

Corporate Jet & Helicopter Finance Asia 2013



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Business Aircraft Operations: Transactional and Operator Risks
What can really go wrong when things go wrong?

Case Study: CAMAC/Kase Lawal Incident

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Case Study Overview

- Background
- Managing the Operator
- Enforcing the Financier's Rights
- Conclusion

Sources: United Nations Security Council Committee Report, S/2011/738, established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo to the President of the Security Council, 2 December 2011.

Rosen, Armin, "*The Warlord and the Basketball Star: A Story of Congo's Corrupt Gold Trade*" The Atlantic, Mar. 1, 2012.

VFS Financing, Inc. v. Deep South Partners, et al, Case No. DC-11-04005, Dallas County Dist. Court, 134th Judicial District, Third-Party Plaintiffs' Motion for Entry of Judgment, Sept. 26, 2012.

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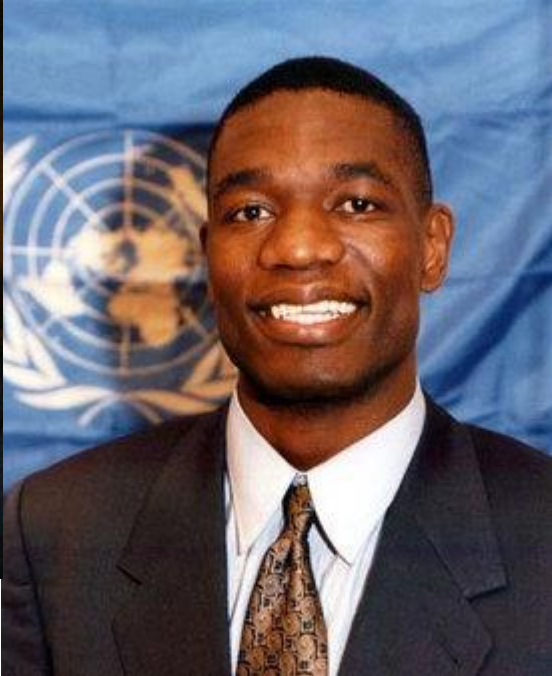
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Background - The Players

Kase Lawal



Dikembe Mutombo



Carlos St. Mary



CEO CAMAC Energy, Inc.
(NYSE: CAK)
Former Member of President Obama's Advisory Committee for Trade Policy and Negotiation

Former NBA All-Star, Humanitarian,
Director Mutumbo International &
Geico Commercial Actor

West Point graduate, Axiom Trading director
African diamond trader, & long-time friend of Kase Lawal




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Background - The Plan

- On 2 December 2010, Lawal convened a meeting in New York to initiate a deal to purchase 475 kg /1047 lbs of gold. Mutombo and three relatives made a presentation regarding the deal.
- Parties estimated the profit at \$10 million (USD), split between Lawal, Mutombo, and St. Mary. The three planned to split the profit on a 40:30:30 basis, with Lawal receiving the 40% because he was financing the deal.

GOLD TRADING



Location: Nairobi, Kenya to the United States, Nigeria or other nations – depending on the deal proposition.

We will play the roll of the buyer initially in partnership with lead contact. It is mandatory to have a valid license to import gold or minerals in this trading transaction.

We will execute an exchange meeting the seller's negotiated price, requirements, and execution plan agreed by both parties.

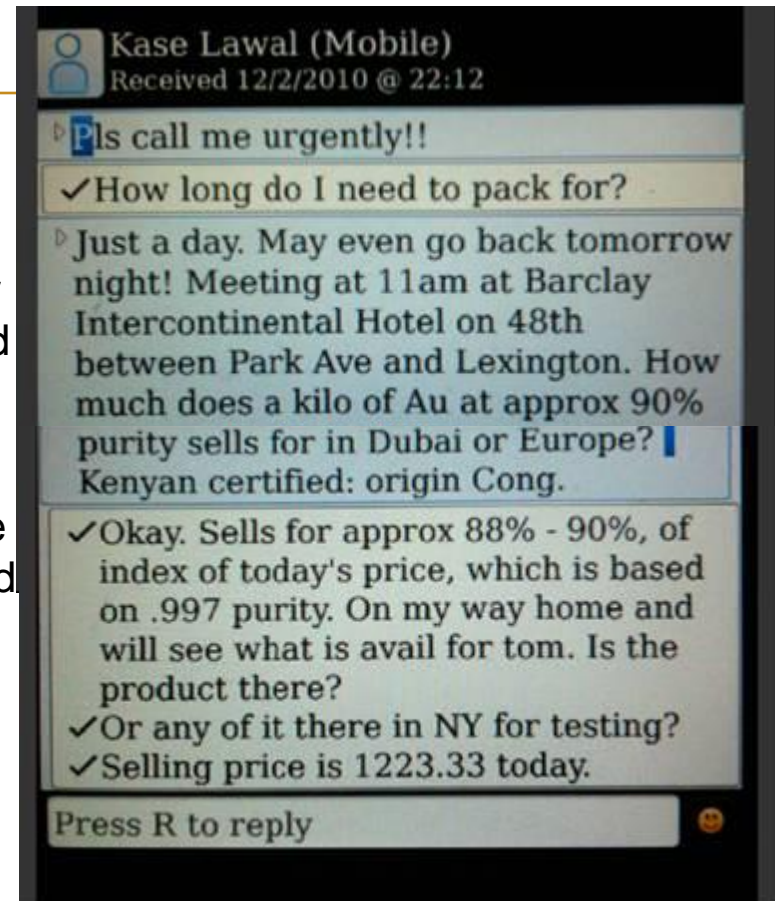
This project is an initial deal that will launch a long term plan; so the parties perception must be long term given all goes well. Using the highest discretion and confidentiality is a priority.

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Background - Due Diligence?

- Gold was in Nairobi, but Lawal indicated that the gold originated from the Democratic Republic of the Congo (DRC). Apparently, Lawal made no inquiries regarding the origin or conditions in which the gold had been extracted and transported from the DRC to Kenya.
- After the NYC meeting, St. Mary traveled to Karin, Kenya, met with the alleged owner of the gold, Eddy Michel Malonga, and visited the gold refinery.
- Lawal was sufficiently convinced that the gold existed, and CAMAC made an initial payment of \$4.8 million to Malonga on 17 December 2010.



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Background - Due Diligence?

- *Malonga disappeared with the \$4.8 million!*
- He resurfaced about a few weeks later claiming the payment was for a “**General**” and proposed the transaction was to be completed in Goma, DRC.
- On 19 January 2011, St. Mary’s Kenyan based lawyer and CAMAC employee Alexander Ehinmola traveled to Goma, met with two army colonels and accompanied them in a military vehicle to a FARDC-guarded safe house to view the metal boxes that supposedly contained the gold.
- After St. Mary briefed Lawal, he agreed to proceed with the deal, apparently believing it to be easier to obtain export documents from DRC. According to St. Mary, Lawal was reassured rather than concerned by the explicit involvement of the DRC military because he viewed it as a security guarantee.



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Background - The Aircraft

- Lawal then planned to complete the transaction in Goma. He used a Gulfstream G-V, N886DT, SN 636 (the “Gulfstream” or “Aircraft”), leased by CAMAC from the owner, Southlake Aviation (“Southlake”). CAMAC told Southlake it would use the Gulfstream to travel between Houston and Nigeria in support of its oil operations.
- On 28 September 2010, CAMAC and Southlake had entered into a three-year Lease Agreement.



- Aircrew and management was provided by Arcadia Aviation, based in NYC.
- Southlake executed a \$43 million Promissory Note in favor of VFS Financing, Inc., a subsidiary of General Electric, (“VFS”) to finance the Aircraft on 6 March 2008.

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Background - The General

- 3 February: Lawal told Mukaila “Mickey” Lawal to prepare two suitcases \$5.2 million cash, join St. Mary and CAMAC security agent Franck M’Bemba, and fly from Abuja to Goma.
- When the passengers arrived in Goma they were brought to meet the General, who was actually Congolese warlord Bosco “The Terminator” Ntaganda. According to St. Mary, he told the General “‘ you took almost five million from us in Nairobi. We don't have one gold bar. Give me just one reason to trust any of you in this room.’ And he looks me in the eye and says, '**We didn't kill you this morning.**'"



- Ntaganda was wanted by the ICC for war crimes, including the killings, rapes and mutilations of men, women and children, and the forced conscription of child soldiers. He unexpectedly surrendered at the U.S. Embassy in Kigali on 18 March 2013.

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Background - Trouble?

- Ntaganda then introduced himself as the true owner of the gold. St. Mary and Mickey, informed Lawal about Ntaganda, and while Lawal was concerned about the twist, he was relieved he was finally dealing with the true owner of the gold.
- According to St. Mary, Lawal did not ask about Ntaganda or ask St. Mary to terminate the deal because Ntaganda was involved.
- 4 February: Ntaganda told St. Mary to bring one suitcase of cash to cover documentation costs, which St. Mary did. When St. Mary brought the suitcase, there was an armed standoff between Ntaganda's forces and the DRC forces.
- At the Kivi Light Hotel in Goma, St. Mary witnessed Ntaganda and his chief intelligence officer count \$3.1 million in cash.



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Background - The Scam!

- 5 February: St. Mary, Mickey, and the flight crew were brought back to the Gulfstream, loaded 25 metal boxes the Gulfstream, and Mickey gave the second suitcase of cash to Ntaganda's troops. Then, a Congolese Colonel boarded the Gulfstream and accused St. Mary of illegal possession of minerals. A fire truck was driven in front of the Aircraft and an anti-aircraft gun arrived on the scene.
- Everyone was taken into custody, interrogated, and St. Mary was asked to review the contents of the suitcases provided to Ntaganda. They now contained \$5.8 million of counterfeit *yellow* dollars all with the same serial numbers.
- The Gulfstream was then impounded and the crew and four passengers transferred to the Kivi Light Hotel.
- On 14 March 2011, St. Mary, Mickey, and M'Bemba were charged with money-laundering and illegal transport of a banned material, given the mining ban in effect at the time.



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Background - The Release

- Everyone was held at the Kivi Light Hotel in Goma under armed guard for approximately six weeks until CAMAC paid a \$3 million fine to the Congolese government. All were released, and the Gulfstream was returned to the U.S. Lawal claimed he paid \$10 million in fines and bribes.
- Ntangada owned the Kivi Light Hotel. He even charged everyone for their food and lodging at 5-star hotel rates.



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Managing the Operator

- First, perform comprehensive due diligence.
 - Check the public records & internet.
 - PATRIOT Act due diligence.
 - Check United Nations directives and United States watch lists:
 - ◆ OFAC's Specially Designated Nationals and Blocked Persons List & Commerce.
 - ◆ Commerce's Denied Party List and Entity List.
 - ◆ Verify country of operations are permissible under the lease and Insurance.
- Second, prepare the comprehensive agreements, thoroughly review associated subleases, operating agreements, and management agreements.

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Managing the Operator

- The Lease Agreement that CAMAC entered into with Southlake provided:

Section 7.03 Territorial Limits: LESSEE AGREES NOT TO OPERATE OR LOCATE THE AIRCRAFT, OR ALLOW THE AIRCRAFT TO BE OPERATED OR LOCATED DURING THE TERM, IN OR **OVER ANY GEOGRAPHIC AREA WHICH IS NOT COVERED BY THE INSURANCE POLICIES REQUIRED BY THE LEASE**, OR ANY COUNTRY OR JURISDICTION FOR WHICH EXPORTS OR TRANSACTIONS ARE SUBJECT TO SPECIFIC RESTRICTIONS UNDER ANY UNITED STATES EXPORT OR OTHER LAW OR UNITED NATIONS SECURITY COUNSEL DIRECTIVE, INCLUDING WITHOUT LIMITATION, **THE TRADING WITH THE ENEMY ACT, 50 U.S.C. APP. SECTIONS 1710 ET. SEQ.**, AND THE EXPORT ADMINISTRATION ACT, 50 U.S.C. APP. SECTIONS 2401 ET. SEQ. OR TO OTHERWISE VIOLATE, OR PERMIT THE VIOLATION OF, SUCH LAWS OR DIRECTIVES.

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Managing the Operator

- Third, perform annual due diligence and document requests; loan documents should specifically include updates.
- Fourth, if dealing with a high-risk operator, perform on-site audits, review flight logs!
 - Owner was Southlake.
 - Operator was CAMAC Aviation.
 - Management Company was Arcadia Aviation, providing the flight crew and management services.
- Fifth, have a broad scope Crisis Management Plan, prepare for the unexpected.
- Finally, agreements, warranties, representations, and *their word* are only as good as the person's character.

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Enforcing the Financier's Rights

- VFS also obtained guarantees from Southlake's parent company and the principals, David and Teresa Disiere.
- On 30 March 2011, VFS (i) repossessed the Gulfstream when it landed in the United States citing the seizure in the DRC, a breach of the Security Agreement, and (ii) filed suit in Dallas against Southlake's parent company and the Disiere's seeking payment of \$40,797,507.47, plus interest (18%) and fees.
- The VFS suit was predicated on the breach of the Security Agreement securing the Note. VFS alleged that the seizure of the Gulfstream in the Congo was an event of default on the Note, and that the default triggered the associated guaranty obligations and accelerated payment.
- On 30 March 2011, Southlake filed for bankruptcy protection.

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Enforcing the Financier's Rights

- Southlake principals joined the suit as Third-Party Plaintiffs against CAMAC, seeking to recover the damages that VFS was seeking from them.
- On 2 September 2011, VFS sold the Gulfstream.
- At trial, Lawal and his associates refused to answer most of the questioned asked of them, instead they invoked their 5th Amendment right against criminal prosecution over 100 times!
- On 21 September 2012, the Dallas, Texas jury found that CAMAC and its officers violated the U.S. Trading With The Enemy Act and were liable for conversion, returning a verdict in favor of Southlake and Disiere for \$32,450,000 against CAMAC, including \$25.34 million for the value of the Gulfstream, a \$3.4 million award for illegal operation of the Aircraft, \$535,737 for damage to the Aircraft, and \$3.1 million for negligence.
- The jury also found that (1) CAMAC violated the insurance provisions under the lease by operating the Aircraft in a hostile area that was not covered under the insurance policy, and (2) Southlake was 30% contributorily negligent for the Aircraft being seized in the DRC.

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Enforcing the Financier's Rights

- Litigation in the DRC
- Cape Town Convention
- Rights under the Country of Registration?
- Self-help & onsite repossession
- Loan document remedies, “Event of Loss” & “Event of Default”
- Political pressure
- DRC's potential seizure and sale of the Aircraft
- Airworthiness of the Aircraft
- Threatened or perceived hostilities, public unrest?
- What would you be willing to do?

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The Black Pearl Incident

- A similar deal took place in December 2010, when Tariq Fawad Malik, a Pakistani national, came to Goma on board a Hawker 4000 jet from Dubai to engage in a gold deal.
- The aircraft, registration number A6-SHH, had been leased from the Dubai Empire Aviation Group and flew to Goma on 14 December 2010 with a stopover in Kampala. Data shared by United Arab Emirates authorities revealed that the charter had been contracted to Black Pearl Capital Limited, Dubai.
- According to the certificate of registration, the owner of the aircraft is UBS Leasing AG of Switzerland, which leased it to Elegant Aviation Limited, care of Codan Trust Company Limited, British Virgin Islands. The Trust has the aircraft operated by Empire Aviation Group.

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Conclusion

- Comprehensive due diligence is a must.
- You have to manage the operator based on the risks; increased risk requires added responsibilities.
- Insurance policies matter.
- Agreement terms and conditions matter, choice of law matters.
- Have a comprehensive crisis management plan.
- *Greed is a powerful motivator!*
- *When in doubt, walk away from the deal!*
- Questions?

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