Crony Capitalism and State Capture: The Kenyatta Family Story

By David Ndii

Nothing is more dangerous than the influence of private interests in public affairs, and the abuse of the laws by the government is a less evil than the corruption of the legislator, which is the inevitable sequel to a particular standpoint. In such a case, the State being altered in substance, all reformation becomes impossible. ~ Jean Jacques Rousseau

In November 2013, seven months into Uhuru Kenyatta's presidency, one of the dailies carried a story profiling what it termed as the Kenyatta family business "expansion drive". "Uhuru Kenyatta's presidency" it averred, "has injected fresh energy into his family's commercial empire, putting a number of units on an expansion mode that is expected to consolidate its position as one of the largest business dynasties in Kenya." The paper listed interests in hospitality, dairy healthcare, media, banking and construction. The feature went unremarked in public debate. Conflict of interest is not part of Kenya's political lexicon.

At the time, Brookside Dairy, the family's flagship business, was completing an acquisition spree that has swallowed up all the large private milk processors leaving only the state-supported and erstwhile processing monopoly, Kenya Cooperative Creameries (KCC), and the farmer-owned Githunguri Dairies (owner of the "Fresha" brand) as serious competitors.

The pay-off has been remarkable. During Uhuru Kenyatta's first term the consumer price of milk increased 67 percent (from KSh 36 to KSh 60 per half-litre packet), while producer prices remained unchanged at KSh 35 per litre), effectively increasing processors' gross margin by 130 percent (from KSh 37 to KSh 85 per litre). Given the industry's 400m litre annual throughput and Kenyatta family's market share, which stands at 45 percent, the consumer squeeze translates to an increase of the Kenyatta Family's turnover from KSh 13 billion to KSh 22 billion, and gross margin from KSh 6.7 billion to KSh 15 billion a year.

Two years ago, it emerged that the president's sister and cousin (or niece) had abused procurement reserved for disadvantaged women and youth to supply the health ministry. The company involved was registered after Kenyatta assumed office. The website, which has since been taken down, listed their business as supplying healthcare products, building materials, construction equipment, dry foods and supplementary foods to "government entities, parastatal entities, non-governmental organizations, corporates and counties". It also advertised investment consultancy and "facilitation" services, also known as influence peddling. The business was set up specifically to profit from Kenyatta's presidency.

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Koto Housing, associated with Uhuru's sister and specialising in expanded polysterene (EPS) modular construction technology was cashing in on police housing. No sleuthing is required to establish this— it's on the company's website. Since then, the family has established an even bigger EPS building company C-MAX, which also showcases police housing on its website. Instructively, the website also markets "affordable housing" as one of the product lines. Affordable housing is one of Kenyatta's "big four" agenda.

That the Kenyatta family would set up businesses to trade with the government during his tenure, and have no qualms showcasing government business on their websites, is astounding. But nothing brings home the family's obliviousness to conflict of interest than its entanglement with the Rai family, the timber and sugar merchants now embroiled in the contaminated sugar import scandal. Parallels have been drawn between Kenyatta's engagement with Rai and the South African Gupta state capture saga.

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Sometime in the early 90s, the Rai siblings sued one of their brothers, Jaswant Rai, alleging that he had secretly been siphoning money from the family business and investing it on his own. They alleged that the money was invested in two Kenyatta Family businesses: Timsales, a timber merchant, and the Commercial Bank of Africa.

Raiply, the Rai family's flagship plywood manufacturing business came to prominence for what appeared to be a carte blanche license to log public forests during Moi's tenure. The case confirmed what the public had long suspected: that Moi had a stake in the business. Kabarak Limited, a name synonymous with Moi, had a 1.4 percent stake in Raiply. Moi banned logging of hardwoods from indigenous forests in 1986. According to the task force the Jubilee administration appointed recently, the Kenya Forestry service has continued to give Raiply licenses to log these invaluable forests for plywood.

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Rai's clout in the Jubilee administration became apparent during the disposal of the bankrupt Pan Paper Mills, Kenya's lone pulp paper mill and a monument to failed import substitution industrialisation. Established in 1971 as a joint venture between the Government and an Indian investor, Pan Paper's claim to fame is that it has never made a profit, even though during the pre-liberalization era, the Indian investors paid themselves handsomely through transfer pricing, management fees and royalties. Pan Paper collapsed in 2009, was bailed out and reopened by the government in 2010, but it closed down again a year later. A second revival failed.

In 2014, Pan Paper's receiver managers resigned abruptly, protesting that a powerful hidden hand was manipulating the transaction to ensure that Pan Paper's assets were sold cheaply to Rai. A new receiver was promptly appointed and the assets, reportedly worth KSh 18 billion were sold to Rai, for KSh 900 million – even less than the Ksh 1 billion the government had injected in the failed revival.

Kenya's current sugar production according to Kenya National Bureau of Statistics data is in the order of 600,000 tons a year, against a consumption of 830,000 metric tonnes, making for an annual deficit of 230,000 tons. Kenya has been accorded safeguards to protect the domestic sugar industry by COMESA trading partners, but these safeguards dictate that Kenya imports the deficit from COMESA countries. Also, it was the practice, as I remember it, that preference was given to the domestic millers in proportion to their market share.

It has now come to light that mid last year, in the run-up to the election, the government, citing drought, opened the floodgates and allowed all and sundry to import sugar duty-free. The KNBS data shows 990,000 tons imported during the year—more than a year's consumption. To be sure, 376,000 tons, the volume of domestic production, was well below normal, but this translates to a deficit in the order of 450,000 tons – less than half of what was imported. Moreover, it is unclear why duty was waived—sugar withdrawal symptoms are not fatal.

Sugar importation was the Moi era's default election financing racket. In those days, the racket was a closed shop controlled by a small cabal of Moi's associates known as the "sugar barons", not the feeding frenzy we are witnessing today. Jubilee's dynamic duo may be Moi's political children but one among the many things they did not learn from him was disciplined corruption. Little wonder that Moi once described them as “ndume hawajakomaa”.

Domestic sugar industry protection in these parts borders on the irrational. Sugar is classified as a “sensitive item” under the EAC’s Common External Tariff, which means it attracts punitive import duties, set at 100% or US$460 a ton, whichever is higher. With sugar currently trading at U$265 a ton on the world market, the applicable rate is US$460, which is effectively an import duty rate of 170 percent. Regular goods are taxed at 0,10 and 25 percent while rates for other sensitive items range from 35 to 60 percent.

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But even with the punitive import duty, the landed cost still works out to between KSh 80-85 a kilo, which allowing for distribution costs and trade margins, would still have put sugar on the shelf in the KSh 110 to Ksh 120 range at which it has been selling. In effect, the foregone duty has been pocketed by the importers. For 960,000 tons, we are talking US$ 455 million (KSh 45.5 billion). If the importation had been done by the sugar millers, and at the right quantity, a duty waiver would have translated to revenue in the order of KSh 20 billion – enough, if properly managed, to turn the struggling mills around. Instead, when they most needed the financial cushion, the government let the dogs out.

When the contaminated sugar scandal first broke with a raid on a backstreet operation in Eastleigh (Nairobi’s “Somali Quarter”), with the culprits caught packing the contraband as “Kabras” sugar, it created the impression that this was a crackdown on the Somalia-Kenya border smuggling racket. Kabras is the brand name of the Rai-owned West Kenya Sugar Company. Then, Aden Duale, Jubilee’s motor-mouthed Parliamentary majority leader turned the guns on Rai. This immediately elicited a stern, sanctimonious public statement from West Kenya Sugar. It admitted to importing sugar, but did not disclose how much. It was not long before sugar hoardings popped up in various Rai establishments up and down the country, including Pan Paper.

It has been reported that Rai imported 189,000 tons of sugar, close to a fifth of the total duty free imports last year. The tax benefit to Rai, and loss to the public, for this amount of sugar is in the order of US$86 million (KSh 8.6 billion). We are talking here of the annual budget of an entire county. The sugar itself is worth upwards of US$50 million (KSh 5 billion). Businesses seldom have this kind of cash lying around, so it is most likely that the transaction was bank financed. If so, it would be interesting to know which bank this is.

It is western Kenya’s misfortune that the region was the hub of both the sugar industry and Pan Paper, Kenya’s most disastrous import substitution industries. The people of Webuye, and the larger Western region, have nothing to show for it. A log of wood typically converts to 8000 sheets of A4 paper worth Ksh. 60,000 (US$600). This is about the same as the value of raw timber. The same log converted into furniture will have a final value twenty times that amount (e.g. three dining tables worth KSh 40,000 each) or higher depending on quality. The furniture industry is a relatively low capital requirement, labour intensive industry that would have utilized Webuye’s forest resources for a locally-owned job and wealth-creating industry.

In its lifetime, Pan Paper has consumed 25,000 hectares of public forests — about 600 hectares per year. Pan Paper at its peak employed 1,500 people. A timber-furniture industry cluster utilising the same resource would have created ten times as many jobs, injecting more than Ksh 100 billion a year into the region's economy.

In a previous column, I posed the question as to what made the leaders of the East Asian Tigers pursue export-led industrialisation going against the dominant development paradigm of the day. I postulated that they did not set out to perform economic miracles, but rather to improve the lot of their people, which led them to the realisation that capital intensive import substitution industries would not create jobs for the masses.

Half a century on, Uhuru Kenyatta, who claims to be inspired by Lee Kuan Yew, is taking the country back to crony capitalist import substitution. In recent months, import tariffs have been raised on timber, vegetable oils and paper products, in all of which the Kenyattas and Rais are players. It was rumored that the Rai purchase of Pan Paper was a Trojan Horse to access public forests for their timber business. The rumour was all but confirmed by the recent appointment of Jaswant Rai to the board of the Kenya Forestry Service. As I opined, "when East Asian leaders were asking prospective investors what they needed to do for them, ours were asking what was in it for them". Nothing has changed. The "big four" manufacturing pillar is also about profits for Kenyatta & Co. – not about jobs. The president's bread is buttered on the side of capital, not labour.

Kenyatta's presidency has increased the profits of his family's conglomerate by at least Ksh 10 billion a year, and that is not including the side lines of family members' "tenderprises" such as the sister's health ministry tenders and the uncle's NYS fuel supplies. The best-run businesses in competitive markets typically make profits in the order of five percent of turnover. In effect, the presidency translates for the Kenyatta conglomerate the equivalent of a KSh 200 billion turnover business —a business the size of Safaricom (whose hefty earnings are due to inordinate market power).

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It should not surprise then that no expense has been spared, no price has been too high not only to keep Uhuru Kenyatta in power, but also to roll back the constitutional dispensation and restore to the presidency the unfettered power on which the family fortune rests.

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