

# THE AFTERMATH of FRAUD

By: CPA David Mathuva and Kennedy Waituika, CFE  
Photo: malaysia sme loan

## Introduction

You have just unearthed that “major” fraud in your organization. You now want to establish the underlying cause of the fraud and how you can recover the lost assets. Question is: how do you involve the relevant law enforcement agencies, the criminal justice system and then ‘move on’? What do you need to consider before engaging the law enforcement agencies? Forensic investigators or internal auditors may be required to work with law enforcement agencies at some point of their career. Law enforcement agencies could include the following: The local police, Criminal Investigations Department (CID), Ethics and Anti-Corruption Commission (EACC) or Central Bank Investigative units. Law enforcement agencies may not be limited to local

agencies but could include agencies from other countries such as the Federal Bureau of Investigation (FBI), the New Scotland Yard among others. This may happen when the matters involved cover more than one jurisdiction or in cases where foreign laws apply. For example if a listed American company is involved in bribery or corruption allegations in Kenya, an investigator could end up dealing with the Kenya police, the EACC, the Securities and Exchange commission investigators and the FBI, just to mention but a few.

An understanding of how law enforcement agencies operate and their objectives is important for any investigator or auditor. In most cases, law enforcement agencies have wide experience in handling court proceedings and complex criminal cases, while forensic accountants have the

technical skills required to understand technical accounting and financial issues. It is therefore important and advisable that by working together, the objective should be to realize the synergies of the two teams working together.

## Understanding roles, mandates and objectives of law enforcement agencies

Working with law enforcement agencies requires an understanding of the roles, mandates and objectives of the parties involved. Ideally, law enforcement agencies and investigators should complement each other. Differences may arise due to the following:

### Different mandates

Investigators may have a narrower mandate

and law enforcement agencies may not want to share all the relevant information. Sharing information on investigation mandates may prevent duplicity of roles.

### Time constraints

Drawing from experience, law enforcement agencies seem to have unlimited time to investigate a case. For example, in Kenya, once the CID present suspects in court, they may request a number of months to complete investigations. This sometimes affects the work of forensic investigators who work with definite timetables.

### Access to information

Each team of investigators or law enforcement agencies may have access to privileged information that the other should not access due to some reasons. Understanding this is important for court purposes. For example, if investigators are reviewing loss of funds and want to trace proceeds, they may have difficulties obtaining the bank accounts of the suspect, however, these can be obtained easily by law enforcement agencies. If the information is shared with investigators, they may be able to use it in drafting their reports, as they cannot prove that they obtained the information legally.

### Sharing of documents

It is important to maintain chain of custody. This is to avoid loss of evidence pertinent to the investigation. Maintaining a chain of custody ensures that the investigator can “tell” the story based on evidence and not rumours or hearsay.

### The use of confessions

Be careful not to use confessions obtained by law enforcement agencies as part of the report.

### Working culture

It is important to appreciate the different working cultures of the different groups and their reporting hierarchy. Public sector working culture is fundamentally different from private sector.

### Benefits of working with law enforcement agencies

Some of the benefits of working with the law enforcement agencies include:

- They have access to resources not available to the public – e.g. Bank accounts, phone records, mobile money, etc.;
- They can go to high risk areas since they are armed and well trained to operate in hostile environments which are adversarial in nature;
- They can easily get a court order to search the suspects residence and other relevant places with a view to obtaining additional evidence or for recovery purposes;
- They apply a street-smart approach. Law enforcement officers apply a street-smart approach, which adds value to the investigation. Law enforcers may also be in a position to cover a wider jurisdiction.

### Points to bear in mind when working with law enforcement agencies

While working has its benefits, it is important to bear in mind the following:

- Law enforcement agencies will only be interested in certain aspects of an investigation report. They will not read the entire forensic investigation or audit report. Therefore, ensure that the report is not prone to misinterpretation and most importantly, let the report be factual. Remember that once the case goes to court, you have to share any investigation or audit report with the defendant(s);
- In certain jurisdictions, law enforcement agencies are susceptible to bribery or other forms of misconduct, which may have far-reaching implications on the success of criminal or civil proceedings.

### Points to note when presenting evidence in court

Once investigations are concluded and court proceedings commence, the following tips may be useful during the court process:

- Document the source of evidence. Make sure you get the evidence through the right channels. Otherwise, it won't be admissible in court;
- Scan the evidence and preserve the originals in evidence bags to avoid contamination;
- Index the evidence to allow easy reference and retrieval;
- In case of signatures, always state that you are not a handwriting expert when alleging a suspect signed the document. Obtain a copy of signature from the human resource file and get the suspect's colleagues to attest that the signature is his or hers. This adds weight to your claim;
- Where possible, try to schedule an interview with the suspect obtain explanations regarding the suspicious transactions. This is useful in illustrating that you are objective and independent as an investigator;
- Ensure that all the minutes and/or consultation notes are signed by the interviewees and those present during the interview (as witnesses);
- Be aware of the strong and weak points in your report. That is, know or understand your report by heart;
- Explain the technical issues in a language that the judges understand and avoid jargon;
- Remember, when testifying, your credibility is on the line, be factual as much as possible. In most cases, you will be a witness of fact and not an expert witness. Unless the judge prompts you to provide your opinion, the evidence you present should be factual and supported by evidence.

### Concluding remarks

Working with Law enforcement agencies can enrich an investigation if the two teams understand that they bring different skill sets and/or resources. As noted above, there are a number of aspects to consider in ensuring a successful working relationship, which will result to a conviction and/or possible recovery of stolen assets.

David Mathuva is a Lecturer at Strathmore Business School. He can be reached at [dmathuva@strathmore.edu](mailto:dmathuva@strathmore.edu)

Kennedy Waituika is a Forensic and Internal Audit Consultant based in Nairobi. He can be reached at [kennedy86@gmail.com](mailto:kennedy86@gmail.com)