

Britam vs Acorn: How takeover bid fuelled \$388m war



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By Anne Kiruku

A bid for a majority stake by Britam Holdings in Acorn Group is said to have been behind one of Kenya's most vicious corporate battles, which came to an end after the two firms agreed on the terms of an out-of-court settlement.

The legal battle, which is a classic case of partners turned foes, began in November 2014 after four top executives at Britam resigned to form their own advisory company, Cytonn Investment.

Within weeks of its formation, Cytonn was appointed the lead transaction advisor for a series of projects estimated to be worth Ksh40 billion (\$388 million), which included a large proportion from Acorn. Cytonn had apparently bagged several projects they had initiated while its directors were still working at Britam's asset management subsidiary. Britam refused to take it lying down: The company moved to court and sought to have the real estate developer's accounts frozen.

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had triggered the court battle.

In fact, Acorn Chief Executive Officer Edward Kirathe traces the roots of the falling out to his rejection of a proposal made by Britam Managing Director Dr Benson Wairegi for the latter to increase its stake in Acorn.

"When Britam realized that Acorn was not willing to accede to their demands to enable them acquire a larger equity interest, they orchestrated a deliberate plot to arm-twist Acorn by unilaterally withdrawing funding," Mr Kirathe said.

Britam bought a 25 per cent stake in Acorn in November last year and was said to have been keen on getting a majority stake in the property firm, whose client list includes such top firms as Coca-Cola East Africa, Deloitte East Africa and Equity Bank.

The High Court has now approved an out-of-court settlement between the two firms. Britam, which is also listed on the Nairobi Securities Exchange, is a diversified financial services firm with interests in insurance as well as asset management. Acorn is a property management development company.

A suit between Britam and its former em-

ployees will however proceed. This is because the agreement reached is between Britam and Acorn only and excludes the ex-employees of Britam, who were part of the respondents. Britam accuses the former employees of using their positions to siphon money from the company and forming rival companies dealing in similar services.

The dispute, pitting Britam on the one hand against Acorn and Britam's former employees on the other, started late last year in what became one of the most high profile court battles in Kenya's corporate history.

Britam, through its lawyers led by Fred Ngatia, filed five suits against Acorn and its affiliated entities, as well as former employees, in a bid to recover over Ksh5 billion (\$48.5million) in cash and land that it said had been irregularly transferred from Britam to Acorn and its related entities by Britam's former employees.

Acorn retaliated by filing a judicial review application at the High Court stopping criminal and civil proceedings.

The legal tussle has seen some of the Acorn employees arrested and detained for several days in police cells.

The settlement recorded in court effectively withdraws the lawsuits between the two companies. Under the agreement, Acorn Group will return to Britam the irregularly transferred funds and land, which had been acquired without the requisite approval and authority from Britam board.

On its part, Britam has agreed to relinquish its interest in Acorn Group and projects initiated by the firm on Jogoo Road, Eaba Dogo, Lavington and Kitengela suburbs in Nairobi. Under the terms negotiated, Britam has further agreed not to pursue any criminal complaints against Acorn or any of its directors.

"Under the terms of the settlement, Britam and Acorn have agreed to pursue their real estate strategies independently. The settlement is only between Britam and Acorn" said Dr Wairegi.

Following the legal settlement, Britam will recover high-value land in Nairobi which includes five acres in Kileleshwa, 2.5 acres in Mlolongo and 182 acres in Lukenya, Machakos County. The projects have an estimated value of Ksh40 billion (\$388 million). Acorn has also agreed to transfer to Britam the mandate to operate the various bank accounts and cash balances in relation to these projects.

Suits and counter-suits defined tussle between Britam, Acorn

By Anne Kiruku

In November last year, Britam's senior employees Edwin Dande (Chief Executive), Elizabeth Nkukuu (Portfolio Manager), Shiv Arora (Investment Analyst) and Patricia Wanjama (Head of Legal Affairs) quit to form Cytonn Investment, a consulting firm. The four were later dragged to court with accusations of illegally transferring money to bank accounts held by Acorn Group, a real property developer where Britam held a 25 per cent stake.

Britam also accused Acorn and Acorn's associated firms of a conspiracy to defraud the company. On November 12, 2014, it moved to the High Court and filed a case to have the bank accounts of their former employees frozen. The civil division judge, David Onyancha, further upheld the ruling to extend the orders on November 26; he said this was in order to preserve the application filed by Britam Ltd and to ensure the money and title deeds which were subject of the suit before the court were not interfered with. The judge further stopped any transfer of the properties traced and purportedly acquired using the illicitly transferred funds.

Acorn immediately fired Britam as lead transaction advisor in its real estate development projects and hired Cytonn, the firm associated with Britam's former employees.

Jude Brian Anyiko, the then acting Chief Executive Officer of British American Asset Managers (BAAM) swore an affidavit saying that the four employees had held positions of trust and were in a fiduciary relationship with BAAM. They allegedly breached the trust bestowed upon them and hatched a conspiracy to make payment and execute contracts without approval. BAAM is the asset management arm of Britam.

One of the unauthorised contracts executed without authority of the board was a joint venture agreement to make monetary contributions to real estate development projects under and controlled by Acorn and affiliated companies.

Britam claimed that it conducted internal investigations and a legal audit, which were done by Coulson Hamey Advocates, and discovered that the four employees had instructed transfer of funds without authority of the

board and relevant investment committees.

A whopping Ksh1.1 billion (\$10.7 million) was paid off as "expenses" but instead siphoned to various firms associated with Acorn, including Edenvale Development LLP, Starling Park Properties, Crimsom Court Development LLP, Sinopia Properties LLP and Mikando Properties LLP.

BAAM claimed that Acorn used the money to purchase properties in Nairobi, Machakos and Kajado counties.

A further unauthorised transfer of Ksh2.7 billion (\$26.2 million) was made to firms owned and controlled by Acorn, including Crescent Development LLP.

BAAM accused Acorn of dishonesty for receiving seed capital for its development projects from funds "illegally and fraudulently transferred from BAAM."

Cytonn, in its response to Britam's affidavit, insisted that the transfers were approved by BAAM's designated signatories and that the suits were a wild goose chase aimed at arm-twisting Acorn into selling a majority stake to Britam.

"I personally informed the board of the deal pipeline; the Britam executive committee was also aware of the deal pipeline. These disbursements had been approved prior to release of the funds," said Cytonn CEO Edwin Dande.

Acorn, in response, filed an application seeking that Justice David Onyancha disqualify himself from the case. It argued that Britam's advocate Fred Ngatia acted for the judge in other suits, raising questions of conflict of interest.

The case has been ongoing, with Britam pushing for the arrest of its former employees and Acorn executives for criminal offences.

The accused hit back at Britam by filing a petition in the Judicial Review Division of the High Court where they claimed that the investment firm had in fact not lost any funds, but was using suits in the civil division to blackmail them.

The main tussle, which was between Britam and Acorn and had attracted a multiplicity of lawsuits, has now come to an end with the out-of-court settlement.

Lawsuit

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