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# nosowweek

# 122

# DECEMBER 2009

## The season for taking

### 0, Tannenbaum! How Barry did it



**Sociopaths stole my farm**

**Trapped in Pollsmoor**

**MWEB hits engineer with R275,674 internet bill**





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## O, Tannenbaum!

Barry's cunning plan

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## Whatsky?

The advert on the inside front cover of *nose121* talks about Bain's Whisky. Whisky is the spelling for genuine Scotch. All others are spelt whiskey. I thought you ought to be told.

**Peter Garrett**

Cape Town

*There I was thinking it was spelt wishky! – Ed.*

## Reinvention of Hromnik

I'm not an historian or archaeologist, but this much I know: any serious

who believe that stone circles have astronomical significance (which may be false in many instances) refer to their role in pointing out the rising and setting of certain stars. One cannot use a stone circle to do the same with the moon, because it orbits the Earth. Hence it appears that Dr. Hromnik, who has no astronomical credentials, is talking tosh when he claims that Hermanus is the site of an ancient lunar observatory.

As a student of South African political discourse,

outsiders, was manufactured to legitimate expanding white settlement in southern Africa early in the Scramble for Africa. This propaganda appears in Rider Haggard's colonial texts, *King Solomon's Mines* and *She*. It was enthusiastically adopted by white supremacists in late colonial southern Africa; the Rhodesian government officially proclaimed that Great Zimbabwe was built by foreigners (a belief which no Rhodesian archaeologist supported), and similar racist claptrap ap-

hesitate to engage with Dr. Hromnik because doing so legitimises his "research" in the public eye. I feel no need to defend myself against his quoted statements – his manner speaks for itself.

I make four final points:

■ I have not been to or studied Hoy's Koppie; neither did I make any reference to the site in the digging stick article.

■ My views on Hromnik and other dissident or fringe researchers are similar to those held by most, if not all, professional, academic archaeologists in Southern Africa. I am glad that my article was read by the public and acted on to expose Hromnik's poor scholarship.

■ I leave professors Parkington and Van der Merwe, distinguished academics with international reputations, to respond in their own good time. It is, however, worthwhile noting that they are happy to conduct the Hoy's Koppie work at no cost to the ratepayers.

■ As a consultant archaeologist myself, I know that "the little money" paid for Hromnik's "research" is not little. His reported expectation that his report is "worth at least R500,000" is outrageous.

To conclude, I reiterate a statement I have made in the digging stick article: "Belief – and it is belief rather than reason – in these theories is disempowering because it distances the majority of South Africans from their real heritage, which is every bit as fascinating as the fabrications. Support is given to neo-colonial ideas that simply retread tired old tropes, instead of building on the exciting discoveries made by archaeologists."

**Johan Nel**

Pretoria

## Our Mutual Friends – again

According to Old Mutual we now have a new form of asset management: manage-

## Dr Hromnik presents evidence to buttress his racist propaganda

archaeological investigation of a substantial site (such as Hoy's Koppie in Hermanus) could not be done by one man, however well paid. Ergo, Dr Hromnik has done a shoddy job for the Hermanus municipality [as reported in *nose120*]. Those

however, I am amused by Dr Hromnik's attempts to re-invent himself as an anti-apartheid activist. The notion that Africans are too stupid to construct lasting monuments, and that any such in southern Africa were created by racially superior

appears in Wilbur Smith's *The Sunbird* (1972).

If the Hermanus municipality is as reactionary as your magazine suggests, it is unsurprisingly encouraging the belief that everything achieved by the First People in South Africa was actually done by Indian immigrants.

The evidence which Dr Hromnik presents to buttress his racist propaganda, is equivalent to deciding that since some of the ancient jewellery found in Britain contains lapis lazuli from Afghanistan, the Afghans colonised Britain and built Stonehenge.

**Mathew Blatchford**

University of Fort Hare

## That koppie

In your article on that Hermanus koppie (*nose120*) I am incorrectly referred to as "Professor Johan Nel of the University of Pretoria". I am not a professor at UP or any other university. I am a freelance, contract archaeologist and co-owner of Archaic Heritage Project Management that manages the Archaeological Contracts Office of the Department of Anthropology and Archaeology at UP.

This correction made, I

**Gus**

have you noticed that even the beggars are on strike?



ment by website. How this works is you have to keep your eyes constantly glued to the OM website for announcements regarding the closure of funds you may be invested in. If you happen to miss these announcements, they simply make brilliant decisions themselves – like moving you out of a gold fund they decide to close into a dollar-deposit fund. What happens? Gold goes through the roof and the dollar goes through the toilet.

OM advises there is no chance of compensation. There is not even an apology for not contacting you prior to this switch to get your input. After all it's only your money. Old Mutual seem to have lost their grip – if they ever had one.

**“No Mutual feelings”**  
Stellenbosch

### Cat's out of the bag

While your article on feral cats (*nose120*) raises important and topical issues, it does so in the usual sensationalist way that portrays cats in a negative light, creates friction between animal welfare groups and misinforms the public. You have also quoted me out of context in such a way that I end up denying TUF CAT's successes.

You clearly have no understanding of how “organisations” involved in trap-neuter-release (TNR) programmes operate – if you did you would realise that

most are run by one or two (mostly female) volunteers who subsidise most of the costs themselves. Sometimes the institutions where the cats reside contribute to veterinary costs. How this takes donor funds away from the SPCA is unclear, since the latter would have a lot more work to do if individual cat trappers did not take it upon themselves to trap, sterilise and euthanase colonies.

You base your argument on a US organisation, Alley Cat Allies, who are indeed well funded and supported, yet have not bothered to find out that the South African situation is quite different. And it does not cost hundreds of rands to sterilise feral cats, as you claim.

You do not discuss what the alternatives are, let alone evaluate their “success rate”. The complete eradication of entire feral colonies is virtually impossible and even in places like Marion Island (new cats can't swim there), it took more than 20 years of all sorts of brutal methods to finally exterminate the cats. You do not even mention the considerable and ongoing “hidden costs” associated with exterminating entire cat colonies.

Many of the local so-called “no-kill” groups have managed to sterilise entire colonies, which then steadily die off. Even at UWC, where more than 20 cat colonies live on 160 hectares of land, surrounded by industrial

and residential areas with huge unsterilised cat populations who can easily migrate onto campus, numbers are declining steadily. You should not assume that all feral cat groups are “no-kill”. Have you ever considered that one of the reasons feral cats are tolerated in certain places has little to do with sentimentalism and anthropomorphism but is purely utilitarian: they are cost effective and environmentally friendly rodent controllers.

Feral cats have been in the news lately due to the Robben Island culling fiasco, and ideas about which animals belong and which do not, result in feral cats being regarded as transgressive and ambiguous. This issue needs to be debated. In some spaces, feral cats are considered part of the landscape and are not thought to be “out of place”. Similarly, the use and abuse of donor funds within the charity/NPO sector in general, and animal welfare in particular, could have been addressed. Your article does nothing except further demonise cats and their caretakers.

**Sharyn Spicer**  
TUF CAT (The UWC Feral Cat Project)

### Country Light

My compliments and thanks to Bheki Mashile for his enlightening new column on the local political and social scene.

**H Liedberg**  
Johannesburg



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## Hallelujah! Nedbank gets into the spirit

**I**T'S CHRISTMAS, AND, IN THE SPIRIT of good cheer, Mr Nose has a small item of good news for you. Actually it's Nedbank that has produced the moving moment.

Many readers were – appropriately – outraged by the report in our last issue on the financial catastrophe that has struck Mrs Johanna (Cathy) Brinkhuis (48), a sausage maker employed by Spar in the Strand, as a result of having borrowed just R4,800 from Nedbank in August 2005.

It was really all about what happens to poor people when they are obliged to borrow money from financial institutions at 82% interest. Yes, that's what Nedbank charged in the "good old days" on their "classic loan". (And they didn't think they needed to feel bad about it, when African Bank were getting away with charging 174.4% for such loans!)

Anyway, by May 2007 Mrs Brinkhuis had paid off R6,824 on her R4,800 loan – but the bank was suing her because she still owed them another R5,814. Not surprisingly, matters simply went downhill from there: with luck, at the current rate, she was going to have paid R41,780 on a R4,800 loan by the time it was settled in 2015!

When Mr Nose's old friend Dr David Klatzow saw our story, he was instantly on his high horse and the phone to poor Sarel Rudd, the head of personal loans at Nedbank. The immoderate language used will

not be repeated because it's Christmas time and, as it transpires, Mr Rudd is a good man who quickly entered into the spirit of things ... Christmas, that is. The result was the following cheering statement, that *noseweek* has received from Nedbank:

"Having taken this matter into consideration and out of regard for the plight of our client which Mr Nose has brought to our attention, we have taken a decision to do the following:

- Write off the outstanding balance on this account;

- Cancel the emoluments attachment order (garnishee) [the court-ordered monthly deduction from her salary]; and

- Expunge all adverse credit bureaux records pertaining to this account.

"In the spirit of customer service and empathy for our client, the bank has taken a decision to compensate our client for any possible distress and inconvenience she may have suffered in highlighting her plight by paying her an amount of R2,000.

"The offer is made without prejudice to the bank's rights and constitutes an *ex gratia* payment that should not be construed as an admission of liability or negligence on the part of the bank.

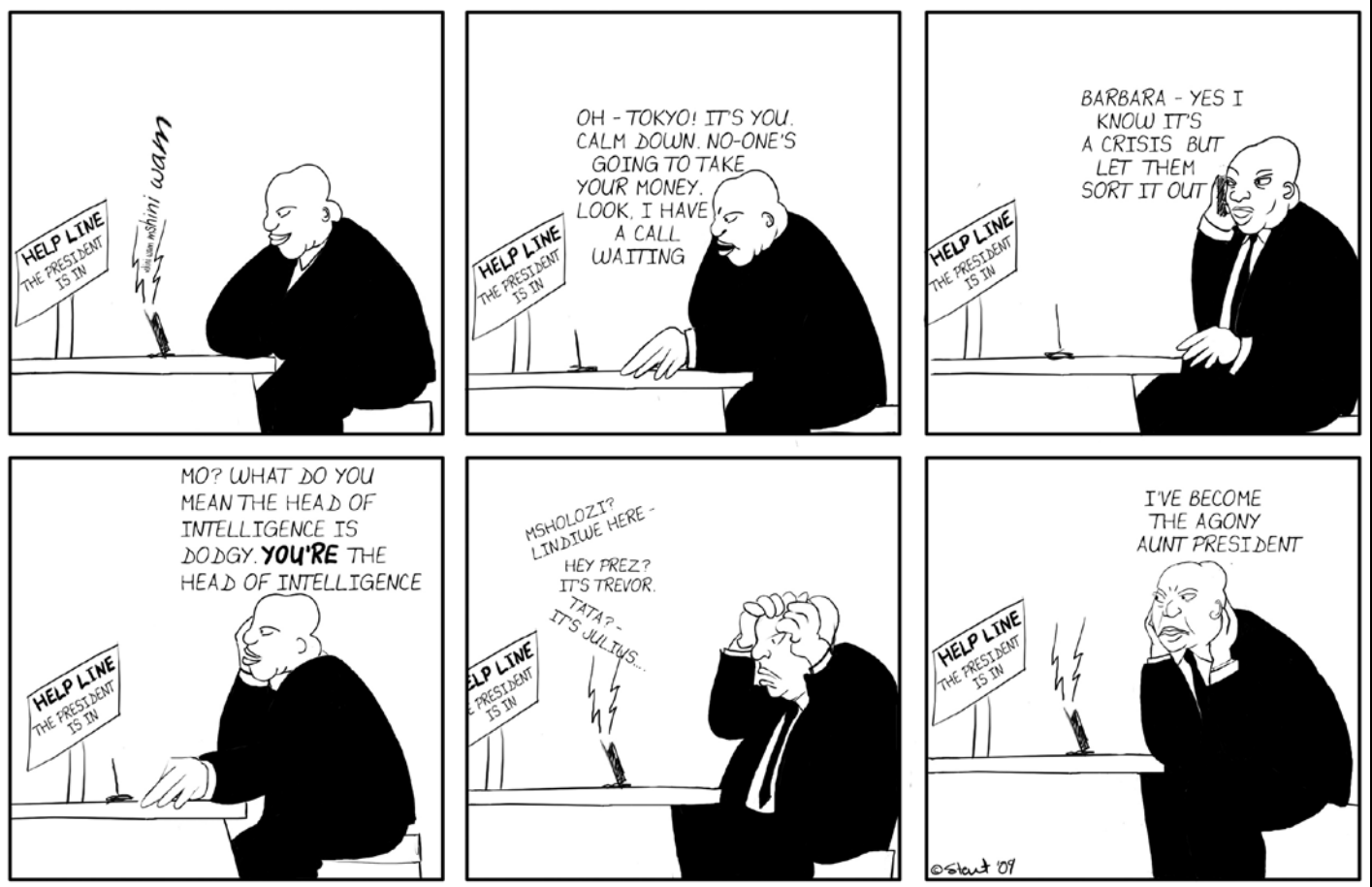
"Kindly note that in order to effect the above we will be in contact with our client."

Happy Christmas!

**The Editor**



"We're just pleased he can still get into the Christmas spirit"



## Notes & Updates

# Cattle Baron restaurateur's beef with Absa

**WHEN VIC DA SILVA APPLIED** to Absa for a R2.5m loan to start a Cattle Baron restaurant in Bel Air Mall in northern Johannesburg, he had no idea what he was letting himself in for. Absa certainly did – but, conveniently, decided not to let him in on their dirty little secret.

What Da Silva didn't know when he was granted the loan in December 2007 (also raising another R3.5m on his home bond) was that he was about to risk everything on establishing a steak ranch in a shopping mall that was built illegally, and which lacked a licence for restaurants to operate there.

All Da Silva knew was the stories Absa spun him, based on fairytales concocted by Universal Property Professionals (UPP) group, owned by Theodosiou brothers Dimetrus, Tony and Sedrick. (*Nose116* told how Absa loaned the brothers over R1bn – with

interest clocking up at R13m a month – to build a series of shopping malls, including Bel Air, without getting official approvals).

Universal Property made prospective tenants like Da Silva all kinds of promises, including that they had already lined up Woolworths, Truworths, Edgars, a Virgin Active gym, eight Nu-Metro cinemas and a banking court. Besides the fact that most of these promises were not kept, local residents began protesting that construction of the mall was continuing without approvals, and notified the Public Protector in July 2007.

By mid-2008, with half the planned retail developments failing to materialise, traffic was drying up, tenants were defaulting on rentals, and Universal ran into serious financial difficulties. In September Absa instituted winding-up proceedings against 12 Universal Property Professionals entities, including Bel Air Mall – the

same month that Da Silva opened his restaurant.

Da Silva's lavishly fitted 400-seater eatery was expected to bring in R900,000 to R1m a month, but he found himself doing less than half that.

"We received good write-ups, including one in *The Star*, so there's no way it was because of the quality of our food or service," he says. "There was something else going on, but I didn't know what it was."

It never occurred to him that local residents might be boycotting his restaurant because it was operating in an illegal mall. Absa had not bothered to mention the legal wrangles, nor that they were instituting an action against the owners of the mall. According to Da Silva, Absa should take responsibility for not informing its retail credit managers that its R1bn house of cards was about to come tumbling down.

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## Beef with Absa

From previous page

In July 2007 – six months before Absa loaned Da Silva the money – *noseweek* exposed how Bel Air Mall had been built illegally (*nose93*). Absa even mentioned in court that *noseweek's* article had alerted the bank to this fact. The Public Protector complaint was also submitted months before the loan to Da Silva was approved.

Only in January this year, when he read a news report that Bel Air was being liquidated, did Da Silva get to hear that all was not well. And things went from bad to worse: in April the Joburg city council told him he didn't have a licence to trade and had 30 days to clear out. He was outraged.

"I asked them how the council could approve my building plans if there wasn't a licence to trade, but they said it came from another department and shouldn't have been approved."

Liquidators D&T Trust have since made a deal with the council. Legal action against restaurateurs is on hold until a planning committee decides whether remedial proposals address residents' concerns. Meanwhile Bel Air's remaining restaurants, including the Cattle Baron, operate in a legal vacuum, not knowing from one day to the next if and when the axe might fall.

Da Silva approached Absa for an explanation for his predicament: he was only just breaking even, which made it hard to service his loans. He needed some breathing space. But Absa was unsympathetic, saying they hadn't known what was going to happen, and suggested he relocate.

"It was a crazy suggestion," says Da Silva. "With the fixed seating and other fixtures I'd put in, I'd lose R2m – and relocation would cost almost R3m, leaving me with a total exposure of over R10m," he says. "No restaurant can survive with debt like that."

He believes Absa should take responsibility for making a bad lending decision. "If I knew there was no licence to trade I would never have invested my money," says Da Silva. "This is reckless lending. According to the National Credit Act they must put me back in the position I was in before taking out the loan. Now I'm losing my home and my business."

*Noseweek* asked Absa why it lent Da Silva R2.5m in December 2007 for a restaurant in Bel Air at a point when it was public knowledge that the mall had been built illegally, and that no licence had been issued for restaurants to trade there. We're still waiting for an answer.



## Bullying Samro loses court battle

**IF YOU CHERISH FREE SPEECH** (if you don't, you've probably chosen the wrong magazine), you will be pleased to hear that on 4 November the North Gauteng High Court turned down the Southern African Music Rights Organisation's (Samro) application for a temporary gagging order on Graeme Gilfillan (*nose119*).

Gilfillan had been employed as an investigator by the executor of singer Brenda Fassie's estate, David Feldman, to help him prove that Samro had diddled Fassie out of royalties. As a result of the Fassie case, a number of embarrassing reports appeared in the press, and Samro concluded that Gilfillan must've been the source. So the organisation asked for an order requiring Gilfillan to stop using the words "corruption", "fraud" and "Samro" in the same sentence, at least until such time as the arbitration between David Feldman and Samro had been concluded.

Samro's application failed because there was no reason to suppose that Gilfillan was likely to say anything more on the issue, so, in legal parlance, no reasonable apprehension of harm could follow.

In fact, Samro had shown a distinct lack of urgency on the matter:

The first publication of a negative view took place in July 2008, but only in November 2008 did Samro send Gilfillan a "watch it China" letter; in February this year Gilfillan addressed a press conference, following which a number of articles appeared in the press, but only in April did Samro launch its "urgent" application for an interim interdict – and by November, when the application was finally heard, Samro had not yet instituted a full action for a final interdict, or for damages.

The judgment is strong on freedom of expression, with references to well-known quotes from past cases: "The law of defamation requires a balance to be struck between the right of reputation on the one hand and the freedom of expression on the other"; the court needs to be satisfied "that the disadvantage of curtailing the free flow of information outweighs its advantages". There's also a welcome reference to "the tyranny of litigation". What the court was saying (in a very judicious way – as Judge Traverso had done in the matter of First Rand versus *noseweek*) was that this was simply a large organisation attempting to bully a little man into shutting up. Well done Gilfillan.



# THERE'S GOLD IN THEM THAR



## How Barry Tannenbaum and Dean Rees exploited the rich seams of human greed and gullibility

**T**HE GOLD WAREN'T IN THEM THAR PILLS. Ever since Brett Kebble rose as a colossus on our horizon, South Africans have been asking: What sort of man needs to steal a billion ... or two ... or three? Kebble left us a few clues: a man with insatiable appetites; for food, for sex, for all things sensually stimulating and ego enhancing such as art and music, luxurious clothing and flash possessions. And a man who needs to score a point off a scornful father: In the end, compared to his son's spectacular success in plundering the resources of public companies, Roger Kebble was but a petty thief.

Now, in an amazing collection of documents attached to a court application brought by the Barwa Real Estate Company of Qatar – the pair's last major victim (for a mere R250 million, all of it lost) – ponzi fraud operators Barry Tannenbaum and Dean Rees have provided us with further insight into the subject.

Barry Tannenbaum was born in Johan-

nesburg in 1966. After completing a BSc at the University of Witwatersrand he held a number of different jobs before joining his father's company, Frankel Chemicals Ltd, in 1992. Frankel Chemicals was in the business of acquiring active pharmaceutical ingredients (APIs) and then reselling them with a substantial markup to pharmaceutical manufacturers – mostly to Adcock Ingram, a public company that Tannenbaum senior controlled. (In effect, Tannenbaum senior was using it as a device to siphon personal profit from a public company of which he was a director – a scheme that would probably not pass scrutiny in terms of today's corporate governance laws.)

In 2001 Barry and a business associate, Kevin Kramer, purchased Frankel Chemicals. But in 2008 he was in a position to buy out Kramer, to become sole shareholder. Then again, with Tannenbaum senior having left Adcocks, Frankel Chemicals' trade with that company had undoubtedly declined to a fraction of what it once had been.

Barry Tannenbaum had shortly before established a German company called Frankel International GmbH, with one Volker Schulz: Tannenbaum holding 74% of the shares and Schulz the remaining 26%.

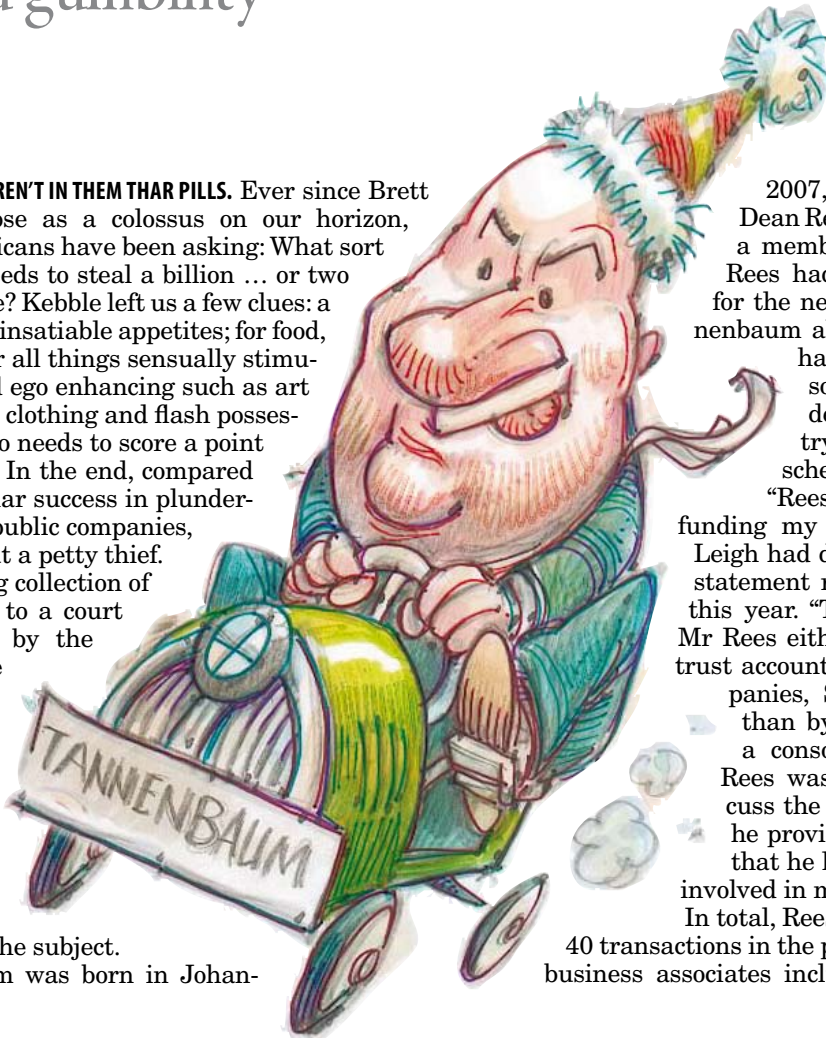
Beginning in 2005, Tannenbaum had obtained trade financing privately through Darryl Leigh, then still a senior official with the Development Bank of South Africa. Leigh established a consortium of private investors who provided Tannenbaum with funding on a transaction to transaction

basis. When each API contract was completed – generally within 12 to 15 weeks -- the consortium would be repaid the money they had advanced for it, plus a fairly spectacular interest payment.

Then, some time early in 2007, Tannenbaum got to know Dean Rees, an attorney who had been a member of the Leigh consortium. Rees had just the right background for the new sort of business that Tannenbaum already then appears to have had in mind: he had achieved something of a public profile as defence attorney for the country's then biggest ever ponzi scheme operator.

"Rees expressed an interest in funding my business in much the way Leigh had done," Tannenbaum says in a statement recorded in Australia earlier this year. "The funds were provided by Mr Rees either directly (via his attorney trust account) or through one of his companies, Suscito Investments, rather than by the individual members of a consortium of private investors. Rees was generally reluctant to discuss the sources of some of the funds he provided for me. However, I knew that he had many investors, and was involved in many different companies."

In total, Rees provided financing for 30 to 40 transactions in the period from 2007 onward. His business associates included James Patterson, who





Barry Tannenbaum

was based in Monaco, and Gareth Macintosh and Moni Chin in Hong Kong, where another of Rees's companies, Abated Investments, maintains an office (and bank accounts with HSBC).

The transactions followed a common pattern: funds would be deposited into the account of Bartan, Barry's finance company, from an account controlled

passed between Tannenbaum and Rees, is that their relationship had become so close as to be tantamount to a love affair – and that Rees knew the true nature of the business he was involved in from the start – a rapidly growing, well-disguised ponzi scheme, where Peter's money was being used to pay Paul. On 26 May 2008, for example, Rees emailed Tannenbaum complaining about the pressure he was under from investors who he wasn't able to pay on time, saying "I just want them off my back". The "them" he was referring to included former Pick n Pay boss Sean Summers, who at one stage sent an email to Rees saying: "I have told Barry once again, in no uncertain terms, that he has basically stolen another three weeks of credit, notwithstanding his and your commitments. No more bland meaningless emails required.

Show us the money. I await your urgent response."

Tannenbaum and Rees urgently had to find new investors in order to be able to pay the old ones. In the meantime they had to pocket and hide as much of the cash for themselves as possible.



and we do feed off each other, and at times we know how the other is feeling about things. It is special and I guard it fiercely from my end. I appreciate how you feel too; not many people understand the bond we have... With you thru thick and thin, whether you want me or not."

Tannenbaum, who signed his emails "Uncle B" or "Mr T", clearly felt the same way. His reponse: "Knew from the start that you were going to be my main partner going forward. I trust you equally with my life and am very comfortable with how our relationship has progressed over the last two years. I wake up thinking of you and go to bed thinking of you. Don't worry – not in a sexual manner."

In December 2008 Rees told Tannenbaum that Patterson and Macintosh (from their European office)

had met with representatives of Qatar's second largest property developer, Barwa

Real Estate Company QSC, in London. He reported that Barwa was considering providing financing for API trading, for which the company proposed establishing a revolving credit facility in an amount of \$40m.

In early January 2009 Tannenbaum met with Adam Wilson and Gordian Gaeta of Barwa in Hong Kong, for a "very informal meeting to get acquainted". The Barwa men had clearly been lured in by the bait laid so temptingly before them in December. In February Rees reported that Barwa's Mr Wilson was on his way to Frankel International's offices in Hamburg to conduct a due diligence inspection, preparatory to making a substantial investment. On Wilson's arrival in Hamburg, the entire team were there to meet him: Barry Tannenbaum, Dean Rees, James Patterson and Volker Schulz, MD of Frankel's German operations.

On 19 February 2009 they concluded a formal "revolving investment facility" agreement: Barwa would make funding available to a company associated with Frankel International, known as Frankel Enterprises Ltd, which would then use the money to fund the purchase of APIs. Once the order was filled and Frankel was paid, Barwa would be repaid the capital amount it had advanced, plus a remarkably high rate of

What is quite clear from emails between Tannenbaum and Rees, is that Rees knew exactly what he was involved in from the start

by Rees. Tannenbaum would ostensibly manage the purchase and sale of APIs using these funds, then, once the pharmaceutical ingredients were delivered and paid for, repay Rees the money invested plus a handsome share of the even more handsome profits he claimed to be earning. Or so it was meant to appear.

What is quite clear from emails that

in tune we are and how we both know cash flows so well. We are a very special team. I hope that does not sound arrogant, but I am so proud of what all of us have achieved and what we strive to achieve is very special. Love to all, Your bestest, The DR."

The relationship clearly meant a lot to Rees. In another email he says: "I know it's a close relationship we have

interest from the proceeds. The usual spiel.

“None of that ever happened,” Tannenbaum has since confessed. “Instead, Barwa was defrauded into making payments for fake transactions on the basis of falsified documents provided to Barwa by Rees, Patterson and me.”

Tannenbaum then explains what really happened: “In February 2009 Mr Rees discussed with me an idea that he had of creating some Hong Kong-based companies with names that sounded like API suppliers, so that those companies could issue fake invoices for APIs which could then be used fraudulently to obtain trade finance, inter alia from Barwa.” Rees instructed his Hong Kong associate, Moni Chin, to do the necessary. On 8 February Rees sent an email to Moni in Hong Kong asking “Is Debarred still around?”. (Debarred was an offshore shelf company that Rees had bought previously but never used. One can’t but notice the interesting choice of name for an offshore company to be secretly operated by a shady lawyer.) He continued: “I would like to change its name to Xing Wild Pharmaceutical Co Ltd. Can we open a second company called Lin Ping Import Export too? I need no trace to Barry and I and no one else knows about their existence, save for you, Barry, Volker Schulz and I.” Chin replied saying: “I shall set up another corporate director and put myself as director. So it doesn’t lead to you.”

Immediately thereafter, Tannenbaum instructed Schulz of Frankel International to create fake invoices in the names of these companies, for possible submission to Barwa. But before these fakes could be used, Rees suggested a change of strategy: Tannenbaum recalled him saying: “Barwa won’t accept multiple [small] orders – we need a single [big] order. If you can get me one, then leave it to me. Do up an order in a big amount just under \$20m”. So Schulz was instructed to also “prepare” a purchase order and related invoice which met Rees’s new specifications.

Since time was short, Schulz created the required order by altering an existing genuine, but far smaller order by Aspen (the South African pharmaceutical manufacturer) from a Chinese company called Shudu Import & Export, by upping the value to the proposed \$19.41m. “Mr Schulz falsified these documents (or arranged for them to be falsified) on my instructions, as I had, in turn, been instructed by Mr Rees,”

Tannenbaum later explained. The latter falsified documents (in the amount of \$19.41m) were the ones that were ultimately submitted to Barwa in order to obtain the first drawdown under their facility.

On 24 February 2009 Barwa declared themselves happy with the proposed deal, and willing to provide \$24m funding for orders – conditional on the submission of the agreed transaction documents. But there were still a few hitches to be sorted out. Tannenbaum recalled a telephone conversation with Rees, in words to the following effect:

Rees: Barwa won’t pay Shudu direct for the goods as they are concerned about security if the goods aren’t released. The way around this is if we tell Barwa we have paid Shudu – and only when goods are released and the air waybill issued will Barwa pay for the goods. What else can we do?

Tannenbaum: We can just tell them we’ve paid.

Rees: They’ll want documentation – just get something going.

Get something going he did. Later that day Tannenbaum sent Barwa a letter from a Chinese company called Green Plantchem Company Limited, in which the latter purported to confirm that it was the official agent for Shudu Import and Export GmbH (Shudu was an existing business and the perpetrators of the fraud had to ensure that Barwa did not attempt to communicate with it directly.)

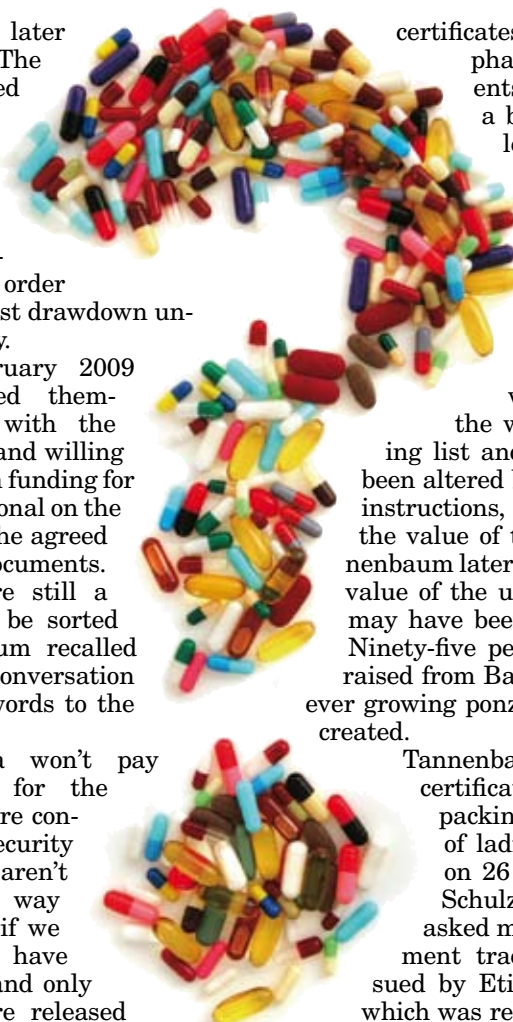
Schulz was also instructed to “create” an ANZ bank telegraphic transfer receipt purporting to record payment by Bartan (Tannenbaum’s company) to Shudu, in the amount of \$19.41m. This too was sent to Barwa. No such transfer had taken place. Next, the talented Mr Schulz supplied Tannenbaum with

certificates of analysis [of the pharmaceutical ingredients], a packing list and a bill of lading on the letterhead of Green Plantchem Company Limited.

“The certificates of analysis may have been legitimate in relation to the small underlying order with Shudu, but the weight on the packing list and bill of lading had been altered by Mr Schulz on my instructions, in order to increase the value of the shipment,” Tannenbaum later confessed. “The real value of the underlying shipment may have been as little as \$1m.” Ninety-five percent of the money raised from Barwa was to feed the ever growing ponzi monster they had created.

Tannenbaum forwarded the certificates of analysis, the packing list and the bill of lading to Barwa. “Also on 26 February 2009, Mr Schulz emailed me and asked me to approve a shipment tracking document issued by Etihad Crystal Cargo, which was required as proof that the goods were being delivered. This was a genuine document from Etihad, but it tracked the status of the small underlying shipment from Shudu.”

Next day it was a certificate of marine insurance for the sum of \$21.351m (the value of the consignment plus shipping and insurance costs). Once again, the weight of the shipment had been altered in order to increase its apparent value.



Dean Rees



# Where has all the money gone?

**WHERE DID ALL THE PONZI** money go? In many directions still to be researched, but what we do know is that hundreds of millions of rands flooded through the Investec Bank account of Suscito Investments (Pty), the company set up by Dean Rees for that purpose. And in that rush of cash, he wallowed in it – and quickly confirmed that well-worn adage that no money is more fun to spend than other people's money. Here are just some of the things he paid for with investors' money taken straight out of the Suscito account.

(Note that the payments listed below were in addition to his monthly salary of R750 000 plus his subscription to Discovery health, life insurance premiums and his bond repayments that were paid out of the same account.)

In just 2008, Suscito paid R100,000 for new designer luggage from Louis Vuitton for the Rees family, R17,000 for shoes from Gucci and Prada, another R17,000 for designer shirts from Tommy Hilfiger; R26 000 on luxury goods from Harrods, R49,900 at the Abbey box office for some tickets to a London show; R17,500 for CDs bought on a shopping spree in Hong Kong, and many thousands on pampering at various spas with names like Karma and Urban Escape. (The session at the Mandarin Oriental Spa in London costing R16,800 must have been something special.)

In the course of the year, Rees spent several hundreds of thousands of rands – yes hundreds of thousands – on restaurant meals: R14,500 on a single dinner at Browns, R11,500 for another at Louis XVI in Rosebank, R14,600 on a meal at the Cheyne Walk Brasserie in London, a total of R62,000 on just four dinners at Auberge Michel in Sandton (where ANC hobnobs

also like to hang out), an average of R8000 a shot at a dozen other restaurants. The R2000-a-meal jobs we got bored with counting. There are scores of them.

Also in that year he spent a total of R326 000 on Quintessentially's services and indulgences for the very rich (e.g. a Chauffeur-driven Rolls or membership of the Buttons Club – check their website) in London, Geneva and Singapore.

We haven't started to tell you about the list of international hotels he stayed at and the non-stop first class air travel he did. The three stops at the Carlton in London costing R545,000 and a R188,000 stay at the Palace hotel in Lausanne are highlights. The first class airtickets bought in that year cost millions – yes, millions.

But Rees was not entirely reckless: besides the various personal investments he made from Suscito's account (town house developments, a water bottling plant and an online shop amongst them), he did also buy R1.7 million-worth of Krugers rands from the Gold Coin Exchange. (By now they are no doubt safely deposited in a Swiss bank vault.)

After all that, he also drew cash from ATMs at an average rate of R3000 per day. What, we ask ourselves, was he having to pay for in cash?

From the same Suscito account his assistant, Kate Hogan was paid R150,000 per month – mostly, one imagines, to keep her mouth shut. She wisely resigned from Suscito in September 2008, when the going started getting a bit rough. Her husband, Kurt, stayed on at a mere R70 000 per month.

Oh, and lest we forget, Suscito did also pay the wages of Rees's loyal domestic servant, Florence. R2,500 a month, every month.

With due caution, Barwa had requested that Frankel Enterprises and Bartan sign these documents, to verify that the order was approved. No problem: on the same day Tannenbaum sent an email to Rees and Patterson asking them to sign the Aspen order valued at \$32.35m, the Shudu

invoice for \$19.41m and the Bartan Group invoice for \$19.41m.

In short, Bartan was purportedly going to buy the pharmaceutical raw materials from Shudu for \$19.4m and then immediately sell them on to Aspen for \$32.3m. In this conman's fantasy, they were going to make a profit of \$13m within a matter of weeks – a profit they had promised to share generously with their investors.

"I had frequent telephone discussions with Mr Rees during this period about the transaction and it was apparent

from the content of our discussions that he was fully aware of the falsification of documents presented to Barwa," Tannenbaum has declared. (And that they were planning to immediately use the money – all of it – to finance their own lavish lifestyles, and the next round of their Ponzi scheme.)

"On 4 March 2009 I sent Rees an email which confirmed that upon receipt of the \$19.41m from Frankel Enterprises into the Bartan account, those funds would be available to Mr Rees to settle claims of his investors," Tannenbaum has declared. "Rees was therefore well aware that the Barwa money was not going to be used to pay Shudu pursuant to the purported invoice, as Barwa had been led to believe."

He continues: "On 9 March Mr Rees sent me an email confirming that the funds from Barwa had been transferred to Frankel Enterprises' account in Hong Kong. In that email he also gave me instructions as to how the funds were to be transferred out of the Bartan account once they were received: £4.15m and \$1.5m were to be transferred to [Rees's offshore company] Abated and R10.1m was to go to Rees's Johannesburg trust account."

Later the same day, Rees revised his instructions regarding the transfer of funds out of the Bartan account: the dollar sum to be transferred to Abated needed to be upped to \$4.5m. He had forgotten that he had agreed to pay Nick Pagden \$2.6m: "I understood from telephone conversations, and a meeting with Mr Pagden, that he was one of Mr Rees's investors," said Tannenbaum.

Fired by their success, it took the conspirators just two days to set the next trap for Barwa. They obviously had to strike while the iron was hot – and before round one's repayment date, and rude disillusionment, arrived. "On 11 March 2009 Rees sent me an email in which he requested I provide him with invoices for APIs, which could be used to obtain more trade finance from Barwa and another investor known as Concordia," said Tannenbaum.

On 13 March 2009 Tannenbaum sent an email to Rees (copy to Patterson) in relation to an order for APIs for a company called Pharma-Q. These would be bought by Frankel from Shudu Import & Export for \$4,799,850 and sold on to Pharma-Q for \$6,480,375.

"I informed Rees that the goods for the order had been paid for by Bartan. My email also refers to the goods being 'en route to the harbour' and 'confirmed



to sail only end of next week,'” says Tannenbaum. “But while there were APIs procured by Frankel International as part of this deal, the value of those APIs was significantly less than the \$4,799,850 which was to be sought by way of trade finance from Barwa.” All the documents submitted to Barwa were false.

As was the purported further order from Pharma-Q in the amount of \$8,247,750 sent to Barwa three days later. “That documentation was altered by Mr Schulz, at my instruction, to increase the value of the order so that additional funds could be acquired from Barwa,” he has since confirmed. Together the two new orders supported a funding request to Barwa of an additional \$10,908,750.

On 26 March 2009 Barwa approved the transfer of US\$ 10,908,750 to Frankel Enterprises. Rees had already given Tannenbaum instructions as to how these funds were to be dispersed once received in Bartan’s account: \$6.7m of it was to go to Abated and \$1.41m to Rees to cover investors associated with Cape Town attorney Craig Delpont.

Barwa’s millions were not enough to prop up the collapsing pyramid. Local investors were becoming nasty

A copy of the statements for Bartan’s Australia and New Zealand Banking Group Ltd (ANZ) account for the period 6 March to 20 March 2009 shows the credit of \$19,409,975 on 10 March – the first sum provided by Barwa.

The transfers then made out of the account included the following:

■ On 11 March \$1.468m went to a Citigroup Global market account in New York (noseweek understands this is an account held by Rees);

■ \$1.5m was transferred to Bartan’s Australian account;

■ \$5m was transferred to Tannenbaum’s account with Rand Merchant Bank in Johannesburg, from where it

was immediately transferred to Rees’s Investec trust account;

■ On 12 March \$1.05m was transferred to the Merrill Lynch account of M3 Trustees for St Francis Trust, which is controlled by Nick Pagden;

■ \$1.55m was transferred to Rees’s Abated Investments in Hong Kong;

■ \$1,552,561 was transferred to a Merrill Lynch account in New York in the name of Nick Pagden;

■ On 13 March \$250,000 was transferred to the account of Mr Mark Harris. (“I understand he was one of Mr Rees’s investors,” says Tannenbaum.)

■ A further \$500,000 was transferred to Tannenbaum’s RMB account in Johannesburg and from there to Rees’s Investec trust account;

■ A further \$2.750m was transferred to [Rees’s] Abated Investments account in Hong Kong;

■ On 16 March \$500,000 was transferred to Samcole Ltd, believed to be one of Rees’s investors;

■ Another \$1.5m went to Abated Investments in Hong Kong;

■ \$200,000 went to Tannenbaum’s RMB account and then to Rees’s trust account.

Only \$790,000 was paid to Chinese suppliers of APIs actually ordered and shipped to South Africa – less than 5% of the amount solicited from Barwa.

In fewer than ten days, only \$36,000 of Barwa’s \$19.4m, remained in Barry Tannenbaum’s Bartan bank account.

According to a bank statement for Bartan’s ANZ account for the period 27 March to 17 April 2009, Barwa’s second investment – of \$10.9m – arrived in Bartan’s Australian account on 1 April. Within a week \$8.1m ended up in Rees’s Investec trust account in Johannesburg; two transfers of \$100,000 went to two separate accounts belonging to Bartan (presumably for Tannenbaum’s own use); a total of \$1,956,240 was transferred to an account in the name Avin Lieberman (understood to be one of Rees’s investors); and \$310,000 was transferred to Tannenbaum’s RMB account in Johannesburg “for the purposes of operating the company”.

Tannenbaum says the small change

went to paying for some (unspecified) APIs shipped to South Africa.

It wasn’t enough.

A day later, Rees was emailing Tannenbaum to provide more invoices for APIs. As casual as ever: “I need an order and invoice on a 60-day payment basis for \$3.1m. Can you send me today?” Barwa’s millions were not enough to prop up the collapsing pyramid. Local investors were becoming nasty.

“I understood from my past dealings with Rees as described above, and the fact that he requested the invoices stating specific terms without regard to any details of the proposed underlying transaction – and that he wanted the invoices that same day – that he wanted and expected me to provide falsified invoices of the kind already described,” said Tannenbaum.

But their luck had run out. Barwa immediately rejected this proposal.

“In mid May 2009 I had a telephone conversation with Mr Rees,” Tannenbaum recounts in court papers.

“He told me that Barwa was pressing for repayment [and] he needed to provide an explanation for the delay in payment... [he] instructed me to falsify a Reserve Bank document which he stated he would give to Barwa. I subsequently prepared that document and provided it to Rees.”

By late May Barwa’s directors were becoming anxious and had started making some rather pointed enquiries. Rees decided the best defence strategy was to immediately establish his (false) credentials as an innocent and a campaigner on behalf of the victims of fraud – by betraying his best-ever, beloved (but not in a sexual way) friend Barry Tannenbaum.

On 29 May Rees sent an email to Patterson and Volker Schultz in which he said, in a tone of moral outrage, that he had only just discovered “irregularities” in relation to certain deals with Frankel Enterprises, adding: “James [Patterson] and I were not parties in that regard... There are transactions which these funds have been used for... independently of the funder’s intent. These transactions, I believe, have not been disclosed.”

In fact, as his earlier emails to Tannenbaum make clear, he had all along been aware that falsified documents had been created to support the funding requests to Barwa – and that those funds were not used for the purposes which Barwa had intended: He had used most of the funds himself! ▣

# "TRAPPED IN POLLSMOOR

Jenny was warned that she would spend the rest of her life in jail if she spilled the beans on a crime syndicate

**A**S A NINE-YEAR-OLD GIRL, she survived the 1994 genocide that saw nearly a million of her fellow Rwandans brutally butchered. Some fourteen-odd years later she was trafficked into South Africa and turned into a cheat, a sex-slave and a thief. Forced into acting as an accomplice to theft, and – it seems – betrayed by police detectives, Jenny (not her real name) now languishes in Pollsmoor Women's Prison in Cape Town, awaiting prosecution. It has become almost impossible for the young Rwandan woman to trust anybody.

Jenny's father and an older brother were killed during the Rwandan genocide, but, somehow, her life slowly returned to normal, and, after high

school, she enrolled at the National University of Rwanda to study nursing. In 2004, she completed the first phase of her diploma, but couldn't afford the fees to continue her studies.

For a while she found casual work as an hospital orderly, then, in late 2007, she heard from some Rwandans living in South Africa that the country was in need of medical staff and that she would easily secure employment. Jenny quickly packed her bags for Africa's new land of opportunities.

Alas, Cape Town wasn't the haven she had been led to believe – for starters, her limited command of English meant nothing was going to be easy. No nursing job awaited her as promised: without a work permit, medical

institutions wouldn't even look at her diploma. As for getting such a permit – that, she quickly learned, would be no walk on the beach. Besides, those who had coaxed her south had something else lined up: according to Jenny, the Rwandans who had lured her here soon offered to introduce her to a woman they said had contacts in government departments, and particularly in the Department of Home Affairs. This woman would get Jenny the work permit she needed. And so the desperate young woman met Felicia Auntie, as she is known in prostitution circles.

Felicia, who is allegedly from Nigeria, assured Jenny that everything would be taken care of, and she

handed over her passport and diplomas – she was told they were needed to get the work permit. Shortly thereafter, says Jenny, in February 2008, Felicia arranged for her to be driven to the Home Affairs offices in Nyanga, where an official registered her as a Kenyan asylum seeker. (In early 2008, at the height of the post-election violence that gripped Kenya, Kenyans were considered more deserving of asylum, whereas there were no grounds for Rwandans to be granted such status.) The temporary asylum permit, *noseweek* has established, was authorised and granted by Home Affairs official Nomajama Guwa.

If Jenny had imagined that her problems were at an end, she was in for a shock. She discovered almost immediately that her life now belonged to Felicia and her gang. If she didn't cooperate and do as demanded, she would be turned over to the "Home Affairs police" (of course no such police department exists).

Shortly thereafter, Jenny joined several other young women, similarly lured here with promises of work, cruising the bars of Cape Town, offering their bodies for a price. For almost a year, Felicia Auntie collected most of the proceeds, claiming that Jenny was paying off what she "owed" – plus interest – as well as for protection, accommodation and "taxes". Jenny was never told how much she "owed" altogether – and the amount she was expected to pay back grew almost by the day.

Then the economic meltdown hit and suddenly prostitution wasn't as profitable; the men who sustained the trade found themselves with less disposable income. Towards the end of last year, Jenny and several other girls were advised to seek employment as house-helpers in wealthy suburbs in order to pay off their respective debts.

Unsure how to go about advertising her services, Jenny chanced on a lucky contact in a bar – a Polish tourist put her in contact with someone who could help her. Thus it was that Jenny found herself working for Sylvia (who has requested that her surname not be given), who operates a tour and travel bureau from her Table View home.

For some five months, Jenny used her income to service her "debt" to Felicia, hoping that sooner or later

**W**HILE RECENT MEDIA coverage of human trafficking into South Africa links it to the 2010 Soccer World Cup, the reality is that syndicates behind the trade in people don't need sporting events to attract clients. For instance, as reported in *nose110*, young women from Eastern Europe are promised jobs in South Africa – but end up in strip joints. As Dr Jaco Barkhuizen, who teaches Victimology at Monash University SA, tells *noseweek*: "They often arrive in the country as tourists, or on invitation for such jobs as modeling and acting, or other forms of vocation their 'handlers' think up."

Once they arrive, the traffickers "sell" them to brothel- or strip-club owners. Their travel documents are retained by "their owners" as security.

As Jenny's story shows, women are being "sourced" from African countries by an underworld network where intimidation, arrogance and bribery are the order of the day.

That Jenny chose to return to her employer's home after helping Felicia's men to rob the place, and her subsequent confession to the police, provided a truly extraordinary chance to crack

open what appears to be very powerful human trafficking ring operating in Cape Town. Thanks to individuals at the Table View police station, this opportunity appears to have been lost.

In May this year, the Department of Justice and Constitutional Development published a draft bill on the prevention and combating of trafficking in persons. This bill, if enacted, would be in line with the 2000 UN Convention against Transnational Organised Crime and the protocol to prevent, suppress and punish trafficking in persons, especially women and children.

Launching the UN Convention, the then secretary-general declared: "If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalisation for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings."

her papers and passport (which may well already have been sold) would be returned to her. Then, one day, Felicia suggested that Jenny supplement her income by stealing from her employer. All she had to do was wait for a signal, and at the right moment she would be told what to do. From then on Felicia called regularly, to ask Jenny about the whereabouts of her employer.

Then on Saturday 2 May, when her employer and husband were out of the country, Felicia called. Shortly afterwards men arrived in a metered taxi and were let in by Jenny. The homecum-office was cleared of its valuables, including a laptop valued at R17,000, jewellery, designer clothes, \$30,000, Aus\$3,850 and several thousand Euros and Rands in cash. All in all, goods and cash to the value of R300,000 were removed. Jenny accompanied the men back to Felicia's

house, in the taxi. Then, oddly, she returned to wait for her employer.

When Sylvia arrived home later that afternoon, Jenny quietly welcomed her as if nothing had happened. When Sylvia discovered she'd been robbed, Jenny claimed to know nothing about it, and accompanied her employer to the Table View police station to report the crime.

At the station an Inspector Leggett supervised the recording of a statement. He advised Sylvia to have polygraph tests administered on everyone who had had access to her home while she was away.

Three days later, a text message arrived from the police station, advising Sylvia that a Detective Constable RD de Koker would be investigating the case. This despite the fact that theft cases involving sums in excess of R100,000 must be assigned to a detective ranked Captain and above.

For days, there was no action from the Table View police. It was only after Sylvia handed them the results from the polygraph tests, carried out by Lucille Reed of Truth & Deception Bureau, that Inspector Leggett instructed her to fetch Jenny and bring her to the station.

Although the polygraph test had indicated inconsistencies in Jenny's replies, none of the detectives at Table View were able to extract any information from Jenny. On Friday 8 May (a day after Jenny was locked up) Sylvia, frustrated by the slow pace of investigations, requested that Inspector Lambert and Constable Fluks allow her a few minutes with Jenny.

Within minutes the young woman had broken down and told Sylvia her whole sorry tale. Sylvia tells *noseweek* that this confirmed her suspicions: "She had nothing to show for the valuables that had been stolen from my house. I encouraged her to tell the cops everything as she had told me."

Sylvia says that when she called Inspector Lambert and Constable Fluks back into the interrogation room, they assured Jenny that they would ensure her protection and leniency on the part of the courts, as long as she told the truth. The detectives then recorded a confession in which Jenny described how the theft had been conducted, and Felicia's role in the human-trafficking and prostitution rings in which she

Authority to make plea bargains, but police apparently often promise leniency to suspects.) Jenny told *noseweek* during an interview in Pollsmoor that all she wanted from the cops was their assistance in getting her passport back from the madam. She wanted to go home.

A day after the cops recorded her statement, Jenny led them to the house where the loot had been delivered. Leaving her handcuffed in the car, the detectives allegedly went in, returning shortly afterwards to say that everything would be taken care of. Jenny was also able to point out the metered taxi that the gang had used. This, she tells *noseweek*, was confirmed by the taxi driver's cellphone number, which she still had. The cops called in the driver for questioning but let him go, after listing him as a witness against Jenny.

That Sunday the cops disclosed to Sylvia that Jenny was an important witness and would be arraigned in court the following day (Monday 11 May), in the company of the detectives who would request that she be returned to Table View police station to help in providing information needed for their investigations into the human trafficking ring. This brought some sort of satisfaction to Sylvia: "At least there was a possibility of getting to the bottom of the syndicate. The cops had a victim witness; her information was vital and could help other girls."

But when Jenny appeared at the Cape Town Regional Magistrate's Court the following day, the detectives were absent – and her statement of confession was missing. Appearing as the investigating officer was Constable Detective RD de Koker, who, thus far, had had no part

in the investigations. And instead of being returned to Table View police station Jenny was sent to Pollsmoor. On learning this, Sylvia lost patience; she sought interventions from every senior police officer who would listen to her. She even paid a visit to the of-

## Bride for sale: cash on delivery

**N**oseweek chanced upon another "little" story involving madam Felicia Auntie, which corroborates aspects of Jenny's account of the operations of this particular trafficking ring. The story is told by an individual who claims to have witnessed the 2008 "sale" of a Nigerian woman to a Dutch tourist, for a cool €60,000.

The tourist had met the woman – who worked during the day as a hairdresser at a Cape Town taxi rank – at a night club. After falling in love with her, he asked her to marry him and move to the Netherlands with him, at which point she disclosed that her travelling documents were being held by the mysterious Felicia Auntie. Felicia would only release them upon full payment of the Nigerian woman's "debt" of €60,000. The tourist coughed up, the documents were released and the happy couple apparently flew off to Europe.

ices of the Provincial Commissioner of Police: "They were letting an opportunity go that could crack the syndicate. Sending her to prison was never my intention. I wanted those behind the despicable crime of human trafficking to be placed behind bars."

The pressure from Sylvia prompted police to recall Jenny from Pollsmoor to Table View police station, and detectives from the Organised Crime Unit took over the case. But at that point Sylvia was denied any further access to Jenny, under claims that she might interfere with investigations. Unfortunately for Jenny, despite the undertakings concerning protection, she once again appeared in the Cape Town Regional Magistrate's Court, under the same charges. For a second time, she was hauled off to Pollsmoor.

It was during her second return to Pollsmoor that she was visited by a fellow Rwandan, Cyril Bucumi, who offered to provide her with legal representation. Bucumi, although a Rwandan, carries South African identity documents (not a permanent residency permit).

According to Bucumi, who works for the Telkom Cable Unit (with offices

When Jenny appeared at the Cape Town Regional Magistrate's Court, the detectives were absent – and her statement of confession was missing

had become embroiled.

According to Jenny, the assurances given to her by the Table View police motivated her to tell all she knew about the gang. (The Criminal Procedure Act allows only the office of the director of the National Prosecutions



along Barrack Street, beside Cape Town Home Affairs), he was getting instructions from an individual called John Miller, based in the UK. Bucumi told *noseweek* that the funds for Jenny's legal services were being sent to him by this Miller.

And so, at her third court appearance, Jenny had attorney Riedwaan Isaac as her representative, and he instructed her to plead not guilty. Isaac also instructed her not to provide any further information to anyone. Once again, she was told that everything would be taken care of. Also present at court was Bucumi, who introduced himself to Sylvia and told her that he was a friend of Jenny's brother, one "John Miller", who had sent him the cash to hire the attorney.

Jenny, as instructed, pleaded not guilty. Attorney Isaac did not request bail for Jenny and she was sent to Pollsmoor for the third time to await trial – set for 8 December.

*Noseweek* first learned of Jenny's story from Sylvia, after she realised that the Table View police were not pursuing Felicia Auntie, and she approached forensic scientist Dr David

Klatzow for help. *Noseweek* immediately linked the story to one from a confidential source in the same police station, who had already called about the suspicious mismanagement of a case that could have broken the back of a major crime syndicate.

One of the first things *noseweek* discovered was that Jenny's file at the Magistrate's court did not contain the signed confession (which Table View police had shown to Sylvia, and which described the nuts and bolts of Felicia's *modus operandi*.)

The state prosecutor thought that this might be because the police were still investigating. Why then was a trial date set – before police could complete their investigations and without admissible statement from the accused?

Bucumi at first agreed to meet *noseweek*, but later cancelled: "I got a call from her brother, John Miller, who is in the UK, requesting that I urgently get an attorney to represent her. I receive money from Miller through Western Union, which I pass on to the attorney."

Bucumi referred *noseweek* back to attorney Isaac, who also declined to meet, or discuss the case. He would not explain why he was receiving instructions from third parties Bucumi and Miller, and why he had never consulted with his client.

When *noseweek* finally got to speak to Jenny in Pollsmoor, she denied that she has a brother called John Miller, or that she had heard of Cyril Bucumi before he visited her in jail.

In mid-October, *noseweek* called attorney Isaac to find out why he wasn't preparing his client for the upcoming trial. Because he was no longer representing her, was the answer. Why hadn't he told her that? Because he'd let "her relatives" know (i.e. Bucumi and Miller), he said.

When *noseweek* asked him whether the Law Society allows attorneys to receive instructions from third parties,

attorney Isaac somewhat lost his cool: "Are you threatening me? Are you my president? Are you my boss? Are you my client? Are you an attorney? You can do whatever the fuck you want, you can report me to the Law Society or to the police. I have your contact details." And the line went dead.

*Noseweek* has established that Miller, a UK resident, is not Jenny's broth-

A source in the same police station had already called about the suspicious mismanagement of a case that could have broken the back of a major crime syndicate

er. Is he part of the human trafficking syndicate? And what is Bucumi's role in the operations? How did he get his South African citizenship?

In the meantime, Jenny has been warned to keep her mouth shut, or she won't leave Pollsmoor alive. During her first week in the prison, she says, several of Felicia's girls, whom she knew from the clubs in Cape Town, came to her and told her to keep her mouth shut. Each time this happened, she would hear shortly thereafter that the particular girl who had spoken to her had been released on bail.

Jenny also claims to have been threatened by Table View detectives. She says they told her that, should she open her mouth again, they would ensure she spent the rest of her life in jail. The Rwandan embassy has been unable thus far to establish that Jenny is a Rwandan national, as her official travel documents are missing. The embassy hopes to clarify her status soon, and has offered financial support, as have various organisations, to retain attorneys to provide proper legal representation for Jenny.

■ As *noseweek* was going to press, we heard that Jenny had been released on unexplained bail. ■



# Sociopaths stole my farm!

Two brothers with long criminal records  
have a history of outrageous thievery

**A** RETIRED SCOTTISH AIRCRAFT engineer, now facing financial ruin, has learned the hard way how to lose a farm in Africa after he crossed paths with the brothers Kotze, two sociopaths from Gordons Bay, both of whom have long criminal records.

In desperation Dave Cater has applied to the Cape High Court to have one of the brothers, JP Kotze, declared a vexatious litigant, in order to stop the torrent of legal abuse that has come his way since he tried to save his property after it fell into Kotze's hands by fraud. Cater is the first person in decades to apply to the court for such an order.

The saga started almost four years ago when Cater sold the shares in Alba Olives (Pty) Ltd to JP Kotze's brother, St Michael Pierre Kotze, for R3.4m (plus some furniture for a further R500,000). The sole asset of Alba Olives is a small buchu farm near Firlands, Gordons Bay.

"My wife and I purchased the property with all the money which we had saved for our retirement, planning to sell it for a profit sufficient for us to be secure for the rest of our lives," Cater explained.

Kotze promised that the full amount owing (for the shares and the furniture) would be paid to Cater by 13 February 2006. Kotze also asked to move in early "to do some tiling work". Cater, who was about to leave the country, agreed – to his everlasting regret.

What he did not know at the time was that Pierre Kotze had been convicted of 15 charges (the first in 1982) including theft, assault and contravening the Insolvency Act, and had served a three-year sentence for fraud. After being released from prison he changed his name to St Michael Pierre Kotze.

"Needless to say, the R500,000 promised by Pierre Kotze was not paid, then or ever. To date neither I nor Alba Olives (Pty) Ltd have received a cent



from Pierre Kotze, whether in payment, rental or contribution to municipal rates and taxes – or indeed legal costs," Cater lamented.

When Cater's attorney demanded proof that Kotze had obtained the necessary financing to buy the shares, he gave them a documents from Bond Choice that later turned out to have been obtained by threatening an employee with violence. Absa's Roelien Janse van Rensburg declared it a forgery.

In April 2006 Cater's attorneys cancelled the agreement and planned to sue for Kotze's eviction, but he got in first, and issued summons demanding that the shares in Alba Olives be transferred to his name.

In the meantime Kotze had spread the word amongst local building contractors that the farm operated as a dump for building rubble. The result: damage that will cost several millions to put right, in the form of builders' rubble piled up to 3.5m deep across

over four hectares of the property.

Kotze bizarrely claimed he was thereby "improving" the land. When it turned out that his dump was contaminating the ground water, the Green Scorpions issued him with a compliance notice to clear up the mess – which Kotze simply ignored.

By then the acting judge president of the Cape High Court, Judge Jeanette Traverso, had ruled that Kotze's share application, Cater's eviction application and the interdict to stop the dumping must be heard by the same judge on the same day.

But when the trial date arrived, Kotze's legal representatives withdrew. When the judge refused him another postponement, as he had already been given several, Kotze agreed to settle the matter: he would either pay R6.9m or immediately move out. He never paid.

Ominously, his brother JP Kotze arrived at court on the same day demanding to be heard. JP, a boat builder, also has a long list of previous convictions, including an early one for armed robbery and later ones for fraud and rape. JP now claimed that he had been "leasing" the property from St Michael and had paid for a whole year. He had, he said, paid in cash so could produce no proof that he had done so. He demanded to be allowed to stay. St Michael had meanwhile moved on, to Mtunzini on the KwaZulu-Natal North Coast – where he was illegally occupying the house of his next victim, local pharmacist Etienne Vermaak.

In Cape Town, Cater was now involved in a new round of litigation to get JP removed from the farm. He finally succeeded in September this year. Or so he thought. After giving JP several days to voluntarily move, the sheriff of the court finally moved in and changed the locks.

"Jean-Pierre's refusal of this remarkably generous tender makes clear his true intent. He hopes that by abuse of

process of this court and engaging in vexatious litigation and forcing me to incur unsustainable legal costs, he will simply wear me down and force me to give up fighting, leaving him in possession of the property," Cater said.

Changing the locks, however, was not going to keep Jean-Pierre off the farm. In the early hours of 24 September he

He barged into the house,  
ripped the new house  
keys out of the hands  
of security guard Future  
Pungu and went to bed

barged into the house, ripped the new house keys out of the hands of security guard Future Pungu and went to bed.

Cater's attorneys brought an application to have him restored in possession of the property, but Judge Essa Moosa postponed the application to 14 October. Cater then flew back to Cape Town, and with the help of neighbour Owen Pritchard and "some friends", attempted to put an end to the ongoing saga, once and for all.

"As we arrived at the property, Jean-Pierre opened the door. Mr Pritchard then said to him that he had to leave. If I remember his exact words correctly, they were: 'JP you've had a good run, it's time to go'."

JP rushed off to court and somehow managed (late on a Saturday night) to get an *ex parte* order from Judge Elizabeth Baartman restoring his possession of the property and allowing for Cater to be arrested if he came onto his own property.

The next day, however, Judge Andre la Grange suspended the operation of this order and postponed all the cases to 14 October.

Meanwhile JP Kotze had approached the Constitutional Court for urgent relief. In papers before the court he claimed that Judge le Grange said that the order he got from Judge Baartman was "bedrog" (fraud). Judge le Grange and everybody else who had been present, however, insisted that he had said "flawed".

On 14 October when the case was expected to resume, Judge le Grange withdrew from proceedings and asked the police and the National Director of Public Prosecutions to investigate a case of perjury against Kotze.

The case was expected to resume before another judge.

"I have followed due process despite the enormous suffering it has occasioned to my family, as I firmly believe in the rule of law. I have expended hundreds of thousands of rands, only to be despoiled by a criminal who has systematically been exploiting the protection afforded by the Prevention of Illegal Eviction and Unlawful Occupation of Land

Act and the rules and procedures of this court. This has been carrying on for so long that I may not live to see the end of this and never be able to enjoy the fruits of my life's labour," Cater said.

He adds: "It virtually beggars belief that anybody can act with such utter contempt for the rights of another party."

On 9 November Judge Ashley Binns-Ward finally declared Gordons Bay boat builder JP Kotze to be a vexatious litigant. He is barred from harassing Dave Cater with any further lawsuits for the next three years. He was also ordered by the court to stay away from the farm.

Meanwhile pharmacist Vermaak was having his own problems with the other Kotze criminal, "St Michael".

"I put my house up for sale for R2.2m. There were some repairs that had to be done. Kotze said he would do them himself, so we reduced the sale price to just over R2m. He said he would only be able to pay me in six months, but wanted to move in right away. I agreed on condition that he paid a non-refundable deposit of R100,000 and rent of R7,500 per month," Vermaak explained.

Unsurprisingly, there was a problem with the payment of the deposit.

"In March when I asked for the rent he said there were so many 'latent defects' in the house that he was not going to pay. Now he refuses to move, saying that he has suffered damages. He wants me to pay for his move and to return the R100,000," said Vermaak.

Vermaak and Kotze cancelled the sale agreement at the end of April, but Kotze still refuses to move. Vermaak's application to have St Michael Kotze evicted from the property was due to be heard at the end of November. ■



"Exactly what kind of options are you interested in trading?"



# Lawyer's negligence gets him off hook

**H**ERE'S SOMETHING THAT will make the legal profession sit up and take notice: *nose109* told how, back in 2005, the Cape High Court found that Andre Berrange (former managing director of law firm Buchanan Boyes – now Smith Tabata Buchanan Boyes) had committed the most dreadful sin that an attorney can be accused of – sharing fees with a non-attorney – and had therefore suspended him from practising law for two years. (The prohibition against sharing fees is, of course, not there to ensure that the odd act of human kindness damages the profession's well-deserved reputation for meanness, but to ensure that attorneys don't buy instructions).

What Berrange had done was to enter into identical marketing agreements on behalf of Buchanan Boyes with two giants of the property world, Pam Golding and Seeff. Although the simple one-page agreements were pretty vague – there was some fairly innocuous stuff about each law firm's name appearing in the estate agents' brochures, and talk of "suitable consideration... calculated on commercial principles" – Judge Desai said that the agreements were a sham and that the deal was very simple: Buchanan Boyes would pay the estate agents R1000 for every conveyancing instruction

referred their way. And there were quite a few of those – Buchanan Boyes paid Pam Golding R273,000 and Seeff R271,000.

The Law Society was applying for the suspension of four of Berrange's fellow directors – Robert McPherson, Martin Sheard, Phillip Steyn and Jonathan Steytler.

Well, their day of reckoning came on 15 October 2009, in the form of a 65-page judgment by Judges Van Reenen and Allie. The judges found that the four had, together with Berrange, comprised the executive committee (Exco) of Buchanan Boyes, but that Berrange had been the *de facto* leader, and a man who was so involved in marketing that he "had little time to practise law". The judges went on to say that it would not be right to simply impute Berrange's misconduct to his former directors, but that the Law Society needed to show that the four had made themselves guilty of misconduct.

The evidence showed that Steyn –

who had joined Buchanan Boyes from another firm in 1999 – had, in 1996, been told by the Law Society that an arrangement, in terms of which his then firm contributed to the advertising costs of an estate agent client and had its name featured in the estate agent's advertising, was kosher as long as the seller's freedom to appoint a conveyancer was unfettered. On joining Buchanan Boyes, Steyn had handed his file to the Exco for consideration, and it was decided that Berrange should consult senior counsel for advice on what exactly the firm could and could not do. This, said the judges, made it very clear that the five knew that the Law Society had not sanctioned what Buchanan Boyes had in mind, which was the buying of instructions.

What exactly happened with senior counsel is unclear, mainly because Berrange, who is no longer with the firm, failed to file an affidavit. It does, however, seem that Berrange

## Slaps on the wrist for naughty Exco members

## With the exception of McPherson, none of the four even bothered to read the document

may have taken a draft agreement to senior counsel for consideration, who then proposed some changes so that it would comply with the Law Society's guidelines. What is very clear though, is that the other four showed little or no interest in what was going on. With the exception of McPherson, none of the four even bothered to read the simple document, and Sheard, who eventually signed as a witness to the Pam Golding agreement, didn't even bother to read it then.

The four Exco members seem to have taken the view that marketing was Berrange's baby, and that whatever he said was fine. By doing this, said the judges, the four gave Berrange a legal mandate, which meant that his knowledge could be imputed to them. The judges made it very clear that the obligations imposed by the Law Society's rules apply to each and every attorney, and that no attorney can shift the responsibility of conforming to those standards on to their partners. The judges also rejected the predictable buck-passing defence, and said that they were very sceptical of the claim that Berrange implemented the agreements in a manner that "wholly altered their nature, effect and purpose".

So if senior counsel approved the agreement and if the agreement was unlawful, there can be only one conclusion – senior counsel got it wrong. The judges were, however, having none of that (even today, most of our judges come from the ranks of senior counsel). Not only did they fail to identify the culprit, but they even contrived to find excuses for him – we don't know what instructions were given by Berrange, or whether he was given a copy of the Law Society's rules, or whether the opinion was in writing or oral, or whether he had the benefit of the assistance of junior counsel. In fact,

they seemed to doubt whether there had even been an opinion – "in view of the generally known good reputation of the counsel involved, it is difficult to reconcile the opinion attributed to him with his having been fully briefed with all the relevant rules and guidelines.. for some inexplicable reason the person best qualified to provide such

particulars, namely Berrange, has not been required to depose to such an affidavit". If the attorneys had really wanted to know whether the agreement was lawful, said the judges, they should've approached the Law Society for a ruling (instead of bothering one of our brethren).

So, all four were guilty of unprofessional conduct – but what to do with them? The judges felt that the four clearly had to receive a lesser punishment than ringleader Berrange (two years' suspension). So they settled on nine months' suspension (itself suspended for five years) for Sheard, Steyn and Steytler. But McPherson, they felt, deserved more, so he got an immediate 12-months' suspension. His crime – he had actually read the agreement and done nothing about it.

So what are the lessons? Well if you're an attorney and you break a significant practice rule, the chances are you'll get off fairly lightly – the judges made a point of saying that the mere fact that attorneys break a rule does not mean that they must be struck off, as the Law Society still needs to prove that you're not a fit and proper person to practise.

More significantly, you can't rely on the fact that one of your partners is responsible for certain functions – the rules apply to all attorneys equally. But, if you are going to slack, best to be well and truly *slapgat* (*noseweek's* interpretation of the finding that the



attorneys who didn't bother to read the agreement were less culpable than the one who did). And if you're an advocate, don't worry – you're in the world's most sheltered profession. All things considered, this judgment probably won't do much to improve public confidence in the legal profession. ■

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# Doctatorship

The government has seized control over health care professionals

**T**HERE'S AN INTERESTING debate going on in the world of medicine. It involves the Health Professions Council South Africa (HPCSA) – the over-arching body that comprises 12 professional boards, including the Medical and Dental Professions Board, and those of professional optometrists, physiotherapists and audiologists.

The HPCSA is there to set and maintain educational and professional standards, and it is, says their website, “an entirely autonomous organisation”, which “does not receive grants or subsidies from government or any other source, and is funded entirely by the health care professions it represents”.

Autonomous *se moer*, says the editor of the South African Medical Journal (SAMJ), Dr JP van Niekerk. In its April 2009 issue, Van Niekerk wrote an editorial castigating changes that have been made to the HPCSA. The main thrust of his attack is that the Department of Health has taken complete control of the HPCSA – in the same way that it has taken over bodies like the Medical Research Council and the Medicines Control Council.

This process by which government has gained control of these bodies, says Van Niekerk, was initiated and vigorously pursued by former President Thabo Mbeki and his never-to-be-forgotten health minister, Manto Tshabalala-Msimang, and is now just about complete. According to Van Niekerk, the Medical and Dental Professions' Board – the largest and most important of the boards comprising the HPCSA – has vigorously opposed the changes, but its views were completely ignored. Van Niekerk also claims that the HPCSA president, Dr Nicky Padayachee, and HPCSA registrar and CEO, advocate Boyce Mkhize, rammed these changes through Parliament (see sidebar).



Van Niekerk has a further gripe: changes that the government proposes making to the composition of disciplinary boards means that they will in future be chaired by laymen rather than doctors.

So how has the government obtained control over a body that is funded by its own members? Simple: it changed the rules so that the quaint old system of health professionals electing the members of their professional boards has been replaced with one whereby Big Brother, in the guise of the minister of Health, appoints the members of the various boards from names nominated by health professionals, and so is able to appoint the “right” people.

This control over the medical profession is a great shame, according to Van Niekerk, because one of the very rea-

sons why the HPCSA came into being was because of the perception that the old South African Medical and Dental Council (SAMDC) – which did not represent black doctors properly and failed to distinguish itself during the Steve Biko affair – had been under the thumb of the old regime.

HPCSA CEO advocate Boyce Mkhize disagrees. In a furious response published in the July edition of the SAMJ, he refers to Van Niekerk's comments as “wild, libellous and unsubstantiated”, saying there is no evidence of any attempt to politicise the HPCSA. As regards the objections of the Medical and Dental Professions' Board, Mkhize says that the HPCSA “carefully considered their protestations and ruled them to be without basis”. He goes on to say that the HPCSA is

much more than doctors and dentists, and the “overwhelming majority” of the members supported the changes. Mkhize denies “that democracy will be eroded”, and claims that the new system is “certainly not a dictatorship but a form of democracy that perhaps Dr Van Niekerk does not like; but the fact that he does not like it does not make it something other than democracy. Election is only one form of democracy and there are many other forms”.

Apparently tiring of arguing the matter on the merits, Mkhize then moves to safer territory: “Dr van Niekerk”, he says, “Omits to advise the readership that the process of appointments by government is not something unique to developing countries such as South Africa, or something of the so-called ‘dark continent’ but a practice in force in many developed countries and so-called civilised democracies of the world. [...] A number of States in America and Commonwealth countries with established democracies use this model of appointments.” Ho hum.

Mkhize goes on to deny that he or Padayachee played an improper role in getting the legislation passed, or that the system of lay chairmen will adversely affect disciplinary proceedings, pointing out that there will always be medical assessors. And then it’s on to the personal stuff, describing the editorial as “a foul cry lamenting what Dr Van Niekerk may have perceived or experienced as a glorious past in which he played an active part and the new order in which he has no part to play and hence his conclusion that the HPCSA has become or is becoming a sorry mess”.

Time to see what this is really all about. *Noseweek* asked Mkhize to explain exactly how the new appointment system works, and he supplied the following example: The Professional Board for Physiotherapy, Podiatry and Biokinetics will now comprise 13 members, including physiotherapists, podiatrists, biokineticists, as well as persons from the Department of Health, the world of higher education, and “the community”. Of these 13, all but one will be appointed by the Minister of Health. He sees the appointment system as an improvement because “in the past, this organisation (and the previous Medical and Dental Board) reflected a very skewed representation of the country’s demographics [...]; the HPCSA therefore needed to transform into an organisation with

## Everything that’s wrong

**H**PCSA PRESIDENT Dr Nicky Padayachee epitomises everything that’s wrong with affirmative action. A once highly-regarded doctor who succumbed to well-documented psychiatric and substance abuse problems, Padayachee was controversially appointed dean of the UCT Medical School, only to be relieved of his duties after slurring and being unable to stand straight at a graduation ceremony. He then went on to become executive director of research at the Medical Research Council (MRC) and president of the HPCSA – but resigned his position at the MRC after embarrassing himself and his country at a medical conference in Switzerland, once again by slurring and being unable to stand straight. He did, however manage to resist calls by the Medical and Dental Professions Board to resign his HPCSA presidency, primarily because ministerially-appointed HPCSA board members supported him. Padayachee is close to former Health Minister Manto Tshabalala-Msimang (who also contrived to embarrass her country). Advocate Boyce Mkhize, registrar and CEO of the HPCSA, has been there a long time. Some think he suffers from “Founder’s Syndrome”, an unofficial term referring to the autocratic behaviour of those who have been in a position of power for a long time. Doctors claim that, although he’s simply an administrator, he rules the HPCSA like a dictator.

members who represent the broader population and not a limited minority”.

Ah, so that’s what it’s about.

A long-serving Medical and Dental Professions Board member, who wishes to remain anonymous, put it more bluntly – democracy’s nice, but only if you’re winning. In the old days, practitioners elected the people they wanted on the board. The government didn’t much like this because the doctors and dentists tended to elect white board members, possibly because most of the practitioners were white. So a sys-

tem whereby certain members were elected and others were designated by the minister was introduced – in other words a quota system, a bit like they have in rugby and cricket.

But that wasn’t good enough, so elections were done away with altogether. And now the system is this: every registered practitioner can nominate people they want on their board; every person who gets two or more nominations goes on to a very long short list, and the minister then appoints board members from that list. Mkhize is right, says the source: it is a different form of democracy – the version you might find in, say, North Korea.

Regarding the disciplinary panels, Mkhize told *noseweek* that in the past the HPCSA was seen as an old boys’ club that protected its own, so having laymen with doctors adds fairness and transparency. Fair enough, but how exactly does it work? Well, said Mkhize, every disciplinary panel will consist of six members – two doctors specialising in the field, two community representatives (one of whom will be the chair), one board member, and one legal assessor who will simply guide the panel, but have no vote.

So who are these community representatives? Well, it seems that if the complaint involves alleged negligence by a doctor in Pretoria, two people from Pretoria will serve. And what if there’s disagreement between the laymen and the experts? Oh that won’t happen said Mkhize, there’ll always be consensus. So why bother with laymen?

Why, then, does government want so much control over doctors? And does it matter? The ANC is, of course, obsessive about centralising power, but doctors have a real concern about what this means for the profession, because one of the main functions of the professional boards is to set standards and register professionals. And that’s why the government is so keen to ensure that doctors agree with the policy of the day, be it the prescribing of garlic, the recognition of Cuban medical qualifications, or simply making sure that it isn’t so damn hard to get a medical degree – *noseweek* understands that there’s already a Medicine Lite qualification available, a so-called “medical associate”.

Yes, the real concern is that the medical professionals we will be consulting in the future may be a far cry from the ones we’re consulting now. ■

# New hazards on Arabella

These greens are becoming politically treacherous

**A** WHILE BACK NOSEWEEK reported on the Arabella hotel group's controversial plan to expand its luxury estate near Kleinmond (*nose104*), by adding a second 18-hole golf course and 350 additional luxury homes to the existing 18-hole course, 240 luxury homes and 145-room luxury hotel.

Environmental approval was refused by the Western Cape Department for Environmental Affairs, but this decision was reversed by the department's then minister, Tasneem Essop. A federation of ratepayers' associations thereafter applied for a judicial review.

They claimed that there was improper influence and bias, because the local communities – led by man-of-God-turned-BEE-facilitator Reverend Edwin Arrison – lobbied the Western Cape's then premier, Ebrahim Rasool, to get the development through. Rasool apparently told the lobbyists that the trick was to make sure it was “green enough and black enough”. Furthermore, the ratepayers argued, the land, which forms part of both the Boland Mountain Complex (registered as a World Heritage Site), and the Kogelberg biosphere buffer zone, should be preserved. Lastly, they said that a (misleading) Broad-Based Black Economic Empowerment (BBBEE) agreement that Arabella signed with the local communities had swayed the decision.

On 1 October 2009, Judges Louw and Bozalek gave judgment. The facts were these: On 26 January 2006 the relevant provincial director turned down the application, a decision that pissed off both the German owners of Arabella and a number of local people who were hoping to benefit from the development. So in February 2006, Arrison set about mobilising local communities, and Arabella South Africa's MD, Riaan Gous, made grand promises – “10,000 jobs” during the construction phase, and “1,000 jobs” in the long term, etc. etc.

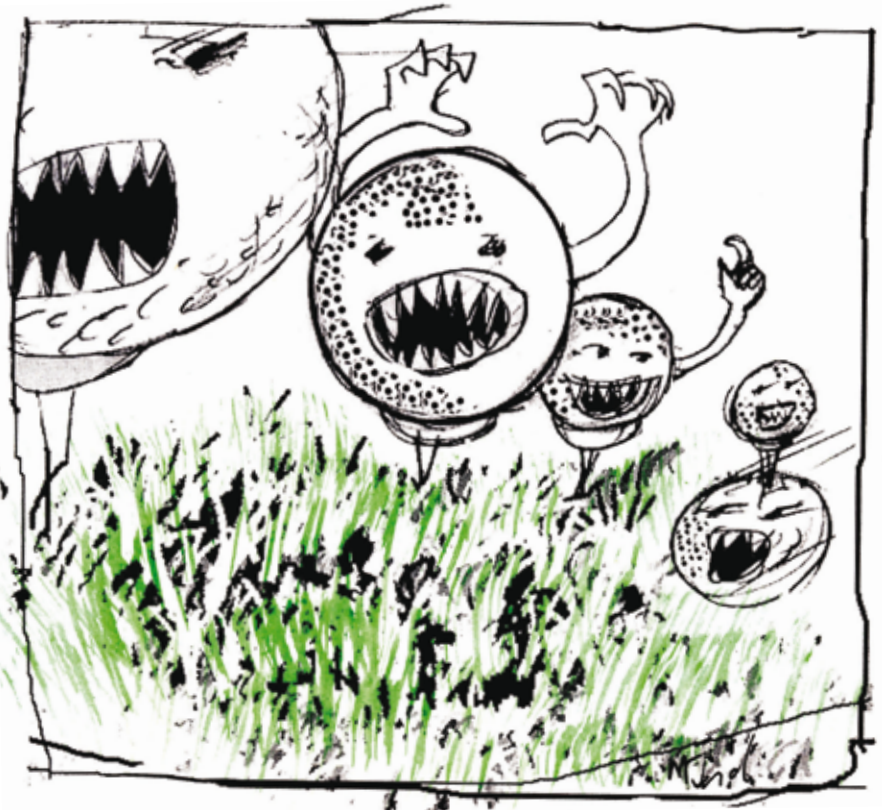


Illustration: Meg Jordi

The communities created an action group and a number of them filed appeals against the director's refusal to approve the application.

On 26 June 2006, by which time these appeals were already on file, Arrison, together with certain community leaders, met with Ebrahim Rasool. The premier told the group that they should maximise the benefits available to them. As a result, the group negotiated a BBBEE agreement with Arabella. This agreement provides for the creation of a trust, the Arabella Community Trust (ACT), which will represent the people of the local communities. It also provides that ACT will receive a percentage of the profits from the development, and that Arabella will provide skills training and employment opportunities to local people.

It also provides that Arabella and the ACT will each give the local

municipality R5m for social housing, to be built in nearby townships. The agreement was signed on 18 September 2006, and on the same day Arrison sent a copy of the agreement to both Rasool and Essop.

In Feb 2007, the department told Essop that the macro disadvantages of the Arabella extension outweighed the supposed local advantages. But on 23 April 2007 Essop wrote to Arabella to ask for clarification about the social housing. On 14 May 2007 Arabella replied with details of the R10m undertaking, and again sent a copy of the BBBEE agreement. On 10 September 2007 Essop upheld the appeal, allowing the development to go ahead subject to 76 conditions. One of these conditions required Arabella to provide the social housing it had undertaken to provide in the agreement.

The ratepayers claimed that the condition relating to social housing



was *ultra vires* (beyond the minister's powers). The court agreed, saying that the developer's commitment was simply to contribute to housing elsewhere, not in the area where the environmental approval was required. There was therefore no link between the positive impact of the housing and the negative impact of the environmental damage. The developer was basically seeking to buy environmental authorisation by making a donation elsewhere. And that was not permitted.

So did this kill off the approval? Yes, said the court, because even though it was one of just 76 conditions, a social housing commitment was clearly crucial. So the condition could not simply be excised from the approval. And even if it could, the fact that it was imposed suggested that the minister did not apply her mind properly to the matter.

Lest this decision be found to be wrong, the court went on to consider another issue, that of bias. Although Rasool in his affidavit denied that he ever influenced Essop, the minister had been copied on the letter from Arrison to Rasool. And, said the court, the meeting between Rasool and Arrison and the community leaders was clearly no ordinary meeting to

suggestion that he was a naive clergyman seeking to find out from the premier what the implications of the refusal were. This was political lobbying, and an email that Arrison had sent to the various communities showed that he was a man who knew just how to play the game: "Dear Arabella Phase 2 members, the only way some government officials will listen is if we put pressure on them. Please sms Lionel Louw [...] with the following message, or something similar: Dear Mr Louw, I am from (Kleinmond, Zwelihe, Botriver, Hawston, Mount Pleasant) and wish to know when the premier will meet us re Arabella Phase 2. Encourage as many people from the area to do this. Let's see what then happens."

The court said that a combination of factors – Rasool's meeting with appellants, the appellants' decision to send their agreement to Rasool and the minister, and the decision of the minister – who served at the premier's pleasure – to ignore her department's advice, clearly pointed to bias. So the decision had to be set aside, with the instruction that the appeal be considered afresh by the minister.

A slap in the face for the ANC. But the party will probably pull out the old race card, or argue this case shows just why Thabo Mbeki and his chums had to go. But a huge bonus for the DA surely. Or is it? Politics is a funny thing, and Tasneem Essop resigned in 2008 following the departure of Ebrahim Rasool, to be replaced for a short period by one Pierre Uys, who in turn was replaced, when the DA took the province in 2009, by one Anton Bredell. So a DA Minister will now need

to decide a sensitive matter involving an issue that many of the party's supporters are passionate about – the environment – and one that many are likely to be a lot less passionate about – economic upliftment.

To add spice to the matter, Arabella is in the Overstrand, whose DA-led administration so often features in this magazine. The Overstrand Municipality – a respondent in the proceedings, but one that simply agreed to abide by the court's decision – is known to have little interest in either the environment or the plight of the dark and the poor, but is known to be very partial to property developments. Could be a tricky decision. **W**

## The department's advice clearly pointed to bias

discuss the advantages of golf developments in general. Rasool knew very well that appeals had been filed and that he was talking to appellants. Rasool, in fact, actively intervened to improve the situation of appellants. This was clear from the following words that appear in the BBEE agreement: "During the meeting with the premier, it was decided that the action group should engage Arabella with a view to formalising all the BBEE undertakings of Arabella in respect of the Phase 2 development."

The court was equally unimpressed with Arrison's claim that he had simply sent the letter to Rasool as a courtesy. Nor did it buy Arrison's



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# City Capital winds up in court



**A**S A RESULT OF A BITTER behind-the-scenes battle to gain control over the R300m property portfolio of the troubled City Capital Investment Scheme (and the R6.9m commission the liquidators are likely to collect) the judges of the Cape High Court have had to endure a veritable soap opera of applications and counter-applications.

In May this year, blaming the economic downturn, City Capital stopped monthly income payments to the close on 1000 pensioners who had jointly invested R300m in the scheme.

In an effort to protect “almost all the money she has ever had” a 69-year-old

## The liquidators deny that their urgency is motivated by the lure of a big fat fee

widow from Franskraal, Elma Taylor, then successfully applied on 22 May for the provisional liquidation of City Capital.

On 1 June the Master of the High Court appointed Brian Shaw, a director of Progressive Administration, and three co-liquidators, to handle the winding-up of the company.

At that stage City Capital had various subsidiaries that were property-holding entities in which most of the value of the fund was seated.

On 7 July, without telling anybody, Shaw and Co decided to liquidate these subsidiaries by means of a voluntary winding up.

Shaw's co-director in Progressive Administration, Chris van Zyl, was then appointed as liquidator of six of the subsidiaries.

By August, Ms Taylor and her legal team were persuaded by a new player in the drama, one Jaco Carstens, that there was a way to save the pensioners' money, and City Capital. On this advice she had her provisional liquidation order set aside.

On 14 August the remaining three directors of City Capital resigned and Carstens was given leave by the Cape High Court to convene a shareholders' meeting.

What he did not know was that Shaw and Van Zyl's colleague, Christiaan Findlay Bester, who had been in charge of winding-up Capital Investments, had secretly applied on 1 September for City Capital to again be put into provisional liquidation. Notice of this application was not served on Taylor or Carstens, although they were clearly interested parties. They were also not served with a copy of the court order that was obtained without their knowledge.

Bester based his application on an unpaid debt of R719,335 and the contention that it was “just and equitable” for the company to be put into liquidation.



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When they learned of this, the new set of directors of City Capital decided to apply to court to have the Bester's provisional order lifted. To facilitate this application, they paid the debt which he had used as the basis for his application.

Bester nevertheless opposed their application and, in papers he filed to support his case, revealed that he had examined the books of City Capital.

This triggered an angry letter from Carstens' attorney Francois du Toit complaining to the Master of the High Court that it seemed the liquidators at Progressive Administration were up to some unlawful and self-interested information-sharing:

"The only way Bester could have had sight of the books and records of City Capital was if the provisional liquidators [his colleagues in Progressive Administration] gave him access, which they are only entitled to do if Bester obtained a court order. [...] My client is unaware of any such court order [...] If that is what transpired, [it] would be shocking to say the very least."

Meanwhile Shaw (now reappointed as liquidator for City Capital, thanks to Bester's efforts) refused to accept the "rescue plan" for City Capital proposed by Carstens, claiming under oath that "it will never work".

Judge President John Hlophe then indicated that he could only have a judge available on 7 December to sort out this avalanche of applications and counter-applications.

Troubled by some emails he received, Carstens however went to court on 16 October, complaining that he now believed that the liquidators plan to sell the properties owned by City Capital's subsidiaries before the scheduled court date.

He said he had received emails written by a commercial properties broker in which City Capital's "exceptionally precious commercial property portfolio

with an estimated value of R230m" was declared up for sale, and stating that "the liquidators have some offers, but the key is to take out the entire portfolio at a discount".

Carstens' fears were confirmed when the liquidators of the subsidiaries were not willing to give him an undertaking that they would not sell the property portfolio pending the 7 December hearing.

"These properties form a big part of the investment value in City Capital," Carstens complained in his fresh court papers. "If they sell the property and the provisional liquidation order is discharged there would be nothing left but an empty shell."

Carstens stated in his application to stop the sale (settled later when the liquidators decided to give an undertaking not to proceed with a sale) that there could only be one explanation for this sudden urgency: "The liquidators will receive R6.9m from the sale of the property portfolio."

This in turn triggered an affidavit, curiously not by any of the liquidators involved, but by Edward Nathan Sonnenbergs chairman Leonard Katz, explaining that no steps had been taken to sell the properties and no offers had been received.

What he did say, however, was that the provisional liquidators are convening creditors' meetings for three of the subsidiary companies, at which the liquidators will ask the creditors to authorise them to sell the properties.

Katz then added, somewhat lamely, that he "had no idea" how the City Capital property portfolio had come to be in the hands of a commercial property broker.

"The liquidators dispute that the only advantage is an advantage to themselves as a result of the fees that they will earn, and object to the implication that they are acting in their own interests," Katz said. ▣

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# Grapeseed muti adverts give reader the pip

**P**ROCYDIN IS A PRETTY wonderful product. According to its extensive advertising (in *Sunday Times*, *Rapport*, *Die Burger*, *Huisgenoot* – though never in *noseweek*), this complementary medicine helps in the treatment of cancer, arthritis, heart disease, diabetes, asthma, high blood pressure, stress, high cholesterol, blood clots, hardening of the arteries, inflammation, depression, Alzheimer's and Parkinson's. It also helps stimulate brain cells and protects the eyes. Manufacturers Value Added Life say the product's so effective because it's made from grape seed extract, which is a rich source of proanthocyanidins, a potent antioxidant complex.

The advertising clearly works, but not everyone buys this stuff. On a number of occasions the Advertising Standards Authority (ASA) has ruled

that claims made in Procydin ads must be withdrawn.

On 7 December 2007, for example, the ASA upheld an objection raised by the Health Products Association of South Africa, and ruled that an advertorial for Procydin, entitled "Your key to a healthy heart", which claimed that Procydin could play an important role in preventing cardio-vascular disease, breached the clause of the ASA Code that says that if a product is not a registered medicine the advertising cannot refer to medical conditions. Similar rulings on Procydin have involved claims regarding diabetes and arthritis.

On 14 October one Izak Kenny wrote to the editor of *Die Burger* to complain

that the paper constantly runs adverts for Procydin. He pointed out that on 29 August the paper ran a half-page ad for Procydin titled "A recipe for a healthy heart"

(all translations are *noseweek's*). "Why," he asked, "does the paper continue accepting Procydin's misleading ads with their pseudo-scientific claims? ...

Are you not yourself guilty of misleading readers and breaking the law?" Kenny copied his letter to the paper's ombudsman, George Claassen.

But why does Kenny expect so much of his daily? Well, it's because *Die Burger* has chosen to take the moral high ground on dodgy medicines. Not only did the paper report on the ASA judgment in the consumer column "*Kampvegter*", but on 19 May 2005 (at a time when advertising revenue perhaps wasn't so tight) George Claassen wrote a piece titled "Media have a duty regarding health", in which he asked if the media should "simply close their eyes and accept health-related ads that are clearly based on doubtful pseudo-science?" In his opinion "the media accept these ads far too easily", and should "to a large extent play the role of watchdog with these sorts of ads". Claassen believes "it is time for local

media to comply with their social obligations in this regard". Stirring stuff.

Reader Kenny also drew attention to the fact that in *Die Burger* of 24 May 2007 Irene Labuschagne of the Nutrition Information Centre of the University of Stellenbosch raised serious doubts about the efficacy of antioxidants, and that on 2 June 2007 one Elsabé Brits wrote an article headed "Pills by the Dozen", in which she said that tests in various countries have shown that antioxidants can be harmful, and that a balanced diet is far preferable to handfuls of antioxidants.

Kenny also pointed out that though the manufacturers make much of the fact that Procydin is produced from grape seed extract, a few years ago they were saying it was made from grape seed extract and pine bark, which they claimed has "outstanding immune-boosting properties", and has been used for centuries as a medicine by Native North Americans. Despite the apparent change in composition, the claims made about the product remain unchanged. Kenny concludes that pine bark and grape seed extract must therefore have exactly the same qualities. Surely it's an easy matter to establish whether this is true, he says – and, if not, it follows that Procydin's advertising is a lot of nonsense.

Kenny's letter was not published, so he sent a chaser, expressing disappointment that a paper that "observed the highest ethical standards" did not deal with his letter. He again copied the paper's ombudsman as well as the press ombudsman. Still no response. .

*Noseweek* spoke to Johan Lottering, MD of Value Added Life, who immediately offered to fly a reporter to the Eastern Cape to have a look at the company's setup in Jeffrey's Bay, and to go through documentation supporting their claims for the product. (*Noseweek* declined the offer). Lottering insisted that the claims made for Procydin are true and provable, and said his company doesn't advertise the product as a "magic bullet", but as one

QUACK!





# Mr Nose puts it about

## The games people play

**B**ACK IN FEBRUARY 2006 Mr Nose put it about that Old Mutual had shamelessly been currying favour with the judges of the Cape High Court by sponsoring their splendid Christmas lunch. OM apologised for this unhappy error of judgment, and Mr Nose assumed they had learned their lesson. Nope. Now it's the high-ups in government they're schlupping. And, because aforesaid are presumed to be overwhelmingly heathen, for them it's golf days rather than Christmas lunches.

Mr Nose's agent 009 rushed into action:

**30 September 2009**  
**To: Mr Kuseni Dlamini,**  
**CEO, Old Mutual**

Dear Mr Dlamini,

As a (very small) shareholder in OM, I am certain that I would have the support of the mass of individual shareholders in objecting strongly to the fact that you continue to hold golf days for the benefit of "fat cats", when we are not receiving even a pittance of a return on our investments. (I was at the Johannesburg Country Club yesterday when I observed your promotional banners advertising your Johannesburg golf day – no doubt only one of the many held by you around the

country.)

It is incredible that you and your executives can continue with "business as usual" – those "great unwashed shareholders out there" be damned! Unfortunately, since (the unlamented) Mr Levett and his cohorts moved OM offshore, South African shareholders have no opportunity to voice our frustrations at the way in which OM is being managed.

Before I take my unhappiness to the media, I would be interested to know how you justify holding such OM golf days in view of the current economic climate – and in OM's parlous financial circumstances.

**Steve Murray**

**09 October 2009**  
**Subject: Golf Days**

Dear Mr Murray

Your comments about business and being responsible in an economic recession are absolutely spot-on. We take the business of managing the money of South Africans very seriously – the trust and responsibility that our clients and policyholders place in us are always foremost in our business decisions.

It is in this spirit that we entered into a sponsorship agreement with the national government – one of our key clients and

stakeholders. These uncertain economic times confront us with challenging and difficult decisions. While we are intensely focused on cost containment and efficiency – doing more with less, as it were – one thing that remains unchanged is our need to maintain solid relationships with our stakeholders.

Our involvement in and sponsorship of golf is one such platform – it provides us an opportunity to engage each other. Even so, we have significantly scaled down our events, given the tough economic times, and, in this regard, it is not "business as usual".

I do believe that one of the reasons that Old Mutual will continue to survive is because we put our clients and stakeholders at the centre of our business.

Your letter encourages me tremendously. It means that South Africans care about our company, which keeps us committed to act with accountability and good faith.

Thank you once again for your letter. I invite you to contact me if ever you need more information about our business and activities.

**Best regards**  
**Kuseni Dlamini**  
**CE: Old Mutual South Africa**

Pass the barf bag, Alice!

that should be taken in conjunction with other substances.

Lottering claims that some people at the ASA have it in for his company, and that a number of the objections have been lodged by competitors, whose motives are suspect. (Value Added Life does not belong to the industry body that brought the most recent complaint, the Health Products Association of SA.) Lottering said he would love to see complementary medicines being regulated properly, and suggests following the Australian model.

However, the chances of a proper registration system being put in place here are minimal – the Medicines Control Council can barely cope with registering conventional medicines. Lottering said that he, too, is pissed off with *Die Burger* and Media24 – for taking his advertising money, and then running articles questioning the effectiveness of complementary medicines. (He would not say how much his company spends on advertising, or what the turnover for Procydin is.)

Doctors monitoring ASA decisions have mixed views about the Procydin

issue, pointing out that in October the European Food Safety Authority declared it could find no support for the claim that grape seed extract has cholesterol-lowering benefits.

The local doctors do, however, wonder if there's a vendetta against Value Added Life, pointing out that the Health Products Association of SA seems never to lodge complaints against its own members. Their main concern remains that issues like this are too important to be dealt with by an advertising regulatory body.

Shortly before going to press *noseweek* heard that the ombudsman dealt with the issue in a piece in *Die Burger* on 6 November. Although the paper has decided it will no longer publish the Procydin ad that has been rejected by the ASA, the paper has taken legal advice and has been assured that it is under no general duty to turn away misleading ads. When Kenny asked for further clarification, the ombudsman wrote that readers have a duty to establish the facts, and should ensure that their "onsinverklikkers" (crap detectors) are working. **W**

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# Engineer's internet bill shock: R275,674

## How an international roaming facility ended up costing the earth



**M**WEB HAS TAKEN A CAPE TOWN helicopter engineer to court about an astonishing R275,674 cellphone bill that he is said to have run up by using his laptop to access the internet while on a two-week trip abroad.

The same usage back home costs Sean Greeff less than R700 per month.

In his replying court papers the engineer claims that he actually owes MWEB no more than the R5000 he paid them in advance. He says that when he asked to have the international roaming feature on his 3G data card activated in September last year, he was given the impression, by MWEB

and his service would be suspended.

While MWEB did make it clear that they could not guarantee that the credit limit would indeed kick in, in Greeff's experience it always did. "I found that I was regularly experiencing automatic suspension ... as a result of having used up my bandwidth. This left me in no doubt that the mechanism which triggered the suspension ... worked effectively," he said in his court papers.

On 5 September 2008 he asked a friend, Angela Caldeira, to request MWEB to activate the international data roaming facility on his 3G card, for one month.

"Since I spend a substantial portion of my professional time working from different locations in South Africa and abroad, I require MWEB's wireless broadband internet services to enable me to access my emails and the internet on my laptop computer, from almost any location.

"MWEB required me to pay a deposit of R5000 in order to proceed with the activation of my 3G subscription for international data roaming. MWEB's representative informed Caldeira that any excess charges (over and above the monthly charges association with my 3G package) ... would not exceed the R5000 deposit required by MWEB.

"I did not find this unreasonable because the total cost of my 3G package, while I used it in South Africa, amounted to R649. I felt that it was fair to pay an additional R5000 for the convenience of using the same service while abroad," Greeff said in his affidavit.

Said Greeff: "It need hardly be stated that I would certainly never have elected to [activate the roaming service] if I had been informed ... that my eventual bill for the relevant period could amount to over a quarter of a million rand, for less than 75% of my monthly package."

The international roaming contract signed by Caldeira also stated that MWEB would refund the balance of the deposit after the full roaming usage amount had been billed. Caldeira was apparently told by MWEB personnel that any excess charges for international data roaming for one month would not exceed R5000.

Greeff further asked the court to rule that MWEB should, under these circumstances, be barred from invoicing him for more than R5000.

MWEB stated in the summons issued in March against Greeff that he is bound by contract and has to pay the full R275,000, plus costs. Shortly thereafter, MWEB proceeded with an application for summary judgment in the Cape High Court, with MWEB CEO Rudolf Jansen claiming that Greeff should be denied the opportunity to defend the case as "[he] has no *bona fide* defence to this action and has entered an appearance to defend solely for the purpose of delay".

At the time, Greeff was overseas. According to his attorney, Dorota Butlion, he was "somewhere in Northern Africa shepherding a helicopter from the Middle East to South Africa".

After several postponements, Greeff finally made it back to South Africa and filed his reply – whereupon MWEB withdrew its application for summary judgment. The matter will now be set down for trial some time next year. ■

## MWEB charged Greeff up to R35,000 each time he logged onto the internet while abroad

documentation and by MWEB customer support personnel, that it would cost him no more than that amount.

According to a data usage report annexed to MWEB's court papers, they charged Greeff up to R35,000 each time he logged onto the internet while abroad.

Greeff explained in court papers that he understood that – for an internet service supplied by Vodacom – his contract with MWEB would give him three gigabytes of data transmission per month, and he would be charged R1.20 per megabyte for additional data, up to a total of R1200, when an automatic credit limit would kick in

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# That mad woman

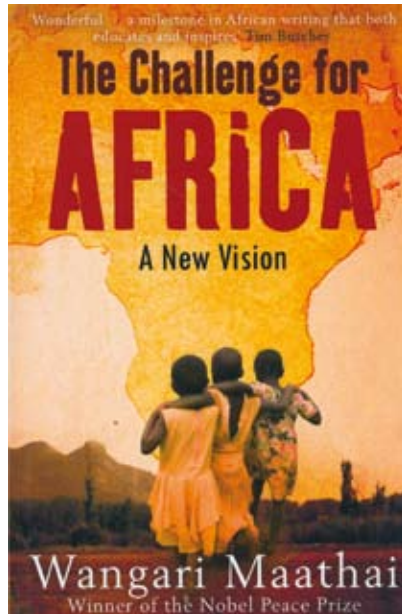
**B** EING AN ENVIRONMENTALIST in Kenya is a political hot potato very few would want to touch. Professor Wangari Maathai, the 2004 Nobel Peace laureate, has experienced it all; she has been publicly humiliated, teargassed, whipped, arrested and detained. Former Kenyan president Daniel arap Moi called her “that mad woman”.

But Prof Maathai is anything but mad. One only needs to read her memoir *Unbowed*, and her latest book *The Challenge for Africa* to appreciate why the Nobel committee decided to honour her five years ago.

In 1989, at the peak of Moi's autocratic single-party control of the country, she was the lone voice that dared oppose his infamous roadside declarations. Most memorable of all was her protest against Moi's planned raiding of the historic Uhuru Park in Nairobi, the country's largest public park.

Moi's party, KANU, had intended to replace the park's greenery with a 60-storey skyscraper and a massive golden statue of Moi. At a time when any form of opposition against Moi's leadership was a treasonable offence punishable by death, Prof Maathai refused to be cowed. For the next three years Maathai led public protests to the park, bombarded the project funders and developers with letters, endured death threats and repeatedly landed in jail.

It was during the Uhuru Park protests that Moi called Maathai “that mad woman,” and went on to remind the professor of her place: “According to African traditions, women should respect their men. She has crossed the line.”



NELLY NYAGAH  
REVIEWS

**The Challenge for Africa: A New Vision**  
(Heinemann)

AND

**Unbowed: One Woman's Story**  
(Arrow Books)

By

**Wangari Maathai**

Maathai stood her ground and Moi finally caved in under international pressure. Uhuru Park has remained one of the most beautiful on the continent.

That event was an eye-opener and Kenyan political activists realised it was possible to oppose bad leadership and began a quest for a multi-party democracy.

Prof Maathai (69) knows Kenyan politics can be tumultuous – but even she was shocked by the violence that followed the 2007 general election, when supporters of various groups went on a butchering spree. She argues in *The*

*Challenge for Africa* that it will take more than agreeing to coalitions to heal Kenya, or the continent.

In the book she explores many problems facing Africa, from unfair trade policies to global warming and tribalism.

How to deal with the perpetrators of the post-election violence is a weighty issue that has commanded the presence of former UN Secretary-General Kofi Annan and the International

Criminal Court. Talking to *noseweek* from Monte Carlo, Maathai says that how Kenya handles the criminals responsible for the post-election violence will determine whether peace or violence will reign in future elections.

She told *noseweek* that, while it's extremely important for Africa to learn to respect the rule of law and not change constitutions midstream to fit the political persuasion of the moment, root causes must first be addressed to stop the dangerous trend of leaders preferring to form coalitions rather than accepting defeat in elections.

The situations in Kenya and Zimbabwe vindicate what Maathai has preached to deaf ears for years – the linkages between the environment, peace and good governance. In the absence of democratic governance and sustainable environmental management, natural resources have often been the source of conflict in African countries.

In this book she gives the example of the impact of the introduction of private land ownership into Kenya, which caused animosity between Maasai herders, who need expansive land to graze cattle, and Kikuyu farmers, who for the first time owned title deeds and began marking boundaries.

“The book is a reflection of three decades of working in Kenya to do things the right way, and trying to persuade the leadership to be accountable, to distribute resources equitably, respecting human rights and rule of law. I was challenging Africans to think outside the box and begin to see why we are not moving forward, to realise it is only we who can liberate ourselves from the challenges we face,” says Maathai.

She attributes the complexity of some of the issues to the baggage Africans bring on board, such as the effects of colonisation and tribes – which she refers to as “micro-nations”. These issues have a lot to do with how resources, politics and economics are managed in Africa.

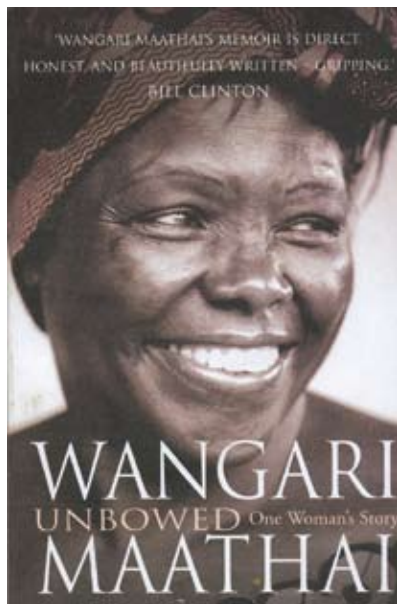
Maathai sees the modern African



state as a superficial creation, consisting of a loose collection of ethnic communities or micro-nations, brought together in a single entity, or macro-nation, by the colonial powers. Consequently, most Africans identify with their tribe, and not their country.

She proposes creation of initiatives that bring communities together, foster dialogue, and achieve long-term reconciliation, to allow Africans to rise above competitive and often petty politics at the level of micro-nations, and to address the pressing larger issues confronting the continent.

The book is dotted with very effective metaphors, such as the traditional African three-legged stool which Maathai uses to explain that every country must embrace three basic principals or pillars: environmental sustainability, a democratic system



up and hold their leaders accountable. That's what has happened in many parts of the world, why can't it happen in Africa?"

Five years after winning the coveted Nobel award Maathai is still sidelined in the running of Kenya's affairs, as in the biblical example of a prophet who was not appreciated at home. She wonders why the Kenyan government shows little appreciation of her feats, which led to the writing of her memoir *Unbowed*.

*Unbowed* details challenges she faced as an intelligent, outspoken and strong woman in a country that hid behind tradition to justify intolerance of anything but "quiet girls".

She was the first Kenyan woman to earn a PhD in biology, yet suffered professionally; she had to fight for equal pay and to be taken seriously by her peers.

Maathai also had to endure a humiliating public divorce. Former husband Mwangi Mathai (Wangari added an "a" to the name after her divorce) expected her to be submissive and obedient and fake failure – which she refused to do. He filed for divorce claiming "she was too educated, too strong, too suc-

cessful, too stubborn, and too hard to control."

"With every court proceeding, I felt stripped naked before my children, my family and friends. It was a cruel, cruel punishment," she writes. "I was being turned into a sacrificial lamb. Anybody who had a grudge against modern, educated and independent women was being given an opportunity to spit on me. I decided to hold my head high, put my shoulders back, and suffer with dignity: I would give every woman and girl reasons to be proud and never regret being educated, successful, and talented."

Kenya has less than two percent of forest cover remaining, and large chunks of forests have been allocated to squatters, grabbed by politicians or awarded to sycophants. Maathai sketches the almost insurmountable work that went into establishing an extensive rural network under the Green Belt Movement, whose objective was to stem the rate of de-forestation while improving the lives of rural women by paying them to plant and tend trees.

According to Maathai, rewarding individuals with land goes back to the era of British colonialists who grabbed the most productive agricultural land in Kenya. The practice has survived two regimes and even today public land is hived off for personal gain. ■

Her husband filed for divorce claiming 'she was too educated, too strong, too successful, too stubborn, and too hard to control'

of governance and a culture of peace. Unless these are all in place, no development can happen – no matter how much funding is advanced in the form of aid or loans.

Unfortunately this is not the case in most African countries, prompting Maathai to call for the adoption of an integrated approach to development.

Another crucial component for achieving meaningful development in the continent is through electing a new breed of "selfless" and "visionary"

The Challenge for Africa is published by William Heinemann with a published price of R215. It is available from Loot.co.za for R177. *Unbowed* is a US import published by Anchor Books and available from Loot.co.za for R121.



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# The booze brothers

**E**VERY ONCE IN A WHILE you get a story that simply makes you pull out your hair and say; “I can’t believe this shit.”

As a small-town scribe, I honestly could not believe my eyes when a “citizen journalist” brought the photo that accompanies this column to my office.

If the recent story of an innocent car being mistaken for a hijacked vehicle by the police – who then spattered it with bullets, resulting in one fatality – was not enough, then add the suggestion by the Minister of Safety and Security that consideration should be given to eliminating the need for the police to produce a warrant in order to enter private premises.

Just a day after these issues made headline news, and were broadcast on television and radio, here in Barberton two police officers are discovered drunk, in uniform, in a state vehicle, the one slumped in the passenger seat with a

beer between his legs.

Are these the kind of officers we must expect to be entrusted with orders to shoot to kill, and to be allowed to enter our homes and businesses without a warrant?

It does not take an Einstein to realise that our society has not just a monumental crime problem, but, a policing one as well.

We don’t just have a crime problem, but a policing problem as well

**O**NE OF THE MOST difficult things in life is living in one culture, having grown up in a totally different one.

Here I am in Mpumalanga once again preparing for Christmas in the Republic – my mother used to love calling South Africa the Republic, I haven’t a clue why – but, you see, my *idea* of Christmas was formed in the USA, where I spent most of my early years. Yes, there in the land that actually belongs to the “red Indians” but has been taken over and developed by –

well, a bunch of bloody English colonialists and other such European riffraff. Criminal!

I have always said those native Americans should never have shared their turkey with the English. Thanksgiving! Go to the reservations in places like Omaha and see how much Thanks Giving you find.

Still, that is what I miss the most about Xmas in the States: the turkey. Here in Barberton it’s the bloody traditional Christmas braai: red meat, Klipdrift and of course the drunken fools in the township begging for “Krismas”. Pure torture.

I want to be able to tumble my girlfriend in the snow. I want to ski. I want eggnog made with the real thing: Bacardi Rum. (It sure beats the local quart of “Saaz Harp”).

But, I suppose, one has to make the best of what you’ve got – Barberton has gorgeous mountains, even if they have no snow. And the Christmas break is the only time I can truly get to appreciate them. It’s when a gang of us hike into the mountains to hunt/poach guinea fowl. OK, it’s not wild turkey but I’ll take what I can get. Problem is, we can never get them: as soon as you get close, they take flight. I keep telling my fellow hikers we would have better luck with a shotgun, but no one ever listens to me; they just say “this is not America; we will catch them the African way”. In three years of hiking expeditions we have yet to catch one “the African way”. So, chances are I’ll end up heading for the Spar and buying a frozen turkey.

B Town is a small place, so everyone knows everyone – although we don’t necessarily get along. But at Xmas it’s always the traditional greeting all round: hi, how you and Merry Christmas. I suppose that’s what it’s about: being kind to your fellow man even the drunken township fool who says “can I have Krismas?”.

But why can’t he just come out and say it: Got a “Saaz Harp” for me?

The answer might just be “yes” – provided you’re not driving a police car. ▣

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## Mushroomville

**M**USHROOMVILLE. WELL I *think* that's what *Eshowe* means. But the name appeals anyway, as does the place, nestled amongst the sugarcane as Nieu Bethesda nestles among the *koppies* and *kakiebos* and folks go about making cement owls and famous *vetkoek* all day. You know, it's that sort of place. Durban sucks, I'll make a move... I do! It's super! I find a modest little flat with a fine view of the cane. I pull in at the BBS Builders' Merchants (Prop. R Tyack) for Polyfilla to tart up the bathroom a bit.

'Morning, Mr Tyack, say I. You're under arrest, says a loud unlovely voice behind me, and there stands an armoured Bigfoot with ugly artillery buckled about his bum and NAIDOO above his right tit and a lady counterpart with SAMUEL above hers. Bloody hell, say I. Not you – him – says Policeperson Naidoo, pointing. Bloody hell, says Tyack, what for? Theft, says P/p Naidoo – Senior Superintendent Mathenjwa has instructed me to take statements from a certain customer and all witnesses and arrest you for refusing to hand to this customer goods which were paid for, but she said she would come back with transport but now she has lost her till slip and you say that is against policy because the world today is full of criminals. Well isn't it? says Tyack. Yes but the customer came back again with an affidavit saying she has paid for the goods, and you still won't give them to her, says Naidoo. What are the goods worth? I ask. R130, says Tyack, for some glass, window putty and cement. Cheez Crise say I. Well now he's under arrest, Naidoo explains, to which Tyack replies Then I must phone my attorney Mr Adams from Messrs Wynne & Wynne who I'm sure you have heard of. Naidoo remains cool, takes statements from all in sight. Look, say I, all I want is some Polyfilla. But stick around, dear readers, this is only the beginning. These are early days. The plot thickens.

Attorney Adams on the phone asks to speak to Naidoo, who replies I don't have to speak to anybody! Adams asks Tyack to get Superintendent Mathenjwa's number and Naidoo gives him the charge office one.



**If you think you've had a bad time following this, dear reader, spare a thought for myself**

On Adams' instructions Tyack tells the cops there that this is a civil matter rather than a criminal one and the cops laugh at him, Policemen Naidoo and Samuels make ready to *shlep* Tyack off to said copshop and Tyack's control clerk Mr Joe Belcher suggests instead that Mr Naidoo sign a slip to release the valuables from the BBS store, to which Naidoo replies with some pomp: I don't need a slip, I'm a policeman. He shoves Tyack in a van marked Anti-Hijack and along the way delivers a sermon on civil decency along with the pithy aphorism rubbish in, rubbish out – whatever that may mean – and declares he has half a mind to radio his colleagues to come with a police van so the world can see Tyack getting shackled hand and foot and know what a no-good sonofabitch he is.

He sticks Tyack in an office at the copshop to wait for attorney Adams. Adams enters the superintendent's office and emerges twenty minutes later shaking his head at the unreasonableness of the man who has declared Tyack must release the goods or get locked up and appear in court tomorrow. Tyack releases the goods and the police release Tyack and I go straight home to drink a cup of tea and phone Wakefield's property management in Durbs and tell them please please not to let my flat there because I've changed my mind.

Now if you think you've had a bad time following this crap, dear reader, spare a thought for myself; I've had to scrape it out from the dingy corners inside my skull where ol' Sigmund stuck it for purposes of Freudian forgetfulness. I happened to be passing through Mushroomville recently, see, and thought to pull in at BBS Builders to ask *hoosit* these days, and that's how all this came to mind. Mr Tyack says he lodged a complaint with the Independent Complaints Authority, *Eshowe*, after the above events back in 2007. Policeperson Stephan van Vuuren came to take statements which he would send straightway to the Authority, but the station commander SAPS *Eshowe* won't speak about the matter, nor will the regional director of the Independent Complaints Directorate, Durban.

Meanwhile my home back here in Durbs has got a bit unkempt. I pull in at Wardkiss Hardware for Polyfilla. Polyfilla? say I to a bloke with a cloth badge over his left tit saying SONNY. This way, Sir, says Sonny, but may I remind you that unused Polyfilla hardens very soon in its tub, I suggest you try plaster of Paris mixed with ordinary wood glue instead. That is most helpful of you, say I, and efficient. You have to be these days, says Sonny. ▣

Who nose and 'ears  
everything on  
the Garden Route?

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## PERSONAL

**To Roy**, happy birthday from Terry and Dawn and Ebony.

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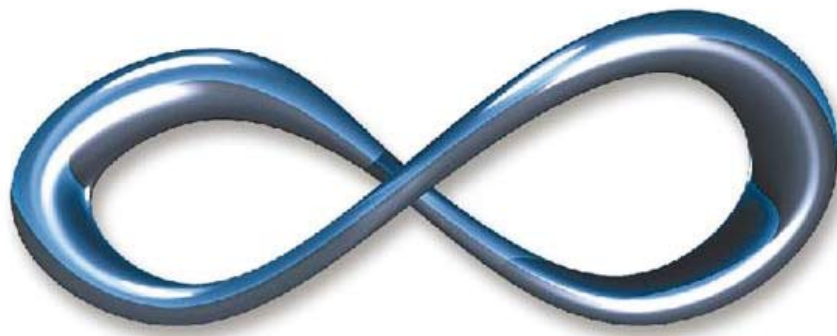
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