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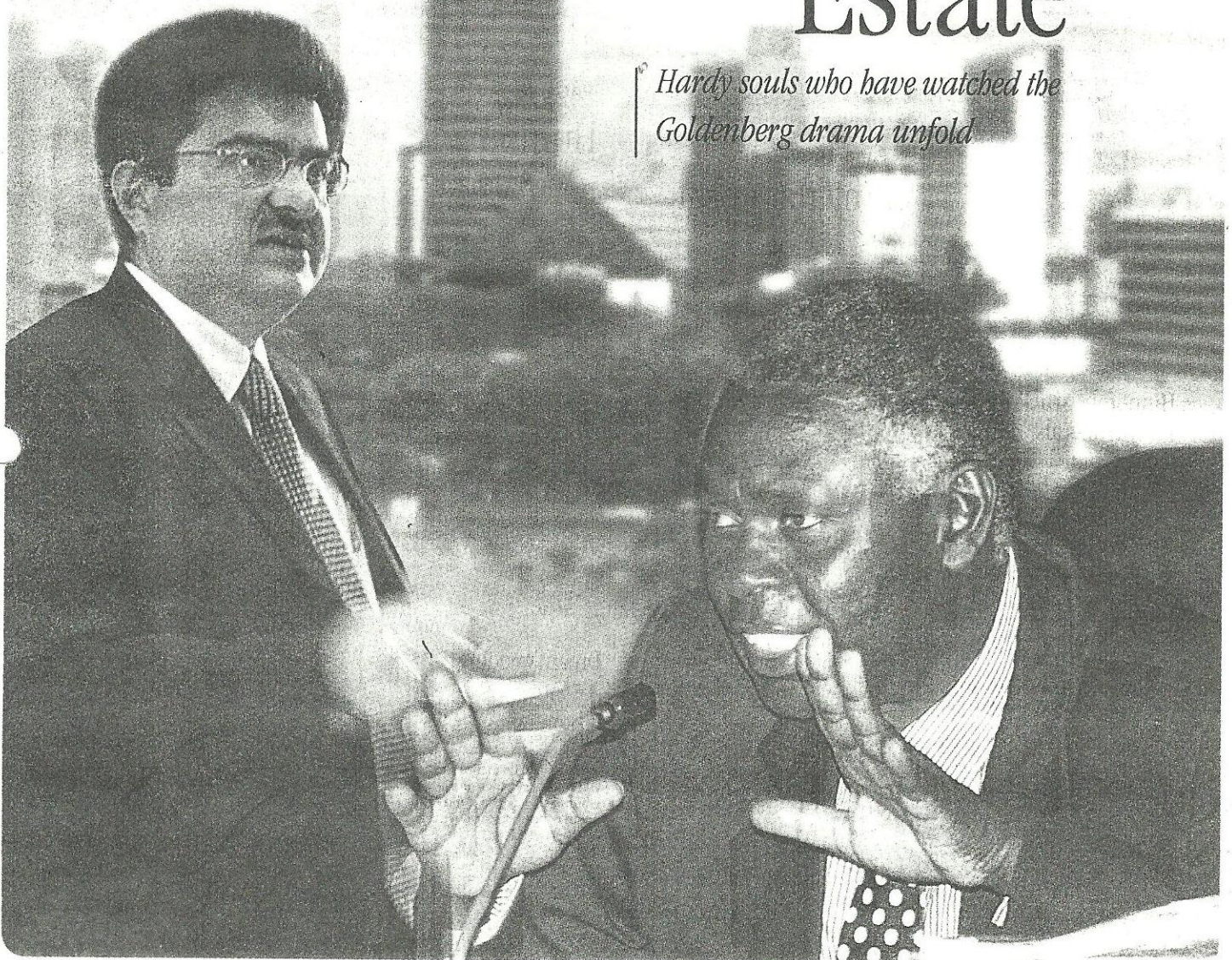
SOCIETY

THE MAGAZINE FOR THE WHOLE FAMILY

THE SUNDAY STANDARD

The Fifth Estate

*Hardy souls who have watched the
Goldenberg drama unfold*



It combines the best elements of a public spectacle, a legal *cause celebre*, a scandal of monumental proportions and the compelling attraction of a television drama. The Goldenberg Commission of Inquiry has been sitting for more than 280 days now. In that period Kenyans have been regaled with details of a scandal in which mind-numbing figures have been bandied about. While many might have been wearied into disinterest by time, repetitiveness and the plodding nature of a public inquiry, there are those who have religiously attended and followed the proceedings since the inquiry opened. What attracts them and what do they see and hear? Recently *Society* writers **TONY MOCHAMA** and **LILLIAN ALUANGA** joined them for a day and saw the drama through their eyes.

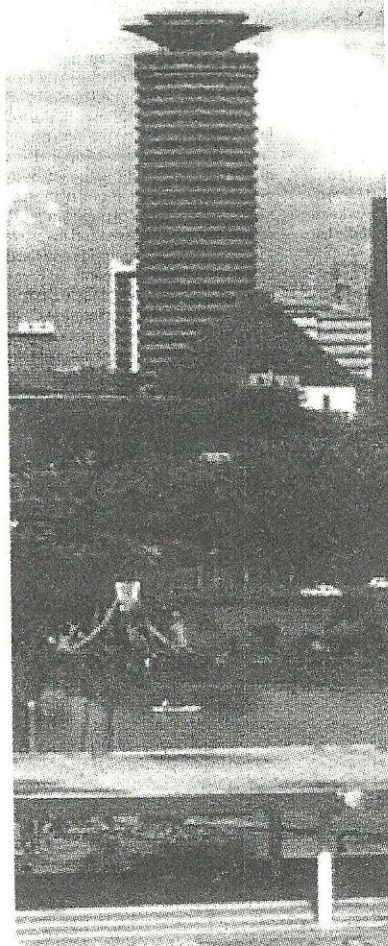
The fifth estate



Witness: Kamlesh Pattni



Commission chairman Samuel Bosire



You've probably seen them on television during the Goldenberg proceedings, blobs among the sea of faces that swarm behind the lawyers' benches.

But Patrick Hamisi, Moses Akano and Ochieng Arum are no ordinary idlers or thrill-seekers.

When *The Sunday Standard* caught up with them on the 277th day of the Goldenberg Inquiry, the three men had attended 207, 232 and 250 days of the Inquiry respectively, making them unofficial chroniclers of the proceedings and informal observers, not of preponderances of evidence or of matters judicial, but of character and perhaps even judges, or gauges of 'the public mood' — that amorphous entity that is hard to calibrate.

The trio emerged on October 15 from the hall at the Kenyatta International Conference Centre (KICC) where the hearing is being held on the heels of ejected counsel — a fuming Dr John Khaminwa, Dr Gibson Kamau Kuria, still looking teary-eyed, and lawyer Pravin Bowry, who told us he was "as cool as a cucumber."

In contrast to the learned trio's expensive apparel, Patrick is dressed in an apparently cheap checked shirt, Moses in a shabby one with the insignia of a dragon and Ochieng Arum in a slightly frayed cream suit.

But their clothes, though well worn, are clean, and the trio bear themselves with dignity, the solemnity of the proceedings where they spend their days having rubbed off on a genteel poverty.

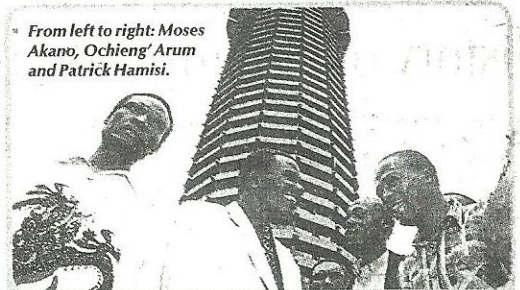
What motivates them to spend morning after morning listening to the ramblings of a plethora of witnesses? "My money was stolen by somebody," Moses says, "and I want to find out who stole it."

Ochieng Arum chimes in: "It is a public inquiry, so it is job (sic) of public to attend it." Patrick Hamisi, on the other hand, comes for "entertainment". It is better than listening to the clowns and preachers on Aga Khan walk, he says.

What do they make of the morning's proceedings, this having been the stormy session when bow-shots have been fired between assisting counsel (Kuria and Khaminwa) and

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From left to right: Moses Akano, Ochieng Arum and Patrick Hamisi.



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Cover story

The fifth estate

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Pravin Bowry, Mr Joshua Kulei's lawyer?

Arum wishes the lawyer had been allowed to proceed with his "onslaught" on Dr Kuria, in order that the truth may come out. All three men, however, express profound respect for Commission Chairman Samuel Bosire, saying he inspires "public confidence" and has conducted the hearings with "great patience" in spite of some lawyers and witnesses testing his limits.

They contrast Bosire's stewardship of the Goldenberg inquiry with that of Gor Sunguh at the Ouko Inquiry, which they have attended intermittently. "Sunguh asks many questions and there is some bulldozing going on," Moses states.

Arum, on his part, takes issue with Sunguh's suggestion that the Commission goes to London. "To do what?" he poses. "Hon Gor already went on holiday to the Whitesands in Mombasa and if he wants London(ers), they should be brought here instead of the Commission going there, otherwise (people will think) it is a joy-ride!"

Patrick chips in: "What if Justice Bosire says Commissioners to go to Switzerland (Switzerland) to look for the Goldenberg funds?"

We are back on the golden path. What do the trio, as members of the public, think ought to be the culmination of the inquiry when all the evidence is in, and culprits are incriminated?

"When the suspects are identified," says Patrick, "especially those who conned Central Bank, carried forexes in sacks and imported pangas at they are diamonds, they are gold; they should be sent to jail."

Moses Akano is of the opinion that "the money swindled should be returned, and the property of the (perpetrators) attached." Ochieng has a very specific list of seven people whom he believes stole up to "eleven figure sums" each. "The rest are secondary players, or even minor characters."

And what are the gallery's sentiments towards the central characters in the drama,

such as Kamlesh Pattni and regulars at the hearings who seem to be his avid admirers?

"Some people think Pattni is a hero," Moses says. "We have nick-named them PPS (Public Pattni Supporters)."

"They sit in the middle of the hall," Arum adds, "and whenever Pattni says anything funny, they burst into loud laughter. Afterwards, they bounce to see him off — and are very happy and excited when Kamlesh smile and wave at them."

At a recent British High Commission farewell function, Mrs Agnes Murgor, the Central Bank of Kenya lawyer, wondered aloud whether the people are paid. But Mr Wambua Kilonzo, one of Pattni's lawyers, dismisses the idea of "rent-a-mob" offhand.

The trio of Hamisi, Akano and Arum have also had room enough to notice various idiosyncrasies among the witnesses, assisting counsel and the various advocates at the inquiry, in the 200-plus days that they have sat there.

Says Ochieng, solemnly: "We study everything, every move, from our 'chamber' (three chairs behind the Press table). For example, we have noticed that Mr Pattni only greet Dr Kuria, and that Kuria stays bend (hunched) over his desk until business (commences). His only friend on that long (lawyers') desk appears to be Dr Khaminwa."

The three men are impressed by Moi's lawyer, Mutula Kilonzo for "producing documents that revealed foreign accounts Pattni had," lawyer Pravin Bowry for his "aggression" and Mr Cecil Miller for his "calmness and professionalism."

The hawk-eyed trio has also taken note of the personal dynamics between the lawyers. "While Doctors Kuria and Khaminwa keep to themselves, Mutula Kilonzo is friendly to everyone. Fred Ojiambo, Cecil Miller Junior and Mrs Agnes Murgor seem to share a very congenial relationship, while Professor Saitoti's lawyer, Pheroze Nowrojee, keep to himself."

Their verdict on the worst court-room



Foreground: Saadia Effendy and Mutula Kilonzo Jr. Background: Moses Akano (left) and Ochieng' Arum.

demeanour is unanimous: former Gwasi MP and lawyer for Mombasa businessman, Muzahim Mohammed, advocate Felix Nyauchi.

Layman Arum, who was re-trenched from a clerical position in the Civil Service sometime back, describes him as "seeming confused in his cross-examination." His opinion, like that of Moses who strongly feels the Goldenberg scam messed the economy irreversibly in the early 1990s, is of course not an informed one.

In the end, lawyer Kilonzo Junior tells us that the public gallery, the "fifth estate," is "invaluable as a process of open democracy", with the "public nature of these proceedings in the tradition of the Commons where matters of public interest were openly raised, discussed and investigated."

Lady lawyers June Njoroge and Saadia Effendy share the sentiments. As French moralist Michel de Montaigne said, the world is "but a school of inquiries," and it is people like Arum and his friends who represent the public in some of these classrooms.



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History of a scam without precedence

After more than 10 years of numerous court cases that never got to a conclusive end, President Mwai Kibaki set up the Goldenberg Commission of Inquiry on February 24, 2003 to probe the biggest financial scandal in Kenya's history. Its mandate? To unearth the truth about a scam in which the mighty and lowly have been implicated, including a former president, permanent secretaries and Members of Parliament.

At the centre of this complicated web of deceit and underhand dealings is Goldenberg International, a firm owned by businessman Kamlesh Pattni, registered in 1991 ostensibly to provide an alternative source of foreign exchange earnings from gold and diamond jewellery exports.

Even though the scandal is believed to have started earlier, the first Goldenberg story was reported in the local media in 1992 and made reference to suspect "exports of gold and diamond activities" and

pre-shipment movements of large sums of money. The claims were however denied by the Ministry of Finance and the Commissioner of Mines and Geology.

But the following month the Controller and Auditor General raised questions about payment of Sh590million purportedly as export compensation to Goldenberg International.

When the Commission was first set up, its terms of reference were pegged on "fictitious export compensation claims running into billions of shillings" and the questionable payments of billions by the Central Bank of Kenya to Exchange Bank.

The Commission was to be led by Justice Samuel Bosire with judge Daniel Aganyanya and Senior Counsel Peter Le Pelley.

Assisting Counsel were John Khaminwa, Gibson Kamau Kuria, Ms Dorcas Oduor and Waweru Gatonye.

Aganyanya was however dropped from the commission last year after he was sus-

pending alongside 22 other judges over allegations of corruption. He was replaced by Justice Nzamba Kitonga.

On July 29, 2003, President Kibaki expanded the commission's terms of reference to include establishing whether Exchange Bank Limited and Goldenberg International had defrauded the Central Bank of Kenya through cheque kiting, the effect the scandal had on the administration of justice in Kenya and finding out the identities of the shareholders, directors and beneficial owners of all companies involved in the scandal.

The Inquiry has been on for over 280 days and has seen more than 70 witnesses testify. It cost the government up to Sh160million between February when it was commissioned and October 31, 2003.

At the time the commission was sworn in on March 8, 2003, cases related to the scam had been in the courts for 10 years and had been heard by not less than eight judges.

My Lords, it's a typical Goldenberg morning...

Several uniformed officers stand guard at the entrance to the hall.

They engage in minimal conversation as they frisk all visitors who come down the flight of stairs. It is only after this that they are allowed to go into the hall.

Inside, a businesslike mood pervades the room, only occasionally interrupted by muted murmurs from the audience. The audience, which is predominantly male, is seated on metallic chairs that are neatly arranged in rows.

It is 227th day of the tragic-comic soap opera that is the Goldenberg Inquiry, which is being held at the Kenyatta International Conference Centre, Nairobi.

A dark skinned, middle-aged man in his 40s is seated in the midst of a group of about 10 others. He begins to talk softly and waves his arms in the air as he mimics a lawyer. His actions send his audience into fits of raucous laughter, which ends as suddenly as it started when a court usher signals the entrance of the commissioners into the room.

As they slowly file in and walk towards the front of the room, people rise to their feet and bow to acknowledge their presence, then hurriedly resume their seats to eagerly await the day's proceedings to commence.

The Goldenberg Commission of Inquiry was set up in February 2003. This was after President Kibaki announced a probe into Kenya's biggest scandal, dubbed the 'Goldenberg affair'. The alleged fraudulent dealings, in which top government officials have been implicated, began in 1991 and the inquiry is estimated to have cost the government Sh68 billion.

Inside the hall, a host of journalists with cameras on the ready are standing opposite the main entrance. Soon their cameras begin to roll, rapaciously recording every activity in the room, as their colleagues hastily fish out notepads and pens.

With their faces looking grave and solemn, the three commissioners presiding over the hearings take their seats and as their eyes sweep over the audience, a hushed silence descends upon the room.

On the wall behind the Commissioner's bench is a portrait of a smiling President Kibaki, an incongruity considering the solemn nature of the proceedings.

At the very front of the room is a bench—long, imposing and covered with a red cloth. On it are several stacks of neatly arranged files containing documents that constitute a critical paper trail of the monumental financial scandal.

To the Commissioners' left is a witness stand and across it is a screen on which data is continuously displayed by use of a projector.

Another long table sits several Assisting Counsel and lawyers representing their clients who have been mentioned in the inquiry.

It is 9.30 pm and a witness takes to the stand as cross-examination begins.

Save for the occasional cough or clearing of

the throat, the audience is quiet and keenly follows the proceedings. Half an hour later, a group of about 30 high school students troops into the hall and take their seats at the back of the hall, momentarily disrupting the attention of the audience.

Here, protocol must be strictly observed. For instance when answering questions the words "My Lord..." usually precedes the response, although many a witness is in the habit of referring to everybody as "My Lord," including the court orderly who has just surfaced to adjust a microphone.

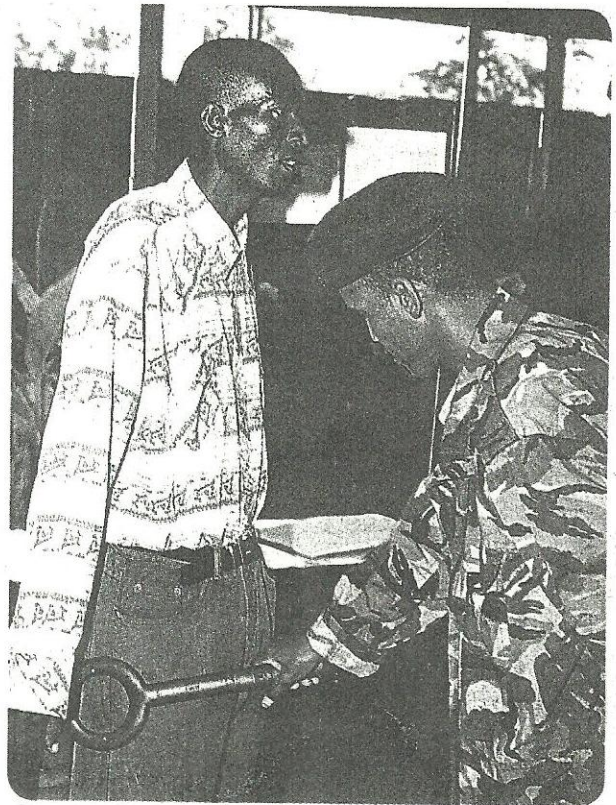
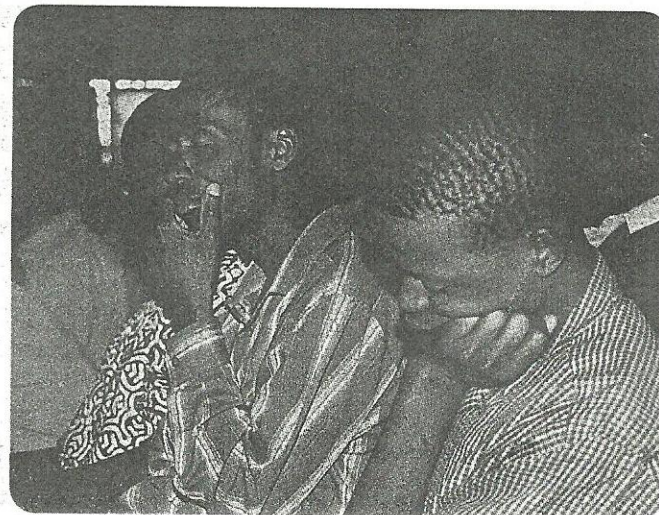
One does not just walk in and out of the room as they please without acknowledging the presence of the Chair, and you are well advised to switch off your mobile phone as soon as you step into the room, to avoid unnecessary interruptions and possible eviction from the proceedings.

The commissioners keenly listen to the evidence being presented and might once in a while intervene when they require clarity on the issue at hand.

Meanwhile, bright flashes cut across the room every so often as the photographers click away, sometimes inching close to the witness stand for a better mug shot.

But the mood is not always so sombre. Sometimes the affable chairman catches the witness off-guard, and breaks into a smile as

Its now 1.30 pm and the Commission's work is done for the day. The witness looks tired but relieved to step off the stand.



Above: A member of the public is frisked for weapons. Below: The proceedings have their fair share of sleepers.

he asks for clarification on a matter, instantly drawing a similar reaction from the audience.

Perhaps today's proceedings are a tad difficult to follow due to the financial terms in use. The effect soon begins to show as some people in the audience begin to nod off. Their nap is however cut short by a hawk-eyed court orderly who motions those seated next to them to wake them up. Sometimes he is forced to walk up to them and give them a nudge. Somewhere in the middle of the proceedings a mobile phone goes off and its

owner frantically tries to switch it off, much to the chagrin of the Orderly. He glares at the offender, and wags an admonishing finger at him. He is lucky not to be thrown out of the hall for the interruption.

By 11 o'clock, some people in the audience are slouched in their seats, while others are desperately struggling to stay awake as the financial guru delves deeper into the miasma of "accounting made difficult".

A look of relief can be seen on many a face as one of the assisting counsel requests for a break. Once again, protocol must be observed and everyone rises to their feet as the commissioners leave the room.

Several people can be seen stretching themselves as they engage in lively chatter, while others walk out of the room to catch some sun and compare notes on the evidence presented.

About 15 minutes later, the proceedings resume and the same witness takes the stand. The audience has grown relatively thinner now but the level of alertness remains high even though it dwindles once more as the lunch hour approaches.

It's now 1.30 pm and the Commission's work is done for the day. The witness looks tired but relieved to step off the stand. As soon as the Commissioners walk out, the audience bursts into lively banter and chatter.

Some of them simply walk away and can be overheard rendering their verdicts in light of the evidence presented for the day, while others linger in the hallway, hoping for the opportunity to rub shoulders and shake hands with some of the famous faces from the Commission—like Dr Gibson Kamau Kuria, Mutula Kilonzo and the unchallenged star of the show, Mr 'Paul' Kamlesh Pattini.