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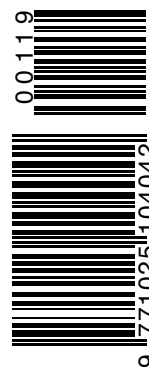
19

SEPTEMBER 2009

**Hlophe judge
shows his bias**

**Moti goes
potty**

**Samro sits on
musicians'
millions**



The rats who ate our pensions

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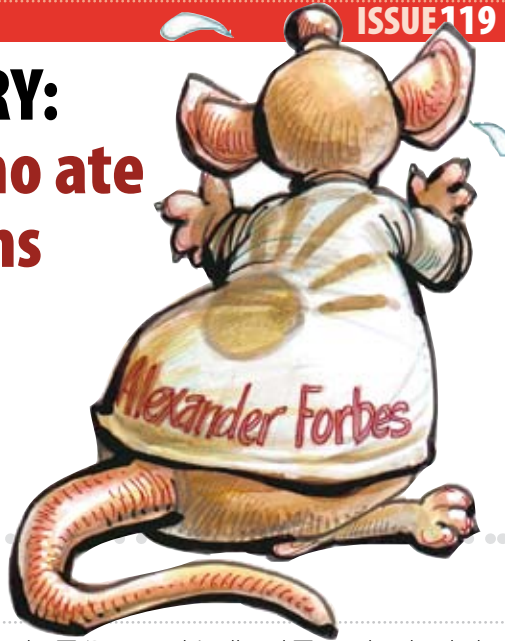
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noseweek

SEPTEMBER 2009

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Klapotzed by Harold

Harold Strachan is not normally my favourite columnist, but hell he got it right with the "klapotz" article (nose118). That, and the tributes to Marike – we will miss her – made the August issue one of the best.

John Rance
Stutterheim

Maybe you're finally starting to get Harold? Welcome to the club! – Ed.

zeal and investigative prowess and tend to be nothing more than council lapdogs. I can't wait.

George van der Merwe
Glenwood

Romancing the Silverstone

In response to your puerile "Romancing Ms Silverstone" (nose118), two immediate objections:

1. If any male captain of industry had had relationships

factual error in our story, whereas we are happy to point out many in your letter; so many, in fact, that it seems you have not even read the article. For a start, central to our story was a relationship being conducted by a male captain of finance. Secondly, this particular bit of consort-ing, normal or otherwise, gave rise (sic) to a serious conflict of interest that may well have influenced how

Jane Marston has done hundreds of thousands of rands' worth of legal work for the SPCA, free of charge.

In comparison, Mr Francois van Wyk has been involved in our movement for five minutes. His claim that the organization will be bankrupt in four years is laughable.

I object to the way Mrs Werdmuller-Von Elgg insinuates that the NSPCA in the form of Mrs Meredith, Mrs Marston and Ms Loxton did nothing about the problem SPCAs in the Western Cape. If she had bothered to read a constitution for any of the SPCAs, she would have seen that blame for bad management lies firmly at the feet of the residents of the towns in which those SPCAs function.

I ask you to think of the bigger picture here. The only thing that is going to suffer as a result of Werdmuller's vendetta is animal welfare in this country.

Jenneth Geel
Secunda

Many SPCA old-hands mentioned Medith's lack of qualifications, not just Mrs Werdmuller-Von Elgg. It was UCT's Centre for Conflict Resolution which found that conflicts affecting the organisation "were largely left unmanaged" – and the Office of the Public Protector which referred to "an unaccountable management style". And we did study the SPCA constitution – maybe you should too. – Ed.

Ambrosini doing good work

Having been an employee of Promethea for some 18 months I am able to shed light on issues you raise in nose117 about the Parasafe stove.

Mr Vale was never coerced into signing over his intellectual property. He is trying to exploit loopholes now that the Parasafe stove is successful, and wants a bigger piece of the pie. Mr Vale would never have been in a position

Harold Strachan is not normally my favourite columnist, but, hell, he got it right last month

Durbs needs noseweek

Nose118 rightly questioned Durban's 2010 website. This is typical of the goings on in Durban under the incompetent leadership of Mike Sutcliffe. In fact, it's but the tip of the iceberg. Please investigate the fiasco around the Remant Alton bus company deal and the subsequent lack of public transport in Durban. You also might want to enquire as to why ratepayers are continually having to bail out Ushaka Marine World, to the tune of millions. Our local press clearly lack your

it would not have warranted a mention.
2. There are many factual errors in the article. This must cast doubt on your general credibility. The alleged philanderings amounted to nothing more than a normal consort between two adults. Your investigative reporters should concentrate on business matters, rather than relying on unfounded canards from disgruntled former employees.

Sandra Kahn
Waterfront, Cape Town

You fail to identify even one

a contract worth hundreds of millions of rands was awarded by a public company.

Finally, we spoke to no disgruntled ex-employees. Perhaps we should have. Please supply name and contact details of the person you have in mind. – Ed.

Dog eats dog

Your article "Dogfight at the SPCA" (nose118) gives an unbalanced view of the situation. The disgruntled Pat Werdmuller-Von Elgg has waged a vendetta against the NSPCA and Marcelle Meredith for at least eight years.

Marcelle Meredith IS a tough person to work for. She has extremely high standards. Her staff, colleagues and societies would not have it any other way, and she is greatly respected in the SPCA movement and abroad, being invited to join the board of WSPA – a huge feather in South Africa's cap. Contrary to what your article states, Marcelle has years and years of animal welfare experience and ran an SPCA before she joined national council.

Directors are not "elevated" to national office; they are elected by the societies in their various regions.

Gus



We need you to put all the boys on Ritalin so we can count them

to bring this "invention" into the market place – it takes millions to manufacture, import, distribute and then drive sales. Without Mr Ambrosini and investors, the Parasafe would never have seen the light of day.

I was involved in many tests and trials and in getting the stove approved by the SABS. As you say, it does take a huge sum of money to have anything approved by the SABS.

But I have yet to read an article about the illegal stoves smuggled into the country that cost hundreds of lives each year – but I also understand that would not sell as much copy. [Wrong. That was our cover story in nose68, June 2005. – and it sold well! – Ed.]

With regard to PASASA: besides several meetings with senior representatives, I demonstrated the stove at an EMS/PASASA event on National Paraffin Safety day in JHB. Google it and see for yourself.

A lot has been said about Mr Ambrosini's nationality or how many passports he has. That is irrelevant. Hundreds of people enter this country illegally every day – yet we sensationalise a foreigner who contributes as a taxpayer and job provider. Having known Mr Ambrosini for a number of years I can confirm he is a decent man, extremely hard-working and a person who has contributed to this country in a number

of ways. I would find it extremely hard to believe that he would persist with legal matters without just cause.

Jethro Geyser
Cape Town

Paradise misled

In quoting Mr Adriaan Smuts, your article about the Paradise Palms development in Mozambique (nose116) created a misleading and damaging impression of the role of our law firm, MGA, in relation to the development.

Smuts was quoted saying: "All the contracts between the purchasers and the developer were drawn by ... MGA" and "we were led to believe that MGA attorneys investigated the developers' rights in the property..."

MGA neither advised any of the purchasers, nor did it advise the developer, Zveee View Limitada, in relation to these particular purchase contracts.

Further, MGA did not provide advice in relation to that company's rights to the land, and it had no involvement whatsoever with the funds of purchasers that, according to your article, have been "spirited away".

MGA received funds on account from just one prospective purchaser of a plot at Paradise Palms, which was paid over on his express instructions to Zveee View Limitada.

From a building contractor we gathered that the purchase contracts for

Paradise Palms may have been based on a standard form which our firm had drafted for an altogether different development. It should never have been used without our consent and without specific analysis of its appropriateness.

Jorge Graca
MGA Advogados & Consultores
Maputo

We are happy to set the record straight. – Ed.

Santam premiums

I have just received a letter, unsigned, from Santam Contact Centre, Bellville, dated 01 July and postmarked 03 August, announcing a premium increase, effective 01 September 2009.

It states:

"Premium increases unfortunately are an unavoidable aspect of the insurance industry. Various factors, including the rising cost of vehicle repairs, higher prices for imported goods, as well as changing weather patterns, put pressure on claim costs and therefore on premiums."

This from a company that has just shown an improvement of 215% in headline earnings. Their income of course derived from selling policies and profits on investments. Those "unavoidable" increases have nothing to do with the cost of vehicle repairs, but rather with the policy lapses that occur as a result of current hard times – so the suckers still paying are punished with increased

premiums in order to keep up those headline earnings.

In a News24 report, Mutual and Federal is quoted as saying gross premiums declined by 7%, which is approximately the increase in my premium announced by Santam.

Charmaine Griffiths
By email

Santam parent, Sanlam, very generously sponsors an annual award for the best journalism in the country. We're thinking of reciprocating with an award for the best creative writing in the financial services industry. – Ed.

Old Mutual down the pan?

Please, please, tell me, do Old Mutual have problems? I have been trying for months to get answers about my retirement/pension fund, but they never return calls. I am losing a lot of money each month, but no-one at Old Mutual wants to give me info. Are Old Mutual going down the toilet?

Gordon
Johannesburg

They are run by a few obscenely rich, bonus-grabbing #@&es, a computer and a call centre. None of them cares a hoot who you are or what you want. They will, however, record your call – for your protection. But, for their own protection, they won't give you a copy of the recording. If that's the toilet you're talking about, they're down it. – Ed.

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Dear Reader

Sanlam takes the cake

SHORTLY BEFORE PUBLICATION, we received the following letter:

Sadly, one of our employees, Mr Elliott Nojiyeza, has been boarded by the state hospital after being employed by us for only 18 months – from May 2008 to July 2009. As his pension contributions (7% employee and 7% company) to the Sanlam pension scheme over that short period total only R8300, the agent advised me that Sanlam will make a “one-time” payout as they don’t want these small amounts tied-up in policies with small monthly pay-outs. OK.

But now, surprise, surprise, I have received the reconciliation from Sanlam, indicating they will pay him just R6005.68 – which by my calculation is R2295 less than the capital amount contributed! Sanlam’s “explanation”: “A charge

of R1974.28 has been taken into account”. A charge for what? Don’t ask; a charge!

Anyway, by my reckoning, that leaves a missing balance of R320 which remains to be “taken into account”, if not actually explained.

Not only have they paid him no interest, they’ve managed to lose more than a quarter of Elliott’s capital in just 18 months!

Perhaps they’re assuming the average Sanlam client won’t notice the discrepancy?

I have checked the list of Sanlam directors but cannot find the name “Shylock”. Whoever the directors are, may they choke on their caviar.

Dick Fabby

Durban

Having read that, now read our story on page 10. You’ll get the drift. – Editor

‘Reverends’ collared

SUCCESS. NOSE114 REVEALED HOW THEY preyed on the dying. Now, finally, the law has caught up with them – thanks to our investigation. “Reverends” Les Harris and Neville de Witt and Neville’s son Gary de Witt were arrested on 5 August, and charged with 80 counts of fraud and forgery. The three ran Durban’s Dream Centre HIV/AIDS hospice. In the process, it is now alleged, they defrauded the KwaZulu Natal Department of Health of at least R6.6m. The figure was provided to the Durban Commercial Crime Unit’s detectives by the forensic division of auditors PricewaterhouseCooper, who were unleashed onto the Dream Centre following our detailed expose in April. At the

auditors’ request, we were happy to supply them with copies of the documents we had unearthed in the course of our investigation.

The provincial Department of Housing then stepped in to halt the sale of the building it had loaned the reverends for the hospice. Deprived of the hoped-for proceeds of the sale, the three men now accused of fraud were unable to fund their planned emigration to Canada.

It remains to be seen whether any of the reverends’ friends in the Department of Health will be joining them in the dock. Or might the case against those already charged be deemed enough to appease donors, such as The Global Fund, whose money was schemed away?

The ego has landed

MR NOSE HAS ARRIVED in a state of high excitement and demanded space on this page. Why? He’s just found the amazing Mervyn E King SC website! It includes the most extensive CV known to man – with only one serious omission: no mention of his regular appearances in noseweek.

Here’s but an edited extract:

Appointments and fellowships: Prof Extraordinaire at Unisa in the College of Economic and Management Sciences, with a focus on corporate citizenship; president of the Advertising Standards Authority of SA and Chair of its Appeals Committee; Chair of the Exec Committee of the SA Council of the Intl Chamber of Commerce; First VP of the Institute of Directors, Southern Africa; Fellow of the Inst of Directors in Southern Africa; Fellow of The Royal Society for the encouragement of Arts, Manufacture & Commerce, UK; Mbr of the Intl Advisory Board of Stern Stewart of America; Pres of GreaterGood SA; Co deputy Chair of the Securities Regulation Panel which regulates mergers and acquisitions in SA; Director of the Advisory Board of the SA Savings Inst; Chair of the Walter Sisulu Paediatric Cardiac Centre for Africa.

Corporate Appointments: Chair of Brait Societe Anonyme, Luxembourg, being the holding company of the largest private equity business in Africa listed on the Luxembourg, London and Jhb stock exchanges; Chair Share Transactions Totally Electronic (STRATE); Dir JD Group Limited and Chair of its Audit Com.

Corporate Governance: Chair and Mbr of the UN Steering Committee of eminent persons to review the governance and oversight within the UN, its funds, programmes and specialised agencies; Chair of the King Committee on Corporate Governance in SA, which has published the King I and King II Reports on Corporate Governance in SA; Mbr of the Put Sector Advisory Group of the World Bank on Corporate Governance; Mbr of the Advisory Boards of the Central European Corporate Governance Association and Tomorrow’s Company UK; Chair of the Asian Centre for Corporate Governance; Past Pres of the Commonwealth Association of Corporate Governance, which published principles of governance for the 54 countries in the Commonwealth; author of “The Corporate Citizen”; Mbr of the Intl Advisory Board of Tomorrow’s Company, UK; Chair of the Global Reporting Initiative; Former Governor of the International Corporate Governance Network; Mbr of the IOD/KPMG Audit Committee Forum; Mbr of the Steering Committee of the Independent Directors’ Forum; Adviser to the Mauritian Corporate Governance Committee; Trustee of the Dubai Ethics & Resource Centre, which is developing corporate governance for the UAE; Mbr of the Advisory Committee for Stellenbosch University’s Unit on Corporate Governance in Africa.

Go to www.mervynking.co.za/pages/cv.htm for pages more. Is our Merv the real Superman? Selling the use of his brand name for a royalty fee? Or simply the biggest ego that ever landed?

The Editor



Mr Nose

puts it about

Twisp in the tail

MR NOSE HAS A SPECIAL soft spot in his heart for everyone who advertises in his illustrious organ (even those who simply take advantage of the free small ad offer that comes with their subscription renewal). *Noseweek* advertisers are obviously smart. And they help keep his avaricious bank manager happy – no small thing. But there's no way *noseweek* can be expected to check or endorse everything that's advertised on our pages. Advertisers pay for the space and what they do in it is, roughly speaking, their business. Mr Nose's loyal readers are expected to know just two words of Latin: *caveat emptor*.

But Mr Nose will speak out when he notices something definitely not right in an ad. As he's about to do,



after reading the one for Twisp electronic cigarettes which appears in this issue's classifieds, under "Health and Fitness".

"No tar, no carcinogens, no carbon monoxide" is the bold claim being made.

An electronic cigarette, according to the Twisp website, "is not a real cigarette, but a personal and portable vaporiser that uses micro-electronics and a lithium polymer cell to evaporate nicotine from a replaceable cartridge", thus releasing a vapour which "does neither smell nor does it contain tar, carcinogens or smoke particulate".

The site features the logos of *News24*, *iafrica*, *Die Burger*, *The Times*, *Rapport*, *Sunday Times*, *Sowetan* and *Health24*, all, ostensi-

bly, endorsing the product. In fact, on 26 November 2008 *iafrica* seemed to inhale everything the distributor of Twisp told it, informing readers that "smokers can now enjoy a safer alternative to conventional smoking without losing out on the tactile sensations associated with lighting up a ciggie", and going on to assure them that "although nicotine is what keeps people reaching for their cigarettes, it is the carcinogens – cancer forming agents – carbon monoxide and tar, that are responsible for lung damage, premature aging, bad breath, stained teeth and the many other dangers associated with smoking".

No carcinogens? Hold it right there. You may not have thought it, but Mr Nose keeps the latest copy of *Scientific American* at his bedside. So he is able to direct you to their website, www.scientificamerican.com, where you will find it reported, on 24 July 2009, that "those who like to get their nicotine fix electronically will be disappointed to hear that a US Food and Drug Administration report [has] found that electronic cigarettes, or 'e-cigarettes', contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in anti-freeze".

Scientific American also reported that the (US) FDA is alarmed that these products are sold without a health warning.

So, though Mr Nose is no expert, and assumes that his smalls advertiser was innocent of evil intent, please don't, even for a moment, forget those two Latin words: *caveat emptor*, *caveat emptor*...

Perhaps, when next attending a dinner party, take along a small syringe, and, during the smoke break, shoot up with 5mg of pure nicotine. You won't even have to step into the garden. For the missing oral stimulation, previously afforded by sucking on a fag, Mr Nose recommends a large dummy, orthodontist-designed not to damage your dentures – obtainable from your nearest pharmacy.

Nothing like a good bank

REGULAR READERS OF this organ may have noticed that Mr Nose takes a fond interest in the gymnastics of banks. He was pleased to note recently that our indigenous banks still have some catching up to do when it comes to discombobulating the public.

About two years ago a friend of Mr Nose opened an offshore bank account with Abbey International in Jersey. One of the conditions of the account was that he needed to maintain a balance of at least £1000. Last month, the bank informed him that (in his own interests of course) they would have to close his bank account – because he hadn't maintained a balance of some R650,000.

The letter from the bank said: "To help our clients make the most of their money we are continually reviewing our services and products to ensure we are meeting our client's needs. Following a recent review we noticed that your Abbey International account currently has a balance of less than £50,000."

The bank offered the friend several amiable options:

- Increase his balance to £50,000, (at 3.75% fixed for 12 months);
- Transfer £5,000 funds to a Gold account;
- Transfer less than £5,000 and pay the bank to look after it; or
- Piss off.

When the friend got to that part of the letter which advised him that "our recently launched products have been designed to offer our clients the benefits they are looking for", he realised the game was up.

The letter was signed by "Frank Anthony, Client Experience Manager".

So what *was* the friend's experience after being banked by Abbey International Bonk? In his own words: "The account moved".

Let mall people go

TENANTS OF THE BEL AIR MALL in Sandton who may have hoped for speedy liquidation of the Theodosiou brothers' tottering real estate empire – so a new buyer can be found to get the mall up and running again – will be disappointed yet again. The Theodosious' lawyers have thrown yet another curve ball at liquidating creditor Absa in a further desperate bid to prevent or delay the liquidation order being made final.

In one of the last great acts of reckless lending before the present financial crisis, Absa lent hundreds of millions of rands to Universal Property Professionals group (UPP), owned by the brothers Dimetrus, Tony and Sedrick Theodosiou. The total debt plus interest by now exceeds R1bn (*nose116*).

In August, North Gauteng High Court Judge Bill Prinsloo heard arguments on an application brought by the Theodosious for an order to compel Absa to disclose documents that, the brothers allege, will prove the bank has struck a deal with rival mall developer Retail Africa and is acting in bad faith in attempting to put their businesses into liquidation.

In court papers UPP lawyer Henk Strydom also alluded to Absa officials allegedly using insider knowledge against UPP. (For good measure, he also alleged that Absa had not declared its interest in Retail Africa to the Competition Commission.)

Absa calls it a “smokescreen” and “fishing expedition”. It denies having entered into an exclusive partnership with Retail Africa, or anyone else. It holds only a minor stake in a Retail Africa subsidiary, Retail Africa Wingspan Investments – which isn't in competition with UPP malls. This “conspiracy theory” was yet another delaying tactic to prevent final liquidation, the bank's lawyers argued.

The final liquidation hearing will be set (probably for the end of the year) after judgment on the document “discovery” application.

Meanwhile Bel Air's remaining tenants live in limbo, waiting for someone to revamp their ailing mall and save their businesses. Toys chain store Reggies, estate agent Rawson Properties and a Thai restaurant have joined the exodus, bringing to 17 the number of vacant shops.

Provisional liquidators D&T Trust received a due diligence from property con-

sultants JHI this month, outlining options to save the mall, including whether to revamp it before selling, but little can be done before the liquidation is finalised. “It's not being run well or profitably, so potential buyers are offering bargain basement prices,” says D&T's Theo van der Heever.

Absa won't say how much it stands to lose, but its write-offs are likely to be sub-

stantial. Van der Heever tells *noseweek* he's in talks with objecting neighbours regarding extensions to the mall that were built without planning permission, and which the city council has ordered to be demolished. He expects an amicable solution soon. “This is a good mall. It has to work sooner or later.”

Don't hold your breath.

Chinese whispers

IN AUGUST 2007 *nose94* reported that local chemical and fertiliser distributor Protea, and its listed parent company, Omnia Holdings, knew since at least 2004 that zinc sulphate they were importing from China for agricultural use was seriously contaminated with cadmium – a poisonous heavy metal that accumulates in the soil.

Rainbow Chickens in Durban had discovered that the eggs laid by their breeding hens were infertile, and their young chickens were not growing – after Protea's zinc sulphate was added to their feed. Laboratory tests revealed it was contaminated with cadmium.

Despite this discovery, and the threat of legal action, Protea/Omnia kept quiet about the problem – and ruthlessly, even deviously, continued to sell the contaminated product into the entire agricultural sector for a further three years – until *noseweek* raised the issue in June 2007.

By then, pig and dairy farmers had a hushed-up crisis on their hands, after BASF, a supplier of vitamin and mineral supplements, had added Protea's zinc sulphate to their mix.

The contaminated chemical has also devastated the Eastern Cape pineapple

industry, where two-thirds of the workers in the related canning industry have lost their jobs because South African pineapples may no longer be exported due of their high cadmium content.

Those who doubted the seriousness of *noseweek's* reports might want to note the following report broadcast by the BBC on 3 August, headlined “Chinese factory poisons hundreds”:

Hundreds of residents near a Chinese

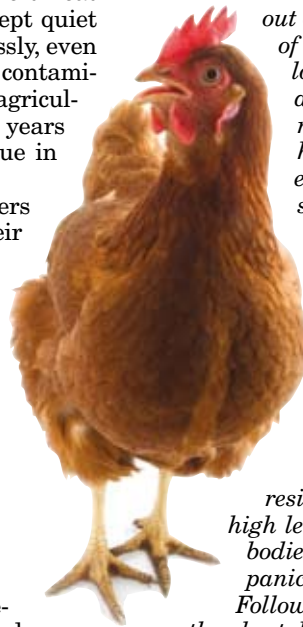
chemical plant that produced zinc sulphate – a component of many agricultural fertilizers – have been found to have high levels of cadmium, a dangerous metal, in their bodies. Thirty-three of them were admitted to hospitals in Hunan province over the weekend with cadmium poisoning, the official Xinhua news agency reported.

Production at the Changsha Xianghe plant in Liuyang stopped earlier this year, shortly before two people died. Cadmium can damage the liver, kidneys, lungs, nervous system and brain. Compounds containing the highly toxic metal, which is used in batteries, are also carcinogenic.

Medical tests were carried out on nearly 3,000 residents of Zhentou township following a protest involving about 1,000 people. The news agency said people had been seeking a government investigation since 2007, but that the local authorities had failed to act. They had complained that deadly pollutants were frequently discharged illegally into water that irrigated their fields. The plant was eventually shut down in April.

Autopsies on the two residents who died found high levels of cadmium in their bodies, causing widespread panic among their neighbours. Following last week's protest, the plant director was detained and two officials from the municipal environmental protection bureau were suspended. The authorities will compensate villagers for tainted farm produce and livestock which had to be destroyed.

When, we wonder, are the responsible Omnia directors going to be detained?



Pair used Inseta as 'personal piggy bank'

ELEVEN MONTHS AFTER *noseweek* first exposed their self-enrichment schemes (noses108,110&111), and nine months after their suspension on full pay, Mike Abel and Shirley Steenekamp were finally booted out of the Insurance Sector Training Authority (Inseta). The Inseta council accepted the findings of Dr Len Konar, of Outsourced Risk and Compliance Assessments, whose investigation drew conclusions similar to those of *noseweek*: the two were unfit to hold public office and should be compelled to reimburse Inseta for losses caused by their shenanigans.

Soon after the *nose108* report appeared, an Inseta council member sympathetic to the two began painting a very positive picture of them to the media. *Noseweek* preferred not to change its stance.

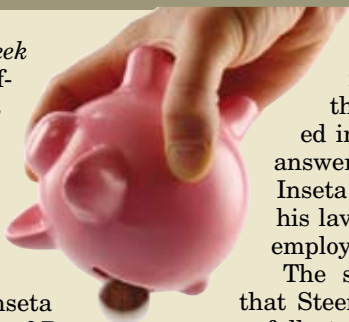
Abel and Steenekamp were formally charged with several counts, including conflict of interest involving their sons (Greg and Piers, respectively). After evidence was led, a source close to the hearing told *noseweek*: "It was a total vindication of your publication. Abel tendered his resignation

on 1 July, giving a month's notice, instead of the three months stipulated in his contract. He had no answers to the charges – he used Inseta as his piggy bank to fund his lavish lifestyle and his son's employment."

The source further confirmed that Steenekamp, who had unsuccessfully taken Inseta to the CCMA to fight her suspension, was found guilty on a number of charges and was dismissed with immediate effect. "Her bullying, dishonesty and victimisation of service providers was apparent. Her attorney's badgering and aggressive cross-examination made no impact on the experts and staff members called to testify."

In the absence abroad of Inseta council chairperson Tetiwe Jawuna (of Standard Bank), her deputy, Ivan Mzimela (of Holland Insurance), confirmed: "The disciplinary hearing involving Mike Abel and Shirley Steenekamp has been concluded.

Based on the outcome of the hearing, both individuals are no longer employees of the Inseta. The council is currently in discussion with its legal team to explore what further recourse the Inseta might have."



Silverstone rocks

THE MYSTERY of who, some years back, gave Jupiter Drawing Room chief executive Renee Silverstone a pair of magnificent diamond earrings has been solved (*nose118*). Silverstone had kept mum on the donor's identity, but speculation at her ad agency was that they were the gift of erstwhile admirer – and Jupiter client – Edgars chief executive Steve Ross.

Well, ladies and gentlemen, the speculators were wrong and Ross is off the hook, because who should have stepped forward to accept the honours but Theo Rutstein (68), executive chairman and substantial shareholder of rent-to-own group Teljoy.

"I bought Renee a pair of diamond earrings for her 40th birthday, which is round about 10 years ago," says Rutstein, father of three (and grandfather of five). "Renee's been a very good friend of mine for an awfully long time."

It also emerges they are not quite the one-carat sparklers

evoked by the story: "I paid about R7000 for them," says Rutstein. "They're not amazing earrings, but they're nice – little diamond chips.

"Renee is still a good friend. There's been no work connection; Jupiter never did Teljoy's account."

Now there's a gentleman.

Silverstone has refused to comment on other aspects of *noseweek*'s story, but on this one she has issued a statement – through her attorneys – in which she declares:

"It is true that the earrings were a gift from Theo Rutstein and his family. Whilst Theo and I do not have a business relationship, our families share a close and supportive friendship going back to the time of my late father and my mother, who is now 75 years old. We have shared



Renee Silverstone



religious holidays and the Sabbath in each other's company."

Fortunately, Silverstone's emailed statement arrived safely. Unlike Jupiter chairman Graham Warsop's, which didn't: *nose118* therefore announced that no reply had been received to a request for Warsop's comment on Silverstone's friendship with FNB brand director Derek Carstens, and confirmation of the shareholding of

Jupiter's associate company, MetropolitanRepublic (joint winner – as *noseweek* predicted – of FNB's R900m ad account).

Warsop insisted that he had indeed responded to *noseweek* and went looking for evidence. It emerges dizzy old Warsop had penned a response all right – but mistakenly addressed the email to himself.

Red-faced Investec forces staff to take 'voluntary' lie tests

INVESTEC HAS HAD scores of its Johannesburg staff polygraphed in an attempt to identify the mole/s who passed confidential information to *noseweek* exposing the R1.5bn debt – and inability to service it – of its VIP client, property developer Zunaid Moti (*nose118*).

There has been a flurry of urgent meetings at the bank's headquarters, with individuals hauled in for vigorous interrogation. The problem is that every banking employee at Investec has their own code to access the bank's internal Radar system – which contains the information relayed by *noseweek* – and there's no facility in place to track who logs in for sensitive information on clients such as Moti.

By 11 August, amidst great secrecy, 38 employees had been persuaded to "voluntarily" take lie-detector tests at Warren Goldblatt's private eye firm SSG Forensic Consultants, whose premises were made available to the sub-contracted polygraph tester.

The internal probe is concentrated on staff in the bank's recoveries and property finance departments and *noseweek* hears there's a "substantial" reward on offer for information leading to the mole's identification.



The rats who ate our pensions

WHILE THE CRIMINAL prosecution sputters of those who, a dozen years ago, defrauded various pension funds of hundreds of millions – in a scheme popularly known as the “Ghavalas Option” – behind the scenes there’s a Herculean battle being waged between Sanlam, the biggest single beneficiary of the scam, and the curators of the looted pension funds.

So bitter has the contest become that it has all the characteristics of a fight to the death.

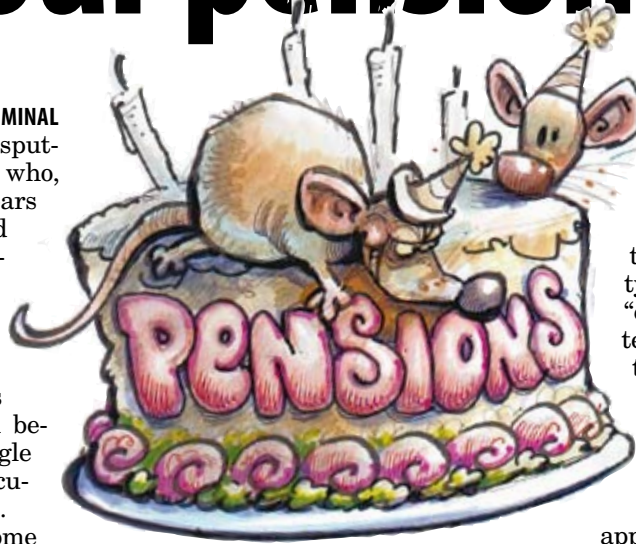
In October 2006 *Personal Finance* was the first to report that two of South Africa’s biggest financial services companies, Alexander Forbes and Sanlam, were directly implicated in or had benefited from the “Ghavalas option” fraud.

There had been earlier reports in the press about the “Ghavalas option” – the scheme devised by fund consultant Peter Ghavalas – that enabled employers to appropriate the surpluses in their employees’ pension funds, but these reports had made little mention of Alexander Forbes – and no mention of Sanlam.

It now emerges that the scheme had been used by employer companies’ senior executives – including those of Sanlam’s investment arm, Sankorp – to hide their illegal purpose from the affected employees and pensioners, and from the registrar of pensions.

By devious means the registrar was, in fact, misled into sanctioning some of the transactions initiated by the fraudsters, thereby covering the scheme with a veil of legitimacy.

Sanlam’s involvement had become public record in April 2005, when the registrar applied to the Pretoria High Court for three of the affected pension funds – all associated with the Datakor group of companies – to be placed



Sanlam dragged
to the brink
in ding-dong,
behind-the-
scenes, battle
over stolen
millions

under curatorship, and, in the process, made public his inspectors’ report on their investigation of the conspiracy.

There it emerged that the employer companies had all been wholly-owned subsidiaries of Sanlam’s industrial arm, Sankorp, and that the pension fund surpluses had ended up in Sanlam’s pocket.

But no reporter appears to have noticed.

Sanlam did notice – it was served with a copy of the court papers. Why

mention this? Because, despite this knowledge, various of the beneficiaries, including Sanlam, persisted in clinging to their ill-gotten gains, while their lawyers embarked on a typically laborious and expensive “come and get us if you can” contest with the pension funds’ curators who were seeking to recover the stolen amounts.

Twelve years have passed since these frauds were committed. By now, the amount owed to the pension funds is approaching R800m.

Sanlam’s directors insist they did not know about the crime committed for the company’s benefit. Supposing that is true, they have known since April 2005, at the latest, that they are the recipients of the proceeds of crime – and that the victims are largely defenceless elderly people who are suffering poverty and ill-health in the last years of their lives.

Yet much of the pension fund money still remains to be recovered.

Only on 15 December 2006 – 20 months after the first public disclosure of the fraud – did Sanlam Life Insurance Ltd make an unconditional payment of R106m into curator Mostert’s trust account, for apportionment between the three pension funds that were related to the Datakor group.

But this only covered the net amount of R44.1m that Sankorp (and ultimately Sanlam) had itself, on 24 November 1997, received from the stripped pension funds – the payment was disguised as a “tax-free dividend” – plus simple interest at 15.5% for its use over the intervening nine years.

Sanlam conceded only this amount because it could be paid without legally compromising its claim to innocent of any wrongdoing; it was simply conceding that, while it had undoubtedly benefited from the proceeds of crime, it had done so unwittingly and was, as a good citizen, now returning the benefit

it had received to the rightful owners.

If that was the case, however, why did it take Sanlam 20 more months to make the concession and hand back the pensioners' money?

The answer: strategy.

Within a week of Sanlam's part in the fraud being exposed in *Personal Finance* on 1 September 2006, Johan van Zyl, Sanlam's chief executive, met with Rob Barrow, the Financial Services Board's chief executive, and curator Tony Mostert to once again talk settlement – in earnest, or so *Personal Finance* reported.

Most people assumed that, to preserve its good name, Sanlam was determined to waste no further time in arranging to pay back all the money it had received, plus any other monies that had been lost as a result of the criminal actions of its employees and those Sankorp had nominated to manage the pension-stripping enterprise. The latter's criminal acts, it needs to be repeated, were directed at advancing a scheme designed to circumvent the law so that Sanlam might reap the benefit of a pension surplus to which it was not entitled.

But all those who thought Sanlam would now rush to do the right thing were wrong. September passed, then October, then November, and still no settlement or payment.

It now emerges that, behind the scenes, a serious battle was being waged for strategic advantage: Sanlam not only wished to limit its financial liability; it needed, desperately, to ensure that it did not find itself in the dock with those facing criminal charges.

Quite apart from the embarrassment, such a development could be seriously damaging in the marketplace for a major financial institution whose business revolves around public trust: its clients entrust it with money they will need to support them in their old age; with their life insurance intended for the care of widows and orphans in case of the breadwinners' untimely death.

No-one wittingly entrusts such funds to a known or even suspected thief.

The Sanlam/Sankorp directors were adamant in their protestations that they had definitely not known that the means by which their company had profited were criminal. But they were not going to risk prosecution either.

In short, by withholding payment of their more obvious, innocent debt, Sanlam hoped to pressure the curators (and the FSB) into making concessions with

regard to further claims against Sanlam they were known to be contemplating: claims that arose from Sankorp's alleged knowledge or negligence – a potentially far more dangerous prospect. Who knows?: by withholding payment for longer they might even have hoped to extract an indemnity from prosecution.

The source of Sanlam's anxiety would have been details such as the following:

Sankorp's senior investment manager, Anton Roets, had been charged with the task of realising the assets of Sankorp's wholly-owned companies in the Datakor group. The project was to include realising any "value" that might be derived from its pension funds, for the benefit of Sankorp – as stated in the company's own board minutes. Through 1997 Roets regularly attended Sankorp management and board meetings to report on the progress of this project – once again, a fact recorded in the minutes.

prosecution in return for their testimony against Roets. The three are due back in court on 15 September.

But, Sanlam and its directors insist, they had never, ever, suspected that these men would employ criminal means to generate the desired profits.

Dr Steph Naude, a Sankorp executive director at the time, concedes in an affidavit filed in the Johannesburg High Court: "I understood from Roets that there is value attached to the shares in the principal employer

Tony Mostert



Pic BusinessReport

All those who thought Sanlam would now rush to do the right thing were wrong

According to all the available evidence, Roets, together with Mike McEvoy and Derek Pettitt (the two men the Sankorp board had installed as sole directors of the three subsidiary companies, and as trustees of their pension funds) carried out the criminal scheme which resulted in the pension fund surplus being "stripped" out (most of it ending up in Sankorp's bank account – that much Sanlam was prepared to concede).

And, true, the Sankorp board even approved a special bonus scheme to incentivise these men to close down or dispose of the three companies, and their pension funds, as profitably as possible.

All three men have since been arrested and face various charges arising from their alleged involvement in the criminal scheme. There is talk in informed legal circles that McEvoy and Pettitt are to be offered indemnity from

of the three retirement funds associated with the Datakor group, because of the existence of a surplus in those funds." But, he says: "I did not have personal knowledge of [...] the mechanics by which value could be extracted from the shares. I was not familiar with pension fund law and was not (and had never been) involved in pension fund administration. My role was the management of investments."

Naude continues: "I understood from Roets that shares in a company which was the principal employer in a defined benefit pension fund which had a surplus would command additional value because of the surplus. I saw nothing unusual



about this. Nor, clearly, did my colleagues.”

The “colleagues” he refers to included co-directors on the Sankorp board, such as Marinus Daling and Dave Brink. They were also present at various of Roets’s presentations to the board and,

according to Naude, could “clearly” see nothing unusual in his analysis of the profit potential in those pension fund surpluses.

Did Sanlam/Sankorp know what was really up? There is plenty of circumstantial evidence to suggest they may

have. Should they have known? The probabilities could be argued either way.

Mostert, one of the triumvirate of curators nominated by the Financial Services Board to head the pension funds in their bid to recover their stolen assets, was less inclined to accept that Sanlam was not guilty, if not of a crime, then at the very least of extreme negligence.

Quite apart from the probabilities, he had a lot – a few hundred millions – to gain, partly for the pension funds and partly for himself, by not accepting their protestations of innocence. (He is acting on contingency – his fee will be a percentage of whatever amount he recovers.)

But most of the documents Mostert had gathered amounted to hearsay evidence, and most of the live witnesses who might testify to those documents had either fled abroad, or were facing criminal charges, and were therefore entitled – and well-advised – to remain silent.

Mostert’s chances of getting Sanlam/Sankorp held liable for the missing pension money would be greatly enhanced if the state saw fit to prosecute them on criminal charges.

Next-best prize would be a plea bargain with the mastermind of the fraudulent scheme, Peter Ghavalas – a bargain that requires him to make a complete statement setting out who knew what, with relation to each of the pension funds that had been stripped, hopefully thereby providing the “live” evidence needed to successfully prosecute his co-conspirators. The problem was that Ghavalas had long before managed to make off with his loot to Australia – out of reach of the likes of Mostert.

But he had remained at the top of Mostert’s mind. In July 2005 he heard “via the grapevine” that Ghavalas was planning a quick visit to Johannesburg to visit his elderly mother. Mostert wasted no time in preparing for the fugitive’s return. When Ghavalas landed, Mostert was ready and waiting with a civil warrant for his arrest. (It would establish the Johannesburg court’s jurisdiction to hear a civil case against a foreign resident.) Ghavalas was arrested and next day, when taken to court, a posse of policemen arrived to rearrest him on a criminal warrant. After 40 days in detention, he was released on bail – but was in no mood to talk.

In October 2006 Mostert applied

The hero of our story

THE “GHAVALAS OPTION” WAS the perfect scam: in the early 1990s experts in the field of pension fund administration, such as Alexander Forbes and Wynne Jones & Co, would discreetly recommend it to selected corporate clients – for a percentage of the take, naturally. For five glorious years Peter

Ghavalas’s patent recipe enabled company executives to cook up a storm in the pension fund kitchen. It allowed them to steal millions from their employees’ pension funds, leaving the pensioners poorer – but none the wiser.

The recipe was so good, the results so tempting, that even companies in Sanlam’s Sankorp group used it to re-

markably profitable effect – in fact they used it to wing the biggest strip of them all.

The registrar of pensions did not notice. The Financial Services Board did not notice. The auditors did not notice. Sanlam’s directors say they did not notice what their left hand was doing.

One little old lady was, single-handedly, the entire scheme’s undoing.

Mrs Frances Doyle, who spent the last ten years of her life seeking justice for the scheme’s victims, is the hero of this story. She died in a retirement village in Port Shepstone, in January, aged 84.

When she retired in 1982 Mrs Doyle had been an accountant with Cortech for 13 years. In 1988 Cortech had been acquired by Sanlam’s investment arm,

Sankorp, and as the years passed Doyle’s pension failed to keep pace with inflation. By 1997 it was a mere R1,777 per month, and, once again, no increase was received. Doyle decided it was time to investigate what was going on – and was not intimidated by the jargon employed by her pension fund’s administrator.

It took her just a few months to establish that her pension fund had had its assets stripped – and that the surplus had disappeared. (Over the years it had managed to accumulate a healthy surplus, presumably because it was paying such lousy pensions.)

Rejecting a concocted explanation from Sanlam, in June 1999 Doyle filed a complaint with the pension funds adjudicator, John Murphy. It took the adjudicator two years to confirm her worst fears: the surplus had indeed been stripped and squandered.

Ironically, the most the adjudicator could do for Doyle and fellow pensioners was to rule that Sanlam reinstate the “missing surpluses”. This didn’t happen. So she filed a non-compliance complaint with the adjudicator – which was a wake-up call for then registrar of pension funds Dube Tshidi, who decided to do what he should have done in the first place: he sent his inspectors to re-examine the transactions that had led to the disappearance of the surpluses.

It took nearly two more years for the registrar to link the Cortech asset-stripping with those of the Datakor pension fund and the Datakor retirement fund – both also associated with companies in the Sankorp stable – and, eventually, with the stripping of several other pension funds. Between 1992 and 1998, at least nine pension funds had lost more than R200m to companies that had opted for the “Ghavalas Option”.

In April 2005 the registrar obtained a court order, placing the affected funds under curatorship – which is where our story begins.



Frances Doyle

to the high court for the liquidation of Soundprops, the company that Ghavalas had used to collect the millions in “royalties” paid by companies that had used his scheme. Ghavalas opposed it, and the case was postponed to the following year.

All these factors played a role in the behind-the-scenes game of cat and rat being played by Sanlam and the curators.

According to various well-informed sources, Sanlam/Sankorp’s biggest strategic advantage lay in the fact

on the long list of those that D’Oliviera intended to prosecute.

Whatever it was that Sanlam was holding out for through 2006 (by withholding payment of even the conceded amount to the curator), and whatever the curator was holding out for, by the end of the year neither had succeeded. But by then nerves and tempers on both sides were frayed.

Come early December 2006, still no cheque was forthcoming from Sanlam. The secret talks were going nowhere.

help in carrying out the fraud.

In support of the application, Mostert filed an 81-page affidavit setting out all he knew, and believed could be deduced, about Sanlam’s involvement in the pension stripping scheme.

On the same day that the application was filed at court, Sanlam transferred the long-promised R104m – unconditionally – into Mostert’s bank account. It came with a barbed note from Sanlam’s attorneys:

“Our client expresses the earnest hope that ... the curators will confine their fee to an amount which is reasonable and appropriate in all the circumstances.”

A concern for the wellbeing of pensioners, to be taken from whence it came.

Sanlam’s affidavits replying to Mostert’s application were filed at court on 28 February 2007. They meticulously identify all the documents filed by Mostert that stand to be stuck from the record as hearsay because they are unsupported by affidavits from the authors or recipients. For many of the documents to which Mostert gave a hostile interpretation, Sanlam’s directors as easily offer an innocent interpretation.

Stalemate once again.

In the same week *Business Report*



Sanlam chairman Major-General Roy Andersen

Sanlam and its investment division, Sankorp, were the single-biggest beneficiaries of the Ghavalas option

that they had the support of Dr Jan d’Oliviera SC, the senior advocate specially hired to lead the prosecution of those involved in the pension stripping frauds.

Early in the process he had apparently been persuaded of Sanlam’s innocence, because, while Sanlam and its investment division, Sankorp were the single-biggest beneficiaries of the “Ghavalas option”, neither appeared

On 15 December Mostert issued an application out of the Johannesburg High Court, in which he demanded immediate payment from Sanlam of the already conceded R104m. He also wanted a date set for a hearing related to the further R200m-plus which he contended Sanlam should be ordered to pay to compensate for the millions that had been paid from pension funds to the various co-conspirators for their



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If you don't know the trees,
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if you don't know the stories,
you may be lost in life.



revealed that Business Against Crime SA was helping fund "the prosecution of Alexander Forbes and at least 26 company executives for allegedly stripping pension fund surpluses of about R900m". The report continued: "So seriously do the FSB and Business Against Crime regard the alleged offences that they have engaged the services of retired ace prosecutor Jan d'Oliviera to be the prosecutor." The report went so far as to describe it as a "private prosecution".

It did not go unnoticed that Sanlam chairman Major General Roy Anderson was (and still is) a Business Against Crime director, and that Sanlam was a major contributor to their funds.

Cynics might wish to point to the Business Against Crime connection as an explanation for the prosecution "going soft" on Sanlam, but, judging by curator Mostert's difficulty in finding hard evidence to support even a civil claim based on fraud or negligence, it is fair to assume that D'Oliviera simply had not found the sort of evidence needed to support a responsible prosecution of the insurance giant.

Just a few weeks later, Mostert and Ghavalas returned to battle in the liquidation application, Mostert's counsel now put out feelers for the first time: might Ghavalas be interested in settlement talks about settlement talks – in the context of the "bigger picture"?

Mostert began agitating for a plea bargain to be struck with Ghavalas – his best hope of eliciting a witness statement containing "hard" evidence for his case. But throughout 2007 the NPA was in such disarray, as a result of the Zuma case, that no-one with the appropriate authority could be found to sanction such a deal.

Out of the blue, in April 2008, the curators learned by chance that D'Oliviera had concluded a plea bargain with

Ghavalas – without consulting the curators, and without their consent – and was about to have it made an order of court. Mostert rushed to court on the day and succeeded in getting the hearing postponed for two weeks.

He now discovered that D'Oliviera had done a plea bargain without requiring Ghavalas to make any statement at all, let alone the required "full disclosure".

D'Oliviera was said to have been satisfied with Ghavalas's undertaking to testify against other accused "if required" – without having had to reveal what that evidence might be. No incriminating statements, no pack drill – for anyone.

The opportunity to get Ghavalas to reveal what he knew about the Sanlam deal was about to slip through Mostert's fingers.

The prosecution had also not undertaken an audit of Ghavalas's assets in order to assess what repayment he could reasonably be expected to make. It smacked of a set-up to dispose of the potentially most dangerous witness against Sanlam, letting him go without making any statement and having to repay only a fraction of the pension money he had pocketed ten years earlier.

Mostert prepared for battle: when the two weeks were up, and D'Oliviera showed no signs of relenting, the curator launched an urgent application in the high court – for Ghavalas's sequestration. He got a provisional order – enough to prevent Ghavalas from concluding a plea bargain for most of that year.

By the time the provisional sequestration was set aside late last year, the prosecution had agreed to a full statement being taken from Ghavalas to the satisfaction of the curators before a plea bargain was agreed. Come Christmas, it was done.

In December Business Against Crime decided, without public announcement, that it would be terminating its funding of the prosecution.

Finally, in February this year, the plea bargain with Ghavalas was presented in court with the curators' approval. In terms of the deal, Peter Ghavalas entered a plea of guilty to a large number of fraud charges that arose from his pension surplus-stripping scheme, and he was given a 15-year prison sentence, suspended on condition that he made full disclosure to the state and the curators, and refunded R18m for apportionment amongst the pension funds he had defrauded.

Immediately after the hearing he



was allowed to return to Australia. Many believe he got off too lightly, but the curators have declared themselves happy with their part of the deal. Last month he was back in Johannesburg for further consultations with the curators.

The state has given notice that it intends filing fresh indictments against the remaining list of accused. The extent to which these changes might be based on further evidence provided by Ghavalas is not known.

Although more than a dozen individuals involved in the conspiracy have been arrested, and a few have been convicted following plea-bargain deals, not one has, so far, gone to jail for participating in the fraud.

Alexander Forbes is the only major corporate entity that features on the list of those indicted for fraud in relation to the surplus stripping. Recently the company gave notice that it intends applying to court to have all the criminal charges against it struck down.

Its lawyers propose to argue that Section 332 of the Criminal Procedure Act, which allows companies to be criminally prosecuted, is uncon-

stitutional. The application has been set down for hearing at the Pretoria High Court on 10 October.

Sankorp's man, Anton Roets, and his alleged two co-conspirators, McEvoy and Pettitt, are due back in court this month.

According to reliably informed sources, McEvoy and Pettitt have been offered indemnity from prosecution, in terms of section 205, in return for their evidence against Roets, who is also due to be served with a fresh indictment.

The actual trials of the remaining accused are only expected to begin in mid 2010.

On the civil front, whatever the outcome of the criminal proceedings, Alexander Forbes still have Mr Mostert to contend with. He has already drawn the battle lines with Alexander Forbes, in a damning affidavit filed in the Soundprops liquidation application.

As far as Sanlam and Mostert are concerned, the battle rages on as before – except that Mostert now returns to battle armed with Ghavalas's first-hand evidence. It could be a whole new ball game. **W**

BE A WINNER!

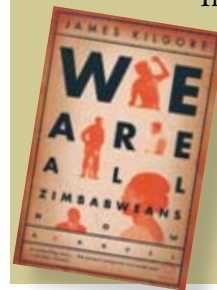
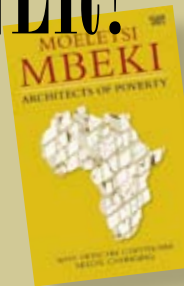
Noseweek readers are invited to email entries for a simple competition offering ten copies of *We Are All Zimbabweans* and *Architects of Poverty* (five of each title – see reviews on pages 36-38).

All you have to do to be eligible for the prizes is to email the correct replies to **win@noseweek.co.za** or fax them to **021 686 0573**.

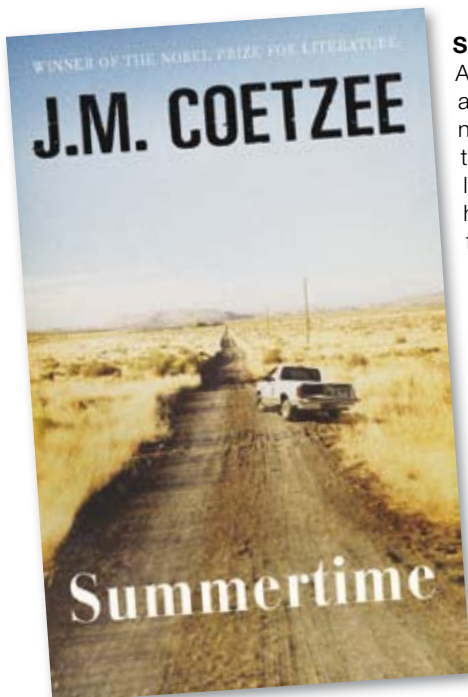
Question 1: Who wrote *We Are All Zimbabweans Now*?

Question 2: What is the first name of ex-President Mbeki's author brother?

The first ten correct entries drawn will be the winners. The editor will draw the winning entries on Friday 11 September. Correspondence will not be entered into. Good luck!



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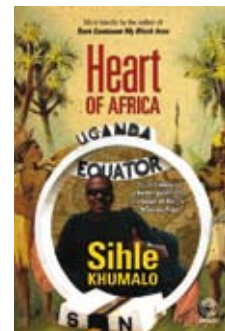
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Many houses **one home**

Moti goes potty

Blood spilled as former business partners come to blows over disputed deal

THE STORY in *nose118* of fast-driving Zunaid Moti's inability to service his R1.5b debt to Investec has the bank frozen in the headlights (see the update on p16). In the meantime, another alarming story of Moti's flash-trash business style has come to light.

The latest story starts with a claim, in court papers, that some years back the speed-loving tycoon cheated a business partner when he "sold" him a filling station, in up-market Bryanston, for R1m. Almost a year later Shell evicted the hapless buyer, claiming that, as a franchisee, Moti's company had no right to dispose of the business without their consent.

When the business partner complained to Moti and demanded R1.5m from him (the garage had come as part-settlement of a larger debt), Moti allegedly responded by beating him up in a boardroom fracas.

To begin at the beginning: in June 2003, Moti bought a Ferrari 360 Modena from Joburg businessman John Dryden. Dryden, in turn, bought a Lamborghini from Moti.

Dryden is sole owner of Brewtech, which sells draught beer dispensing equipment to giants such as SAB and Namibian Breweries. Under pressure to become black empowered, Dryden invited Moti – an Indian – to be his BEE partner. Dryden is emphatic he does not want to talk to *noseweek* about what followed. "Moti is a violent man and I fear for my life," he says. But court papers, and people close to what happened, tell a colourful story.

In 2003 Dryden's Brewtech bought 25% of Moti's Byzantium Wholesale Jewellers for R1.6m, and 25% of his Abalengani Jewellers for R400,000 – a total of R2m. Moti, in turn, paid R500,000 for 12% of Brewtech, nominating his sister Tasmeen to hold his interest in her name. Dryden raised the R1.5m he

needed to pay Moti to finalise the deal by raising a bond from Absa on his Bryanston home. Payment was made to a Moti company, Abalengani Supplies.

But things didn't work out. Dryden's wife, who went to work in the Byzantium Jewellery store at Monte Casino, allegedly discovered that the business operated with two sets of books. Small purchases, such as 9ct gold chains, went through one invoice book; sales of expensive Rolex watches, Mrs Dryden is said to have discovered, went through another.

And although Moti promised to assist at Brewtech and meet its customers, this never happened.

Sometime in 2004 Dryden told Moti he was not happy with the way things were going. Short-fused Moti responded by tearing up the share certificates relating to their partnership.

Dryden claimed at the time that this "unbundling" left him R1.5m out of pocket, but that Moti repeatedly told him he had no funds to pay the debt. Eventually it was agreed that yet another Moti-controlled company, Sharmi Investments, would reduce the debt to some R500,000 by "selling" Dryden Shell Riverside Motors in Bryanston Drive for just over R1m.

Dryden's newly-formed Maranello Motors took possession of the filling station in September 2004. For nearly a year Dryden operated Riverside Motors, although he complained that every time he turned his back his assistant – who formerly worked for Moti – stole from the till, and on one occasion forged a cheque to obtain a R219,000 load of petrol which was diverted elsewhere. At the end of the day the business returned a net profit of barely R40,000 per month.

On 1 September 2005 Dryden arrived at Riverside Motors to find Shell's attorneys from Cliffe Dekker waiting to serve him with a repossession notice. This stated he had no right to be there: Shell had terminated its franchise



Zunaid Moti with wheels

agreement with Sharmi on 19 October 2004 – less than a month after Dryden took over the filling station.

Moti blamed Dryden for the eviction, saying he should have stood his ground and refused to leave. Dryden (who should have ensured that the franchise was transferred to him) was left looking to Moti to retrieve his R1m.

The showdown came on Friday 9 December 2005, after Dryden had gone to Absa and told them the whole sorry story. Shortly afterwards, Moti phoned and asked him to come to Abalengani's then offices in Bryanston's Sloane Street. The two men met in the plush boardroom while Moti's ever-present two bodyguards hovered at the door.

The conversation, it is said, went roughly as follows:

Moti: "Why did you go to Absa and not come straight to me?"

Dryden: "Because I'm still servicing Absa's bond for something I don't have."

Moti: "Why are you going around telling people I'm a crook?"

Dryden: "I've merely explained to people that because the franchise agreement was never transferred to me I've been evicted. You had no right to sell me something you weren't entitled to sell. That's fraud."

Moti responded by walking across the boardroom and, as Dryden later described it, "just climbed into me, shouting and screaming". During the frenzied attack, Dryden noticed the security cameras in the boardroom recording the scene.

When he left, covered in blood, he was helped to his car by one of Moti's bodyguards, Francois Cronje. He went straight to Randburg police station to lay a complaint of assault.

There is some question over the severity of Moti's assault, but when Dryden had police call for the boardroom's security cameras, which should have established exactly what had happened, they were told the cameras weren't working. Dryden told friends there were many blows to his left temple. Two crowns were also knocked out. However, his statement to police reads: "As I was going out of his office he grabbed me and hit me twice with his fists on the back of the left ear."

The statement adds: "At the time of assault Francois [the bodyguard] and



John Dryden

Johan [the manager of Moti's sportscar financing company, FutureFin] were in the office and they saw what happened. I fear that due to the fact that he [Moti] is violent, he will assault me and my family, as he knows where I stay."

Two days later Moti opened an assault docket at Randburg police station,

claiming that Dryden had hit him in the ribs. Neither case came to court.

Since the boardroom fracas, John Dryden and Zunaid Moti have not met. But friends tell of a visit to Dryden's home about a year after the event by someone called "Carlos", said to have been a Moti bodyguard. As Dryden, his wife and then 17-year-old son Grant sat around a table the bodyguard allegedly told them he had been fired by Moti. Carlos said he wanted them to know that Moti had told him to find someone to beat up Grant – then in grade 11 at St Stithians – for R2,500. And that there would be another R2,500 "when the job was done". Carlos told the shocked family that he never took up the offer.

True or not, the story would certainly have given Dryden pause.

In 2007 Dryden finally issued high court summons against Moti and a number of his companies, for R1.06m. The case was set to for trial in March this year, but was withdrawn in favour of settlement talks. Sources close to the case say that, to meet legal fees, Dryden increased his bond with Absa to over R2m. His claim against Moti has now soared to an optimistic R4.5m.

In an affidavit filed in court Moti says: "The claim is based on an illiquid [unproven] amount of R1,060,000. There is no allegation that [this sum] was paid by plaintiff as a purchase price, nor was it. The third defendant [Dryden's Maranello Motors] duly represented by the plaintiff [Dryden] agreed to take over Shell Riverside Motors from the second defendant [Sharmi Investments].

"I am at a loss as to why it is that (Dryden) firstly instituted action in his personal capacity and secondly why I am the defendant in this matter against whom relief is being sought. It is clear that the plaintiff (Dryden) has not applied his mind to the matter.

"I deny that Sharmi was 'not entitled' to dispose of the service station. I do not understand the basis upon which this allegation is made." ■

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Behind the Jo'burg bar brawl

Hlophe judge had shown his bias 18 months before the row erupted

WHY IS IT THAT the majority of political commentators assumed that the Judicial Services Commission would let Cape Judge President John Hlophe off the hook in the dispute between the controversial beak and 11 judges of the Constitutional Court?

Once you knew a bit more about President Zuma's recent appointee to the JSC, Advocate Ishmael Semenya SC, that assumption made a lot more sense. Semenya's appointment was announced on 20 July – and three days later JSC spokesman Marumo Moerane announced that Semenya was to be one of a three-person JSC sub-committee to consider whether Hlophe had a case to answer over his alleged attempt to influence Constitutional Court judges to make pro-Zuma rulings in the now abandoned corruption case against the then president-in-waiting.

"Ish" Semenya is a leading light within Advocates for Transformation (Aft), a pressure group that strives for change in what they perceive as anti-

quoted and unfair practices within the bar. Nose117 told how Semenya had resigned as chairman

of the Johannesburg bar council on 14 May in protest at the selection process of new senior advocates, or "silks".

President Zuma's other three appointees to the JSC were Semenya's fellow-Aft member Dumisa Ntsebeza, plus advocates Vas Soni and Andiswa Ndoni.

What is generally not known, except to the members of the Johannesburg bar, is the extent of Semenya – and Aft's – passionate and long-standing support for Judge Hlophe. A support that makes Semenya's appointment to the sub-committee set up to judge him not only a mockery, but highly suspicious. For, despite Zuma's recent nomination of Justice Sandile Ngcobo as the next chief justice, it is widely believed that Hlophe is the President's real favourite

for the job. Ngcobo, it is said, is merely a stand-in, until the dust around the Hlophe furore has settled.

The long-standing Hlophe dispute within the Joburg bar has its genesis in October 2007, when the JSC decided not to continue its inquiry into Hlophe's receipt of money from the Oasis financial services group – to which Hlophe had given permission to sue fellow Cape judge, Siraj Desai.

Retired Constitutional Court judge Johan Kriegler wrote in a Sunday newspaper that Hlophe was guilty of grossly improper conduct and was not fit to be a judge.

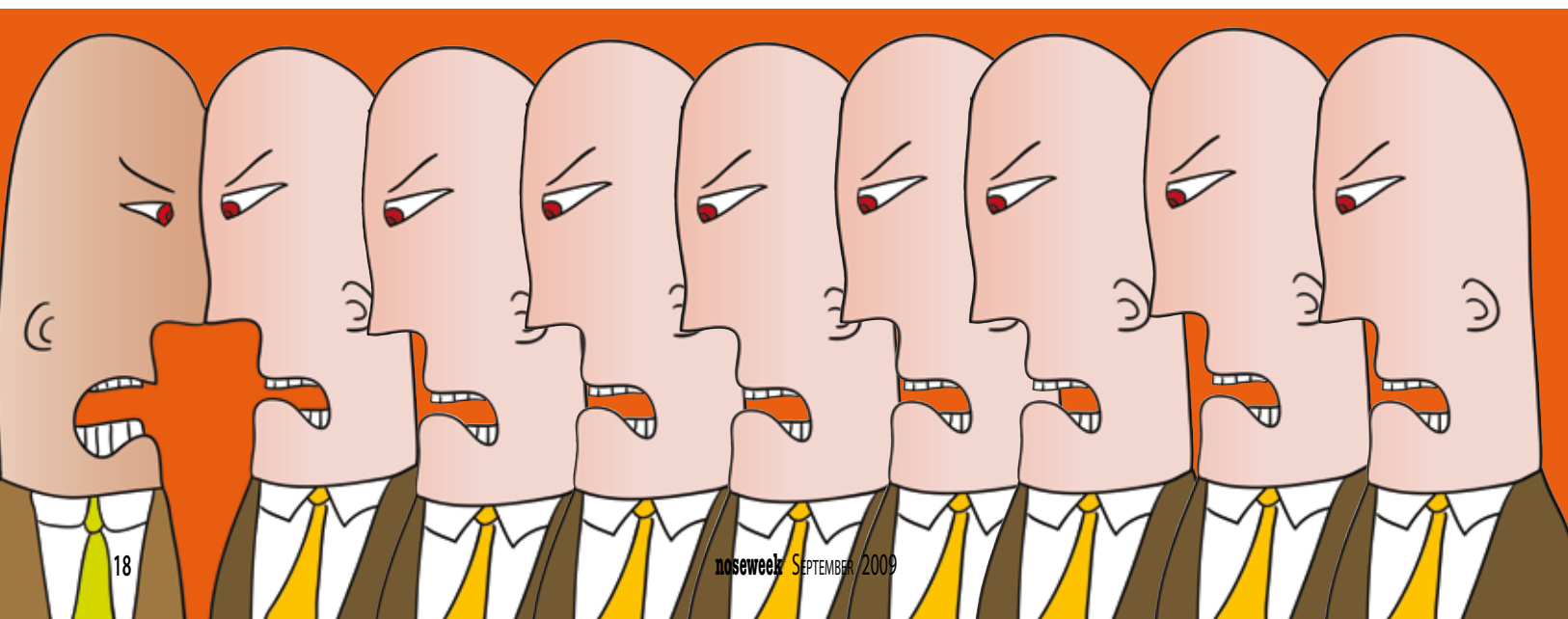
Nine senior advocates from the Cape bar, including heavyweight Jeremy Gauntlett SC, also called on Hlophe to step down.

In Joburg, senior advocates approached Guy Pretorius, then chairman of the Johannesburg bar council, asking him to sponsor a resolution calling on Hlophe to resign. After deliberation, the council members resolved not to pronounce on the issue. Its decision read: "We and the bar which has appointed us, are divided on whether or how the Johannesburg bar council should respond to the public debate on this issue. The council has resolved that the value of unity of the Johannesburg bar is so great that it ought not, in the circumstances, to add further to this public debate."

However, senior advocates Guy Hoffman and Sharise Weiner then gave notice that they would propose the adoption of a resolution at the bar's pending annual general meeting, calling on



Ishmael Semenya



Hlophe to resign from judicial office with immediate effect.

Before this meeting took place Patric Mtshaulana SC, vice chairman of the bar council as well as chairman of Aft (Johannesburg), wrote to bar council chairman Pretorius, stepping down as the council's vice chairman.

"Unfortunately some members of the bar have responded to our resolution by a motion which will be discussed tomorrow," he wrote. "I see tomorrow as a vote of no confidence in my leadership and the silence of the leaders of the Bar as a complicity to that vote of no confidence. I have decided I will not allow myself to be humiliated by numbers and not by

not end the crisis within the bar council. Its Aft members decided not to return to their duties, and for a year, until last December, the Johannesburg bar council functioned without the pressure group's participation.

One repercussion of this was disappointment to the 11 junior advocates who had been selected for silk in 2008. The selection process – there were 42 applications that year – should have been finalised in early May of that year, as required by the bar council's constitution. Aft was invited to participate in the selection process, but refused.

Last October Aft national chairman Dumisa Ntsebeza (the second Aft member

to be appointed to the JSC by President Zuma) wrote to Johannesburg Judge President Bernard Ngoepe, whom he addressed, quaintly, as "Dear Comrade Judge President Ngoepe"

Ntsebeza recounted how recent "unfortunate events" had led to an "unfortunate parting of the ways"

within the bar council and the former 50% Aft and 50% non-Aft representation no longer existed. "Indeed, the unintended consequences hereof, from a race transformation perspective, was that at one stage it appeared that the Johannesburg bar council was going to be made up of only white members," he wrote.

The 11 juniors recommended for silk in 2008 were "names that come to you without the endorsement of half the section of the bar council". Aft was not party to the selection and Ntsebeza urged the judge president not to make any recommendations to the President for the conferment of silk.

Two days later bar council chairman Guy Pretorius responded, in a letter to Judge President Ngoepe. "It is unfair to prejudice the careers of practitioners, and harm the public, by what is effectively blackmail," wrote Pretorius. "Aft's insistence that the Johannesburg bar council should stop functioning when Aft boycotts it, or to use their words 'disassociate themselves from it' is unacceptable."

Pretorius told Ngoepe that the bar council has an annual budget of over R14m, pays bursaries of R500,000 and

“We have no numbers because of a hundred years of exclusion of black people from the bar”
 – Patric Mtshaulana SC, vice chairman of the bar council and chairman of Aft (Johannesburg)

arguments.” (Of the 764 advocates at the Joburg bar, only 79 were members of Aft at last October's count.)

Mtshaulana continued: "As you know, the reason why we have no numbers is because of a hundred years of exclusion of black people from the bar. I will be giving apartheid a big honour if I allowed it to go that far." He was stepping down as bar council vice chairman in order to make arguments as chairman of Aft. "We are few, and I need to take a position in the trenches tomorrow, next to Ishmael Semenya," he wrote.

Ishmael Semenya confirmed that the fight was on. "Aft will debate this [Hlophe] issue on every and any platform," he declared in an email. "What Aft will not do is submit itself to a forum which will settle the debate by vote. We know that we just do not have the numbers."

However, before the AGM could take place, Aft's eight representatives on the bar council resigned and Aft decided not to attend the AGM unless the Hlophe resolution was removed from the agenda.

The Hlophe resolution was not discussed at the AGM, and an amendment deferred any discussion on the matter, with a fairly large majority. But this did



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“its day to day running just cannot be left in limbo”.

By last December Pretorius had been replaced as bar council chairman by Ishmael Semenya. Semenya's solution to the problem of the 2008 juniors recommended for silk was that their names should be held back until the 2009 silk nomination process has been completed, at which stage the 2008 and 2009 lists would be submitted together to the judge president.

“Sitting as chairman of the silk committee, I have seen one facet of the process that is toxic and abominable”

— Ishmael Semenya in his letter of resignation from the Johannesburg Bar Council

One of the disappointed 11 was adv Andrew Kemack, who was not amused at the prospect of having to wait an additional year before taking silk. He wrote to Semenya: “I call on you and your bar council to perform your lawful duty, by resolving to submit and submitting the 2008 silk recommendations to the judge president without delay, and by doing everything possible to support this process before the judge president, minister of justice and head of state.

“If you are not willing to do your duty, you have no place on the bar council and you should resign.”

Semenya replied saying that the bar council was postponing decision over the 2008 silk nominations until the end of January (2009) “to allow for reflection and deeper thought”. Kemack agreed, “albeit reluctantly”, to await the decisions.

Advocate Vuyani Ngalwana commented in an email to fellow Aft members that “the attitude adopted by Kemack is not particularly reconciliatory in its tone and the arguments it advances. I can only hope in the interests

of the bar that Kemack reconsiders his stoic stance. Sometimes to do the right thing is not necessarily the right thing to do. I believe this is one of those occasions. Kemack's principled stand, while otherwise commendable, is in my view not opportune in this climate where we are trying to forge a new community founded on consensus.”

So that, if you wondered why there were no new silks last year, is what happened. At its January meeting the

bar council resolved to hold back the 2008 list and submit it to the judge president with the one for 2009. Which drew another blast at Ishmael Semenya from Andrew Kemack: “The bar council resolution quoted in your letter is unlawful and *ultra vires*,” he wrote.

“You, as bar council chairman, continue to act in breach of your duties by delaying the submission of the 2008 silk list. The conduct of both you and the bar council is reviewable.”

There were 41 applications for silk this year and on 14 May the 2009 list of 11 to be recommended to the judge president was announced. Ten of the 11 are white; one (the well-regarded Aslam Bava) is Indian. Only two are members of Aft – Bava and Jaco Venter. The ten whites include top criminal advocate Laurence Hodes, Martin Kriegler (son of former constitutional and appeal court judge Johan Kriegler) and Matthew Chaskalson (son of former Chief Justice Arthur Chaskalson).

On the same day Ishmael Semenya announced his resignation as chairman of the Johannesburg bar council. “Sitting as a chairman of the recent silk committee and based on my experience of earlier occasions of being on that committee, I have seen one facet of the process that is toxic and abominable,” reads his resignation letter.

“There are adverse and nebulous comments made about some candidates, without any tangible and supporting evidence. Even when a more

penetrating enquiry is made, no coherent and consistent application of any particular measure is manifest. This element of the silk selection process is morally indefensible and corrodes what we hold to be the anchor of our profession – reason. I cannot in good conscience be the face of a process so jaundiced.”

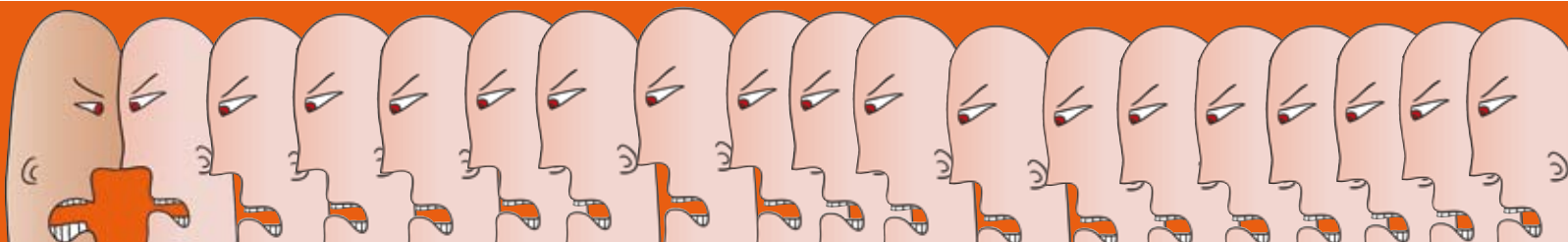
The “adverse and nebulous comments” are thought to be a reference to discussion about the silk application of Semenya's business partner, Aft member and colleague at Pitje Chambers, advocate Andre Bezuidenhout, whose application was unsuccessful.

That was in May, and concludes the turbulent background to the events that took place two months later – President Zuma's surprise propulsion of the Aft duo of Ishmael Semenya and Dumisa Ntsebeza onto the Judicial Services Commission, and Semenya's almost immediate appointment to its sub-committee to consider the plight of Western Cape Judge President John Hlophe. Other members of the sub-committee are JSC spokesman Marumo Moerane and Transvaal Judge President Bernard Ngoepe.

■ Following the *nose117* story about Ishmael Semenya's business relationship with advocate Andre Bezuidenhout and the successful silk application of Pitje Chambers advocate Jaco Venter, the bar council's new chairman Hilton Epstein SC has circulated all 764 Joburg bar members about *noseweek's* story. While “certain statements” were not correct, says Epstein, the silk committee's “tradition of confidentiality” prevented him from listing these so-called inaccuracies.

However, Epstein (also an Aft member) briefly shrugs off his commitment to secrecy. “It became apparent that there would be no consensus concerning the recommendation of Bezuidenhout for the conferment of silk,” he writes. “Venter's application was not considered in relation to Bezuidenhout. The statement [reported in *nose117*] that Semenya SC said that unless Venter was included the Aft silks on the committee would not vote for anyone, is untrue.”

Epstein doubts that the commitment to confidentiality was breached by any member of the silk committee. ■





SANDILE MAJALI IS DETERMINED to keep his hold on New Era Life Insurance, despite the embarrassing revelation that he

illegally used policyholders' money as security for a loan from Absa. The fact that the Financial Services Board (FSB) had New Era placed under provisional curatorship in July counts heavily against his chances of doing so.

According to Majali, his predicament illustrates the near-impossible odds any empowerment company faces in a hostile banking environment where, he says, pre-1994 power relations remain almost entirely preserved. But then he would say that, wouldn't he? In South Africa's godless business environment, allegations of racism are often the last refuge of the scoundrel.

Stories about Majali's involvement in the Oilgate scandal, his undoubted access to persons in power, and persistent allegations that he uses money and influence to swing government tenders his way, have kept the heat on him. The way Majali sees it, the aura of corruptibility that clings to his image in the media is a product of white fears about black people taking control of the reins of power and money; that white people conveniently overlook the recurring shortcomings of the current banking elite despite the regular corporate implosions that are brought on by corruption that pervades white corridors of influence.

The latter assertion may indeed be true. But is Majali's implicit demand that his shortcomings should similarly be overlooked not equally reprehensible? (And, it should be noted, the FSB has put more than 100 financial institutions under curatorship since it came into being in 1991.)

The man behind the Oilgate ANC-funding furore rarely speaks to the media, but, following a tumultuous week in July – he terms it the worst seven days of his business life – he believes he has suffered a serious injustice at the hands of the banking establishment – and like so many others, has turned to *noseweek* for public justice.

Readers will know that *noseweek* shares the critical view held by many of Majali's past business conduct (see *noses*88&89). But when he says Absa and Sanlam are bigger scoundrels than he – God knows, he could just be right. (Our latest story involving Sanlam certainly supports that contention: see page 8.) And, yes, in *noseweek* even



Sandi Majali

'Racist banks stitched me up' – Mr Oilgate

White fears about black people taking control of power and money are behind media smear, says beleaguered Sandi Majali

Sandi Majali gets a hearing.

So, back to that terrible week in July:

First, he had to stave off an arrest warrant from the Scorpions; next, he lost a R20m investment partner,

Nehawu Investment Corporation (NIC), who instead joined up with Sanlam, his main competitor, in a bid to wrest New Era from his grasp; then he discovered his own auditors, KPMG, had been part of a Scorpions investiga-

tion into his links with an alleged scam in the KwaZulu Natal Department of Education; and, finally, the high court put his company under provisional curatorship, without hearing his side of the story.

The return date for the *ex parte* order placing New Era under provisional curatorship is 1 September, but Majali is concerned that irreparable damage may have been done to the company by then.

The FSB, which brought the curatorship application, says in its court papers that it is also considering final liquidation, while, curiously, it admits the company is still a going concern – and that it does not believe funeral policyholders' funds are at risk. That latter assurance simply reinforces Majali's belief that the curatorship is part of a conspiracy against him.

It wouldn't be the first time the FSB has been accused of selective prosecution. Curatorship powers in South Africa are draconian and vest curators with extraordinary powers. They can hire and fire at will, manage, redirect or dispose of someone else's assets with impunity – and make a very healthy living off the proceeds for years (ask Masterbond's unfortunate investors).

Majali says he's been "tried by reputation" and that vested interests in the banking industry are determined to shut him down because he poses a significant threat to their hold on power, influence and, most importantly, huge state-controlled revenue streams.

In the past few months, he had put together two deals that were destined – until the FSB intervention – to take at least R270m in funeral policies away from Sanlam, his main competitor.

Majali is also one of the main players manoeuvring to establish an ANC-owned bank that its backers hope will eventually redirect about R350bn in funds from government, parastatal and worker sources into its own coffers.

He says his woes started when, acting on advice from Absa, he allowed the bank to take cession of New Era funeral policy holders' assets as security for a loan he needed. He says that, at the time, he had assets worth hundreds of millions of rands that could have served just as well – and lawfully – as security for the loan, and never dreamt that Absa would advise him to do something illegal.

He produces documents submitted to

escaped the worst of the fall, earning compliments from the FSB.

All very nice, but, when pressed, Majali admits there was another trigger for the switch to the Sanlam and Liberty policies: he'd had a falling out with Investec, which had previously managed New Era's policy holders' funds.

Majali had discovered that the Investec investment banker who was managing New Era's funds, Anton Kok, had formed a secret alliance with Majali's

white partners – Herman Kotze, a director of JSE-listed Net1 Aplitec, and Aplitec CEO Serge Belamant – in a bid to oust him from New Era. He wrote two letters of complaint about his partners' actions to the FSB, but these were ignored. Instead, the FSB's records then (incorrectly) reflected Net1 Aplitec as the majority (66%) shareholder in Permit Group, the holding company that owned 95% of New Era's shares, while Majali's holding in Permit Group, through Invume, was recorded as just 33%. To prove his point, Majali produces the original shareholders' agreement which reflects Invume as 54% shareholder, and Aplitec with 41% of the shares.

All this, says Majali, supports his claims to being the victim of racist persecution. The FSB recorded the purported 66/33 shareholding based on the mere say-so of a white man – without asking to see a signed shareholders'

agreement, as is standard practice. Despite his objections, the FSB still held that position 17 months later, while demanding from him, a black man, all sorts of documentary proof about every aspect of his business.

But back to the cession of those policies to Absa. The threatened mutiny of his partners is what sparked Majali's request for a loan from Absa: he needed the cash to buy their shares in order to secure his control of the company.

Majali says KPMG discovered the first cession to Absa – of the Sanlam



the FSB in 2007 in which his company Invume is reflected with assets worth R179.7m, while his personal assets were worth R155.5m.

Some history: When the first subprime ripples started undercutting stock market values in mid-2007, Majali says New Era decided it was safer to invest its policy holders' funds, totalling about R43.8m, in guaranteed investment policies – one for R11.5m with Sanlam, another for R32.3m with Liberty Life. The JSE proceeded to lose about 30% of its overall value; New Era

policy – in August last year and immediately brought the irregularity to his attention. He had been shocked to learn that it was illegal. Absa, as a long-established financial institution, should have known it was acting unlawfully, while he, as a newcomer to the business, was unaware that this was a serious breach of the laws that regulate the investment and use of other people's pension and insurance money.

You may be excused for being sceptical of his professed surprise. Everyone knows that the number one rule of the financial services business is: don't mess with Other People's Money – particularly not that of pensioners or policyholders. But it seems it's also the rule that is most often, and most profitably, broken by many, if not most, finan-

we are rectifying the position that the client has been placed in.

"We honestly believe that the client was not aware and neither were we of this contravention and believe that the client cannot be held accountable for this."

The writer added that Absa was obtaining a cession over one of Majali's other investments instead and that the process would be finalized "over the next five days". But "the next five days" stretched into seven months, during which time KPMG refused to sign off New Era's 2008 annual accounts because of the unresolved cession issue – and relations with the FSB continued to deteriorate.

Majali says that KPMG then proceeded to handle their later discovery that the Liberty Life policy had also been ceded to Absa in the most damaging manner possible: he was called in October to a meeting at the FSB, where KPMG partner Brian Mallison floored him with the revelation, in front of the regulator's officials, without having discussed the cession with him in private.

KPMG now refused to sign off New Era's financials, citing uncertainty

surrounding the substitute assets to be ceded to Absa – thereby providing still more ammunition to the FSB.

Majali says his CAR woes forced him to cast about for a saviour. He thought he had found one in Nehawu, whom he persuaded, after a due diligence investigation, to come on board as a 44% partner, for R20m.

But 1 February came and went without Nehawu's investment company, NIC, providing the R20m. Majali's attorneys fired off letters to the FSB begging for time. Instead, on 3 March, the FSB sent a letter to the minister, then still Trevor Manuel, requesting permission to put New Era under curatorship i.e. the FSB was already aiming for curatorship just five months after the cession issue was raised.

On March 17, Absa finally lifted its cessions on the two policies, but this made no difference. By now the FSB was exacting a R1000-a-day penalty for late returns.

KPMG steadfastly refused to sign off New Era's financials; now it said it had to consider "likely action to be taken

All this, says Majali, supports his claims to being the victim of racist persecution

cial institutions in South Africa. Note Absa's willingness to overlook it. In fact, in documents annexed to its application for New Era to be placed under curatorship, it emerges that Mr Pierre Swart of Absa Corporate and Business Bank's legal department misled the FSB by claiming he had received earlier FSB authorization for the cessions. The FSB's investigators conclude that Absa colluded with Majali.

The auditing implications of KPMG's discovery of the cession were profound: Ceded capital cannot be reflected as an asset on balance sheet, resulting in New Era's falling short of its Capital Adequacy Requirement (CAR); the company would have to get the Absa cession cancelled or find an extra R43.8m if it was to continue trading.

Majali says he took immediate steps to sort out the problem, and at all times cooperated with the FSB.

On 4 September last year Absa wrote to his auditors and the Financial Services Board, admitting its "mistake". To quote the letter: "It appears that this was an oversight and assure you that

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by the FSB and the impact of this on fair presentation of the financial statements as well as the appropriateness of the going concern principle for the presentation of the financial statements". A sort of Catch22, home-baked by KPMG.

On 9 June, the FSB informed New Era that it was to be put on monthly reporting and that its first report date was July 15. But before that report date arrived, other events had brought matters to a head:

The Scorpions, who had been investigating Majali's links to an alleged book-buying scam in the KZN Department of Education, required him to answer more than 50 detailed questions about his links to companies allegedly connected to the scam. Majali's lawyers, quite properly, asked if the questions were a prelude to his being arrested and charged; the Scorpions said no – but then, later the same month, instructed him to report to the Randburg Magistrate's Court – to be arrested!

Majali's lawyers easily got the arrest warrant overturned because the Scorpions were unable to show new evidence had come to light that justified the warrant – other than Majali's answers to their questions, elicited under false pretences.

Majali then also discovered that his own auditors, KPMG, had, behind his back, been assisting the Scorpions with their probe. KPMG's Danie van Heerden suggests Majali's claim that he had been stabbed in the back by his auditors may be "overdone". He says the auditing firm is BIG and has so many clients that the individual auditors doing New Era's audit were unlikely to have known that other colleagues had been hired to assist the Scorpions with an investigation targeting *inter alia* their client, Mr Majali. He also claims KPMG follows "strict controls" to prevent conflicts of interest. He appears oblivious of the contradiction between these two assertions.

To crown it all, the FSB used New Era's 2007 accounts – with KPMG's damning qualifying note – in support of its court application to have the company placed under curatorship.

Majali contends that the FSB's application was patently misleading, if not downright dishonest, since, by the

time the application for curatorship was brought, the FSB knew that the extremely prejudicial cession issue reflected in those statements had in the meantime been resolved. (And that, in any event, ABSA had been the main guilty party.)

It was only because of this knowledge

Majali discovered that his own auditors, KPMG, had, behind his back, been assisting the Scorpions with their probe

that FSB deputy CEO Jonathan Dixon was able to apply for curatorship while giving the assurance that policyholders were not in danger of losing their money.

KPMG says it continues to stand by its refusal to sign off New Era's financials, despite the cessions having been lifted. Van Heerden, KPMG's head of risk management, tells *noseweek*: "There was a process followed and clearly the FSB must have done their investigations and convinced the court there were adequate grounds for curatorship and the reasons for that are the reasons why KPMG have withheld the financial statements."

In other words: the FSB relies on KPMG's refusal to sign off redundant accounts to justify its application for curatorship, and KPMG uses the FSB's curatorship application to justify its refusal to sign off New Era's accounts!

"Our first duty was to fully cooperate with the FSB and the curators," says Van Heerden.

And what of New Era, your fee-paying client? *noseweek* asks.

"And to the company," he replies, "...of course."

So what is it really all about, if it's not about Majali's dubious business activities? Majali produces documents to show that he had informed the FSB several times of two new deals he had in the pipeline – the Nehawu share deal and an agreement with the SA Funeral Policy Association (Limpopo) to bring about R150m of members' policies onto



FINE MUSIC RADIO
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New Era's books – which would nearly have tripled the size of his business and set him on course to growing prosperity.

He believes white FSB officials seized on the cessions as an opportunity to shut him down as an unwelcome competitor to the “big boys”, and started plaguing New Era with threats and demands without giving him an opportunity of sorting out the problem.

He contrasts the leniency afforded other, white, players in the sector who committed far more serious misdemeanours:

■ MCubed, contracted to the Sanlam group, was discovered in 2007 to have perpetrated a R10bn foreign exchange fraud by selling non-existent policies through Specialised Investment Solutions in Mauritius. The FSB stopped the company doing new business, but no application was made for curatorship or judicial management and Sanlam eventually sold off its MCubed franchise to PSG.

■ Prosperity Life's CAR had fallen to R5m in 2006/7, half of its required level, but it was given a grace period over a year to rectify its CAR, without any further action or applications for curatorship.

By contrast, the FSB sent a letter to

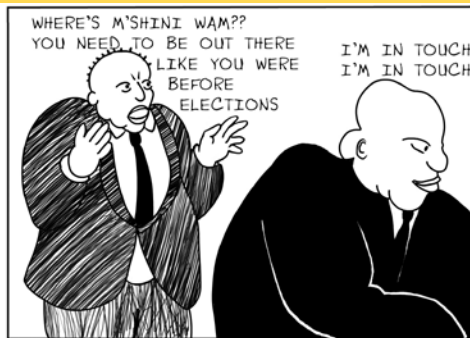
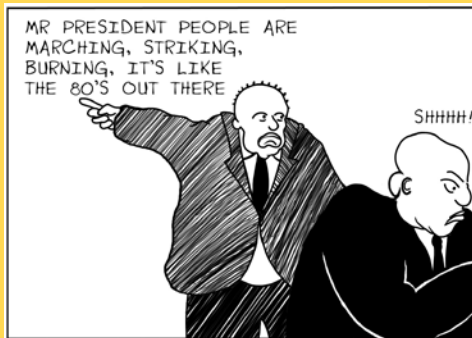
New Era on 19 December warning him that if Majali did not immediately sort out the problem, “the Registrar intends to prohibit New Era from carrying on all long-term insurance business, with effect from 1 February 2009”.

So what, after all that, has become of Majali's betrothed in business, Nehawu? The union has announced that Sanlam is its new partner, and that, together, they now propose buying out Majali's stake in New Era for R11.2m – on condition Majali resigns his directorship. Majali is furious. It is clear Sanlam had got its hands on secret information about his company from Nehawu, despite the union signing a confidentiality agreement.

The price being offered? He says his KPMG auditor, in the middle of a meeting with the NIC, had blurted out that, as far as he was concerned, New Era was worth just R11.2m. The next day, the FSB goes to court for the curatorship order. Majali discovers this only on 7 July, when the court grants the order.

For Majali, it all smacks of a set-up. He says he's convinced he will be able to get the *ex parte* order overturned on the return court date, 1 September, since the FSB based its application on several provably incorrect statements. ■

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Why unpaid royalties are music to Samro's ears

The music rights organisation is a lot more enthusiastic about rewarding its bosses than it is about paying artists

SOUTHERN AFRICAN MUSIC RIGHTS Organisation Ltd (Samro) is a non-profit organisation whose function is to administer music copyright and collect royalties for its members. It collects these from TV and radio stations, and from in-store music channels, pubs, clubs, restaurants and the like. It's a substantial operation: Samro administers some four million musical works on behalf of some 7000 local songwriters and over one million foreign rights holders (who belong to affiliated foreign collecting societies) and it collects royalties from some 100,000 licensed premises.

It is not Samro's function to bring hugely expensive legal proceedings against people who have harsh things to say about the organization. So Samro members must be wondering why it has brought a high court application against Graham Gilfillan, to shut up a man who is something of an expert in matters of copyright, and who is sometimes described as a copyright investigator. Gilfillan is also a director of the much smaller collecting society, South African Recording Rights Ltd (Sarral).

Until the recently the two didn't compete, with Samro acting as guardian of "performance rights" and SARRAL overseeing "mechanical rights" (the copying of music). In 2006, however, Samro entered the mechanical rights' market, and the relationship between them is now so bad that the Competition Commission is considering a complaint lodged by Sarral.

The case to keep Gilfillan quiet flows from certain newspaper articles in which, Samro believes, Gilfillan had a hand. For example, on 13 July 2008,

the *Sunday World* ran a story entitled "Samro Eats The Fat", which suggested that Samro was corrupt, and on 1 February 2009 *City Press* ran a story under the headline "The hunt for Fassie's millions hots up", which suggested that the late diva Brenda Fassie was "robbed blind" by Samro. The application also stems from the fact that Gilfillan – who was employed as an investigator by the executor of Brenda Fassie's estate, David Feldman – allegedly made defamatory remarks about Samro at a press conference held in February this year when the legal proceedings brought by Feldman against Samro for unpaid royalties were suspended and referred to arbitration.

During the weekend following the press conference, the story was everywhere: "Royalties War over Fassie" said the *Independent on Saturday*; "Ruling fails to calm Fassie row" said the *Pretoria News*; "Fassie dispute no end in sight" said *Saturday Star*, "Open war over Brenda Fassie's royalties" said the *Saturday Weekend Argus*, and "Brenda

got five cents in 14 years" said *City Press*.

Samro has filed an affidavit in support of its claim that Gilfillan must be ordered to stop saying horrible things about them, and Gilfillan has filed an answering affidavit. Samro has asked for a postponement, with the result that the case is due to be heard on 15 October 2009. *Noseweek* is quite happy to leave it up to his Lordship to decide whether Gilfillan defamed Samro, whether he has a public interest defence, and whether Samro is suffering ongoing harm that entitles it to an interdict. Samro will say that it is, citing the fact that the Cape Town International Jazz Festival cut its ties with Samro following the adverse publicity.

Noseweek had a little look at the rather hefty court file, and it's quite clear that Gilfillan doesn't think Samro is quite the organisation its website makes it out to be – a "world-class African society with a commitment to solid management, cost-effective services as



well as quality business ethics and values”, which ensures “that composers’ and authors’ talents are adequately credited both locally and internationally for music usage”, and so on. *Au contraire*, says Gilfillan, who, over the past 12 years, has investigated no fewer than 226 cases of alleged misappropriation of royalties by Samro.

Gilfillan makes a number of startling claims. Top of the charts is the claim that Samro collects far more money than it distributes – for example some R322.3m was collected in 2007, against a mere R92.2m distributed. He says that the undistributed reserve increases every year, which is clearly contrary to the mandate of the organization from its members, and which has the effect of impoverishing Samro members. Samro CEO Molefi Motsatse admits that there is a large amount of undistributed money, but claims the organisation is trying hard to find a home for it.

Gilfillan claims there are several factors behind the undistributed money.

SAMRO admits there is a large amount of undistributed money, but says they are trying hard to find a home for it

For starters there may be unclaimed royalties if an artist cannot be found or has died – Gilfillan gives the example of very popular song-writer and theatre entrepreneur Gibson Kente, who died in 2005, and whose estate has not received royalties since his death. Another source of undistributed reserves is royalties in suspense accounts, ostensibly because Samro doesn’t have enough information to make a payment. But, says Gilfillan, in many cases Samro knows exactly where the money should go, or simply chooses not to look too hard – he quotes the example of veteran guitarist Philip Thabane, whose royalties were paid into a suspense account for 40 years, with Samro making no attempt to find him. (Incidentally, these suspense accounts are, in the tradition of Cold War thrillers, known in the trade as “Warsaw accounts”).

A further source of undistributed

reserves is royalties that are actually due to songwriters who are not Samro members, as may happen when Samro grants a blanket licence to a body like the SABC. Example: Gilfillan says that Samro has, since 1978, been collecting sums due to a musician who has always chosen to personally licence his work, Oliver Mtukudzi – but hasn’t paid him a cent, even though he is now a Samro member.

Besides the contributions from such clearly unsound practices, much of the massive surplus seems to stem from good old-fashioned slackness. For example, says Gilfillan, airports, cafes, restaurants and shebeens enter into licence agreements with Samro, which allow them to play music on their premises. The licensees don’t, however, submit detailed playlists of what is played. Unbelievably, Samro hasn’t come up with a method of distributing money that’s collected *sans* playlists, so these amounts go to the undistributed reserve and are described as “general” funds. Gilfillan claims that although

Brenda Fassie was South Africa’s most prolific songwriter and musician, even she never received a payment for monies collected as “general”.

There’s also an issue regarding codes: appar-

ently songs are often wrongly given an internal code which categorises them as “public domain” works, which results in the songwriter getting a far smaller share of what Samro collects for that song. As an example, Gilfillan says that Simon Nkabinde, aka Mahlathini, has been badly affected by this.

Where does all this money go? CEO Motsatse pooh-poohs Gilfillan’s allegations, saying that the people running Samro would have no interest in ripping off members, because they themselves have no ownership in the company. But Gilfillan claims that the undistributed money is eventually written back to income. In the trade, this is known as “black box income” – though, as this sounds a little sinister, euphemisms like “no-royalty income” or “write-backs” are preferred. Gilfillan says black box income is then fed into increased expenses.

Samro executives look after them-

selves rather well, says Gilfillan, through large salaries, first class travel, expensive motor vehicles, large expense accounts and conferences in luxurious resorts. Even non-executive directors do OK, with one S Mabuse being allowed to stay in Rome for a week after a conference. Motlatse doesn’t deny that he earns R1.8m p.a., that the chief operating officer Gregory Zoghy earns R1.2m p.a., and that the various general managers earn R700,000, but claims that these sums are reasonable. Gilfillan finds such excess outrageous in a non-profit organisation, and says that there is also an income tax implication, in that money which would have been taxed in the hands of songwriters is now being gobbled up as expenditure.

Gilfillan makes a number of further claims. He says that the retirement annuity is abused, and that Brenda Fassie’s estate was short-changed some R45,000. In fact, he thinks that Samro has deliberately failed to pay money to Fassie’s estate, to deprive it of the funds to litigate against Samro. Gilfillan says there are conflicts of interest, with EMI Publishing (Pty) Ltd having directors sitting on Samro, and Samro in turn bending over backwards to make payments to that company. A further conflict arises where a Samro general manager, Modri Motshoari, owns a record label called Afrobeam.

Gilfillan also alleges cases of nepotism, with one Gideon Roos having served as the organisation’s CEO for 35 years, (a veritable long-player) and both of his sons having been employees. Lastly, he claims there’s entrenched racial discrimination: in the apartheid days a special category of membership called “candidate members” (read “blacks”) was created and, to this day, though the category remains, there are no white candidate members. White songwriters also appear to earn more than blacks – Gilfillan claims that the top white earner gets around R3.4m, whereas the top “non-white” earner takes home some R190,000.

Gilfillan suggests that Samro was very keen to move the Brenda Fassie case to arbitration in order to take the matter out of the limelight. If this application goes all the way to a hearing, a pile of linen will be aired, will Samro allow it to go that far? The music industry will be watching intently – especially in the light of recent rumours that the Auditor General is investigating a R97m hole in Samro’s finances. ■



Piste off at Tiffindell

A pair of fast operators have nudged SA ski resort onto the skids in a Byzantine buyout

THERE'S FUN AND GAMES aplenty at South Africa's only ski resort, Tiffindell – but most of the action isn't taking place on the snow-covered slopes.

Tiffindell, situated on a farm near the Eastern Cape hamlet of Rhodes, was created some 15 years ago by a group of keen skiers, including the Van Eck family: father Victor and sons Ivan and Philip. The skiers formed Tiffindell Ski Ltd, but several times found themselves on a slippery slope – ski resorts are costly to run (especially ones that operate under a blazing African sun) – and, on occasion, shareholders made loans to the company to keep it going.

A few years ago it was decided to sell plots and chalets at the resort, and the company applied to subdivide the property. While the application was pending, keen skiers acquired rights of pre-emption (options). Patrick Martin, for example, owner of a ski and snowboard shop in Durban, acquired a right of pre-emption on a plot for some R200,000, as well as a right to buy a

completed chalet with two partners, for some R1.8m. In fact, regulars like Martin and his partners were so keen to get in on the act that they paid in full before the subdivision process was even completed. Once the subdivision went through, they converted their rights of pre-emption into formal agreements of sale.

So you had an unusual situation: a company with a valuable asset, a good product and a monopoly in the market was barely breaking even. Tiffendell was servicing considerable debt, but lacked capital to build enough accommodation to make the resort viable. All of which didn't go unnoticed by two sharp operators, David William Taylor and Andre le Roux (*see side bar*).

After lengthy negotiations, a deal was done: Taylor and Le Roux would buy the land from Tiffindell Ski and develop it – more accommodation, ski lifts and ski runs, and an airstrip. Taylor and Le Roux would lease the resort back to Tiffindell Ski, which would “unlock the value of its assets”, i.e. use its

expertise to run the expanded resort. Taylor and Le Roux would acquire a majority shareholding in Tiffindell Ski, which they persuaded the existing shareholders was necessary if they were to raise the finance for the resort to go mega. But everyone would win – Tiffski would make money developing the resort and selling land and chalets, and Tiffindell Ski would use the proceeds of the sale to settle most of its debt, and make its money running an expanded resort, while paying a very modest rental.

On 12 July 2007 agreements were signed. Using a company called Tiffski Property Investments (Pty) Ltd, Taylor and Le Roux bought the assets of Tiffindell Ski – the land and the movables – for some R22m. Of this, only R5m was payable immediately, with some R2m payable within 21 days of signature. Some R4.6m would take the form of guarantees for the company's liabilities (rights of pre-emption and loans), and some R11m was payable on transfer (to be completed within three months of signature). A lease was signed that would kick in on transfer of the property: Tiffindell Ski would pay Tiffski R10,000 per month in rental. Lastly, using another *alter ego*, Greenlight Investment Holdings (Pty) Ltd, Taylor and Le Roux, over a two-month period, acquired some 51% of the shareholding in Tiffindell Ski, at a cost of some R2.8m.

But things didn't go as planned. Taylor and Le Roux couldn't get the finance they needed to develop the resort. They therefore couldn't pay the remainder of the purchase price – so Tiffindell Ski struggled to operate, even having to delay payment of its VAT. When the directors of Tiffindell Ski tried to cancel the agreements with Tiffski and Greenlight, for lack of performance, things got really nasty, with Taylor threatening to have MD Ivan van Eck jailed for seeking legal advice (this offence is new to *noseweek* too).

Taylor and Le Roux then orchestrated a *putsch*, dismissing MD Ivan Van Eck at an illegally-constituted meeting, along with other directors who wouldn't “bend ze knees”. The sacked directors were replaced by Le Roux and three of his pals – though Taylor didn't join the new board, he nonetheless, apparently, ran things at Tiffindell Ski (into the ground, some say). By now, most of the remaining shareholders wanted nothing more to do with Taylor and Le Roux, and accepted the share

offer, which meant Greenlight ended up with some 87% of the shareholding of Tiffindell Ski, at a cost of a further R1.4m. Even then things weren't simple – the Van Eck family had to take Taylor and Le Roux to the Securities Regulation Panel before they received payment for their shares.

Taylor and Le Roux then delayed the transfer of the chalets and plots which had been sold to Patrick Martin and others, requiring them to sign fresh sale agreements, and changing conveyancers on at least two occasions. Eventually Taylor and Le Roux raised the funds to complete the purchase,

shares in Tiffski. In a public "Sens" announcement, dated 14 November 2008, Bonatla announced an offer to buy all shares in Tiffski for R120m – justifying the purchase on the grounds that Tiffski owned the resort, and was leasing it to Tiffindell Ski for some R3.9m per annum. The R120m would be paid by an issue of 210,000 shares in Bonatla. The Bonatla offer was subject to a satisfactory due diligence to be completed by 22 November 2009.

But Bonatla pulled out at the last moment, for a number of reasons. Firstly, Bonatla couldn't get the audited statements it required. Secondly, the due diligence showed that a creditor of Tiffindell Ski had applied to liquidate that company, which made Bonatla nervous. Thirdly, the resort looked run-down and Bonatla simply didn't believe it was worth what Tiffski claimed. Fourthly, there was nearly R20m owing to the Bank of India. And, lastly, Bonatla

was nervous about having Taylor and Le Roux as major shareholders for "various" reasons – for example they thought there was something very wrong with the fact that Le Roux was a director of both the company which had sold the resort and the company

On the basis of this trumped-up lease agreement, the two persuaded the Bank of India to lend Tiffski some R19m

but did so by very dubious means: they simply ignored the agreement to rent the resort for R10,000pm, and replaced it with an agreement to rent it for five years for some R370,000pm – which Tiffindell Ski could never have paid, and never did.

On the basis of this trumped-up lease agreement, the two persuaded the Bank of India to lend Tiffski some R19m, on security of a bond to be registered over the property. The pair used this loan to pay off the balance of some R11m, which allowed transfer to go through in September 2008. But, although Taylor and Le Roux paid the final instalment of R11m to Tiffindell Ski, they in fact applied some R6.8m of that to settle one of Tiffski's own debts. (As further evidence of how fast and loose they played, Le Roux also paid some R2.5m of the Bank of India loan into the account of one of his companies, Prestige Procurement). On top of all this, Taylor and Le Roux never came up with the R4.6m in guarantees for the liabilities. All in all, they underpaid some R11m on a purchase price of some R22m.

Taylor and Le Roux then used the bogus lease agreement to persuade listed company Bonatla to offer to buy all the



Tiffendell chalets in the Eastern Cape

which had bought it. Bonatla was also concerned that the two hotshots had blown some R3m on a Tiffindell promotional event at Monte Casino – which had not led to a single new sale.

On 3 February 2009, a creditor obtained an order for the provisional liquidation of Tiffindell Ski. Clearly not caught offguard, Tiffski sent out a notification on 5 February 2009 to say that Nitrochron Investments (Pty) Ltd – which had the same address as Tiffski and Greenlight – had been appointed as the new company to run the Tiffindell resort, and that it would take over the lease and try to minimise job losses.

So what about the owners of preemptive rights, and the shareholders who had loaned money to Tiffindell Ski? As stated, Tiffski never came up with the R4.6m required to take care of them, though the safeguarding of these creditors had always been integral to the deal. In fact, way back, on 6 July 2007, Taylor had written to one of



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An artist's impression of the proposed Tiffindell development

There's no business like snow business

ACCORDING TO CIPRO RECORDS, David William Taylor is a member or director of 25 close corporations and companies. In the CV he submitted to Tiffindell Ski, he claimed he was president of investment company Digital Explorer Inc, of Boca Raton, Florida, from 1995 to 2005, when he seems to have returned to South Africa. Prior to leaving South Africa in 1999, he was involved with a number of businesses: founder and CEO of Fourth Dimension Video and Television Productions, from 1989 to 1994; founder and CEO of Taylor Made Advertising from 1995 to 1998; and founder and CEO of Convergent Network from 1997 to 1999. Apparently, there may have been some controversy about the proposed JSE listing of this company, which prompted his departure for the USA. Taylor declined to comment on the circumstances surrounding his departure.

CIPRO records show that Andre Pierre Le Roux is a member or director of over 60 close corporations and companies. In the CV which he submitted, he claims that he started his career as an articulated clerk at accountants BN Jooste & Co, and then became financial director at Taylor Made Advertising. Since 1998 he claims to have been involved in financial and tax management businesses, like Chess Consultants CC and Atlantic Corporate Finance (Pty) Ltd. He also claims to have a BCompt degree, though at the insolvency enquiry he stated, on oath, that he holds no post-matric qualifications. ■

Tiffindell Ski's directors, Keith Mckay, confirming that Tiffski would recognise rights holders by way of either a refund, an option to stay in through an additional payment, or through replacement with fractional ownership.

In February 2008, Patrick Martin received a letter offering him the choice of a refund of the R200,000 he had paid for his plot, or a buy-in. As recently as 30 March 2009, at a meeting between investors and Nitrochron, it was minuted that Tiffski acknowledged "rights of use" in terms of the agreements with Tiffindell Ski. So would Tiffski in fact honour these rights? Not likely.

In April 2009 Taylor sent out a notice to interested parties: "We hereby refer and notify you of the liquidation of Tiffindell Ski Ltd. Tiffski Property Investments (Pty) Ltd, as the owner of the property, does not and cannot, under

The Van Ecks claim to have lost at least R11m.

Some of the victims have instructed attorney David Oshry to represent them, and Oshry has instituted an insolvency enquiry (a "section 417 enquiry") to look at various matters, including whether the sale to Tiffski can be set aside, and whether any of the directors bear personal liability. Le Roux appeared at the first hearing, but Taylor was excused on the grounds that he had already paid for a family holiday (at Tiffindell, it turned out). Perhaps he'll put in an appearance at the resumed enquiry. And perhaps the presiding officer will be able to resolve whether Taylor and Le Roux were simply out of their league and forced by circumstances to start cheating, or whether it was, from the start, a clever asset-stripping operation.

When *noseweek* asked Taylor and Le Roux for comment, Taylor responded, on a Tiffski letterhead, with a terse "...we are advised that commenting on the merits of the matter may be detrimental to our cases as they are *sub*

judice ... the general allegations are patently incorrect and devoid of truth ... we are investigating various aspects in relation to the transaction and fully intend to prosecute any possible crimes that may arise out of the investigation being conducted".

Two sharp operators, who underpaid some R11m on a R22m deal, now own a ski resort worth R22m

present circumstances, acknowledge the rights agreements/membership agreements of any nature entered into by Tiffindell Ski Ltd. As such we are instructing Nitrochron (Pty) Ltd, who have been appointed a new operator of the resort, to cancel any bookings/reservations made to date under the previous membership agreements. You are advised to contact the liquidator for any claims in this regard."

Time for the *après ski*. Two sharp operators, who underpaid some R11m on a R22m deal, now own a ski resort worth R22m or R120m, or somewhere in between. A ski lift with a difference you might say. And a lot of people have been stung – *noseweek* couldn't get any comment from the liquidators, KPMG, but it seems that as many as 60 people could be out of pocket. Martin has lost some R770,000 (he never did receive that R200,000 refund), and a long-time shareholder and one director, Tim George, is down at least R500,000.

A few days later Le Roux (writing on a Greenlight letterhead) told *noseweek* he had documents proving that the claims made were "patently incorrect and avoid the truth". Asked him to be more specific, he did not respond. A day or two later Taylor phoned *noseweek*. He claimed that the story affected Le Roux more than himself, because he was simply the owner of Tiffski and therefore of the land, whereas Le Roux was the owner of Greenlight and therefore of Tiffindell Ski.

When *noseweek* pointed out that CIPRO records show that Taylor is also a director of Greenlight, he said this was an error. When *noseweek* pointed out that the records reflect Le Roux as a director of Tiffski, Taylor claimed that Le Roux had resigned from this position. Taylor said Le Roux would bring in his file of documents and show *noseweek* the error of our ways.

He never arrived. ■

Whistling down the wind

Despite an urgent call for a probe into R153m tender irregularities, Cipro's boss is sitting on his hands

CIPRO CHIEF EXECUTIVE Keith Sendwe has been accused of wrongdoing in regard to the controversial R153m information technology tender to little-known ValorIT (*noses114&115*).

The charge is made by Sendwe's own chief operations officer, Melanie Bernard-Fryer, in a "strictly confidential" protected disclosure document which she submitted to him recently.

Bernard-Fryer was suspended from her duties at the DTI's Companies and Intellectual Property Registration Office for three months from last October, after refusing to sign the "business case" of the tender, a document which defined the specific requirements of the information technology tender won by ValorIT.

The business case is a highly confidential document for use only by Cipro and Sita – the State Information Technology Agency. Bernard-Fryer claims that it was leaked to ValorIT, who reproduced it word for word – including grammatical errors – as part of their successful tender proposal.

Bernard-Fryer makes her accusations under the Protected Disclosures Act. The object of the Act is to protect employees who make disclosures relating to criminal or irregular conduct in the workplace – which implies anonymity to the whistle-blower. But Sendwe promptly circulated Bernard-Fryer's disclosure document to members of the Cipro executive team. Within a week copies were circulating in the department – and at *noseweek*.

So what did Bernard-Fryer disclose?

In mid-January, shortly after her return from suspension (all charges dropped), various whistle-blowers approached her "with disclosures about alleged irregularities with the tender". She immediately informed Sendwe and cautioned Cipro's executive team that some of its members, including Sendwe, were implicated.

In April *nose114* revealed ValorIT's surprising win. Bernard-Fryer called for a forensic audit into the tender process to determine "once and for all whether

there is any truth in the allegations". Nothing was done.

In May *nose115* revealed how ValorIT's website content had been lifted, word for word, from the website of technology and services group GijimaAst.

"I advised [Sendwe] to halt the tender and to launch an investigation into the allegations." Again, nothing was done.

Also in May, Bernard-Fryer's report recounts, she was approached by a group of whistle-blowers who lambasted her for being an "inactive employer" in terms of the Act on the Prevention and Combating of Corrupt Activities.

Some of the allegations made in her

now widely distributed "protected disclosure":

■ "The whistle-blowers have sufficient evidence to warrant a forensic investigation"

■ "SCM (supply chain management) processes were flawed from the onset and gross abuse of confidentiality issues have taken place"

■ "False information was allegedly given to the media by persons in positions of authority."

The latter accusation could refer to a press release by Sendwe, after *nose115*, in which he claimed: "One of the most crucial announcements in the seven-year history of Cipro has unfortunately been marred by ill-founded rumours."

Sendwe then gave an unqualified assurance that "We have been totally transparent about the process employed in awarding the tender," and that Cipro followed a "stringent tender process that was cross-checked and evaluated every step of the way".

When no newspaper picked up on this gushing press release, Sendwe had it reproduced in massive advertisements in the national media.

Bernard-Fryer claims that an initial R56m payment to ValorIT in April "cannot be justified". She notes (at 7 June) that a second payment of nearly R20m was about to be made to the company. "Should these allegations prove to be correct, there is very little recourse for the state to ensure the recovery of the funds."

Bernard-Fryer places on record that she will not divulge the identities of the whistle-blowers. "In this regard, I must also remain anonymous to prevent reprisals". Small hope of that.

Finally, she says: "The tender should be halted immediately, pending the outcome of a forensic investigation. A further payment [the R20m] must be avoided at all costs, as should any further engagement with the service provider [ValorIT] until such time as the audit is completed. The Auditor-General as well as National Treasury must be informed without delay." ■





Unwelcome to Fick's Pool

The pale-faced grandees of a southern Cape coastal village are scheming to chase the non-whites out of the water

HERMANUS IS, OF COURSE, FAMOUS for its whales. It's also famous for its immaculately maintained 10km cliff path, that runs from the harbour in the west to Grotto Beach in the east. A major landmark on it is Fick's Pool, a tidal pool in the residential area of Westcliff. Constructed in the 1920s, the pool is an iconic image of Hermanus, featuring on the first page of the latest coffee-table book on Hermanus, by Beth Hunt.

The official Hermanus tourist brochure, "*Hermanus Info 2009*", makes it sound positively idyllic: "Fick's Pool is an easily accessible smaller pool with a sandy floor that is very popular with local children. It lies in a sheltered rocky bowl in a wide crack in the cliff, where at high tide the waves crash over the wall into the pool eliciting squeals of terrified delight."

Close to multi-million rand white-owned homes and guest houses, the pool is also near enough to the residential areas of Mt Pleasant (coloured) and Zwelihle (black) to be well frequented by children of a darker hue. It's an unwritten rule of "new" Hermanus that whites seeking a swim should go eastwards to the tidal pool below the Marine Hotel,

or to the beaches. *Noseweek* was told that black and coloured mothers like to drop their kids off at Fick's Pool on Saturday mornings, and that kids go there in droves during school holidays.

The Overstrand municipality has now decided that it's time for the *nie-blankes* ("non-whites") to get out of the water. It wishes to award a tender to develop and operate a restaurant at the pool, to cater primarily for the tourist market. The first proposal allowed for the restaurant to control access to the pool, through an admission charge, but the latest proposal insists that the public will access the pool free of charge. Perhaps someone mentioned that the laws of the new South Africa do apply even in the little coastal corner that shall forever be Old South Africa. That even the National Environmental Management: Integrated Coast Management Act 24 of 2008, due to come into force shortly, must be considered? According to the Act, coastal public property belongs to all citizens and must be accessible free of charge. It delineates a "coastal protection zone" which, in urban areas, extends 100m from the high-water mark.

Noseweek spoke to Paul Slabbert of

PHS Consulting, the environmental management company handling the process, who was keen to describe how the whole process. The latest proposal takes into account environmental concerns which were raised (the tree-huggers *noseweek* consulted were, generally, in favour of the development), and the proposed 100-seater restaurant will consist of inter-leading low-level buildings on one side of the pool, and an outdoor "Caribbean" area on the other, for sundowners.

Noseweek was surprised at the scale: it takes up a considerable portion of the area surrounding the pool, with no more than 1.8m between the buildings and the water. The pool access passes directly between the indoor and outdoor sections. When *noseweek* put it to Slabbert that children would be deterred from swimming in the pool, he said he had

proposed a community participation system, which would encourage children to swim at times when the restaurant was not in use.

The existing ablution facility (locked for years, apparently) will be incorporated into the restaurant, and new public toilets will be built higher up, close to the cliff path. The parking area directly above the pool will be upgraded. For reasons that aren't clear, a piece of vacant land 100m or so down the road will become a second parking area. A commemorative stone, marked "*Ossewaatrek 1938*", on that site (presumably laid during the centenary celebrations of the Great Trek), will be restored to its former glory (it was vandalised, hence its present minimalist appearance).

Slabbert's assessment recommending that the development go ahead is now with the Western Cape Department of Environmental Affairs. Conceding that the developer was paying his fee, Slabbert is bright enough to admit that a supposedly independent report by someone paid by the developer will always risk being viewed with suspicion. But that's how it works he said – government does not pay for these things.

Next stop was the municipality, which, in its official motivation, says the pool is a "harsh, unfriendly, neglected, dirty, unsafe and inaccessible environment, which is difficult and potentially dangerous for the young and elderly to

The tender trap

use". This, after nearly a century of safe and friendly use by generations of children? *Noseweek* was keen to know why, if things are so bad, the municipality doesn't maintain the pool, as it does the other tidal pool and the beaches. Alas; municipal manager Werner Zybrands and town-planning head Riaan Kuchar declined to talk – so *noseweek* can't say what the council thinks of claims being made by worried locals.

It's claimed, for example, that in the face of restaurant signage, fencing, gates, control by the restaurant over the stairs and the presence of diners and guards, local children will stop using the pool. It's also thought that a restaurant is hardly likely to encourage children, some of whom may take to begging, from swimming within metres of diners. And what of a claim that the initial proposal, giving the restaurant control of access, was a deliberate misrepresentation, to get buy-in from local white residents. Or the claim that the municipality doesn't want its darker residents swimming at Fick's Pool, and recently built a public pool in the township of Zwelihle in order to keep darker children away – and the claim that the council pool doesn't cut it, because it's not free, is built alongside a dump site and is deemed unhygienic, and because it doesn't take account of the weird realities of South Africa – coloured children, it seems, aren't comfortable about going to a pool in a black township.

Noseweek could go on, so it would be a shame not to. People also want to know why the municipality is allowing a commercial development in a residential area, when it didn't allow a private high school in the same area. And why would the municipality want another restaurant when so many are struggling?

Then there's a suggestion that the second parking lot is primarily intended for the benefit of one of the three frail pale males behind the development, one Henri Lerm, who owns a hotel opposite the area, which needs more parking space (others behind the scheme are Peter Jones, who has interests in local restaurants, and engineer Richmond Macintyre). It's also said that Henri Lerm objected to a different development proposal relating to Fick's Pool and the municipality upheld his objection.

THE OVERSTRAND MUNICIPALITY'S reputation for being a law unto itself was recently highlighted in the Western Cape High Court, when, last February, Judge le Grange declared that a Hermanus tender process had been "grossly unfair and fundamentally flawed", and ordered the reinstatement of the original winners of the bid.

On 28 April 2007, the municipality's tender adjudication committee had informed M5 developers that they had been awarded a R600m tender to implement housing projects in the area. Unsuccessful bidders had 21 days to lodge appeals, and thereafter a contract would be signed. Blue Whale and Asla Devco both filed appeals – with Asla's coming in after the deadline.

On 12 February 2008, acting municipal manager Coenie Groenewald (who held his position for a mere five months, from 1 November 2007 until 31 March 2008) dismissed Blue Whale's appeal, saying he could find nothing wrong with the adjudication process. But he decided that Asla scored higher than M5 on empowerment – and told M5 the tender was thus going to Asla.

M5 applied to the high court for an order setting aside that decision and confirming the original award of the tender. Groenewald and the municipality defended the case, but Judge le Grange had little difficulty finding that Groenewald had "erred and committed a serious misdirection", and that the municipality was bound by its original decision. Groenewald, the municipality and Asla were ordered to pay costs, jointly and severally.

Eldon van Boom, the local Department of Environmental Affairs official responsible for the application, told *noseweek* he could not discuss the merits of the application. Asked if the department would consider social factors in the matter, he sounded distinctly doubtful. Besides, the department is unlikely to know what the "non-white" people of Hermanus feel, as they've been kept in the dark, and even misled. Last November Mt Pleasant community leader Bernard Overmeyer wrote to express the community's concern about and op-

Noseweek asked present municipal manager Werner Zybrands how much the municipality spent in defending this matter, who is paying Groenewald's legal costs and what disciplinary steps have been taken against him. Zybrands didn't answer.

Noseweek then heard that Asla has applied for leave to appeal the decision – and that Asla's letter objecting to the award of the contract to M5 had in fact been addressed to the executive mayor of the Overstrand, Theo Beyleveldt. *Noseweek* asked Beyleveldt and Groenewald to comment, and applied for copies of the Asla documents sent to Beyleveldt, and any notes or documents sent by Beyleveldt to Groenewald. *Noseweek* also asked to what extent the building of community housing has been held up by these proceedings – in a recent budget speech Beyleveldt said "there was a delay in the provision [of housing] because of a dispute in the appointment of a housing implementation agency, which is being dealt with in court".

Groenewald answered on behalf of both, referring *noseweek* to the judgment (which answers none of the questions,) and claiming that the matter was *sub judice*.

Apparently an agreement has been reached which allows M5 to do some building work, pending the resolution of the court proceedings. *Noseweek* predicts that the matter will be settled before the appeal is heard, and that Asla will share the spoils with M5. After all, that's how you deal with things when you've lost out, or stuffed up. ▀

position to possible plans to close the pool and convert it into a restaurant. Municipal manager Werner Zybrands wrote back: "I don't know where you're getting this incorrect information from, but there's no question of Fick's Pool being closed to the public."

So a public pool that's been used for eighty years is, effectively, to be privatised, for the virtually exclusive use of tourists and wealthier locals – and to the financial benefit of a few honkies who are probably doing alright for themselves anyway. It just wouldn't happen in the new South Africa. But this is Hermanus. ▀



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Issue 119



Behind the uprisings in the land of the rising sun

AS PUBLISHING EDITOR of two community newspapers in Mpumalanga, the *Umjindi Guardian* (Barberton) and *Elukwatini Guardian* (Carolina-Badplaas), I am not in any way surprised at the violent protests that have erupted in several municipalities across the province – and nor should anyone else be.

Regularly reporting, as I do, on the affairs of my own municipality of Umjindi, I can state with some authority that the protests may be directly linked to the ANC's "loyalist" deployments to mayoral and other local government positions, and the subsequent hand-picking by these public officials of their own "loyal comrades" as councillors or as candidates for election.

One might say there is nothing wrong with this deployment – after all it's not uncommon anywhere around the world for political parties to "deploy" loyal members. But here's the difference: ANC deployments, particularly in local government, are not based on party loyalty but on loyalty to individuals – and every mayor has his or her own clique. Loyalty to individuals superceding party loyalty has shattered the camaraderie that once existed among party members.

Battles in party ranks for access to self-enrichment opportunities, mainly in the form of tenders to supply services, have become commonplace.

Umjindi municipality sets the perfect example. When the current mayor, Richard Lukhele, was deployed to the helm in 2002 he spread the spoils as widely as possible. But he faced a council which included a few "rebellious elements", i.e. fellow ANC councillors who dared to express concern about some questionable decisions – nothing too serious; just matters like his in-laws being awarded a prime piece of commercial land, or his insistence on the appointment of a close friend, a social worker, as municipal manager.

These rebels, mind you, never once expressed concern regarding service delivery issues. But when the 2006 local elections came, the good mayor, who was assured a second term in terms of party policy aimed at maintaining continuity, wasted no time: he hand-picked comrades loyal to him to be endorsed as ward candidates, and handsomely rewarded his loyalists with tenders.

All the excluded comrades could do was plot Lukhele's ousting. So in June last year they decided to oppose the renewal of the "social worker" municipal manager's contract, in the hope of weakening Lukhele. They failed miserably. Then, gradually, the realisation dawned: they had failed because they hadn't mobilised the community for an "effective" protest.

Since then the call for protests has

had very little to do with service delivery issues, and a great deal to do with a failure to share the self-enrichment spoils widely enough. There are of course serious service delivery issues, and communities are unhappy – but the common man or woman on the street does not organise a mass protest. So step in the comrades, who mobilise the community under the guise of service delivery protests.

I saw this again last year when violent protests rocked the local municipality of Pixely Ka Seme, Volksrust. The place resembled a war zone. Five councillors' houses had been torched and had burned to the ground. By the time I arrived, around mid afternoon, the protesters had gathered at the local stadium and were being confined there by a fleet of SAPS Nyala riot vehicles. The cops wouldn't allow journalists in or protesters out, ruining my chances of claiming membership in the Bang Bang Club.

But I did get the story when the frightened ANC-deployed mayor and her staff provided me with a copy of the memorandum of grievances submitted by the protesters: the logo at the top of the document was that of a local ANC branch!

Recently this beloved land of the rising sun, Mpumalanga, has been rocked by violent protests in the local municipalities of Thaba Chewu (Lydenberg-Sabie) and Mkhondo (Piet Retief).

When I asked a comrade, why "the organisation" (the ANC) can't simply address service delivery issues in these municipalities, he explained: "It's not so much about that, it's about comrades against comrades."

"It's about the spoils. Comrades are not sharing any more – they are only giving to their closest friends and allies." ■

Man in the latex mask

WAS HIRING CLOTHES to wear to a friend's Glam & Glitz birthday party when I saw it – a latex mask that would transform me into Robert Mugabe. For a moment I thought of wearing it to the party, which would largely be attended by Zimbabweans (Cape Town is known to Zimbabweans as Harare South – London is Harare North), but I wasn't too sure about the durability of our national sense of humour.

A few days earlier I had been reading James Kilgore's *We are All Zimbabweans Now* and it had taken me back to my home town of some 30 years ago. As the novel opens, idealistic American graduate student Ben Dabney is about to leave for newly democratic Zimbabwe to document the history of the armed struggle against white rule. An extract from Mugabe's inauguration speech in 1980 hangs on his wall: "It could never be a correct justification that because whites oppressed us yesterday when they had power, blacks must oppress them today because they have power. An evil remains an evil whether practised by whites against blacks or blacks against whites. Democracy is never mob rule."

Depending on your perspective at the time, Mugabe was either a Marxist terrorist or an articulate and determined man of principle and reason, waging a just struggle. A man who had publicly acknowledged that "in a democratic system you have to accept

RICK DE SATGÉ
REFLECTS ON
We Are All Zimbabweans Now
by James Kilgore

the verdict of the people." Today Dabney appears hopelessly naive and his admiration for Mugabe hardly credible. But it is worth remembering that his respect for the man was shared by thousands. If you remain sceptical, dismissive or too young to remember, arm your search engine and hunt down the 1979 BBC video *Portrait of a Terrorist*. It provides a useful actuality clip to help situate your reading of Kilgore's novel. It may also help you understand the loss of political virginity imprinted on its pages.

In the early 1980s the Zimbabwean liberation war was a huge inspiration to those involved in the South African anti-apartheid struggle. Our script was pumped up with the titanic struggle of the oppressed black majority against white minority rule, overlaid with socialist rhetoric. This was the era of the heroic Frontline States versus the wicked apartheid machinery. Victory was certain.

We had not yet moved beyond the comforting black/white, colonial/imperial narratives of history, to reframe Mugabe's words and ask whether there could be a "correct justification" for former liberation heroes transforming into an ethnic and economic black elite who would go on to oppress their fellow countrymen for the next 30 years. We had not yet conceptualised how political opposition could be characterised as "chaff to be blown

away" (*gukurahundi*), or how ordinary citizens eking out a livelihood could be regarded as filth to be "cleaned up" (*murambatsvina*).

Kilgore's novel takes us back to beginnings and provides a meditation on the crafting and evolution of "history". It strongly evokes Harare in the early 80s, a curious city in transition, a magnet for international struggalistas, left-wing academics, South African refugees and aid agencies, blending together a heady combination of ideological and sexual energies.

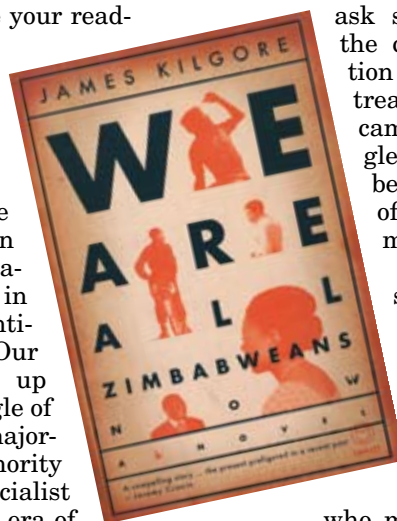
Zimbabwe was a society recovering from conflict and starting to ask some questions about the conduct of the liberation war itself, about the treatment of women in the camps, about the struggles for power within and between the leadership of the liberation movements.

One particularly resilient question concerned the death of Josiah Tongogara, a ZANLA military commander and a force for the unification of the guerrilla armies of ZANU and ZAPU,

who might have threatened Mugabe's rise to power. Dabney begins asking awkward questions about the death of Tichasara, who is clearly modelled on Tongogara, and who, like him, died in a "car accident" in Mozambique just five days after the signing of the Lancaster House Agreement which ended the war.

The early 1980s was also a period of enormous hope and optimism, and Dabney journeys out from the sanctuary of suburban Harare to struggling rural co-operatives, where he encounters ordinary people and their determination to better their situation. "Give us homework," entreat the young people who have forfeited their education.

But then, as always, there falls the shadow. In Zimbabwe it was the threat of real, and supposed, "dissidents" –



disaffected members of ZIPRA (the armed wing of ZAPU) who deserted from demobilisation centres and returned to the bush. This residual conflict was a gift for the South African practitioners of dirty tricks, who were keen to keep the new government focused on its internal problems. It also provided an excuse for ZANU PF strongmen to settle old scores and neutralise present and future opposition, while simultaneously blaming the apartheid regime. A curious “win-win” situation.

Today the consequences of the Gukurahundi Campaign, which saw the North Korean-trained, Shona-manned, Fifth Brigade sweep murderously through rural Matabeleland, are well known. Kilgore deals with the issue almost obliquely, which gives his account its power. Dabney visits a rural school to conduct oral history interviews, and, while he is there, soldiers assault the school principal in front of his students. Later he is taken away and “disappears” – like 20,000 others.

At the time in Zimbabwe a deep and fearful silence reigned – a refusal to acknowledge that this could be happening. Dabney naively tries to bring the issue to the attention of those in power, believing his hero Mugabe to be “ill-advised”. And so the illusions begin to strip away. African news magazines reject his articles – they don’t want to print bad news from Africa.

Kilgore’s novel highlights the bitter aftertaste of heroic constructions of history. He abandons his search for the truth about Tichasara’s death, and in the process relinquishes the notion of a redemptive political figure who, had he survived, could have made everything better. Probably just as well, as the hands of heroes are seldom clean.

The novel warns us to be alert to the manufacturing of “unity” and consent. It shows how timidity or denial in the face of growing evidence of oppression resulted in the present situation, where shadowy men in the Zimbabwean security apparatus now don the Mugabe mask, to loot what is left of the country and disperse those who dissent to the diaspora.

Required reading for all Zimbabweans and South Africans.

Rick de Satgé was born in Zimbabwe and returned there in 1983 after being expelled from South Africa. He was in Harare at the same time as Kilgore and confesses to knowing the author well. ■

Whiff of approaching disaster

GERALD SHAW
REVIEWS

Architects of Poverty
by Moeletsi Mbeki

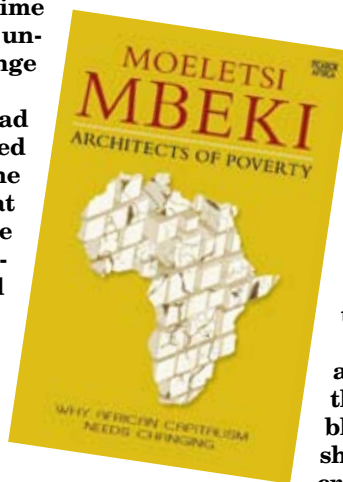
MOELETSI MBEKI is a challenging analyst of the ills of post-colonial Africa, who holds that South Africa is a quietly ticking time bomb – which will explode unless there is a decisive change of direction.

Why is Asia steaming ahead while Africa remains mired in poverty? What has gone wrong, says Mbeki, is that there has been massive mismanagement by the political elites in Africa and South Africa, who enrich themselves to the detriment of the general population. The political elite, he argues, see South Africa primarily as a cash cow that enables them to live extravagantly while pillaging resources and creating a huge urban and rural underclass, which can only be placated by welfare expenditure. Growing numbers of households are living in poverty while the elite grow richer and richer.

According to this lucid and easily readable analysis, the new black elites replaced the former white colonial elites. Exploitation of the black masses has continued as before, as has the exploitation of Africa’s resources.

Moeletsi Mbeki identifies a partnership in South Africa between the black leadership elite and what he calls the economic oligarchy – the owners and controllers of the “minerals-energy complex”. He argues that Black Economic Empowerment was invented by the latter – the handful of white businessmen and their families who control the commanding heights of the economy. It is naive to believe that BEE was an invention of South Africa’s black nationalists, he says.

The object was to co-opt leaders of the black resistance movement by buying them off with what looked like a massive transfer of assets to them, in effect a sanitised form of bribery. “To the oligarchs, of course, these assets were small change,” he notes. It was enough to wean the



ANC from its radical economic ambitions. Putting cash in the politicians’ own pockets was packaged to look like atonement for apartheid and reparations to the black people.

Worse, BEE struck a fatal blow against the emergence of black entrepreneurship, Mbeki asserts. It created a small class of

unproductive black crony capitalists, who have become strong allies of the economic oligarchy. The interests of manufacturers and organised labour have been made sub-

We are All Zimbabweans Now is available from Loot.co.za for R160 (RRP R195).

Architects of Poverty is available from Loot.co.za for R123 (RRP R149).


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Triplets of Bergheim

No grapes, cellar, nor barrel of his own, little knowledge and little money. Only a passion for wine-making. This is the true story of GP and garagiste wine-maker Jorrie Jordaan, of Paarl. Today he's the proud owner of Bergheim Wines. Dream of doing the same? Well, here's the doctor's prescription: "Knowledge is the cheapest commodity you can buy. I bought the standard manual, *Making Good Wine*, used at Elsenburg. I made some equipment – and bought some. I wrote a recipe and contacted Beyers Truter. What a decent guy: he gave me advice – and grapes. That was in 1998. I made Bergheim without any help, so when you open a bottle you'll taste the passion and labour of one man."

The verdict of Wine Master Bill Cooper-Williams:

Bergheim Pinotage 2005 Bright red. Aroma well developed. Nose: develops in glass. Palate: Powerful tannins promise longevity. High alcohol should assist further ageing. A big wine for big food. Would benefit from two more years' maturation. Score: 16/20

Bergheim Semillon 2008 Clear bright colour displaying the gold and green of Semillon. Nose: Still shy but starting to display. Palate: Young. No wood overtones yet. Well-balanced. High acidity will assist maturation. Should be very good in 18 to 24 months. Score: 15/20

Bergheim Shiraz 2005 Deep clean ruby. Nose: open and rich, spicy and oaky. Very clearly a good Shiraz. Palate: Firm tannin balance; though excellent now, will develop nice bouquet and smooth complexity. A good wine. A piece of venison? Score: 16.5/20

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servient to the needs of the dominant classes.

Since the 1980s there has been a sharp decline in manufacturing, and hence in employment, with local products increasingly replaced by cheaper imports in the clothing, textile and footwear industry, for example. This process Mbeki calls "de-industrialisation". Through globalisation it provides cheap consumer goods, and results in the steady decline of the manufacturing sector, except, perhaps, in minerals and energy production. At the same time South Africa has encouraged the development of bloated levels of middle and senior management, who are vastly overpaid. What's needed instead, says Mbeki, is a massive education drive to ensure an abundance of artisans, technicians, and professionals.

Mbeki spent time in exile in Zimbabwe and includes a chapter analysing the decline and economic collapse of that unhappy country, on its knees, he says, because of the greed and ineptitude of its political elite.

He does see signs of hope, both in Zimbabwe and at home. In the 1990s a new and distinctive political and economic voice emerged from trade unions, sections of business, civil society and academics, calling for new economic and social thinking, as well as government accountability. He suggests that such thinking could bring about a capitalist market economy that is responsive to the real needs of African producers and consumers.

He is contemptuous of the black political elite. "Before independence capitalism in Africa promoted the interests of the colonialists; since independence it has promoted the interests of parasitic political elites that control the state and believe that their survival is threatened by the emergence of an independent middle and professional class." He is not optimistic about the future if the country persists on the course pursued for the last 15 years by the black political elite and their allies.

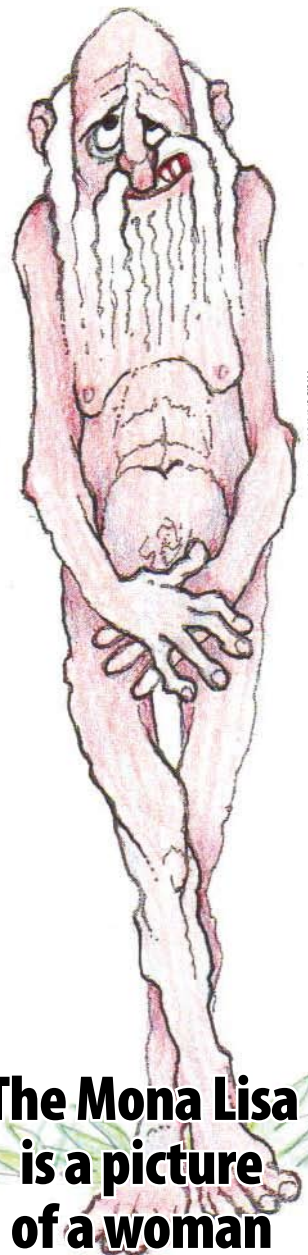
Moeletsi Mbeki's provocative analysis, which he acknowledges owes something to the work of Stellenbosch professor Sampie Terreblanche, will not command universal assent. But, with the smell of approaching disaster everywhere in the air, it should cause its readers to pause – and hopefully give serious thought to what's to be done. ▣



The Lion exposed

IN MY UNIVERSITY DAYS I spent much time falling in love and surf-fishing. I was an ex-warrior, see, I could attend lectures from choice on account of the wisdom I'd gained by dropping high explosives upon foreign citizens at ground level from the air. And the reason I chose the sex and angling was the flim-flam and mumbo-jumbo which is the intellectual currency of the world of Fine Art. Try this: "The heavens sometimes rain down the richest gifts with lavish abandon upon a single individual; personal beauty, grace and ability so that, whatever he does, every action is so divine that he distances all other men, displaying how his genius is the gift of God and not an acquisition of human art." Blimey. No women. And of course the *Grootbaas* was always a *ou*. 1940s blather, that. And about whom could it be but Leonardo? And about which wonderwork of Leonardo is it? Wait for it... wait... wait... yes! you got it – the Mona Lisa! It's that SMILE, bru! What can it actually MEAN? Well, listern up, as they say: amongst all the above phantasmagorical crap Leonardo had also a personal thingly known as the Da Vinci Code, and maybe that's what the lady is contemplating. This code was an arrangement between himself and the Holy Ghost, as it were, maybe that's what gives Ms Mona her ætherial aura.

Well, no. This is a picture of a woman with no eyebrows looking in a bathroom window in Switzerland, and what she sees there causes her not to know whether to laugh or cry. You can see it's Switzerland all right, because of all those alps in the background, and the figure stands bang in the middle of this smallish window frame so it's not for artistic composition that she's there. Such an insipid picture one would hope not to come across on a nice sunny day. No colour to talk of, which might account for her mood. If it's colour you're after, and composition, and painting, f'chrissakes, move north to Mathis Grunewald and his pic of the Son of God ascending from the tomb in a blaze of light such as to knock you clean off your feet, man, a seething tornado of colour, a lurid nuclear column, those eyes at the crest looking straight into yours: Don't mess with me, mate, don't even think of messing with



The Mona Lisa is a picture of a woman looking in a Swiss bathroom window

me, my Father will have your bloody guts. German expressionism at its best, hey, and it's all done with paint. Painting is first of all about paint, as sculpture is first about rock. Art arises from technique. Art is about more than subject matter, enigmatic smiles.

Okay, okay, I'm just being bitchy, you say, but what about Leonardo's powerful mind, then? What about those wonderful engineering drawings? Well, what? There were plenty of military engineers working for plenty of dukes around Italy, I dare say every duke, count, prince and Bob's-y'r-uncle in Europe had one; the difference is that Leonardo was able to draw his war-machinery for his boss, and later art historians, you see. But don't show them to later war historians. Of all his standing devices there were few the Romans hadn't had, and none of his wheeled devices work at all except on dead flat ground. Like that great big wooden tortoise thing with a great big horse inside and things sticking out port and starboard which rotate and cut off other horses' legs, only you couldn't use it anywhere near your own army because it would cut off all their legs too. Furthermore, if you go to your local timber merchant with your calculator and weigh a reasonable plank you will calculate the weight of this tortoise thing to be such that it would require a span of sixteen great big horses to move it.

And the same poxy arithmetic applies to his special personal love, his flying machines. Scrutinising birds and building a facsimile of wood and ropes and rags on a scale of 10:1 might be artistic, but it takes about as much intellect as a chimpanzee cracking nuts between two stones to realise there's no way the human arm or leg is going to propel this thing in the air. Such limbs evolved for lifting cups of tea and propelling limited kilograms of meat and bone more or less horizontally across Earth's surface. You might put two big stong men in there, of course, so now you have a total of eight big strong limbs, but this of course comes in the same category of idiocy as putting the sixteen big strong horses inside the wooden tortoise. Sometimes I wonder why we claim a place in the biological order of Primates.

It is your democratic right, dear reader, to question my insights of sex, surf-angling, art and military engineering if you so wish, but never doubt my insight of aerodynamics, which used to be known as Theory of Flight. Such wisdom comes from the experience of dropping high explosives upon foreign citizens at ground level from the air, as explained. **W**



treasury

Department of
Treasury
FREE STATE PROVINCE

Request for Proposals (RFPs) - FUND MANAGER: Establishment of the Provincial Fund

Operation Hlasela, is the Free State Premier's socio-economic Development Initiatives which sets out, among others, the establishment of a Provincial Fund ("the Fund").

The objective of the Fund is to operate on a non-recourse basis to the Sovereign and, on a ring-fenced basis. The Fund is envisaged to co-fund Province-wide Public Private Partnerships (PPPs) and other viable socio-economic investments (infrastructure in healthcare, social development, education, human settlements rental stock, technology, fibre-optic broadband networks, hospitality and eco-tourism, agro-processing, ICT, knowledge-based ventures etc). The Fund is to be established and listed as a Schedule 3D public entity in accordance with the Public Finance Management Act (PFMA) (As Amended) and shall be administered by a Board of Trustees.

The Fund Manager will be tasked with the following:

- i. Raising capital (initial round of ZAR3 billion) on a ring-fenced and non-recourse basis to the Provincial Government.
- ii. Origination, funding and complementing other Private Public Partnerships of the Provincial Government.
- iii. Funding of viable and investment grade medium to large socio-economic projects and, thereby, freeing scarce financial and human resources of the Provincial Government that will focus on social delivery projects identified in Operation Hlasela.
- iv. Contribute dividends to the Provincial Revenue Fund and, thereby, improve the diminishing source of "Own Revenue" of the Provincial Government.
- v. Add synergy to the investment activities of the public entities in the Free State.

The Free State Treasury, therefore, invites proposals from Development Finance Institutions, Private Equity Funds, Investment Banks, interested Financial Institutions and from other eligible domestic and international Fund Managers who comply with the regulatory requirements of the various financial laws of the Republic of South Africa. Bidders must possess demonstrable track-record, requisite knowledge, industry expertise, financial and other resource-capacity to sustain the assignment.

Interested bidders may obtain tender documents at the address stated below between 08h00 and 16h00 from Monday to Friday with effect from **Tuesday, 18 August 2009**. Tender documentation can be obtained from Me. Sarah Qwesha, Room 606B, office telephone: 051 405 4289.

Payment of a non-refundable tender fee of R1710.00 is required (VAT INC) method of payment: cash deposit and electronic transfer only, payable to:

ACCOUNT NAME: FSPG PROVINCIAL TREASURY
BANK: FIRST NATIONAL BANK **BANK CODE:** 258-628
ACCOUNT NUMBER: 62144172343 **ACCOUNT TYPE:** CHEQUE ACCOUNT
BRANCH NAME: LOCH LOGAN BRANCH, BLOEMFONTEIN
OR

CASHIER OFFICE DETAILS: (payment method: cash or bank guaranteed cheque)

**FSPG: PROVINCIAL TREASURY,
ROOM 520,
5TH FLOOR,
CNR OF 55 ELIZABETH AND MARKGRAAF STREET,
PROVINCIAL GOVERNMENT BUILDING,
BLOEMFONTEIN, 9300**

The Unique Reference Number can be obtained prior to deposit at FNB from the following official Me. Nthabiseng Matlala, office number; 051-405 4049 or 071 349 2512, Room 533 at the above address.

The adjudication of bids will be conducted in accordance with PPPFA (90/10) principle. The tender process involves (i) RFPs (ii) A shortlist (iii) Beauty Parade (iv) Selection of 2 preferred bidders (v) Negotiations with 2 Preferred Bidders (vi) Appointment of Final Bidder.

Project to be executed according to the prescripts of the PPPFA, PFMA and other Procurement Regulations of the Department of Provincial Treasury.

RFPs should be sealed and delivered to the address stated below **on or before 14h00 on Wednesday, 16 September, 2009** and should be clearly marked:

"TENDER FOR FUND MANAGER: Free State Province"

**Chief Executive Officer
Free State Provincial Treasury
Provincial Government Building
55 Elizabeth Street
Bloemfontein, 9300
Republic of South Africa**

Tenders will be opened immediately on the closing date and time in the presence of bidders who choose to attend. Faxed, emailed or tenders delivered after the above-mentioned time and date will not be considered.

The completed tender documentation can also be delivered at the Tender Box marked FREE STATE PROVINCIAL TREASURY TENDERS/BIDS and located at Ground Floor on the address stated above.

Compulsory briefings will take place on **Friday, August 28, 2009** in the Auditorium, 8th Floor, Lebohang Building, cnr Markgraaf and St. Andrews Streets (entrance at St. Andrews Street) between 09h00 – 12h00.

Enquiries are to be directed to: Dr. M. Eugene Mokeyane (00 27) 51 403-3066 and (00 27) 83 461 3950

The Free State Treasury reserves the right to cancel the bid process and/or not to award the tender. The Free State Treasury shall not be held liable for costs associated with preparation of bid documents.

PAYMENT & TERMS FOR SMALLS

Deadline for smalls is the 1st of the month prior to publication.

Smalls ads are prepaid at R120 for up to 15 words, thereafter R15 per word.

Boxed ads are R200 per column cm ex VAT (min 3cm deep).

Payment by cheque should be made to Chaucer Publications, PO Box 44538, Claremont 7735.

Payment by direct transfer should be made to Chaucer Publications; Account 591 7001 7966; First National Bank; Vineyard Branch; Branch code 204 209.

Payment online at www.noseweek.co.za.

Email ads to ads@noseweek.co.za.

Further info Adrienne 021 686 0570.

PERSONAL

Thanks for all condolences upon Sue Schimmel's passing on 24.06.09 aged 95 – Robert Schimmel (texpro-r@iafrica.com).

Den, whatever you do in Port Alfred, keep under Mr Nose's radar. Regards – Al.

Sylvia, another 53 years will be great! Many thanx – Ron.

Maatjie, the lights have gone out.

Happy anniversary, Gemmi on 2 July. I love you lots, even more than *noseweek*.

Lawrie and Shiril, I hope you had a great holiday overseas – Love Ed and Moira.

Grace and Fred Knights send their best wishes to their friends.

Lucia, thank you for 25 years – Chris.

The older we get the better we were. No women, no vegetables. Mpande Buffaloes – Booboos.

Vivian Henry We shall remember you – Jan and the 1967 GSE Team to Arizona.

Congratulations to Chuffy and Robyn on completion of the 2 Oceans half-marathon – Dad.

All the best to Belinda, Yolanda, Gil, Clayton, Kent, Joel for the tax filing season.

Regards to all my friends – from Dave Patton, Durban.

Thanks guys for super golf at Leeukop. Also Reuben and Marco for great service – Ivan.

LEGAL, INSURANCE & FINANCIAL

Legal services in Kenya? Wanam Associates specialise in IP, Trade Mark, Corporate Law, Conveyancing/Property Law, ICT Law, Litigation, Legal Support/Resources; www.wanam.com

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Problems in the Eastern Cape? Contact me. Norman Myers 041 468 0242; cell 071 609 9990.

Morkel & De Villiers Attorneys The best in the West or anywhere else 021 850 9700.

Retirement planning specialists: Biglife. biglife@iafrica.com. 011 462 7671.

Permanent Trust for management and rentals of all types of property. william@permanenttrust.com

Fun Quizzes for corporate team-building or fundraising events. Contact Liz for further information 082 658 4084.

Working Capital Management Professional accountants with a difference. 021 764 2000.

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Accounting and tax services by chartered accountant, Claremont, Cape Town. Contact Toni 072 291 1591.

FOR SALE

Tinus & Gabriel de Jongh paintings bought, sold and valued. Art prints sold. Gallery open by appointment; 021 686 4141 dejongh@yebo.co.za; www.tinusdejongh.co.za.

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WANTED

Moving house? Old books collected for charity distribution. Johannesburg area. Mike 082 920 5667.

Good quality British shotguns and rifles wanted; 083 375 2316.

MISCELLANEOUS SERVICES

Need help with the written word in your business? Editing, proofing, writing, rewriting in English at very affordable rates. 074 190 0515.

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I put attorneys in their place. Rene 021 785 3404.

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Consolek switchgear for transformers, minisubs, mvswitchboards and turnkey projects. 031 304 2698. E-mail alec@consolek.co.za

Press spinning and stamping company. Metal pressing and spinning specialists. Contact Michael. 021 511 0656.

Landscaping, Design and Gardening: Angie Kaplan. Can supply gardeners. Hourly or daily rates. Call 083 286 4587.

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Fun quizzes For corporate team-building or fund-raising events. Contact Liz for further information 082 658 4084.

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work/partner compatibility – career suitability

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All the smalls ads on these pages are included in the online edition of noseweek at no extra cost

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For IT-related work, e-mail CV to kim.hendricks@dlkgroup.com; 021 531 9403.

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Balgowan, KZN Investment – sectional title units. Hotel. Rent back option. Peace, quiet, eco reserve. E-mail sueme@worldonline.co.za; See www.woodridge-estate.com.

Claremont, Cape Town Self-catering apartment. Close to Kingsbury Hospital. Sleeps four. Short lets. 082 469 6440.

De Waterkant Luxury fully equipped 2-bed, 2 bath cottage. Harbour views, garage. Short-term, self-catering. Michael 083 225 7367.

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Umhlanga 2 bed/2 bath stunning, serviced sea-facing apartment with DSTV. putz@icon.co.za; 082 900 1202.

Hermanus Luxury home sleeps 10; ideal for two families; walking distance to village/cliff path. 083 564 8162.

Tamboerskloof 51 on Kloofnek. Guesthouse. (Rated 5 stars in Tripadvisor). See guesthouse@51onkloofnek.co.za for info.

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