tell him what people were saying. So, I continued and I believe it is by God's grace that I was able to finish and do my first degree. It was during that session that when I was watching a documentary that was talking about the life and times of Robert Kennedy. As I was watching, because it was a true story, when I saw him dying, I started to think about his family. That is when it dawned on me that is what happened to my father. That was about 13 years since he had died and that is when I cried. I cried from a point of knowledge that he suffered pain. I started to imagine what he was thinking and I cried that he had died that day. So, that was my turning point. That is when I decided to come back home because my brother was also in the US and I decided to come back home and ask my mother questions. I realized when I was crying about my mother and wondered how she could have managed and it is because she was strong and she stayed strong. We never saw her cry even once. So, I decided that I had to come home and find out what had happened to us. I used to hear people saying that JM was a rich man but we

had to work our way through school and, therefore, we had many questions. That is how we came to find out what my brother used to call the second assassination.

Commissioner Shava: Thank you, Rosemary. I would like to follow up with what you were saying. The assassination of your father and the “second assassination” did it happen when you came back from the States? Is that the first time that you sat down and it dawned on you? Did you ever sit together and say that this is what had happened to you?

We never had a session with the whole family. It was just I and my mother. It is just by luck that she had preserved many of his files. It is by reading those files that I knew who he was. I had also decided that I needed to find my healing before we could sit down as a family. My healing and that of my mother was simultaneous because as I was asking her questions, she was forced to dig keenly into issues that she had never spoken about.

It is through those questions that I discovered what my father’s lawyer; Mr. Lee Muthoga had done to us as a family. So, our journey began by my mother being prodded to express what happened from the day of the funeral. This part of what my brother was talking about began on the day of the funeral. That is when Mr. Lee Muthoga began destroying valuable documents that belonged to the family. It was not days after the funeral but when they were most vulnerable, the same day that he destroyed the file. That is how I believe healing began for me and my mother. The rest of the family is yet to go through their own.

Commissioner Shava: My final question is to you Rosemary. I am leading on to where you left. In traditional society, the hierarchy goes according to age and in our society it is male who have preference in terms of leadership. I am looking at you before me and seeing a female child and a younger male child. It is as if that structure has been turned upside down. Why is it that the two of you are the ones who are trying to take leadership and helping the family to stay together and fight for its rights?

Ms. Rosemary Machua: When I began my search, I decided that I wanted to work in the church and I was in a class where I was being taught to teach Sunday school children. At that time, we were going through the issue of the bomb blast that had happened. The counsellor told us that if we wanted to know those children who were greatly traumatized, we would notice that they would say certain things. For example, instead of saying today is Sunday, they would say it is Friday. That Friday is when they lost their loved ones. It would then cause me to remember my brother. John Sekuturie is the oldest and you are right. He is the one that should be running very many issues but he is the one who was most hurt. He was a teenager and I remember whenever my sister would tease him and tell him John, do not forget my birthday. Instead of saying that your birthday is 13th December, 1968, he would say that I will not forget it is 13th December, 1975, meaning that he was stuck to 1975 when this trauma had occurred. In the beginning of that year, 1975, when he had just turned 13, he told me that my father had told him that year he would take him to where boys his age are taken. So, John was still waiting for that great day. I think he was not able to reconcile what had happened to this man who was his hero and who he had become. He gave up. I cannot explain why it happened but

there is always somebody in the family who is able and somehow that fell on me. It was not by design but the way it had been orchestrated by God and I decided to take up the challenge.

The fact that my brother is sitting next to me does not mean that we have received healing the same way. We are still supposed to go and search and see that JM was not a bad man and that it is okay to be called one of his own. Even though he looks okay, he has gone through a lot of torture in the form of psycho-socio and unlike what one of the Commissioners mentioned, he does not know how to be a good husband. For example, his marriage has failed because he can be okay for sometime but after that, nobody can explain what he is going through. I just felt that it was very important to involve them in this process because this could be the beginning of their healing.

Commissioner Shava: Thank you very much Rosemary for speaking very candidly. I think it is impossible to ignore the picture you have painted of suffering that continues until today. Thank you for participating and for being caring to John and to the rest of your family. We have heard what you have said and we have understood what is underneath what you have said. We have understood the texture of the pain you have experienced and continue to experience. We just want to assure you that we will take this matter absolutely serious. We will take it with the level of seriousness it deserves so that you will no longer have to say that you are there but you are being ignored when you are inside. Thank you.

Commissioner Shava: Anthony, Rosemary and the entire family of Josiah Kariuki, it is now clear that your father was a good man and he was fighting for the good of the poor people. He was a good politician and a good family man. By fighting for the good of the country, those in power perceived him as someone who wanted to be the President of this country and that he wanted to topple them. So, it is clear why he was killed. It is also clear and it is known who was last with him and who picked him from the Hilton Hotel. What is not known are those who were given the orders to carry out the torture. That is why as we go through this Commission's hearings, one of our Commissioners who is not here, from the United States asked us a question about the Nyayo torture chambers and we did not have an answer. He asked; what is it that degrades to the lowest point of torturing people so inhumanly? We were talking to victims and it happens. So, by coming out here and pouring your hearts, we think that you will ultimately heal. We thank you for coming here and we know that it has been painful but it is after the pain that you will heal. Thank you.

Commissioner Farah: Thank you for coming and giving us your testimony. I would like to salute the two of you, your other siblings and your mothers for your courage, resilience and successfully bringing you up without your father. Your father is said to have had ambitions to be the President. For a citizen to have the ambition of becoming the President of a seasoned country, that is the ultimate expression of patriotism. There is nothing with it and every citizen should try not to be rich or create some kind of ethnic dominance but serve people and that is from the literature I have seen from your late father. That was his ambition. I hope that today's testimony which you have given before

us will contribute in some measure in the process of healing to all of you, for your mothers and lighten the burden you have been carrying for very long. I totally subscribe to what has been said by Judge Chawatama. She spoke for all of us. The sentiments she expressed are our sentiments.

Mr. Patrick Njue: Thank you, Presiding Chair. Counsel wanted to make a few remarks.

Mr. Njenga Mwangi: Presiding Chair and fellow Commissioners, I have instructions to make a few remarks on behalf of Mama Doris and Mwikali. They have not been able to make personal statements but having met both of them when I was a young boy in 1987, I have walked with the family advising them on different issues relating to law and the suffering they have gone through in the hands of fellow lawyers. All of them have lost millions of shillings through lawyers and I have instructions to ask this Commission to summon those lawyers to explain what happened to funds that were in their custody as trustees and monies that were never paid to the family for the benefit of the children.

The two widows have expressed their confidence in this Commission to find the truth, justice and eventually reconcile this family with the rest of Kenyans. At the time of his death, the late hon. J. M Kariuki was one of the wealthiest Kenyans, brightest politician and administrator. He had many friends across the political divide and among the wealthiest and the poorest. The family socialized with families of equal financial status and those who did not have. Subsequent to the assassination of their husband, the first thing that happened is that their friends in the higher echelons of politics and finances started isolating them. They were no longer welcome to the families of those who were wealthy for fear that they too would be victimized politically. So, the first thing that happened to the family was isolation. It looked like the Government of the day deliberately put fear in politicians and business people to keep away from the JM family with the exception of Mark Mwithaga and Waruru Kanja. Those are the only true family friends who stood with the family through the difficult times.

The other thing is that as a businessman, JM knew how to borrow and pay his loans to expand his businesses. He had loans with the Kenya Tourist Development Corporation which is a Government Corporation. He had loans with the Agricultural Finance Corporation. He had loans with the Kenya Commercial Bank and all financial institutions owned substantially by the Government. At the time of his death, there were demand notices recalling the loans that he owed to the institutions.

After his death, the demands continued and turned into millions of shillings. It is their belief that if justice was to be done, these loans should have been frozen at the point where there was evidence of Government complicity in the death and cover-up of the late JM Kariuki's death. That is one prayer they will be making to this Commission that the monies that have been paid to these institutions above what had accrued by 2nd March 1975, be refunded to the family.

We will also be asking this Commission to order Kenya Tourist Development Corporation to give an account to the family of all the income that was earned from sale of some land in Castle Inn in Garden Estate and the income that was earned in terms of

rent when Castle Inn was leased by this corporation for ten years. The family would also want an account of how many plots in Castle Inn were sold at and where the residual title is. The family would also want to ask the Government to compensate it for the years that they did not have the use of the 811 acres in Gilgil inspite of a court order directing the Provincial Commissioner, Rift Valley to evict the squatters there since 1984.

The family feels that the fair compensation would be for them to be paid mean profits equivalent to how much each acre costs should it have been rented out since 1984 to date. Since it has become impossible to remove those squatters, the family feels it is only fair for the Government to purchase that piece of land and settle those squatters there permanently. We must commend Doris and Mwikali that after the political violence that hit this country in 2008/08, they gave part of the land in Gilgil for cultivation by the internally displaced persons in furtherance of the ideals of their late husband.

In short, the widows say that they still hold this Government to account for the death of their husband the father of their children and great grandchildren. The children have lost their confidante, mentor and person to give them guidance. On a personal note I will say that having known the family since 1987, unfortunately, instead of their lifestyles going upwards, it has gone downwards and that is because the Governments in power have been uncaring about the heroes of this country. Thank you very much.

The Presiding Chair (Commissioner Dinka): Thank you very much. I do not think anybody has any questions. The only request I have is if you could get together with the Leader of Evidence and give to him any supporting document that can help us in assisting you in a manner that you requested the Commission to do.

Mr. Patrick Njue: The other thing Presiding Chair is that we had received an indication that perhaps Rosemary would be sharing copies of her publication; “My Father’s Daughter”, to the Commissioners present, one for the Leader of Evidence and the other for the records of the Commission. Maybe she can confirm this to us. I confirm having received them and I shall be sharing them with you as soon she autographs them.

Mr. Njenga Mwangi: I do not know whether this is the last that we will have as public hearing on the assassination of J.M. Kariuki because I believe that the Commission would benefit greatly if it would call in a lawyer who practices in Othaya and Nyeri by the name of Mindo who has written a book and who was the campaign manager for the late J.M during the 1974 elections. We have times when we shared what he knew about what transpired during that period and I think his testimony would better enrich this Commission.

The Presiding Chair (Commissioner Dinka): Thank you very much for the information. I am sure the Leader of Evidence and the legal department will take note of this and do the appropriate exercise because whether we have a public hearing or not, his testimony will be very useful to us and we will try to get in touch with him.

Mr. Patrick Njue: Thank you Presiding Chair. May we now proceed to the next witness?

The Presiding Chair (Commissioner Dinka): Yes.

Mr. Patrick Njue: Commissioners, this is witness no. 18 on our programme. Good afternoon. Sir, please introduce yourself to the Commissioners and the public by your name and tell us what you do for a living.

Mr. James Kwatenge: My name is James Lando Kwatenge. I used to work with the intelligence when it was called Special Branch and when it was changed to Directorate of Security Intelligence, I was with it. When later it was turned into NSIS, I had already left.

Mr. Patrick Njue: When you talk of having been with this Special Branch, when was this? When did you join them and when did you exit?

Mr. James Kwatenge: I joined the Special Branch on 1st September 1983 and my last salary was in January 1993.

Mr. Patrick Njue: Ten years of service; I see. At the moment, what are you engaged in?

Mr. James Kwatenge: As the foreign Commissioners may not be aware, in Kenya, when you were sacked for being anti Moi, you just became like a vagabond. I have found a job in a few places. If I can recall, I was about to be employed as a security advisor by Mumias Sugar and then I was also supposed to be employed by Sony Sugar as a company investigator but somehow at the last minute before taking up the appointment, I was told, sorry. I know Kenyans who are here understand.

Mr. Patrick Njue: Mr. Lando in your ten years of service with the Special Branch and I believe perhaps this is what led to your subsequent dismissal, you have come across certain cases of assassinations which is actually the theme that brings us here today. According to the brief we have, one such brief we have is that of Alexander Muge.

Mr. James Kwatenge: I came across six political assassinations. The first one was concerning Alexander Kipsang' Muge, the second and third which are related is concerning Robert Ouko and Masinde Muliro. The next one which many people do not know is a Mr. Salat who is brother to Nick Salat and a son to Isaac Salat. He was killed shortly before the 1992 elections. The other one I was aware of which occurred when I was out of work but I could interact with my colleagues who were in work and compare notes, was to do with honorable Fred Masinde, the MP for Mathare. The last one was to do with Father Kaiser. In this one, I presented a detailed report to the task force for TJRC and then there was a magistrate who did an inquest three years later. The magistrate's inquest that happened three years after I had presented my papers to Makau Mutua came up with the same findings that I had written three years earlier.

Mr. Patrick Njue: Maybe in taking us through these instances of the assassinations beginning with that of Alexander Kipsang Muge for those of us who may not know and for the benefit of the public, who was Alexander Kipsang Muge?

Mr. James Kwatenge: Alexander Kipsang Muge!

Commissioner Chawatama: Sorry, maybe through the Chair, I know that you have a wealth of information judging from the number of names that you have written. What I was wondering was whether or not you had a written statement on all the things. You do, please proceed.

Mr. James Kwatenge: I would say as a trained intelligence officer, most of my notes are in my head. We do not carry papers around because they may fall into the wrong hands.

Mr. Patrick Njue: Please proceed! Bishop Alexander Kipsang Muge, how did you know him?

Mr. James Kwatenge: When Alexander Kipsang Muge died, I was the acting Deputy District Special Branch officer, Mandera and that is when my only daughter was born. Shortly in August of the same year, I was transferred to Eldoret. I was introduced to a constable who was with the Special Branch. He was initially from Busia. That is where he was born so he was a native of Busia.

Before being transferred to Eldoret, he was stationed in present day Lugari Constituency. The detailed circumstances of how I met him are in the records. What had happened before this constable was assigned this duty was that Muge had committed what I call African treason. In Africa, when the president comes from your tribe, you are not supposed to notice anything wrong with him. When Muge could criticize the Government of somebody from his tribe that is what we call African treason. It is worse if you criticize the President if you come from his tribe. That is why he had to be killed and those people who had been sent had been promoted through tribalism. Although he belonged to the same tribe as they did, he was a commando trained by Israelis through the Reece Company of the GSU, so several places had been identified for...

The Presiding Chair (Commissioner Dinka): Excuse me, Leader of Evidence, can you approach the table?

Mr. James Kwatenge: He was a priest but in his previous life, he had been a commando so he was better than them. I could say three things about that. There were two places which had been identified for his death. There is a place called Mtembur between Nasakol Girls and Kacheliba. There is a ravine there where they were to fake an accident. There is also a place called Chepkararat on the border of Kenya and Uganda, a place that had three things which you could not associate with an Anglican Bishop. There was smuggling, fornication and a lot of illicit drinking so the attempt was to place his body there and then, shave him. You know most of the people visualized him with an afro hairdo, with glasses and with a collar. If you shave him clean, remove all those things and place him with traditional Pokot dressing, he would just rot there and we have seen a lot of Kenyans who have disappeared that way.

He was cleverer than them and he even recorded and I think the widow may be having the recording. They were unable to kill him. Those days, there was a lot of political sycophancy so when Okondo said, “if you come to Busia, you will see fire”, he wanted people just to know that he was into Nyaoism or something like that. Okondo was never connected to the death of Muge but he presented an excuse so that they could kill him and then people could associate the death to Okondo’s loose tongue. Along the way to Busia coming back, these people would stage- manage accidents and this was quite irritating as we will see with Ouko’s case. Ouko, being the Minister for Foreign Affairs, was aware of the intelligence and so one time he hiked a tractor, but we will come to that. What happened was that when they went and came back...

Commissioner Chawatama: Sorry, I think what we will do counsel through the Chair is that for purposes of us following the witness, I suggest that you lead so that the witness is then able to follow certain events in a way that will also enable us understand. I am sure that you are aware that we have to vacate this room at 4.00 p.m., but we really want to hear this witness’s testimony. So maybe lead so that we are able to follow events and things are clearer. Thank you.

Mr. Patrick Njue: I am guided. Thank you.

The Presiding Chair (Commissioner Dinka): If he goes according to his deposition here, systematically.

Mr. Patrick Njue: Mr. Lando we are at the point where Bishop Muge is coming to Busia and you are saying that along the way, there was sort of some play in terms of trying to get him to cause an accident. Were they successful?

Mr. James Kwatenge: No, they were not successful both to and fro. When they arrived at a place called Kipkaren River there is an inclination. What Muge or whoever was driving the vehicle had in mind was, since the lorry that was ahead of him was emitting a lot of thick smoke, he timed another lorry to come so that he could zigzag there. He miscalculated the coming lorry and when the driver of the lorry saw that, he went out of the road and Bishop Muge also went to the other side and they had an accident.

Mr. Patrick Njue: After the collision?

Mr. James Kwatenge: After the collision, there is something I had missed, there were officers who came from Nairobi specifically for that operation. These were the ones who went with this constable to Busia and came back. When they were chasing this vehicle, after the accident, the crew commander ordered the rest to remain within the vehicle. He went to the scene of the accident where people were milling around and then after a few minutes he came back. When he came back, he communicated with the headquarters in Nairobi telling them that *Operation Shika Msumari* was successfully completed. I think I should explain...

Mr. Patrick Njue: Can you translate especially the Swahili bit? What does that mean?

Mr. James Kwatenge: *Operation Shika Msumari* means that when you want to hit a nail, there is always a possibility of hitting your finger but when I hold the hammer and my friend holds the nail, if I miss, I will hit his finger but if I succeed in placing the nail in, I get the praise. They succeeded in doing what they wanted to do and Okondo's finger was hurt.

Mr. Patrick Njue: So in this instance, the nail would be Muge and you are saying the hand would be Okondo and the constable is the one who I believe later narrated the happenings to you.

Mr. James Kwatenge: It is this constable who informed me at a bar called Mahindi Hotel opposite Eldoret Police Station.

Mr. Patrick Njue: What has happened to this constable since? Is he still alive?

Mr. James Kwatenge: I am told he was made an inspector and since I left the service in January 1993, I did not interact with most of my former colleagues.

Mr. Patrick Njue: Did you have any active role that you played in the investigations of the case of the assassination of Muge now that you had been posted to Eldoret?

Mr. James Kwatenge: There was a cover up. As I told you, this is something I was told at Mahindi Hotel and if there was anything official, I would have been told in the office.

Mr. Patrick Njue: To make it clear, you said Okondo's statement was just to deviate the main issues as to the purpose of Muge's elimination but as you came to understand it, what were the reasons or the motive behind his elimination?

Mr. James Kwatenge: I believe, those days there was something called "Nyayometer". So, when Okondo said that, he just wanted to be seen to be into Nyayo more than the others but when he said that, he gave somebody an opportunity to do something else.

Mr. Patrick Njue: We now move to the assassination of Robert Ouko.

The Presiding Chair (Commissioner Dinka): Can we first clarify a few points with this witness because we are now getting confused. You have been told this story by someone. Is that right? Do we have his name here? Do we have the name of the commander who told the other guys to stay in the car?

Mr. James Kwatenge: From your records, you will find that these people who came from Nairobi made sure that this constable did not know their names but he had a feeling that the crew commander was an inspector of police.

Mr. Patrick Njue: I do not know if there are any other clarifications from the Commissioners. Mr. Lando, we will now move to the assassination of Dr. Robert Ouko. When did this take place; which year?

Mr. James Kwatenge: Ouko's death and Muge's death happened the same year but after I spent a year in Eldoret, I was transferred to Nakuru. During that reshuffle of senior intelligence officers, there is Mr. Sang who was the District Special Branch Officer in Nakuru. He was transferred to Kakamega on promotion as Deputy Provincial Special Branch officer. During the farewell party, the guest of honor was to be Mr. Jonah Anguka, the then District Commissioner Nakuru. He did not come but he was represented by the DOI who was John Abduba. So, when Sang's time came to talk, he expressed surprise that Anguka was shivering and then he was wondering why he was shaking and yet there was a massive cover up to cover him. Having been an "A" level graduate and that time "A" levels were very few in the police force, I had been given work to record and summarize all the intelligence.

By virtue of that, I could interview any intelligence officer and I could read any file without raising any suspicion. This is what I found out. Before even the trip to the USA, Ouko was a concern to the then President. Ouko used to tell the President what the President needed to hear not what he wanted to hear. Since those days were days of undermining each other, people could obviously translate it the way they wanted.

I did my own investigations and this morning when I was coming here, I had even prepared some notes wanting not to give evidence to this Commission. The reason for this is, there were some loose ends that up to today, I have not found. The best person who would have filled in that was the then Permanent Secretary in the Ministry of Foreign Affairs. There are rumours that Ouko had been sacked. My own investigation was that he was not sacked because he was supposed to go to South Africa on official duties. The only person who would have verified that is the Permanent Secretary, Ministry of Foreign Affairs at that time who does not want to resign from the TJRC. However, that is that.

When the President used to visit Kisumu, he would spend more time in Ouko's private residence than even the State House. So, Ouko used that opportunity to tell him what he needed to hear not what he wanted to hear. I am told from friendly experts that even when Ouko was in the USA, he was advised not to come back to Kenya but he ignored that because he trusted the President.

Mr. Patrick Njue: So, he is in the USA and he chooses to come back. There is an incident in your statement when you talk of the tractor. Was it the lorry incident?

Mr. James Kwatenge: That tractor incident is what I had stated earlier. What happened when he came back, he regretted having not listened to what he had been advised in the USA. So when he came back to Kenya, he made two attempts to reach the President; he used two routes. The first route, he tried to reach the President through the President's

relatives. That is why he was in Kericho to see Peter Kibyego Lagat, the then DC, Kericho. The purpose was to tell him to go and talk to his *mjomba*.

Mr. Patrick Njue: *Mjomba* meaning what?

Mr. James Kwatenge: In Kenya there are two types of uncles. This was his maternal uncle. Peter Kibyego Lagat's mother is the sister to former President Moi. Some other people knew that he was going there. That is why they were ready with the accident. When Ouko experienced the accident, he knew what was happening. That is why he hiked a lift on a tractor and got to Kisumu instead of going to Kericho.

Mr. Patrick Njue: Sorry, I will cut you short. When you talk of the accident, you are at the point at which you said he tried to go to Peter Kibyego so that he could approach the former President as his nephew. Then you are talking of an accident.

Mr. James Kwatenge: What I am trying to say is, when Peter Kibyego Lagat was told to go and see the uncle, he shared that information with others. So that is why that accident had to occur.

Mr. Patrick Njue: The bit of the accident is what we want to understand.

Commissioner Chawatama: Was that accident staged, is that what you are saying and then the accident did not happen?

Mr. James Kwatenge: It happened.

Commissioner Chawatama: So tell us then, there was an accident staged, it happened and then how did Dr. Ouko manage to leave the accident scene?

The Presiding Chair (Commissioner Dinka): Begin with how the accident happened; was it between Dr. Ouko's car and somebody else's car or how was the accident? Please, explain.

Mr. James Kwatenge: What I would say is that we have this mentality that when a vehicle has a slight dent, it kills people and when it is a write-off, people do not get hurt. So, usually they are sent to just dent your vehicle a bit. Then there are these other people - I hope you know the people I mean. After just scratching the vehicle, there is usually another team who are "good Samaritans". They pretend to take you to the hospital but along the way, anything can happen. So Ouko being the Minister for Foreign Affairs and having access to intelligence knew what was happening so he ran to the tractor. For a VIP to be seen on a tractor, you would even pass without knowing him.

Mr. Patrick Njue: And the second incident?

Mr. James Kwatenge: That is why he went to the hospital in Kisumu instead of Kericho.

The second route that he was using is that he used prominent Luos to reach the President.

The Presiding Chair (Commissioner Dinka): If we go a little back; the car that hit his car, was it arrested or it just went away.

Mr. James Kwatenge: No! No! It was not just any other vehicle. You see usually they use somebody from around there so that when the traffic police come they are told, “*hawa ni watu wetu*”. I hope you understand.

Commissioner Shava: I hope I can be of assistance. I think what we are trying to understand is exactly what it is that you are saying that happened during this accident in which Dr. Ouko was involved. You have given examples of what happens in cases like that but what we are asking is; exactly what happened in that case? Was Dr. Ouko driving himself? Was he being driven by somebody? In which vehicle was he? Which vehicles hit him and did he then escape in a tractor or a lorry? Just give us those details.

Mr. James Kwatenge: These people who were chasing him---

(The Presiding Chair consulted the leader of evidence)

The Presiding Chair (Commissioner Dinka): James, we appreciate your coming and we want to listen to you at another time because we have been told to vacate this room because another group is taking over now. So, I think you will be informed by the leader of evidence as to what we are going to do next in this case. I want to adjourn the meeting because time is almost up as they told us.
Thank you very much.

Leader of evidence, please, give him the necessary guidance and instructions. The meeting now stands adjourned.

Mr. Patrick Njue: Presiding Chair, maybe before we adjourn, we can thank the witnesses who already appeared before us today.

The Presiding Chair (Commissioner Dinka): I would like to thank the witnesses that came before us today; Ms. Jenipher Shamalla, the hon. Mark Mwithaga, Rosemary and Tony Kariuki, the entire family of the late J.M Kariuki and James Lando. We have not finished with you; you will have a new date to talk to us.

I thank the witnesses, the cameramen and the audience for your patience and for your discipline. Thank you very much and we will see you next time. I also thank the interpreters.

The meeting standards adjourned now.

(The Commission adjourned at 3.30 p.m.)