

PROSECUTION CASE EXAMPLE

ZAMBIA - PATRICIA MULENGA

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INTRODUCTION

- ▶ In January, 2009, the Anti-Corruption Commission received a report in which it was alleged that the Ministry of Health made payments to a Training Services Company for undelivered training services. It was further alleged that the officials involved at the Ministry were in possession of properties reasonably suspected to have been proceeds of crime.
- ▶ Investigations into the matter were authorized and a Taskforce was formed that included Investigators from Anti-Corruption Commission, Drug Enforcement Commission, Zambia Police Service, Central Bank, Zambia Revenue Authority and Office of the President.

METHODOLOGY

- ▶ The following procedures were performed:
 - ✓ Financial investigations were handled side by side with the main inquiry;
 - ✓ Collection and analysis of documents;
 - ✓ Intelligence gathering;
 - ✓ Searches / Asset Tracing (Banks, Companies, Mobile Service Providers, Motor vehicles, real estate, shares at the stock market, Insurance Companies);
 - ✓ Financial profiling of suspects and their associates; and
 - ✓ Interviews.

FINDINGS

▶ Investigations established the following:

- ✓ There was a conspiracy among officials at the Ministry namely; the Manager - Training, Principal accountant, Chief Account, Senior account and the Internal Auditor, who connived with a Training Services Company.
- ✓ The Manager Training engaged the Training Services Company to provide training services to Community Health Workers, without the knowledge of the controlling Officer at the Ministry. However, none of the scheduled trainings took but payments were made.
- ✓ There was no contract between the Ministry and the Training Services Company, hence procurement procedures were not followed as required by Law.
- ✓ The Ministry paid about K6.8 million Kwacha (\$400,000.00) in 10 separate payments to the Training Services Company over a period of two years from 2007 to 2009.

FINDINGS CONTD.

- ✓ The payments were made from the Expended Basket Account held at a Commercial Bank which was financed through Donor Funds and the account signatories were the Senior Accountant and the Chief Accountant at the Ministry. The payments were authorized by the Principal account. While the Internal Auditor conducted audits on the Expended Basket Account.
- ✓ 10 electronic payments were made from the Ministry account to the Training Services Company and huge over the counter withdrawals amounting to K680,000.00 (\$40,000.00) per transaction were made by the Training Services Company within two days of the credit.
- ✓ The bank did not raise any suspicious transactions as required.
- ✓ The Training Services Company revealed that each time a payment was made, the Manager - Training for the Ministry visited them to postpone the training and asked for a refund of 90% without signing any documents. This was the occurrence on all 10 payments.

FINDINGS CONTD.

- ✓ Upon collection of the money, the Manager - Training at the Ministry shared with his four accomplices and they deposited the money in their accounts from which they procured various high level assets.
- ✓ A number of assets were identified that included 24 high value motor vehicles, a Filing Station, three houses and two lodges. These assets were linked to the five suspects and they were procured within the same period that the payments were made from the Ministry account.
- ✓ The company that managed the Filing Station and Lodges was not tax compliant.
- ✓ The suspects especially the Manager - Training and the Principal Accountant had made extra efforts to distance themselves from the money and property by registering them in other people's names, while some remained in the names of the sellers. The other three suspects registered the motor vehicles in their names.
- ✓ None of the suspects' had a loan and they could not acquire the identified assets from their legitimate sources of income.
- ✓ The identified Properties were subsequently seized.

PROSECUTION ASPECT

- ▶ The five suspects were arrested and jointly charged with 69 counts of theft by public servant and 49 counts of money laundering involving K6.8 million under the Prohibition and Prevention of Money Laundering Act, 2001.
- ▶ The owner of Training Services Company was turned into a key State witness.
- ▶ The criminal prosecution process was long and complex. It took nine years.
- ▶ The Magistrates' Court found the accused persons guilty on all counts and convicted them accordingly.
- ▶ The Court ruled that for the money to move in the manner it did, there was a conspiracy between the five convicts.
- ▶ The Court ordered that all convicts' properties and the five accounts in which the stolen money was deposited be forfeited to the State.
- ▶ The Court entered statutory judgement in the sum of K6.8 million being the sum of money the convicts stole from the Ministry of Health and further awarded interest on the said sum at the current Commercial bank short term lending rate from the date of theft until the date of judgement, until the said sum was liquidated in full.
- ▶ The convicts were sentenced to nine years imprisonment.

CHALLENGES

- ▶ Despite the case being complex, the Prosecutors were only incorporated after the investigations process were concluded, hence they were not on the same page as the Investigators in terms of understanding the case.
- ▶ Lack of analytical tools to deal with the financial aspects posed great challenges for the Investigators.
- ▶ In dealing with the aspect of following the money, we faced challenges in linking the money with the acquired properties because they were collecting the money in cash.
- ▶ We faced challenges in connecting the assets to the suspects because of third party ownership.
- ▶ Lack of cooperation from the Commercial bank as it was a professional enabler. Had they raised suspicious transaction reports, the theft would not have continued. Hence we recommended to the Central Bank that disciplinary action be taken against them.
- ▶ Since the matter involved a lot of assets, maintenance costs were high following the seizure up until they were forfeited to the State.
- ▶ The prosecution process took too long (nine years) due to the complexity of the matter and there were a lot of adjournments by the defense team.
- ▶ The Government lacked a centralized database for accessing information.

THANK YOU

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