

# Who is paying the piper in the IPTL escrow account saga?

IT has to be made very clear from the outset and as will be explained later in this feature article that the money which was drawn from the Tegeta Escrow Account at the Bank of Tanzania and some of it, by Court order used to pay for PAP buying of VIP's 30% Shares in IPTL belonged to IPTL and not to the GOT or TANESCO. The Government does not operate Escrow Account(s) but only Treasury.

For quite sometime now there have been allegations regarding systemic fraud from the escrow account which was opened in the Bank of Tanzania in 2006. The reason why the account was opened was due to conflict within IPTL and between IPTL and TANESCO concerning the exact amount to be paid as capacity charge.

However, the allegations about the fraud were not only leveled against the main players, that is the power companies, but they also included other people who in essence do not have anything to do with the dispute regarding the issues of the conflict leave alone having any connection with what is alleged to be money from the escrow account defined as a special account deposited with a third party, in this case the Bank of Tanzania, acting as agent in the end the account can be accessed when all set conditions are fulfilled. The main parties to the Escrow Account are IPTL and Government of Tanzania period. No other parties according to the contract has the mandate to access the Escrow Account.

The main functional purpose of the Tegeta Escrow Account was based on the Agreement between the GOT and IPTL, to hold disputed IPTL invoice amounts until the dispute is resolved either by agreement between IPTL and TANESCO or by an ICSID Arbitration Order.

It is pertinent to note that after TANESCO prevailed in arbitration case against IPTL and ICSID reduced the IPTL monthly capacity charges from USD 3.6million per month to USD 2.6million per month in the year 2001, later, upon the advice of TANESCO's lawyers, TANESCO wrongly disputed even the IPTL reduced capacity charges since the year 2006 until October 2013 when TANESCO admitted that it had all along been misled and decided to accept that there was no legitimate basis for disputing the IPTL monthly capacity charges of USD 2.6 million even from the time the Escrow Account was opened. No legitimate party in IPTL, or TANESCO has a case in any Court of law disputing the capacity charge amount as decided by ICSID way back in 2001.

Something strange has cropped up openly regarding the issue of this account. Most media outlets have been intentionally misreporting out of sheer ignorance of the issue. Some media for example which have claimed that "Standard Chartered Bank is the owner of the plant at IPTL after being given a Deed of Assignment which empowered it to appropriate and assume ownership of IPTL after respective company failed to settle bank loan!

According to the Swahili tabloid Mawio of Thursday November 20-26, 2014, the paper inadvertently claimed that SCB held all IPTL rights of ownership in the power generating agreement as stipulated in the Power Purchase Agreement (PPA) and ownership of power producing plant belonging to IPTL.

According to the weekly Swahili tabloid Mawio, Standard Chartered Bank is owed by Tanesco USD 258.7 million as cost of power generated by IPTL and USD 138 from a loan plus interest. According to Mawio's analysis Standard Chartered claims are justified according to the law of the land.

According to Mawio, PAP agreed to pay all IPTL legitimate creditors but Standard Chartered Bank has so far not been paid.

It is prudent and wise to start this analysis by quoting the above information from Mawio because it helps us to show clearly that what is alleged to be the Escrow money scandal has many different facets depending on particular interests. In light of the above it is clear that the one being defended here is Standard Chartered Bank which it is claimed has the right to be paid the money in the Escrow account. The bank has filed a case against the Government of Tanzania in a British court to recover the monies purportedly owed to it out of loans advanced to IPTL.

The money which SCB claims it is owed by Tanesco are supposedly charges for power generated by IPTL and part of it is a loan plus interest. How then can Tanesco be indebted to Standard Chartered Bank while the power was generated by IPTL? It is this abracadabra which complicates the rules of the game.

It is clear that Standard Chartered Bank is forcing a conflict regarding the monies in the Escrow account in order to seize the monies by claiming that IPTL has no right on it. If the monies go to SCB which has not generated power and has no evidence that it has legally participated in any form in power generation IPTL which generated power and has a contract to sell power to Tanesco will be deprived of its legitimate rights.

The truth of the matter is that all the talk about the monies in the Escrow account and especially all the effort put in trying

to show that the claimed ownership by IPTL is illegal, aims at preparing ground to eventually SCB grab of the monies basing on the false ground that it has been given ownership of the IPTL plant. That is what the Standard Chartered is claiming in the case against the Tanzania Government which it has filed at ICSID.

SCB is using all means in order to make sure that it grabs the money to the tune of USD 200 million from the government of Tanzania. One way it is using to achieve that is deception propagated through different avenues. It is trying to make the general public believe that the monies in the escrow account was stolen pretentiously by PAP and that the beneficiaries of fraud include some officials of the government.

What makes it more unfortunate is that the accusations are made against those officials without even giving them a chance to be heard as whether they understand what they are being accused of. The designers of the propaganda do not want to come open as they are worried that their ulterior motives will be uncovered. Events reported are one sided and propagated in such a manner as to suit their interests and expectations only.

We are used to being told that when a matter is before a court of law it is improper to discuss it in the public. The law affirms that because doing so may prejudice the fair conclusion of the matter and it is interference in the judicial process. It is also equally true that when a matter is being investigated by a special commission or select committee then it is improper to talk about it in public and even accusing and prejudging other and perchance denying them of natural justice the right to be heard. The Media is being abused by biased and one sided reporting, basically denying the victims of vendetta the right to be heard.

It is improper to judge people without a due legal process of law. It is important that the question is answered carefully in order to establish whether those claiming to be defending Tanzanian's economic rights and interests are really doing that from genuine conviction. Despite the fact that there are cases in the court within and without Tanzania questioning SCB as to why in the first place they went to court? Never will they tell us that they have done so to try their luck if they can access the money they never sweated for.

It is through the same manipulative approach that we are now witnessing efforts to education to girls by Professor Anna Tibaijuka being marred and mud slung simply because she asked and received assistance from the organization that is at the centre of dispute. Let us ask the following question, how can our politicians dare accuse and judge Professor Tibaijuka and even call her bad names, if at all they are a people of conscience? She has been accused of corruption simply because she asked for money to help the Babro Johansson schools which she manages? Professor Tibaijuka did request to be help by writing a formal letter several years ago. The request to the company could not be battered to because of liquidity problems and when the financial situation improved her request was granted.

The request for assistance was not secret and the proceeds were made public and the awarding company was not alone in the enterprise. We understand she received assistance from other organizations and individuals both foreign and local. Now where does Professor Tibaijuka's crookery come from? We the sponsors are asking ourselves, after VIP was paid its proceeds by PAP was it wrong to assist Babro Schools?

The requirements and importance of education cannot be overemphasized. There are calls from leaders urging Tanzanians to change and donate to the development of education instead of donating for weddings and other merry making felicitations. Now here comes a Tanzanian who asks for assistance in order to develop education, and another Tanzanian who agrees to donate for development of education, both of them instead of being honored they are scorned and even more sadly by people among them contending to assume the highest office of the land. They are even ready to politically liquidate them for supporting education.

There is nothing more interesting to people of reason and responsibility than to agree that all monies in the Escrow account has to be handed back to the rightful owner. However, they should ask themselves how did the money first get deposited in the said account. They also must ask themselves if it was TANESCO or the GOT which was depositing the money into the account what made it do so.

They do not see the logic of being sober and answering the basic question that if Tanesco was depositing the money as payment against the capacity of the plant to generate electricity then how come the money has to go back to Tanesco? These are questions which those who believe that they have a copyright to truth do not want to offer answers at all because by doing so they will make the stage play uninteresting if the monies ought to be given back to Tanesco then so Standard Chartered Bank will be the beneficiary on pretext that they are legal and rightful owners of IPTL and that their is a loan as

stipulated in this article earlier on.

However, it is better to approach this matter of escrow account in such a manner as to make those with the lust for the truth quench their thirst. The monies deposited in the escrow account were capacity charges for power generation which Tanesco was paying to IPTL and was disputed by the payer that it was on the high side.

The dispute which ensued between the service provider that is IPTL on one side and the service user that is Tanesco on the other side caused the escrow account to be established with the Bank of Tanzania being appointed custodians until the matter gets resolved. It is important to do so to make sure that the service provider does not stop generating power and the consumer also does not run short of power to its customers. That is wisdom as far as business is concerned. The money is paid to the account by the payer against invoices from the payee and not otherwise.

According to the aforementioned it is clear that Tanesco was paying for services rendered to it by IPTL. There is no argument about that.

But also another indisputable issue though not mentioned intentionally because of the need to mislead people is that among all power generating companies selling power to Tanesco, IPTL is the only company charging the lowest capacity charges. The question we should ask ourselves here is that how is it possible that IPTL which charges the lowest capacity charges is now perceived to be stealing from the government by being paid its rightful bills while other companies are charging far higher capacity charges and no one is complaining!

The question to ask is that what is pushing the accusers to look for every way possible to find hiccups in the manner with which the issue of the escrow account was concluded and brought to rest?

If you take a closer look and focus as to how the allegations have been leveled it is clear that the target is the money which was deposited in the special account which is capacity charges. The money is being scrambled for by Standard Chartered Bank which has its branches in the country. The bank is using all means and ways possible to show that the money which was deposited in the escrow account belongs to the government. Logically, what the bank is trying to do or rather prove is that the money in the escrow account is not for paying for capacity charges for power generation, not at all. That the money belongs to Tanesco and no one has the right to touch it in any way.

What is surprising is that the bank which claims that it lent money to IPTL, in its claim registered with the court, is claiming that it was entitled to be paid all the money in the escrow account! The question here is does that institution constitute the government? Does it mean that money in the escrow account becomes government money simply because that institution, the bank, was not paid?

All efforts to justify the ownership of the escrow account money to Tanesco and that the amount can not be withdrawn in any way are made by Standard Chartered Bank which is laboring to create an environment to grab the money from Tanesco claiming that it is the rightful payee of all monies and there is a loan that they claim to have advanced to IPTL for the power generation project.

The game the Bank (Standard Chartered) is playing around in the country is to make sure that the media writes and publicize information aimed at pitting the public against the government of Tanzania and creating a perception that the government of Tanzania is predatory, encourages graft and embezzlers and that it has no powers whatsoever to fight the vices. The bank has lured in some media outlets to write articles claiming that the judiciary in Tanzania is unreliable and not impartial which cannot be trusted because it hugs embezzlers, cheats and it is overwhelmed by graft.

What is amazing is that these accusations about corruption in the judiciary in Tanzania have surfaced just a short while after Standard Chartered Bank told a court in New York, USA where a litigation was filed against it that Tanzanian courts were the ones with the right to handle and resolve matters regarding IPTL.

How come SCBHK claims USD 200million from the GOT (see their latest ICSID submission) for an USD 84million loan to IPTL, after the GOT already paid USD 200million to IPTL up to 2006 in order to pay off that loan?

The answer is that because Mechmar used the moneys IPTL received from the GOT in order to make corporately unauthorized payments to itself and to Wartsila with the consent of that same bank (first Danaharta, then SCBHK).

SCBHK is trying to enforce a dirty debt against IPTL guaranteed by GOT and the GOT has the right to defend itself. In fact, the GOT should get the full support of all Tanzanians and the sponsors against this abuse.