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# noseweek

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148 FEBRUARY 2012

## DENNIS DAVIS TO THE RESCUE

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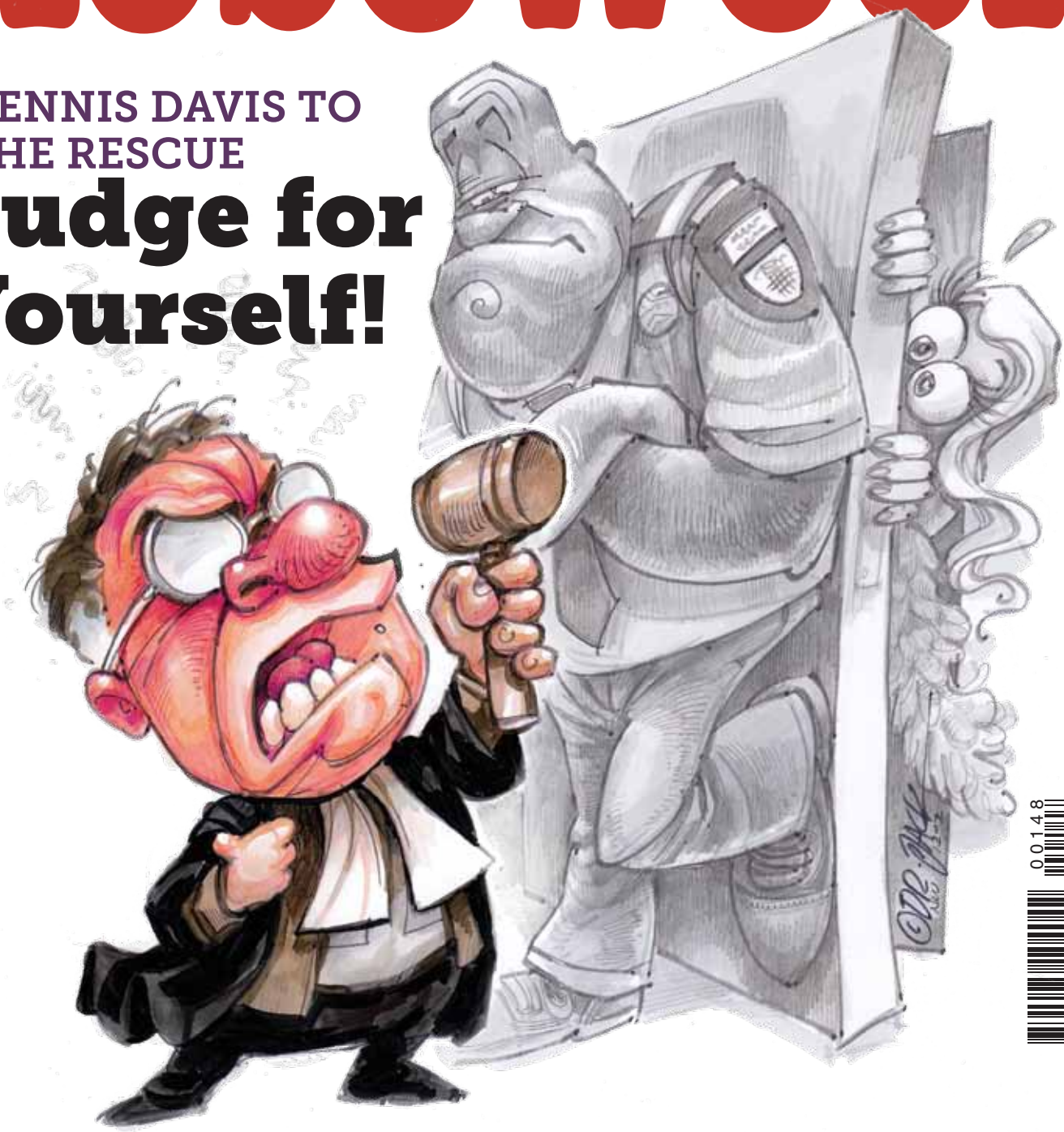

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# noseweek

FEBRUARY 2012 ISSUE148


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# JUDGE DAVIS AND THE UZBEKHISTANI STRIPPER


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## Secret recipe

YOUR Coca-Cola story (*nose*147) was neatly summed up in a quip from a listener to Radio 702's business programme: To err is human; to blame someone else shows management potential.

**"Pepsi"**
Germiston

■ YOUR story in *nose*147 about the shenanigans in the soft drink business made great reading.

Years ago I was told that a whole building on Coca-Cola's corporate campus in Atlanta was devoted solely to housing the court records of its innumerable cases. Seems like nothing's changed.

Hope I never get thirsty enough to drink the stuff.

**L P Holgate**
Randburg

## The way up is down

GREAT article on Enver Motala – "Motala in double trouble" (*nose*147). Now, however, I'm disturbed to read that he may receive a pardon. So if you steal, rob, commit perjury, and financially violate the uninformed, you can expect to be exonerated and appointed to the highest echelons.

South Africa has lost its moral compass and is fast becoming the laughing stock of the world.

**Hannes Greyvenstein**
Pretoria

## Not very nice work

I'M GLAD you took the time to expose the Oasis brothers Ebrahim (*nose*147). I only managed a few weeks in their employ before I walked out.

What a horrible place to work: at first they make as if you're the best thing since sliced bread, but soon you're just one of their slaves. I was employed in a senior position as my predecessor became ill; his predecessor hadn't lasted long either.

The two more-senior brothers, Nazeem and Shaheen, became rude and obnoxious, with false accusations of coming to work late (they could have checked my access details as a tag had to be swiped).

After I walked out I started hearing stories from people who had had dealings with these brothers; most could hardly believe I had lasted the few weeks. I am told a particular employment agency no longer sends job-seekers to Oasis, as all of them come back disgruntled.

Could it be that the brothers are running for the title of "Worst Company Directors Ever"?

**Name withheld**
By email

■ AT LAST someone has had the balls to expose Oasis, especially because they've managed to create a perception of integrity, particularly amongst the Muslim community.

There are many other employees whose stories follow the same theme. I suppose the Ebrahims will be suing *Noseweek* for defamation, as with Judge Siraj Desai and others.

**Name withheld**
Woodstock

Noseweek *has received several letters in like vein from former Oasis employees. See our follow-up story on page* 23. – Ed.

## Curved balls

DAVE Oswald, private investigator and insurance claim consultant – really? Your piece on the Oreport/Clayton saga (*nose*147) makes interesting reading.

I have worked in insurance claims for over 40 years and sometimes wonder whether I have learnt anything at all. But I have learnt this: that when PIs and claims experts depart from objectivity and start playing the man instead ("I want to see this bastard nailed and behind bars… as per Oswald PI") then the result is invariably the same – a very expensive balls-up.

**PC**
Johannesburg

## Another Fine mess

ON WHAT possible basis can the police justify sending five officers to Colin Chaplin's home because they think he may be sending offensive letters to his ex-girlfriend Lauren Fine?

Given the high incidence of serious crime in South Africa, this is a complete waste of both taxpayers' money and the limited resources of the police. I also find it odd that Fine was allowed to pay for a forensic specialist to be present – on what basis?

I suppose the only good thing to come out of it is that if they were so thorough yet found nothing to implicate him, then they have exonerated him in the process. It still seems a bit extreme, if you ask me.

**Denzyl Seymour**
Morningside, Durban

## A good life

ARE PRINCIPLES really necessary if one chooses to have a life free of stress? I thought it would be easy, and seem to have managed quite well over the past 10-or-more years.

I think it started to unravel with Vodacom who, if I remember correctly, had a monopoly as a service provider for mobile phones. Anyway at that time I could think of no reason to own a cell phone. Then came MTN as another provider and I thought, well maybe, but there was talk that the two providers were in bed together so I abstained and made my first principle – no mobile until a third provider came in. I chose the third provider, only to find out that the three were sleeping together. Now I don't trust any of them, but as I am a "pay as you go" and hardly use my mobile, no one is making much money out of me.

Principle number two came about through the shenanigans of the old Lotto Board who held on to the money as if it were glued to their fingers but managed to distribute millions to a well known sports club, while those feeding the hungry were left to find other means of keeping people from starving.

**GUS**

After many letters to the press and Mr [Sershen] Naidoo lying to the public about how the funds meant for charity were allocated, I swore to never buy another lotto ticket. And I have stuck to that principle.

Why am I telling you this? Because, through *Noseweek* and your stories of fraud, theft and corruption by just about every corporation who, I'd thought, lived by ethical behaviour, I am having to make more and more "on principle" decisions that are driving me quite scatty.

Having just read how Coca-Cola screwed a much smaller guy and left him penniless (*nose*147), on principle (number three) I shall not allow a sip of Coke past my lips. This quite honestly is not a difficult one as I hardly drink Coke, Appletiser or Valpré.

Woolworths have done much the same to a small guy making ginger beer, and although their vegetables are fresher, I wonder what screws they put on the farmer or in fact any of their suppliers and how many have gone under.

Then try and find a locally made item of clothing in their stores; check the labels: China, Mauritius, Lesotho, Swaziland is where it is made – countries using slave and child labour.

OK, we can also blame our own unions for closing down our factories, but I also hold Woolworths responsible for being too greedy. So with Woolworths, it is only half a principle and I feel guilty.

At one stage I thought to change my bank, but then found – through *Noseweek* – that every bank, perhaps not Capitec, is ripping us off, so decided one devil is as bad as the next. Anyway it is such a mission, I took the easy route. Hard to make an on-principle choice when there are no choices.

Oh, and I don't fill my car with fracking Shell.

I do have an option of never to buy another newspaper, *Noseweek* or watch *Carte Blanche*. But then how would I be able to live, knowing that through ignorance I am supporting thieves and robbers?

So please, *Noseweek,* keep me on my toes. I'd hate to miss out on making more on-principle choices.

**Jo Maxwell**
Pinelands

*Power to the people – and to Pinelands!* – Ed.

## Inconvenient facts

IT IS disappointing to read an article riddled with inaccuracies – as in "An inconvenient Toefy" (*nose*147).

The Department of Environmental Affairs and Development Planning, on 16 November 2011, issued an Environmental Authorisation in response to an application for the proposed construction of an apartment block and associated infrastructure on Lion's Hill Tamboerskloof.

The refusal was informed by key factors such as the National Environmental Management Principles, biophysical factors, services, visual impact, as well as need and desirability. These are not "nice greeny things" as described in the article but are legislative imperatives that guide decision making.

The department also recommended an integrated approach in the planning of the proposed development. Subsequently, the National Environmental Management Biodiversity Act (Nemba) list of endangered and threatened ecosystems came into effect on 9 December. This meant that certain Nemba EIA-listed activities must be applied to the entire erf – not just the Block E that was refused – and that the entire erf is subject to an EIA process.

The central issue is whether the EIA process, as managed by Environmental Affairs and Development Planning, was flawed. This is what the reader needs to be told.

The taxpayer expects decisions to be concluded within the legislative frameworks and that all the associated democratic processes are executed without compromise. This will affirm transparency and accountability.

**Aziel Gangerdine**
Spokesperson
Dept of Environmental Affairs and Development Planning
Provincial Government of the Western Cape

*The above is a compilation (by* Noseweek*) of those bits of a longer "Media Statement" that we found more-or-less comprehensible. The rest was rambling, jargon-filled, pretentious, dense and frequently incomprehensible.*

*The full text of Mr Gangerdine's letter is available in our online edition, should any masochist wish to read it all.*

*Meanwhile, we suggest to Premier Helen Zille that she arrange for some plain English courses for those provincial employees who have to deal with the media.* – Ed.

## Poached profits

SADLY the wrong party was castigated in your article "Turning rhinos into fast bucks", (*nose*145).

The only person trying to make money out of the plight of rhino poaching is the filmmaker who took the footage at the request of the owner of the reserve on which the rhino was poached, Graham Rushmere, and the vet

attending the butchered animal, William Fowlds, in the interests of using the incident as widely as possible to highlight the ongoing rhino slaughter in the Eastern Cape.

This footage and that taken by the vet, was given to Braam Malherbe for this very purpose and passed on to the free-to-view satvchannel.com that dedicates itself to promoting African wildlife and tourism.

Malherbe passed the edited snippet on to Woolworths. Neither satvchannel nor Woolworths were aware that the filmmaker had claimed royalty rights on the footage. As soon as this came to light, satvchannel replaced the 30-second snippet with footage of the event taken by the vet.

Woolworths feeds money into conservation through their My Planet Rhino Fund and neither they, nor satvchannel, nor Malherbe, a passionate conservationist and *50/50* presenter, dedicated to environmental causes, stood to gain financially from the footage.

What they did by showing the incident was purely in the interests of helping to curb rhino poaching. By exploiting the situation to try to extract R410 000 from Woolworths, puts the filmmaker's motives in a totally different light.

When put under pressure about the amount of money he was asking for, he said it would go to conservation after his costs had been taken into account – but he refused to divulge these.

**Sandra Herrington (PhD)**
www.satvchannel.com

## Bankrupt

SEVERAL weeks ago I wrote, by registered post, to the General Manager of the Standard Bank of South Africa, Simmonds Street, Johannesburg. Some weeks later, the letter was returned unopened as the bank had refused to accept it

All I wanted was to ask for the general manager's comments on the performance of one of his branches – but no dice. After 35 years, my opinion of the bank has sunk to zero.

**RE Lockyer**
Fish Hoek

## Free rounds

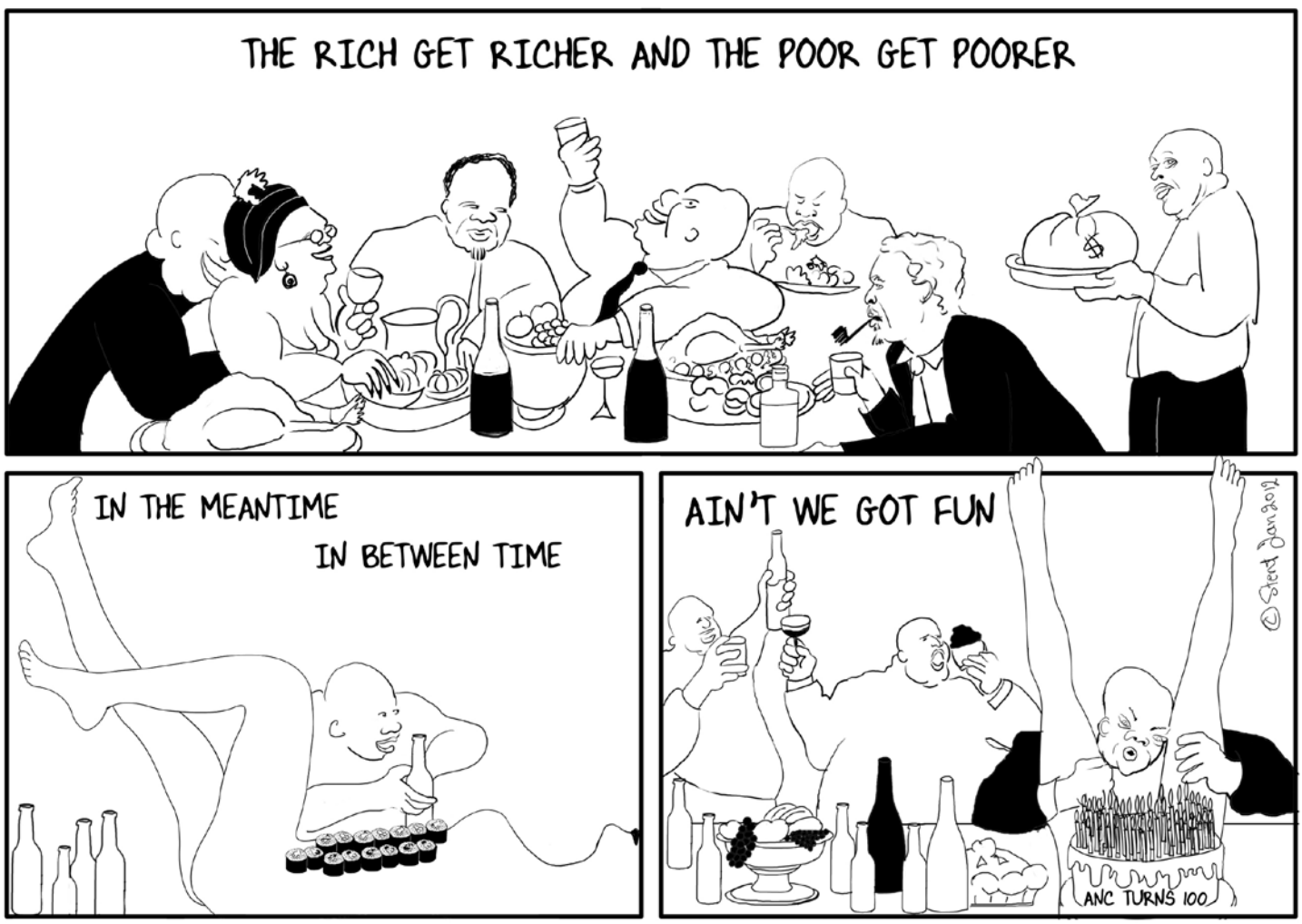
YOUR survey of advocates charging for double briefing was revealing. Does this happen in the medical profession too?

I am referring to hospital visits of surgeons/physicians doing ward rounds, seeing up to 10-or-more patients.

Does every patient pay for a visit? Or is there a reduced fee because he/she came for more than one?

**Maria Louw**
Port Elizabeth

## StEnT



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# The quality of mercy

NOSEWEEK is not one of the Friends of Jackie Selebi. Just the reverse: there can be few people alive who have done quite as much damage to public confidence in our law enforcement agencies, and who are more deserving of a long term in jail. What could be worse than a police chief on the take? And there is every reason to believe he was prosecuted for only a fraction of what he actually took – from various sources.

Take his offences lightly, and you double the damage. Selebi must serve a prison sentence.

That said, justice is not justice unless it is tempered with mercy. Cruelty does the perpetrator no credit. Selebi has a terminal illness – so what to do?

After the Schabir Shaik medical parole fiasco, the nation can be excused hearty scepticism over the severity of Jackie Selebi's ill health, which has kept him out of a prison cell ever since he reported to Pretoria Central in December to begin his 15-year sentence for corruption.

But we have satisfied ourselves that severity is the true situation: appropriately qualified medical experts believe the former national police commissioner and chairman of Interpol has only between two and five years to live. For a year or more, he and his family chose to keep the severity of his condition secret: his creatinine clearance – a measure of kidney function – has been sitting at around 12 for the past year-or-so. Normally patients are started on dialysis when clearance goes below 15. He's now at what doctors call "end stage", or stage five, of his kidney illness. That's when the kidneys aren't working at all. Astonishingly, Selebi's been at stage five since 2009, though peritoneal dialysis was started only after renal specialists discovered very high, life-threatening levels of potassium in his blood.

Without dialysis, it is stated with authority, Selebi would be dead within two weeks to six months. It's only dialysis that will keep him alive for the longer prognosis of two to five years. But as any renal specialist will tell you, you can't keep patients on dialysis forever; they have to have a kidney transplant. But Selebi can't have a transplant because of his diabetes and severe secondary organ involvement.

Therefore, with a maximum of five years to live – and perhaps only two – the former top cop's 15-year prison sentence doesn't mean much now.

What, under these circumstances, are the demands of justice? He must serve a prison sentence. But sooner, rather then later, he must be released on medical parole.

Parole for dying prisoners has traditionally been interpreted as just that: they are released to their family, literally in the last days, to "die with dignity". We have something a little less macabre in mind. With a minimum life expectancy of two years, halve the difference: let him serve one year in correctional services' custody, and then release him to live out the rest of his days in the care of his family.

And while you're about it, Mr President and Mr Commissioner, consider the thousands of ordinary prisoners who are dying lingering deaths in jail from Aids. Surely, as they near the terminal stage, they too should be paroled into the care of their families?

The current system for considering parole is overloaded and under-manned, often resulting in years passing before a ruling is made on an application.

When a prisoner with Aids is in decline and doctors determine that antiretrovirals are no longer effective, make it routine procedure to release that prisoner forthwith. To have an Aids patient seriously ill and facing death in prison is cruel and does the nation no credit. Let them go home while their families and friends may still have pleasure in their company.

We are not a nation of barbarians, and the mark of true power, is power tempered by mercy and compassion.

**The Editor**

# The more things change...

JOHN BLOCK, the notorious ANC leader in the Northern Cape, seems to have been instrumental in making life difficult for the official who sanctioned his illegal mining of a state-owned salt mine, using a fraudulent permit.

The former regional manager of the Department of Mineral Resources in Kimberley, Jerry Mndaweni, has fled town – and he's taken to using an alias. But Mndaweni – or Jerry Monyepao, as he now calls himself – denies that his name change has anything to do with the police having been called in to investigate the use of forged mining licences that took place on his watch.

Mndaweni told Mr Nose he had not been quizzed by police and had changed his name because, "Well, my biological father is Monyepao; there's nothing funny about it. I'll get around to changing my name officially some time. Please don't use the old name though – I just don't like it and I definitely don't want it in the press. I want to break with the past, but there is nothing sinister about it."

Monyepao-Mndaweni, now works for the SA Council for Geoscience, involved in new business ventures.

He also says he has nothing to worry about: "Yes, the Supreme Court of Appeal (SCA) said some nasty things, but I am not worried."

Jerry Mndaweni was reported to the police by the SCA in June after the court had heard evidence that – in the judge's words – beggars belief.

In the SCA judgment, delivered by Appeal Judge Azhar Cachalia, Mndaweni was found to have allowed ANC Northern Cape chairman John Block to operate a state-owned salt mine, armed with only a forged mining permit, probably drawn up by Block himself. Judge Cachalia found that "venality" – the willingness to accept bribes – may well have played some part in the Department of Mineral Resources' treatment of Block.

Mndaweni's conduct came to the court's attention after Saamwerk Saltworks had to go all the way to the highest court of appeal to get Block, a former ANC Youth League leader, off their mine.

Among the damning documents that the court had sight of is a letter

**Notorious:** John Block

from the Chief Mine Economist at the Department of Mineral Resources in Kimberley, Tshwaro Petso, who wrote to Mndaweni in 2007 saying that, while Block claimed to have paid royalties, "this applicant has been conducting illegal mining for the past two years and has not paid royalties according to the issued right."

All the same Mndaweni allowed Block to carry on for several more years, despite the forged permit and the faked financial returns.

When Saamwerk Saltworks, the company that had a genuine mining right on the salt mine, went to the police, Mndaweni "ran interference", telling the cops that there was a huge misunderstanding – lying through his teeth to protect Block.

While South African Saltworks was the first company to mine the salt mine, SA Saltworks let their mining rights lapse and Saamwerk scooped up the right by applying for a permit to mine on the same farm. Their application was successful. However, when the company tried to begin mining, it was blocked by Mndaweni and Block. Block would not move off the mine, and Mndaweni suddenly claimed that SA Saltworks had an "old order" mining permit that had not yet expired.

Mndaweni claimed there had been "a huge mistake" because, for some reason, his department had issued Block with a mining permit but had failed to record the permit's issue on any official register. The "official registers" of mining permits – some worth billions – kept by Mndaweni amounted to no more than A4 exercise books were recorded. Well, that's the story he gave the cops when Saamwerk complained to the police.

Court records show that after Saltworks lost their mining permit, Block visited Mndaweni and showed him and his officials what purported to be an old mining permit that had not expired. It patently could not have expired because there was no expiry date on it – as is required by DMR regulations.

Mndaweni's own records reveal that he and his officials were convinced from the outset that the permit was a forgery. All the same, while publicly agreeing with his staff that it was a fake, Mndaweni wrote to Block confirming the permit's validity and telling him to go ahead with mining. When Saamwerk went to the police, Mndaweni simply told police the permit was genuine.

Judge Cachalia noted that Block made no attempt to describe how he came by the forged mining permit.

When approached for an update, sources at Mineral Resources in Kimberley were less than keen to discuss Block – currently out on bail and facing charges of tender fraud not related to the salt mine debacle. Block has since vacated the mine that he hijacked – allowing the rightful owners to continue mining operations.

Lesego Letebele, Block's spokesperson, said he and Block had read the judgment – but were not losing sleep over it. "After careful consideration of the judgment… it is clear there is no suggestion of impropriety on the side of MEC Block. We note that the said judgment would be referred to the various government institutions for consideration and [we] await responses from these authorities before any final statement is made."

Block's understanding of English is obviously selective.

Monyepao-Mndaweni, too, has yet to answer for his involvement in the forged permit saga. Like Block, he's not been losing sleep over the judgment: "So they said some nasty things – you just have to take it like a man and carry on. I am happy that I did a good job in Kimberley and I don't have any regrets."■

# The judge and the stripper

## Dennis Davis goes head to head with Home Affairs

DENNIS DAVIS is the tough-talking television-show host who South Africans have come to identify with the programme *Judge for Yourself*. However, in his real-life role as Judge of the Western Cape High Court (and Judge President of the Competition Appeal Court) Judge Davis is known, on occasion, to be as opinionated in court as he is on camera. Those who appear before him are easily deemed stupid and uneducated by comparison. His style makes for entertaining television – but is it appropriate coming from a judge on the bench?

That question looms large over his conduct and judgment in an urgent application brought one Sunday in November by lawyers acting for Cape Town strip club ("revue bar") Mavericks, in the name of one of its latest exotic – and erotic – dancing recruits, Violetta Mukhamdieva.

Uzbekistani citizen Mukhamdieva had on her arrival at Cape Town airport on a Turkish Airlines flight from Ankara that day, been denied entry into the country – despite the South African visitor's visa endorsed in her passport. Subsequently, the judge brought contempt of court proceedings against a brave (or in Judge Davis's view, foolish) immigration official who had barred her entry.

The questionable wisdom of Judge Davis's action looms even larger when one reads the record of the subsequent hearing.

Let's begin at the beginning: Sunday, November 6 was a relatively quiet day for immigration officials at Cape Town International Airport. But that was all about to change for Hans Grobler, the Immigration chief on duty, when his team began vetting and clearing passengers from the Turkish Airlines flight that landed shortly after one o'clock.

Among the passengers was Mukhamdieva, who held a Section 11 (2) permit, issued by the South African Consulate in Ankara, Turkey, which stipulated that she was to take up a job as a "cabaret" dancer at Mavericks.

**Anyone for Dennis?** Judge Davis

Section 11 permits are visitors' visas issued to non-residents who are to undertake special work for short periods of not more than six months.

Questioned by border control officers, Mukhamdieva failed to convince them that she met all the criteria to qualify for entry. (*Noseweek* has established that, inter alia, she did not have the required letter from Mavericks confirming her employment by them. In fact, in their contracts with their imported dancers, Mavericks makes it clear the club is not their employer.)

Mukhamdieva did not have a return air ticket, nor the means to support herself for the duration of her stay in South Africa. She was denied entry and returned to the custody of Turkish Airlines, which – in terms of international convention – was obliged to fly her back to her airport of origin on the first available flight, which happened to be leaving Cape Town at 5.10pm that afternoon.

Meanwhile, the high-priced legal team of Gary Eisenberg and Anton Katz, SC, came charging to her rescue. Eisenberg, an immigration agent-cum-attorney, has made a name for himself suing "nearly everybody" within the Department of Home Affairs (see *noses*134, 138 and 140).

Judge Davis, who was both witness and arbiter in the matter, later testified: "Mr Eisenberg informed me that an Uzbekistan citizen, Ms Violetta Mukhamdieva, had been detained by immigration officials… He further informed me that it was the intention of the official to refuse Ms Mukhamdieva entry and to place her on a departing aircraft. This was being done in the face of a valid visa, which had been issued to her in Ankara, Turkey.

"I immediately informed Mr Eisenberg that I would meet him in chambers in order to hear argument."

The judge, on hearing Eisenberg's argument in support of his application, granted an order against the Minister of Home Affairs and the Director General of the department that read: "…the Respondents (the Minister and the DG) shall appear before this Court at 10h00 on Monday 7, November 2011 [*the following day*] together with the Applicant [Mukhamdieva] in order to show why the Applicant should not be permitted to enter the Republic of South Africa on appropriate conditions."

Judge Davis was, by implication, ordering them not to have Mukhamdieva returned to her port of origin – and to admit her into the country.

*Noseweek* has since established that as early as 2pm on that day, the strip dancer was no longer in the custody of the Immigration Department, but in "no man's land" – in the custody of Turkish Airlines – and that Eisenberg knew this.

In granting the order, Judge Davis appears not to have taken account of the issue of jurisdiction: international airports have areas which are designated no-man's land. Before travellers are allowed past the border control (immigration) points, they are in no-man's land and, should their entry be denied, automatically become the responsibility of the airline that flew them in. Therefore the order should have been served on the Turkish Airlines representative who in fact had custody of Eisenberg's client. Alternatively, it could have been served on the Air Traffic Controllers to bar them from clearing the flight for take-off with his client on board.

Later, the judge appears to have realised the error in his initial order as, in his subsequent judgment, he does some subtle back-pedalling: "The idea behind this order was clear [sic]: Applicant [*Mukhamdieva*] would, if it was deemed necessary by Respondents [*Home Affairs*], be held at the airport pending the enquiry in court the next morning, at which time the parties would be able to argue their respective cases pursuant to which a proper determination could be made."

At the hearing, in an exchange with Home Affairs' defence counsel, Judge Davis conceded: "I want to be fair to the witness, on the other side, it's my omission because of the rush…" The judge then becomes incoherent, perhaps with embarrassment: "the order was exactly, was I reflect, it's nobody's fault, but I had discussed with both Mr Eisenberg and Mr Katz and upon reflection I would have put it in the order – it's a lesson you learn yourself – that I wanted her held in the cell because the first thing I said to Mr Eisenberg and Mr Katz was, well if I let her in then you will have a devil of a job maybe to find her, I don't know, so therefore I wanted her cauterised [*quartered?*] for the night, come to court the next day and then one would have an explanation, one way or the other. Whether you were right, or they were right, I don't know, but I just wanted to let you know that was the basis of the order, it was never, there's no authority here to have said, oh he is going to let her into the country."

But problems arise with the judge's order long before we arrive at such subtleties. The document served on the immigration officials at the airport (it can be viewed on *Noseweek's* website) had no case number, no High Court date stamp and was not signed by the court registrar – as is required. It only bore the judge's indecipherable initial in the margin. This is explained by the judge in a subsequent judgment: "Difficulties occurred, owing to the gross inefficiency of the Registrar's office of this High Court. The Duty Registrar, having given Mr Eisenberg my telephone number, then went into 'a state of being incommunicado' – both from myself and Mr Eisenberg. This meant that [*due to*] inexcusable conduct, the order could not be stamped (sic)." This account by the judge does not, however, tally with the transcribed evidence of Eisenberg.

In fact, according to Eisenberg's evidence, the judge's abuse of the regist-rar neatly covers some serious omissions by Mavericks's lawyers – and the judge himself: the transcript records how they made a rather-too-cosy arrangement that Sunday to meet

**The judge appears to have realised the error and started back-pedalling**

at Judge Davis's chambers and how they proceeded to conduct the hearing there, without any reference to the duty registrar, who should have been approached by Eisenberg to set up the urgent hearing. The registrar would then have attended in order to issue a case number and certify the court's ruling, as is normal procedure.

The transcript shows it was only after the event that the judge hurriedly made a perfunctory attempt at finding the registrar and, when he did not get an immediate answer, in the rush elected to proceed without these formalities.

From Eisenberg's contemporaneously made affidavit: "During the afternoon of Sunday 6 November, I received a call from Shane Harrison, who is the proprietor of Mavericks Revue Bar. He very hurriedly told me there was a lady – he couldn't think of the name; he just said Violetta if I remember correctly – stuck at the airport; that... as far as he understood, the immigration authority was not allowing Violetta to pass through immigration control... this was approximately 1.45pm …I understood she had a valid visa, granted to her in Istanbul, to enable her to be employed by Mavericks for 90 days as a cabaret dancer.

"I then called advocate Anton Katz, who suggested I should phone the High Court's urgent applications number. I called the registrar Ms Davids's cell phone number and got a recorded message giving the telephone number of the registrar on duty – I forget his name… I phoned and he very kindly indicated to me that he would be available and I think he told me Judge Davis was on duty that day.

"I called Judge Davis [*and told him*] things are extremely urgent, I think I also said to him that the plane would leave very shortly... and we were already, I think, 1.50pm **[***Within five minutes he had spoken to his client, Katz SC, the registrar and the judge?]* **...**if I remember correctly, so time was ticking by… Judge Davis said he would be in chambers, give him half an hour. I collected Advocate Katz. At Judge Davis's chambers, we explained the situation to him.

"With regard to notice to the other side… I had it in mind that Violetta was going to be turned around in an hour-or-so, and with regard to the further conduct of this matter, I felt more comfortable being before Judge Davis in chambers together with senior counsel to determine the way forward, before I took any steps to give notice or anything else.

"Judge Davis asked me in greater detail what the position was, and I explained [*that*] I believed she did have a valid visa... Judge Davis gave his opinion as to how we should conduct this matter... [*he*] seemed to be concerned about the position of the other side, that the department may well have a case, and reasons for not allowing her in. But there was no time… because of the threatened refusal of entry and return of Violetta to her country of origin.

"Judge Davis suggested that we would require more time, at least let the other side know and an opportunity to come back the next day at 10am to understand the full merits of the matter. We then went back to the chambers of Adv Katz where he formulated and typed up a draft order."

At the foot of the document the words appear "By order of the Court, (signed) Court Registrar". [*The practice is also that the document should bear the Registrar's date stamp*.]

"We returned to Judge Davis, handed him the order and asked if he was satisfied… He was, and he signed two copies, and gave them back to me and bid me to go and serve the order on the immigration authority at Cape Town International Airport."

Eisenberg continues: "In the [*judge's*] corridor, I indicated to Adv Katz that we did not have a registrar's stamp endorsed on the second page, and I knew that the registrar was not physically at the court. I returned to Judge Davis and explained that we weren't able to get a stamp, that the registrar was not available [*but*] that, at any rate, it needs to be stamped.

"Judge Davis immediately tried to call the registrar, and as far as I can recall, it was engaged, he couldn't get through. Time was running past very quickly, I was looking at my watch continually and Judge Davis then said to me, okay, if you arrive at the airport and there's going to be an issue, here is my telephone number, and he wrote his landline number on a post-it sticker, stuck it on the top of the order and told me to serve the order as soon as possible. I got into my car and proceeded to the airport."

*Noseweek* has since learnt that there were no inbound calls logged on the duty registrar's cellphone at that time and that the duty registrar had, earlier that day, received a call from someone wanting to know who the duty judge was. Then shortly after 2pm, the registrar received another call from Eisenberg, asking for Judge Davis' cellphone number.

The validity of the court order aside, by the time the document was being served on Grobler – by his account, at around 4.45pm – the Turkish plane was already on its way to the tarmac to await take-off clearance at 5.10pm. Technically, there wasn't much the officials could have done.

But the judge would later take issue with the timing provided by the immigration officials. Instead, he declared in his judgment: "The best estimate *[of the time of service]* that I was offered – and the one which appears to be completely reliable – is that of Ms De Saude, a candidate attorney to Mr Eisenberg's office... I must assume therefore that he [*Grobler*] would have received the order at approximately 4.35pm. This may mean that he had received the order before the Turkish aircraft had left the air-bridge." (And therefore that it was not too late to retrieve Mukhamdieva from the plane.)

It may have meant that – but it didn't.

Evidence has since emerged which corroborates Grobler's version – on the airport's CCTV footage for that day (see our website). Police Inspector Wildschut can be seen entering the airport's "sterile" area, at 4.40:59pm, clutching the court order he had been asked to serve on Grobler, the chief immigration officer on duty.

Air Traffic Control data shows that the plane would have been heading towards the runway to await clearance for takeoff. Nearly 20 minutes later, the policeman can be seen leaving the area to return to his post.

At the other end of the airport, at 4.54:21pm, Eisenberg is captured going through International Departures. At 5.08:47pm he can be seen looking towards the airport runway from the "General View 2 Departure" area.

From another CCTV vantage point, at 5.02:05pm Eisenberg's candidate attorney, De Saude, is seen arriving at the airport staff security checkpoint at International Arrivals (Customs and Immigration) where she waits until she is joined at 5.23:38pm by Eisenberg, accompanied by an airport staff member who uses his access card (contrary to strict security regulations) to allow the two (De Saude and Eisenberg) entry into a restricted area of the airport at 5.23:50pm.

At 5.25:07pm, long after the Turkish plane had taken off, Eisenberg and De Saude enter the Immigration area to meet Grobler. It's in that time that he was invited – but refused to speak to Judge Davis on Eisenberg's cell phone.

The time-recorded CCTV footage aside, the judge had evidence available right in his pocket – on his cellphone – which would have established that any offer he might have made to drive to the airport to flash his judge's badge would have been futile. And proving that the maligned Grobler is not as stupid as Judge Davis pronounced him to be. In fact, when he first received

# Judge Davis considered him to have behaved wrongly and stupidly

the order (from Inspector Wildschut), before verifying its validity, he considered whether there was anything he could have done. The Turkish Airlines flight with Mukhamdieva on board was already on its way. Since there was nothing he could do to remedy the situation, he made a copy of the order and handed the original back to Inspector Wildschut to ensure it was served on the State Attorney – proper procedure for court documents that happen to cite a cabinet minister and a director general of a government department as respondents. The order had demanded that both high-ranking officials appear in court the following day.

Since neither of them had been properly served, the hearing in fact only took place two weeks later – and then it took the form of a contempt-of-court hearing of the unfortunate Grobler who, it seems, was to be made the scapegoat for everyone else's incompetence and disregard for procedural rules.

In his final ruling, Judge Davis found Grobler not guilty of contempt of court. He nevertheless saw fit to describe Grobler as having behaved "wrongly, improperly and, in certain instances, stupidly".

Meanwhile, Mavericks trumpeted the judgment on its website, along with commentary by owner Shane Harrison who boasts of having laid perjury charges against another immigration official in a different Mavericks matter in which judgment had been reserved.

*(Was this intended as a "hint" to Judge Desai hearing that matter? – Ed.)*

Judge Davis's argument is that court orders must be obeyed – evidently, even if they come on scraps of paper, unauthenticated by the court registrar, and are delivered by a hostile attorney.

As for phone calls that purport to come from judges, Judge Davis said: "[*It*] happens quite often, we phone police stations to release people; officers of the State actually respect judges, generally speaking – obviously Home Affairs appears to be different, but in the police context, quite often I phone police people – the constable or the sergeant – who will say 'How do I know you are a judge' and I say, 'I am, do you want me to come down? I will come down right now'.

"In this particular case, using that which I have done for 14 years, I asked Mr Eisenberg whether I could speak to Mr Grobler, I then heard Mr Eisenberg say 'the judge wants to speak to you', there was complete silence, I heard nothing. Then Mr **To page 14**

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Eisenberg, in exactly the same calm manner, said to me 'He does not want to speak to you'. It was I who, probably, was less calm then, because I was somewhat irritated by the fact that this bureaucrat was not prepared to speak to a judge, and that's the version, there's no other version."

Grobler's testimony, in his own defence on this point, was: "The reason M'Lord why I did not speak to the judge on the phone – and I say this with the utmost, utmost, utmost respect – is that I never believed that there was a judge on the phone; Eisenberg had unlawfully entered the security area, and he has in the past used intimidating tactics to coerce officials into making statements and taking actions that will benefit his matter and his case. It was already an impossible situation M'Lord, that's why I didn't take the phone call."

A senior counsel, on condition of anonymity, commented: "Judge Davis crossed the line here. As the judge hearing the matter, he should not have got so personally involved."

Another SC quipped: "If you value your face, you don't jump into the boxing ring. By inserting his testimony in the judgment, he avoided cross-examination, so it can now only be challenged on appeal. But that may never happen, as he never found the official guilty of contempt."

The main reason for the contempt proceedings against Grobler, the judge declared, was to vindicate the reputation of the court: "If court orders are ignored, our constitutional democracy will be destroyed in the final analysis."

On a lighter note, the following little exchange between Grobler's counsel and the judge was recorded towards the end of the court transcript:

Advocate Albertus: "Sorry Judge Davis, may I take some water?

Court: Yes, you can have some whisky if you want; I think I need one."

Was the court's reputation vindicated by these proceedings?

You be the judge. ■

# Mr Constantia gets

READERS may recall *Noseweek's* story about Michael Fenner-Solomon, aka Mr Constantia, who was putting up a luxury development in Constantia called Warbler's Grove (*nose*125).

Fenner-Solomon was struggling to unload the eight R20-million-plus units he had built and as creditors began to hound him, he would warn them off with the message: "I am Mr Constantia; cross me and I'll make sure you never work in the area again."

There are some creditors you can't threaten, however, and Standard Bank is one of them. On 6 December, the bank brought a High Court application to place Fenner-Solomon's close corporation, Morgan Creek Properties 144, into provisional liquidation.

The affidavit, filed by a senior Standard Bank employee, claimed that the cc owed the bank a cool R155m. Although the loan was secured by various bonds and suretyships from Fenner-Solomon and his family, the bank employee said there had been defaults in payments, and "a material adverse change" in the cc's financial position.

She also told the court that Fenner-Solomon had admitted in an email that Warbler's Way wasn't viable: "Despite many attempts at restructuring the debt on this project, the market that this development was

# the chop

aimed at has been virtually non-existent for many years."

The bank employee said that on top of the R155m, Fenner-Solomon's cc owed R22m to Standard's Personal and Business Banking division. It also owed Absa R20m; Penny Pinchers R2.5m; and a James Clinch R8.5m (Fenner-Solomon sold Clinch a property for R9.5m, took the money before transfer, then sold it on to a Mrs Searle. When Clinch objected, Fenner-Solomon was only able to refund him R1m). In total, Fenner-Solomon's cc had properties worth R196m, owed R240m, and was therefore commercially insolvent.

Other nuggets in the affidavit were that Fenner-Solomon's other cc, Michael Grant Developments cc, owed SARS R5.5m; and that he was involved in a development of 15 villas in Croatia – where, Standard Bank had reason to believe, funds may have been diverted from South Africa.

*Noseweek* asked Standard Bank's attorney, Adam Harris of Bowman Gilfillan, whether the order had been granted, but all we got was a sniffy "I don't talk to the press". But another source said it had been granted – and that Fenner-Solomon was enjoying a holiday in Mauritius while all this unpleasantness was going on. ■

# King Rat

Former R700 000-a-year Netcare senior manager James Gregory, whose charges of criminal fraud against the JSE-listed healthcare group were published in *Noseweek* last year, now claims it was all a pack of lies

FORMER Netcare executive James Gregory was general manager of Netcare's Primary Care division (trading as Prime Cure Health Ltd) when he was sacked in July 2010. His offence: gross negligence in his management of donor money from the US President's Emergency Plan for Aids Relief (Pepfar).

In turn, 44-year-old Gregory claimed he was unfairly dismissed after blowing the whistle with his own litany of charges against Netcare and senior group employees, the main one being that the JSE-listed group had made prohibited and fraudulent profits from the Pepfar millions.

On 7 June, Gregory emailed *Noseweek* offering to tell all, "both in the public interest and to gratify my sense of vengeance", he explained. During 80 minutes of tape-recorded interview he told us his story, supported by a lever-arch file full of documents including spreadsheets. One, for 2009, showed an apparent profit of R13.3m achieved by Prime Cure on R45.3m of Pepfar money. Another, for 2007, indicated a R5.1m profit on R8m of donor money. Gregory's handwritten scrawl on the page states: "5 mill profit".

Our story, headlined "Gimme!" was run over four pages in *nose*141 in July. Gregory, who refers to his previous employer as "Notcare" or "Netscare", was over the moon. "It's marvellous! 100% accurate! You've helped me find closure!" he enthused.

Then, just before Christmas, a surprising development: on 12 December *Noseweek* received a letter from Netcare's non-executive chairman, 51-year-old Jerry Vilakazi, informing us that James Gregory had retracted everything. Yes. After making claims of Netcare's criminal wrongdoing to his attorney, to the US Government, to the Labour Court – and to *Noseweek* – Gregory was saying that he told everyone a pack of lies.

Netcare's Vilakazi informed *Noseweek*: "James Gregory recently approached a representative of our company with a request for Netcare Ltd, its Primary Care Division and senior employees of both entities, to not initiate legal action for defamation (inclusive of a claim for damages) against him in return for his retraction of the untrue statements previously made and his unconditional and formal apologies to all those staff whose reputations were maligned as a result of the publishing of the [*Noseweek*] article."

The chairman now considered it "appropriate" for us, in turn, to retract our article, as well as apologise to Netcare management "and specifically to our CEO Dr Friedland".

In the meantime, said Vilakazi, Gregory's retraction affidavit and his letters of apology were being placed on Netcare's website – "and our rights with regards to *Noseweek* remain fully reserved".

Well, hang on a moment. Let's mull through all this. Since 2004 the US President's Emergency Plan for Aids Relief (Pepfar) has pumped $3.1 billion (more than R25bn at today's rate) of its taxpayers' money into South Africa to support HIV/Aids prevention, care and treatment. Of this, $18.7m over five years went to Netcare for its free HIV treatment programme in the Free State, managed by James Gregory.

On 26 April 2010, three days after he was suspended as manager of Pepfar's donor millions, Gregory wrote an almost incoherent letter to Netcare's group HR director Peter Warrener claiming the mismanagement allegations against him had been "made at a point in time at which management comments are required on an audit report which will require the Company to repay a significant sum of money, and which management comments include the fraudulent allocation of unrelated expenses, in an attempt at reducing the amount to be repaid to the original donor". This, he added, had been brought to the attention of Prime Cure's MD Dr Charmaine Pailman and finance director David de Villiers, "on more than one occasion".

Among the documents Gregory had handed to *Noseweek* was a letter he said he'd written to Pailman on 18 March 2010, a month before his suspension: "You knew that PCH [Prime Cure Health] was making money on the project and you chose to ignore that fact for as long as it suited you," he wrote. "On being presented with the audit report that we had indeed made 'too much profit' you ignored my reservations and insisted on a revision of the accounts so that we 'wouldn't have to

Noseweek received a letter saying Gregory retracted everything

pay the money back to the Americans'. I don't think it's me that is guilty of mismanagement."

In this letter, Gregory refers to a 50-minute telephone conversation with Pailman, "a large part of which concerned my poor attitude to the work and my apparent under-estimation of the seriousness of certain events. Do I understand the implications of the large adjustment that is now required to be made in the PCH books? Yes, of course I do. It's just not my concern! I have been doing that which I was instructed to do. Netcare/PCH management chose to ignore my warnings and recommendations and I cannot pretend that I feel anything."

Gregory was refused permission to have his own external legal representative at his Netcare internal disciplinary hearing on 22 June 2010, so he boycotted the proceedings. The findings (guilty on all charges) made only a brief reference to Pepfar and profits, indicating that if there was fault, the fault was Gregory's.

"Evidence was led that the Pepfar contract (being related to a donor fund) specifically made no provision for any profit to be made by the company," read the hearing findings. "The initiator led (via oral evidence from David de Villiers, financial director) that J G [Gregory] did not have a system in which the actual and appropriate costs incurred during the running of the project were calculated and deducted from the funding. This practice led to the inaccurate accounting of revenue and subsequent identification of 'profit' which should not have existed and which was not able to be utilised."

Not having been there, Gregory had no chance to state his side of the story. However, he had already given details of his fraudulent profit allegations to Eduard de Lange, his personal attorney for more than 11 years.

De Lange duly filed a claim for compensation for unfair dismissal with the CCMA, claiming Gregory's job should have been safeguarded after making a protected disclosure of a criminal offence under the Protected Disclosures Act, better known as the Whistleblowers Act. The act stipulates maximum compensation for whistleblowers of two years' salary – totalling R1.4m in Gregory's case. When the CCMA failed to resolve the dispute, Gregory went to the Labour Court, again citing how his protected disclosure had caused him to lose his job. The matter was never heard; Gregory apparently ran out of money for legal costs.

All of Pepfar's billions to South Africa are monitored by America's Centres for Disease Control (CDC) and in November 2010, four months after he was fired by Netcare, Gregory penned his allegations to them. On legal advice, he explained later, the letter was never sent. But his attorney did forward it to Netcare's Prime Cure management who, according to Gregory, elected not to comment.

Settlement negotiations with Netcare dragged on into last year. Netcare's final compensation offer, received by Gregory in May, was four months' salary (R233 000). He wanted R1.4m plus his share options, valued at R800 000. It was an impasse.

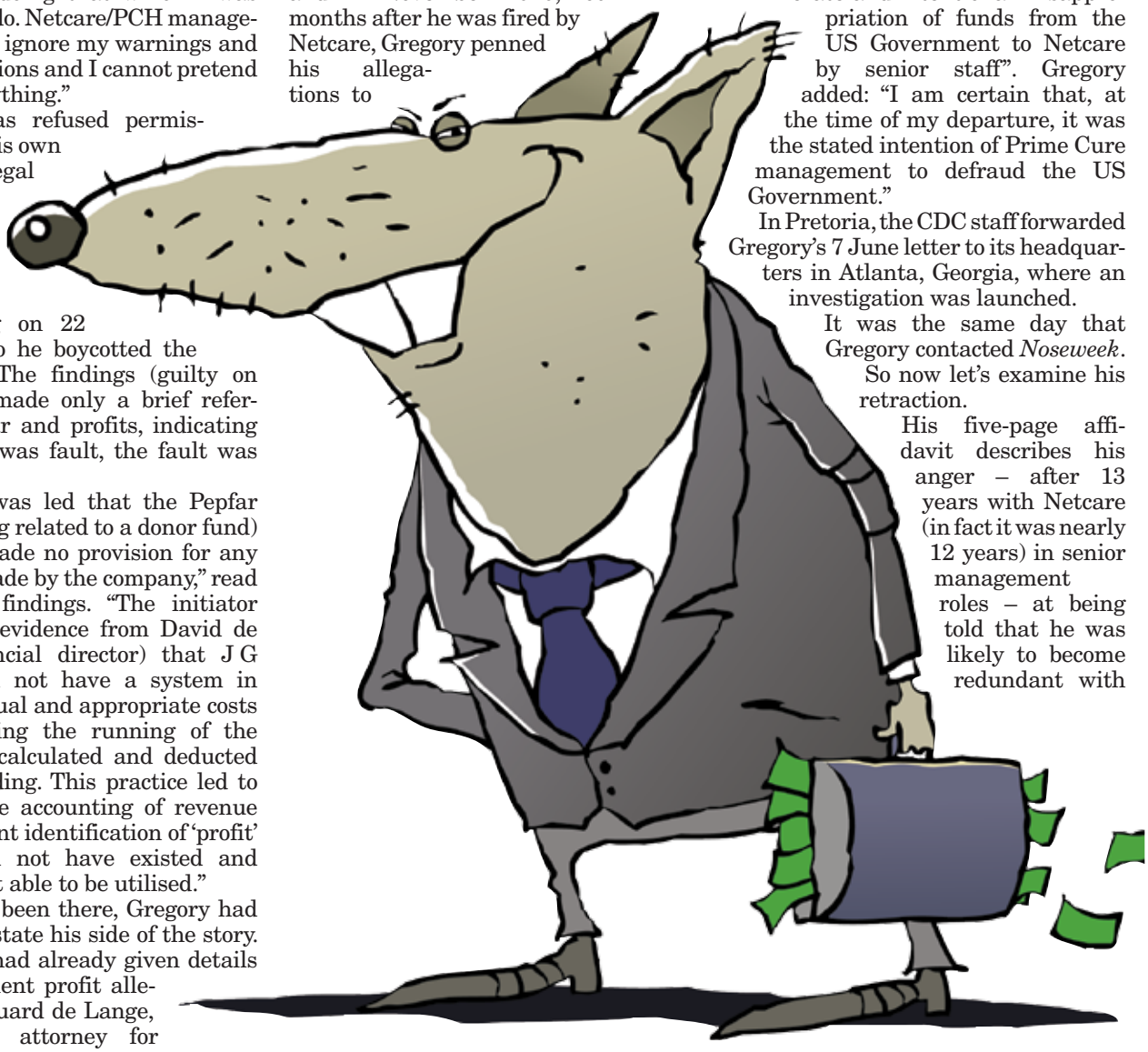
The following month, on 7 June, Gregory decided to put on the pressure with another letter to the Pretoria office of CDC. The CDC's Peter Vranken confirms that this one did arrive. It was headed "Fraudulent activity on Cooperative Agreement 024562/05 – Prime Cure" and related Gregory's charges of illicit profits and "the deliberate and intentional misappropriation of funds from the US Government to Netcare by senior staff". Gregory added: "I am certain that, at the time of my departure, it was the stated intention of Prime Cure management to defraud the US Government."

In Pretoria, the CDC staff forwarded Gregory's 7 June letter to its headquarters in Atlanta, Georgia, where an investigation was launched.

It was the same day that Gregory contacted *Noseweek*.

So now let's examine his retraction.

His five-page affidavit describes his anger – after 13 years with Netcare (in fact it was nearly 12 years) in senior management roles – at being told that he was likely to become redundant with the end of the Pepfar programme. "My anger and sense of betrayal led me to seek legal recourse against Netcare, which in turn lead (sic) to a protracted and costly legal dispute during which time I made a number of unfounded accusations against the Company and its management.



# Prime Cure's financial ailments

JOBURG AUDITOR Roy Harichunder of PricewaterhouseCoopers (PwC) conducted several audits on Prime Cure's Pepfar financials and they make dismal reading. High risk weaknesses that drew a qualified opinion for the audit to May 2007 included: no formal financial policies and procedures relating to the cooperative agreement, expenditure not classified, unauthorised expenditure passed in general ledger, no supporting documents for journals, non-compliance with the VAT Act. That year R1.5m was charged as expenses to the CDC grant account but not presented for audit.

In 2008 PwC found that the Pepfar programme's budgeted expenditure of $273 105 (R2.2m) for salaries, consultant services and travel costs had been exceeded by $668 415 to $941 520. Unallowable overtime of R145 045 over 15 months had been paid without CDC approval. Money for bonuses totalling R824 711 was claimed from CDC, but only R308 128 was paid out. No evidence was presented to explain the difference. R1 284 was spent on "unallowable" alcoholic costs. Semi-annual reports to CDC were not submitted on time and Prime Cure kept no records of these reports.

PwC's 2009 audit discovered massive Pepfar budget deviations. Expenditure on consultant services, budgeted at $62 729, came to $948 112. Salaries and wages, budgeted at $207 737, were more than doubled at $480 781. Unapproved overtime that year came to R235 077. Provision of R11m for three months wind-down costs of the programme could not be adequately explained by management.

No mention in the papers that we hold "too much profit", as claimed by James Gregory in his purported letter to Charmaine Pailman. And PwC's auditor Roy Harichunder refuses to discuss the matter.

"Up to June 2011 the matter between us had been treated as a private matter. I made the decision to take the matter into the public domain expressly to cause embarrassment to the Company and to force its management into an advantageous settlement.

"In July [in fact it was June] of the same year I gave my distorted version of events to a journalist from *Noseweek* and they were published without the journalist or editor giving Netcare the opportunity of responding to the allegations or providing their own version of events. The resulting story contained various half-truths, false suppositions and unsupported allegations for which I am now both sorry and considerably embarrassed."

The "biased and exaggerated report" resulted in "considerable attention to my mostly untrue and fictional story and ultimately, and to my deep remorse, resulted in my having to come to terms with the impact of my unjustified action… In particular, I believe Dr Friedland was damagingly misrepresented by a doctored version of his picture being shown alongside the article in a manner which was designed to hold him up to ridicule."

Finally, Gregory declares: "I have compiled this document of my own free will and without inducement of any sort from Netcare and in a legitimate attempt to undo the damage that I have done."

The affidavit, certified by attorney Brian Denny of the firm Deneys Reitz in Durban, was signed on 7 December. The detailed statement was clearly the final stage in a month-long negotiation. For Gregory had already signed a number of cringing letters of apology to Netcare executives. In his letter to CEO Richard Friedland, dated 8 November, Gregory declares: "The article published was, in my opinion, pure sensationalism and stands as an example of extremely bad journalism. The unwarranted use of a 'doctored' photograph of you further served to connect you with the untrue and highly prejudicial allegations which I made, on which the article was based.

"For the avoidance of doubt, I withdraw and retract all the false allegations about Netcare and its management which I made to *Noseweek* and any others and apologise profusely for my actions. I write this letter of my own free will…" The letter bears the stamp of attorney Lynelle Bagwandeen, who is Netcare's Company Secretary.

What are we to make of all this? Consider the following. Although Deneys Reitz's attorney Brian Denny tells us: "The affidavit and letters were drafted by James Gregory," King Rat now indicates that this is not so. Who drafted your letters? we asked him. "I don't know which lawyers they used, I really don't," was Gregory's reply.

**Noseweek:** So they just prepared draft apologies and things which you signed?

**King Rat**: "I don't want to talk about anything there," is his response.

**Noseweek**: Was it your suggestion that Netcare wouldn't pursue you for defamation and damages if you retracted everything you told us in our article?

**King Rat**: "Err, I'm not sure that was said, but anyway I really don't want to talk about it. I've finished with it, I've closed the book. I can't go back there. I really fucked up and I really don't want to go on with it."

**Noseweek**: So you're saying that none of it was true?

**King Rat:** "I'm not saying anything. You have a wonderful Christmas and a good New Year."

**Noseweek**: Did Netcare pay you anything in settlement of your claim?

**King Rat**: "I really don't want to talk about it at all."

**Noseweek**: Netcare has threatened or initiated defamation and damages action against you. Did you ever receive papers on that?

**King Rat**: "Err, that's the part I don't want to talk about. I have absolutely nothing to say on that."

Although Gregory claims in his affidavit – and Netcare's attorney Brian Denny repeats it in an email to *Noseweek* – that there was no inducement by Netcare for him to sign the retractions, Netcare's chairman, Jerry Vilakazi, had already told us that Gregory had approached the company with a request that if they didn't initiate a defamation action against him, he would, in return, retract his "untrue statements". If it was on that understanding that the matter was settled, how can either side claim there was no inducement?

And a fresh aspect – the hint of a possible pay-out by Netcare – emerges from Gregory's former business associate Peter Smanjak. Smanjak's company, Infinite Risk, was appointed by Prime Cure to monitor and evaluate the efficiency of the Pepfar programme. Smanjak brought additional business to Prime Cure, servicing a multinational across Africa over HIV, TB and malaria. Gregory had negotiated the contract,

and, after he was fired, Prime Cure's financial director David de Villiers questioned the interpretation of a clause concerning disbursements, and refused to pay Infinite Risk.

Smanjak is now suing Netcare's Prime Cure in the High Court for R1.3m. And Gregory will be a key witness – he's already signed a confirmation that Smanjak's reading of the disputed contract clause is correct. Prime Cure is alleging collusion between Gregory and Smanjak.

Gregory had told Smanjak his much-repeated story of Netcare's criminal mishandling of the Pepfar grant money some time before *Noseweek's* story appeared in July. Smanjak was speechless when told of Gregory's retraction. Gregory, he recalls, had been "very happy" with the article and "the allegations [in the article] are very much what he told me".

Early in November, Gregory told Smanjak he was about to meet Netcare's group HR director. Smanjak, who was keen for *Noseweek* to run the story of his own battle with Prime Cure, wrote on 5 November: "I wait on Mr Gregory to see the HR director [Peter Warrener] this week to see how they settle his claim against them. It seems they may wish to put this negative publicity behind them with him."

Smanjak was clearly under the impression that a lucrative settlement was on the cards for King Rat. But when he later asked Gregory how the meeting had gone, he'd replied: "Peter, I'm not allowed to tell you anything about this. If I do, I'm going to have other action taken against me."

*Noseweek* asked chairman Vilakazi about the terms of settlement and whether money was paid to Gregory.

"All employee-related matters are confidential to the employee and Netcare," he replied.

Was he sure the suggestion that Netcare would not sue Gregory if he retracted everything had come from Gregory?

"James Gregory approached Peter Warrener in November wishing to resolve all current and pending matters between himself and Netcare," replied Vilakazi.

"Gregory was the originator and author of all the letters and the affidavit."

What is the US Government to make of this bizarre situation?

One of Gregory's apology letters was addressed to the head of the CDC's Pepfar programme in Pretoria. Gregory wished to "retract unequivocally" a number of unjustifiable allegations and accusations against Netcare and Prime Cure that he had made to CDC. "Everything that I alleged was false," he wrote. "As I alone of all Netcare/Prime Cure employees had the most complete knowledge of the HIV program[me] from inception to termination, it was easy for me to build a superficial and misleading story based upon half-truths and facts used by me knowingly out of context."

However, CDC's hard-nosed auditors in Atlanta are taking Gregory's retraction with a pinch of salt. The US Embassy's Elizabeth Trudeau tells *Noseweek*: "We are well aware of the allegations and we continue actively to investigate."

In spite of Gregory's retraction? "Regardless, we continue to investigate," repeats Trudeau.

In fact the CDC's auditors had already picked up problems with the Prime Cure cooperative agreement well before the article appeared in July, and a top US source tells us that Gregory's claims in *Noseweek* came as no surprise. "CDC is doing a comprehensive audit," says our source. "Even if someone on the inside who raises allegations backs off, it doesn't matter, because it raises flags."

It's on the cards that a team of CDC auditors from Atlanta will travel to South Africa to question James Gregory and the other players in this shoddy affair.

■ *James William Emerson Gregory, ID 670629 5208 082, claims to be a registered accountant, a Master Tax practitioner, a Commissioner of Oaths and a member of the Ethics Institute of South Africa. Gregory joined Medicross, later absorbed into Netcare, as a regional manager in 1998. He, his headhunter wife and two daughters lived in Bedfordview until shortly before Christmas, when they acquired a coastal retreat in the KwaZulu-Natal resort of Ballito. There, unemployed King Rat plans to relax and indulge his passion as a dive master.* ■

**Photo sensitive:** King Rat, alias James Gregory, says there was "no inducement of any sort to change my story" and deeply regrets the publication in *nose*141 of this "doctored" picture of Netcare chief executive Richard Friedland

What is the US government to make of this bizarre business?

# Patent trickery

## Big pharma is using South Africa's weak intellectual property laws to inject extra life into its drugs monopoly

ON 14 NOVEMBER the High Court granted an interim interdict in favour of pharmaceutical giant Bayer, preventing the generic manufacturer Pharma Dynamics from selling an oral contraceptive called Ruby.

Ruby is a generic equivalent of a Bayer product called Yasmin. Bayer claims that Ruby infringes a patent it owns. The interdict will remain in force until such time as legal proceedings regarding the validity of Bayer's patent are concluded.

The court granted the order because it felt the "balance of convenience" favoured Bayer because, whereas Yasmin had been on the market since 2003, Ruby was just entering it, so the damages Bayer would suffer if Ruby were allowed to enter the market would be far greater and much more difficult to compute than the damages Pharma Dynamics would suffer if it were not allowed to enter the market. This, despite Bayer's US and EU patents for the Yasmin product having been declared invalid

Behind the court, big pharma and generic manufacturers are waging a battle. A pharmaceutical company can get a patent on a drug if it is new and if it involves an "inventive step". The patent lasts for 20 years, in which time the company has the exclusive right to sell the product – and can charge whatever price it thinks the market will bear. On expiry of the patent, generic makers can clone the product and sell their versions at whatever price they choose.

Although society generally doesn't like monopolies, we accept the patent system because research and development is very expensive, and if pharmaceutical companies aren't given an opportunity to cash in on their investments, they'll stop creating the new drugs we need, and we'll all lose out.

The generic drug industry is huge, worth some R6 billion in South Africa alone. Pharma Dynamics is one of a number of generic manufacturers

doing business in the country. What Pharma Dynamics does is to look out for patents that are about to expire and then seek to clone them. In South Africa, a generic manufacturer needs to register its clones with the Medicines Control Council. It need not show that the product works; simply that it mimics the original in terms of dissolution and absorption.

Pharma Dynamics has 260 products for registration. The difference in price between an original drug and a generic can be dramatic: Pharma Dynamics's generic antihistamine, Texa, sells for R65 a pack, whereas the original, Zirtek, used to cost roughly R300 a pack before generics were available. Now it sells for around R180 a pack. And the oral contraceptive Yasmin sells for roughly R100, whereas Ruby costs about R70.

Generics pose such a threat to pharmaceutical companies that the latter employ hordes of in-house patent attorneys whose mission is to patent as much as possible and to create as many hurdles as they can for generic manufacturers. One trick is to extend the life of important patents – a practice known as "evergreening", whereby, during the patent's lifespan, the company takes out further patents on the drug – to cover a minor modification perhaps – or even simply to cover the process of manufacturing or the dissolution profile (in other words: stuff that already exists, but simply wasn't highlighted in the original patent). When, on expiry of the original 20-year patent, a manufacturer brings out a generic, the pharmaceutical company sues for infringement of the later patent that's still in force. That may well be invalid if it isn't new or if it involves no "inventive step". But in South Africa, patent applications are not examined, which means you can patent anything. If you were to file a patent for the wheel it would be granted and remain valid until such time as someone successfully challenges it in court.

And therein lies the rub: a pharmaceutical company wanting to stop a generic manufacturer from bringing out a generic can bring an urgent court application for an interdict. The generic manufacturer may well wish to challenge the patent but the two matters will not be heard simultaneously. The application for an interdict will be heard very quickly and the pharmaceutical company will get the order if the "balance of convenience" favours it, whereas the case to determine the validity of the patent will take years, especially if the pharmaceutical company appeals an unfavourable ruling. That way, the pharmaceutical company can buy itself a few extra years of monopoly.

Bayer's Country Divisional Head, Richard de Chastelain, gave rather a lot of comment: "A product cannot be 'double-patented'. A new patent covering an improvement to an existing product protects only the new improved version. The existing version remains available for generic manufacturers to copy. Patents are only valid if they demonstrate an 'inventive step' over previously prior art and other patented material… criticism of incremental innovation is prompted by a narrow vision of the R&D pharmaceutical industry as both imitative and anti-competitive: that any patent obtained beyond the patent on the original compound itself is 'frivolous' because it is motivated solely by commercial reasons, rather than a commitment to innovation to benefit patients.

"Multiple patents relating to a single product sometimes occur over time because significant hurdles were encountered in the product's development that, if not overcome, would have prevented its manufacture or its safe and effective use. Even the most innovative new compound will fail the test of the market if its pharmacokinetic properties prove unstable, if the medicinal content degrades in the human system or cannot be safely stored on the shelf, or if it cannot be manufactured in standardised acceptable quantities, at reasonable cost. These and other 'inventive steps' that drive the journey from laboratory to patient are critical to ensuring that a medicine is approved for the intended indication, with minimal risk to the patient, population, and which is cost effective. An invention can range from manufacturing improvements or modifications to changes in inert or active ingredients. None of these are 'trivial' if the end result is a product approved by governments and appreciated by patients."

Pharma Dynamics isn't convinced, because the response doesn't deal with the fact that the South African patent system and legal system lend themselves to abuse: a patent owner can sue for infringement on the basis of a patent that has never been tested, and it will get an interim interdict if the "balance of convenience" favours it. Whose convenience? Certainly not the company seeking to bring out the generic – or the public who would love the option of a cheaper generic. And why does it matter if it is difficult to compute damages if the patent is eventually upheld; what's so wrong with difficult?

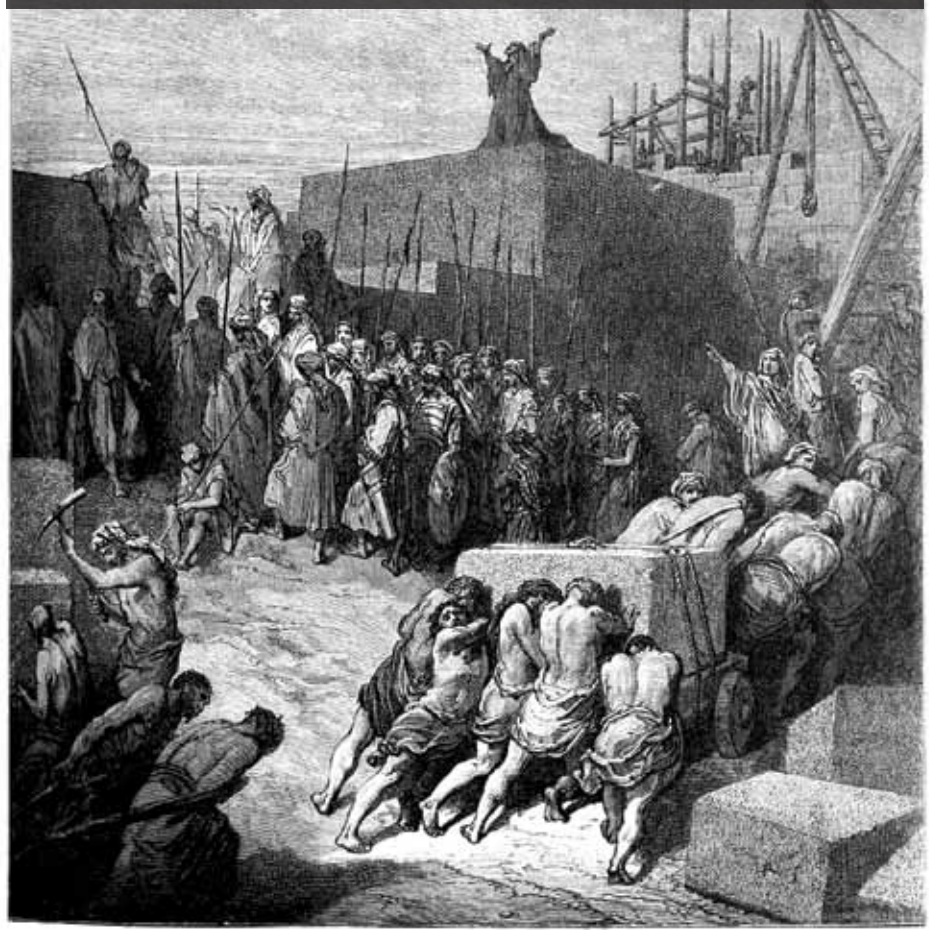
There have long been calls for a reform of the patent system in South Africa to introduce examination (there are indications that the government favours reform), whereas the Treatment Action Campaign has also recently called for reform to bring down the cost of medicines.

## Healthcare regulations benefit monopolies, rather than the public

After the interdict was granted, Pharma Dynamics's CEO, Paul Anley, said Bayer had effectively extended the life of its patent by some 10 years simply by covering its dissolution profile. He added: "This patent has been declared invalid in the EU as well as the United States, and generic equivalents are freely sold in those markets at significant discounts to the originator drug.

It boggles the mind that in South Africa, where the need for affordable healthcare is infinitely greater than in developed countries, the authorities have not yet ensured that regulations are implemented in a manner that benefits the public rather than entrenches costly monopolies. ■

# Slaves to the banks



## How did lawyers allow themselves to be sold into servitude?

THE UNHEALTHY relationship between attorneys and banks was raised in *Noseweek* back in January 2008: "Banks keep lapdog lawyers well fed but firmly muzzled" (*nose*99).

Conveyancing – the transferring of property ownership on the Deeds Office Register (which is not exactly rocket science and could be handled by a variety of people) is reserved exclusively for attorneys, many of whom depend on conveyancing to put food on the table (prosciutto, not pap, of course).

As the providers of the bond finance needed by most people to purchase property, banks control where most conveyancing work goes by appointing panels of attorneys throughout South Africa and then dishing out conveyancing work to those firms. Part of the panel deal is that the attorney agrees not to act against the bank in any matter, even where there's no conflict of interest. (Some banks have more subtle ways of doing this, but the effect is the same.)

Great for the many attorneys who are on the panels; it means a constant stream of easy and lucrative work. Great for the banks; no half-decent lawyer ever acts against them. But not so great for the man-in-the-street who is not only paying inflated fees for conveyancing but also finds it just about impossible to find a competent lawyer when they have a dispute with a bank.

When *Noseweek* approached the banks for comment, we received absurd answers like "We don't impose restrictions on our panellists" and even "We don't have panels".

As for the major law firms, well, they pretty much ignored our questions.

*Noseweek* revisited the issue last year in the article "Banks keep lawyers on a tight lead" (*nose*138) and pointed out that the practice raises serious issues of competition law and constitutional law. We also commented on the fact that the profession had been very slow to respond; some two-and-a-half years after our original article, the Law Society raised the issue in its magazine *De Rebus*, and then only because a member of the public had lodged an official complaint.

In his editorial, the editor of *De Rebus* showed uncanny insight into the issue: "Clearly... the bank simply wants to discourage attorneys from acting for those who have claims against it. There is... at least anecdotal evidence that some banks... have deliberately disempowered the residents of certain towns from conveniently bringing claims against it by simply putting all the local attorneys' firms on its panel and subjecting them to similar conditions.

"Not only is such behaviour possibly anti-competitive but it also amounts to a form of denial of access to justice."

The editor went on to savagely attack such terms and conditions, describing them as "inappropriate", and even "a matter for concern". He ended with a chilling warning to the banks: "It does seem time to have another word with the banks." Scary!

But now, it seems, the attorneys themselves have had enough. Needless to say, their problem with the system is not one of principle; it's a decline

in profits that has them up in arms. The revolt was started by an Alberton attorney called Jack Sherman, who in a letter in the October edition of *De Rebus* said: "I have recently removed myself from the panel of two of South Africa's leading banks after an association in excess of 35 years. When I started acting for these banks/building societies in the 1970s the relationship was that of a professional attorney and client. Since the 1990s the relationship has changed. The professional basis was replaced with that of a 'partnership' and with the advent of electronic communication, quickly became that of 'master and servant' and has now deteriorated to that of 'master and slave'.

"Conveyancers are no longer of any value other than as a conduit to provide the banks and their surrogate vendors a service on terms and conditions dictated by them – even to the extent of what fees to charge. We are told to obey and pay, and failure to meet the bank's software provider's terms and conditions is sanctioned by suspensions or banishment. This is an intolerable situation... It begs the question: How did we allow ourselves to be put in this position?' Surely the time has come for the 'slaves' to revolt and to revert back to our original status quo. Comments from my colleagues would be appreciated."

Comments there were aplenty. In the December's *De Rebus*, new editor Kim Hawkey referred to "an overwhelming response" and went on to say: "It is clear that some attorneys have long been unhappy with this relationship and that the recession has, no doubt, exacerbated the situation."

She posed the questions: "Can... attorneys afford not to be on the banking panels? However, if one looks at the bigger picture, can attorneys afford to bow down to the pressure placed on them by some of the banks in order to remain on their panels? Should attorneys' professional standards be compromised in order to 'please' the banks, this could be the catalyst for doing away with the reservation of conveyancing work for attorneys."

With the recession biting, there are fewer house sales and less conveyancing work to be dished out, yet attorneys on bank panels still have to buy the banks' software and must turn down instructions to act against banks.

"I agree completely with Jack Sherman's letter," said attorney Andrew Cox in a letter. "We are being held to ransom by software providers who have marketed their unique products to banks. Every month there is new software... that we are required to purchase."

The advent of the bond originator, had added a new dimension, said attorney John Gilchrist: "Mortgage originators surfaced in the boom years and, playing banks off against each other not only demanded high commissions for bond business but [banks] also insisted on appointing conveyancers of their choice on each panel to do their bonds. They effectively created their own panels... the bottom line was always that bond business would only go to conveyancers willing to give the originator a referral fee (a nice way of describing a kickback).

The banks knew that conveyancers were doing this and concluded that conveyancers were no longer marketing themselves professionally but opportunistically."

So it's economic pressure that's driving the attorneys' revolt (nothing like a bit of financial pain to bring on a bout of the principles!). Yet, despite the fact that not one attorney actually mentions the issue of banks stopping attorneys from acting against them, it is clear from the letters that some attorneys are simply tired of being abused and desperately crave independence.

Attorney Alan McLoughlin said: "I would like to congratulate Jack Sherman on removing himself from the panel of attorneys of two banks... having experienced the same frustrations and 'slave' status... I decided when I opened a practice for my own account some 20 years ago that I would not, on principle, accept any instructions from any bank and, in so doing, risk compromising my independence and integrity... I am sure that I am a poorer attorney for my decision, but it is a comfortable place to be. Well done Mr Sherman! I fully support the revolt."

Attorney Mark Yazbek said: "I would like to associate myself without any qualification or apology to the adequately expressed sentiments of Jack Sherman.

"These points can be extended to:
• The duty placed on attorneys by local authorities to collect outstanding rates.
• The onus placed on attorneys by the South African Revenue Services to collect taxes...

"I dare say other people... can add to this list of where we're no more than servants but indeed slaves for others."

And attorney Tom Swanepoel said: "I wholeheartedly agree with my colleague Jack Sherman's letter... We, as attorneys and conveyancers, have become the punching bags of the banks. I wonder what would happen if we as a profession took Mr Sherman's example and removed ourselves from these oppressive panels? What then will the 'master' do without his 'slaves'?"

In the letters section of December's *De Rebus*, there was also strong comment on another story *Noseweek* ran recently – the double briefing and overreaching of advocates at the Pretoria Bar (*nose*146). Said attorney P J Kotze of Pretoria (translated): "There's a huge problem in the ranks of advocates in Pretoria... It is unthinkable that something like this could have occurred in the days of William de Villiers, David Curlewis or Oscar Galgut (heavy-hitting Pretoria advocates). It reflects a nonchalance and carelessness that's really unsettling...

# Attorneys on bank panels must turn down instructions to act against banks

It's been well known for years that this sort of thing has been happening with Road Accident Fund work... it cannot be said with honesty that the other members of the Bar weren't aware of this intolerable situation."

And Simon Mositi, a state attorney, said: "I was at pains to understand the logic behind the judgment... A full bench made a finding of fact that the advocates who double briefed and overreached were dishonest... What surprised me was that there was a finding of mitigating factors for some advocates, and a finding of aggravating factors for others.

"What I lament... is that the judgment singled out some for a slap on the wrist while others lost their careers, albeit all were found to lack scruples and honesty.

"They were all found with their hands in the cookie jar so the punishment should have been the same. Two silks, despite their explanations, should have been examples to the junior Bar." Mositi went on to discuss the fact that attorneys were clearly also involved: "What is interesting is that the judgment has been referred to the Law Society of the Northern Provinces to investigate its members who were responsible for the briefs that the fallen counsel were in charge of. I am watching with bated breath what action the Law Society is going to take."

The same edition of *De Rebus* addressed another *Noseweek* bugbear: abstruse legalese. There's a warning to the profession that the Consumer Protection Act now requires attorneys to write in plain English, and that they will no longer be able to baffle all and sundry with the old "Notwithstanding the generality of the aforegoing", or that old favourite, "*mutatis mutandis*".

Useful (and pretty obvious) tips for lawyers given in the article include keeping sentences short (less than 20 words), writing in the active rather than the passive voice, cutting out jargon and legalese, and avoiding words like "notwithstanding", "hereinbefore" and "inasmuch".

And, most frightening of all, it suggests that attorneys ask themselves: "Does what I have drafted make sense?"

If that were not enough, the same issue of *De Rebus* contained an article on carbon credits (discussed in *nose*139), and one on fracking (discussed in *nose*142). ■

# When roaming, do as the Romans do

THE ROMAN satirist Juvenal, who wrote 2 000 years ago, is still the source of some timely maxims. On the question of who can be trusted with power, for example: "Who guards the guardians?" And his observation that the "common people", rather than caring about their freedom, are only interested in "bread and circuses".

But for Peter Tennant, retired associate professor of classics at the Pietermaritzburg campus of the University of KwaZulu-Natal, it was Juvenal's irreverent exposés of a range of Roman scams and villainies that won his admiration. Although, 65-year-old Tennant now remarks ruefully, if he had


applied Juvenal's investigative skills he might not now be at war with World Travel International.

Like Blake and Wendy Wilkins (*nose*146), Tennant and his wife Mary-Lynne were talked into signing a very long contract with World Travel. In the case of the Tennants, their contract was to run for 20 years from 29 October 2010, at an initial annual membership fee of R910, increasing by 10% a year. (That's on top of a joining fee of R9 940.)

Cape Town-based World Travel International offers discounted holiday accommodation around the globe. It claims 40 000 members, increasing by 150 a week. Making its annual income from membership fees alone a handy R3.6m – increasing at a dizzy 10% compounded annually!

Peter and Mary-Lynne signed on the dotted at a presentation in their home town of Pietermaritzburg. They weren't interested in overseas destinations, but in getting discounts at game reserves and conservation areas within South Africa.

As it was, they quickly found out that they could get cheaper deals themselves. World Travel boasted a 10% discount for accommodation in the Kruger National Park. But the Tennants discovered that Sanparks offered pensioners discounts of 20% (at Berg-en-Dal) and 40% (at Olifants). So, less than four months after joining, the pensioners wrote to World Travel making "an earnest appeal for the termination of our contract and for a refund of the monies (R10 850) paid".

As followers of the complaints website Hellopeter will have noted, World Travel is not the speediest of respondents. It took six months before its client service manager Mariska Hiscock replied to the Tennants, saying the company had always allowed a five-working-days cooling-off period on its contracts, "as stipulated by the Consumer Affairs Act". Decreed Hiscock: "In light of the above, we cannot find any grounds for a refund to be processed."

However, she added that although the Tennants' 20-year membership contract could not be cancelled, the ever-mounting annual subscription fee could be set aside, thus "suspending" their membership.

This was done, and the Tennants were glad to see that World Travel did not whisk another R910 (plus 10%) out of their bank account by debit order last October. However, their repeated requests for a refund of the R9 940 joining fee has fallen on deaf ears.

Peter Tennant is irked by World Travel's invocation of the law's five-day cooling off period. He says there's no mention of this in the contract they signed.

"Had I discovered I would be better off by making my own reservations at national parks like the Kruger, I would have cancelled the agreement immediately," says Peter Tennant. His ire is now jointly focussed on the National Consumer Commission, which "routinely ignores" his emails requesting their help in recovering the R9 940 joining fee from World Travel.

Says Peter Tennant: "I fell into the trap of not insisting on having time to peruse the document at my leisure – and I feel really embarrassed about not doing so. These guys apply a very pressured sales spiel." ■

# Oasis feels the heat

## Court battle looms as brothers Ebrahim cling to ex-employees' provident funds

ASIM QAISER was a star employee of asset managers Oasis Group Holdings. By all accounts, the quietly spoken 36-year-old Pakistani national is something of a tough cat: he survived four-and-a-half years at Oasis, from 2006 until 30 June 2010. When he started, it was a material condition of his employment that he would join the Oasis Crescent Retirement Fund.

He was a model employee – no fewer than three external and independent Oasis Group auditors certified him so.

■ "…a person of good standing" said Inge Theron, Director of SAB&T.

■ "He dealt with all matters …in a professional manner and in compliance with JSE and other regulatory requirements. There is nothing negative to note about him …during our interaction with him in connection with the audit," said Peet Burger, Director, PWC, March 2011.

■ Johann Holtzhausen, MD of PSG Capital, independent designated adviser to Oasis Crescent Property Fund, gave a reference in March 2011 which echoes, virtually verbatim, the words of PWC's Peet Burger.

Qaiser left Oasis with a clear conscience and, he believed, a good record. But the hapless man had clearly not reckoned on Oasis' being somewhat like the Hotel California: "*You can check out any time you like, but you can never leave!*" Some 18 months after checking out from Oasis it would appear that the poor man cannot leave.

Qaiser was unable to obtain his pension. On 25 July 2010, he complained to the Pension Fund Adjudicator (PFA), stating that Oasis' HR department and the group chief financial officer, Manie Mayman, had undertaken to make payment by 30 June 2010. To this end, a SARS tax directive, dated 29 June 2010, had been obtained by Oasis. When the money didn't materialise, he followed up with Oasis and on 3 July was assured by the company that all that remained was for the principal officer of the Oasis Crescent Retirement Fund to sign off his forms.

On 20 October, Oasis's HR boss, the decidedly fraudulent ex-professor Dr Mohamed Bayat, responded to the PFA with indignation: "We wholly reject Qaiser's allegations, and set out below the details of the circumstances relating to this matter." Then follows a six-page rant in which they declare their "clear intention to institute legal proceedings against this former employee" for an amount of R1 042 142.00 – being "damages" suffered as a consequence of Qaiser's termination of employment.

Two months later, on 15 December 2010, summons was issued by the Western Cape High Court. Actually, two virtually identical summonses: the second being against former Oasis employee, Naresh Karia. Both were signed by "Uncle" Nazeem Ebrahim (*nose*147), chairman of the law firm acting for Oasis, Ebrahims Inc – and deputy-chairman of Oasis.

We all know justice is a slow train coming – particularly in this case. The summonses never made their way to the Sheriff for service upon the Defendants. But, curiously, copies did find their way to the PFA – which is where Qaiser's lawyers eventually obtained them. They also act for Karia – whose case is similar to Qaiser's.

Most people do their damndest to avoid receiving a summons, but on 17 May Qaiser and Karia launched a High Court application demanding that Oasis be ordered to serve the summonses on them within 10 days, and, should Oasis not comply, that their claims be automatically dismissed, and that Oasis pay all legal costs.

Oasis took fright and the sheriff was despatched post-haste to serve the summonses.

Are Oasis desperate to hang on to those provident funds at all costs. or they are they just vengeful of all who dare leave their employ? ■

# When 'fair trade' is foul

## Sweet charity turns into bitter letdown

LATE LAST year, the *Irene Town Crier*, a suburban paper in Centurion, published an advertorial for a local enterprise known as the Fair Trade Trading Post in Irene. It was headed "Fair Trade Trading Post: an uplifting experience for all". The advertorial boasted that they were "making the community a cleaner and greener place to be" and said that "the foundation's directors, Tania Bryant and Claire Salmon, both share a passion in helping young from all walks of life... to aspire and reach their dreams of owning their own small businesses".

It said that "since March, almost 1 800 entrepreneurs have been assisted, having received finance through Anglo Zimele [which] funds people who were previously 'unbankable' to establish their own businesses". It gave examples: "The ceramic project, sponsored by National Lottery Distribution Fund, has started to produce beautifully crafted sculptures". Another was: "A sewing project with a beneficiary from Bethlehem". It had lots of soul-stirring stuff such as: "The mission of the foundation is to uplift vulnerable members of society". And "As the painting in the store says: We don't want money, we want Change." Nice.

Arline Burger, the owner and editor of the *Irene Town Crier*, discovered that the ladies behind Fair Trade Trading Post, Bryant and Salmon, weren't nearly as nice as they made themselves out to be when she struggled to get payment for the advertorial. The usual excuses: I'm sure my partner has paid; we only do payments on Fridays; your invoice has gone missing, please resend it; my laptop's been stolen; and, of course, the carrot – we'll be placing more ads in the future.

Burger also suspected they weren't so nice because her readers were telling her so and she asked the two women to comment on the claims made, emailing them: "I would like to give you the opportunity to respond to the attached letters before I go to print. I have also received phone calls echoing the sentiments expressed in the letters."

The Fair Trade Trading Post in Irene

In both cases the writers had asked for anonymity. Letter one read: "This place is a scam. I know of at least four people who had to wait months for payment for their products and were only paid when they threatened to go to the press. Another person received funding through Anglo American but this was paid into Claire Salmon's business account... They have also received Lotto money but I believe Tania and Claire are putting the funds into their own accounts. If you look into *Carte Blanche's* investigation of Tania Bryant and her Mrs South Africa dealings, you'll see the same pattern appears."

Letter two: "Why don't you Google Tania Bryant and read about the programme that *Carte Blanche* did on her? You will be shocked about all her identities and antics. Sadly the people and projects at the village are not at all what they seem. Most people don't get paid. The lady from Bethlehem is an example of what she does to people. I am sad to say that she is being treated worse than she was treated in the white squatter camp where she used to live. There definitely is no sewing project and the few things that are made are still not paid for by Tania. The lady is also not paid for work in the tea garden. She has no income and gets no meals as was promised."

"I am shocked... nothing else," responded Claire Salmon. "Please pop into the village anytime – you will see the delightful young girl in the front sewing. Please can you provide the names of the writers?" She then went for the emotional blackmail approach: Burger was told that a homeless woman called Lyn had tried to commit suicide, and that it would be on Burger's head if she tried again.

News then filtered through to Burger that the people operating from the Trading Post were being forced to undergo lie-detector tests; that one had been barred entry; and that suicidal Lyn had been forced to write a letter saying that she had been paid even though she hadn't.

And when Burger started pushing for a response, she was told that an attorney would be responding and that "The publication cannot go to

press without our response". On 1 December attorney Oeloff de Meyer wrote to say: "It is patently clear that both these letters have been authored by the same person. The style and content are too similar to be incidental [sic]... our client has no problem with anybody approaching Anglo American to find out how their system operates... in respect of *Carte Blanche*, no offence of any nature was committed... with regards to the lady from Bethlehem, our client [sic] have a letter in their possession in which it is clearly stated that this lady has accommodation and has been assisted... [and] is also being paid for the work she does... If anonymous information that slanders our client is published we have instruction to issue summons immediately."

The last sentence did it for Burger – on the advice of friends she decided not to publish the letters, but to black them out in the next issue of *Irene Town Crier*.

When *Noseweek* asked the two women whether they would like to add anything to their attorney's response, Claire Salmon responded by asking for copies of the letters. *Noseweek* told her to stop mucking around, to which she replied: "Our attitude is that we were not going to reply to anonymous untruths and at this stage we would welcome an absolutely independent investigation. Whoever makes any allegations should be man enough to disclose his/her particulars such as their name and address."

And she ducked the question of whether her enterprise is linked with the international organisation called Fair Trade. Which is no surprise – when we spoke to Ariana Baldo, the official South African representative of the international Fair Trade organisation, she told us that there had been discussions with Tania Bryant, but that the organisation had decided not to grant her accreditation because her reputation wasn't too kosher.

Baldo explained that this means the Trading Post women are not authorised to use the registered trade marks Fairtrade (one word) and a mark comprising a black, red and green logo and the word Fairtrade.

(Fairtrade certification, a widespread standard for labelling products produced by fair trade, is overseen by FLO International.)

The Fair Trade Trading Post's site, www.makeitfair.co.za, certainly does suggest an association with the international body – there is a section called Fairtrade that both discusses the international organisation at length and features the logo.

So what was the *Carte Blanche* thing all about? On 3 October 1999 *Carte Blanche* did a piece on Tania Bryant and her role as the organiser of the "Mrs South Africa" competition. It told how Bryant had set up a section 21 company called Happy Children's Fund; the thinking being that part of the contestants' entry fee would go to a home for abused children. It told how Bryant announced at a ceremony that she had collected R160 000 for the fund – money that all went into Bryant's Mrs South Africa account rather than that of the fund; that Bryant had explained her failure to pay this to the fund by saying that money pledged had not been paid in and that reconciliations were required. It also revealed that Bryant had "a string of judgments against her" and "an endless supply of ID numbers". *Carte Blanche* ended by disclosing that, shortly before the programme aired, Bryant had issued a series of post-dated cheques, totalling R90 000, payable to the fund.

On 8 June 2003 *Carte Blanche* aired a follow-up, saying that the previous programme had ended with "one burning question": would the cheques be honoured?

No, not one of them, which apparently forced the home – that had been relying on the money – to close down.

When interviewed, Bryant said: "Well, the intent was there. Then they went and they gave us bad publicity and under these circumstances I am not prepared to give anybody any money and I do not think that there will be any corporate company in South Africa that will do that." (The fact that the home only started badmouthing Bryant after she'd reneged apparently escaped her.)

When asked what had happened to the money, Bryant said that she'd decided to "re-route that money and give it to different charity organisations". And then she sold the company for "an undisclosed amount".

No wonder the fair ladies were so keen to stop the *Irene Town Crier* from crying. ■

# Money promised for abused children shelter disappeared

**It was this big:** MTN's Karel Pienaar reveals all

Picture: Avusa

# Naughty MTN boys forgiven

## Round II pardon for porn ring

DUE TO currency swings, global recession and slower growth, revenue at MTN, Africa's top mobile operator, was up less than 1% to a mere R56.5 billion in last year's interims. But at least it was up, an achievement in troubled times that can be attributed partly to the crack sales team headed by the group's general manager of Retail Channels, Paul Newman, whose department supplies SIM cards and airtime to major retailers such as Foschini, Shoprite and Woolworths.

But not so long ago, it now emerges, amidst a deluge of disciplinary hearings and suspensions, it looked like curtains for Newman and his guys – after they were discovered to be running an exclusive internet porn ring from their desks at MTN headquarters.

It's a skeleton in the cupboard of the JSE-listed group (chairman Cyril Ramaphosa) that's been kept well buried until now. In fact, group managing director Karel Pienaar refuses to confirm or deny that such a thing ever happened.

But it did. Back in 2009, we can disclose, MTN's IT boffins were puzzled at the slow response on the main internal email server at group head office in 14th Avenue, Roodepoort. The slow feed, they discovered, was the result of the unusually large data archives held by a small number of employees on the server.

The sleuths, headed by information systems general manager Barney Barnard, identified the large data holders – and found their files packed with pornographic material downloaded from the internet.

The culprits? Paul Newman, general manager of Retail Channels and about six present and past members of his sales team.

After an investigation conducted by HR executive Themba Nyathi, the porn merchants were suspended and hauled before internal disciplinary hearings. Tim Lowry, the outgoing managing director of MTN South Africa, was determined that all of them must be fired.

But that August, Lowry was replaced as managing director by the present incumbent, Karel Pienaar. And Pienaar took a different view. He had all the culprits reinstated, except for one team member who had downloaded kiddie porn. He was out.

"There was a clear intervention," says a former senior MTN staffer. "Tim Lowry decided to discipline the culprits. He handed them over to an official investigation and disciplinary process. Only one of them had child pornography. The others, including Paul Newman, only had ordinary pornography.

"They were exchanging this pornography among the team. It was like a sub-culture that developed. There were two white ladies involved. One of them reported to Paul.

"Tim (Lowry) wanted them all dismissed. Then Karel came in and forgave them all except the guy with child pornography. Tim was very upset. He felt it was double standards. That's what he mentioned to me as he was leaving, that this was unfair because when people at a lower level, such as in the MTN call centre, are caught with pornography, they are routinely dismissed. There had been a number of such dismissals in the call centre, though this is obviously not something that's publicised."

Tim Lowry, as an executive at former MTN shareholder Cable & Wireless, played a key role in the formation of MTN in the early '90s. He was appointed managing director of the group's South African operation in 2007, replacing Maanda Manyatshe.

After Karel Pienaar took over in August 2009, Lowry went on to run the group's South and East Africa region. He left MTN the following year.

Pienaar, 53, formerly MTN's group chief technology officer, is a long-serving staffer and former chief executive of MTN Nigeria.

Says our senior executive source: "Karel is an old-timer in MTN, like Paul Newman. And they're buddy-buddies. Tim was an Irish guy who came in to run MTN South Africa and he didn't care who was who. He was a no-nonsense man who wanted to take action over this porn ring. But MTN has a culture of old boys' networks – the guys who've been there since the beginning, or near the beginning. They stick together."

Paul Newman, long back at his old job as general manager Retail Channels, did not return our call.

Karel Pienaar (7 200 people under his leadership; R30bn of assets under his control) started off 2012 in buoyant mood, being one of several MTN senior executives to receive share awards – R3.5m-worth in his case – subject to meeting performance targets.

He's still buoyant when we begin our chat. "What's the latest *skinner* you want to ask me about?" he booms.

**Noseweek**: "Can you remember, 2009/2010, there was this business at MTN about pornographic material being found on some people's email accounts?"

**Pienaar:** "Yes, yes."

**Noseweek**: "I gather it was mainly in a sales team and that there were a number of suspensions?"

**Pienaar**: "Why are you guys scratching in the history like that?"

**Noseweek**: "I had heard that five members of the sales team were suspended?"

**Pienaar**: "All of that activity and whatever that was, is a long time ago and to bring it out now is not particularly relevant. I'm definitely not going to confirm or deny or discuss any of our internal ethics and issues. Why bring this in? Have you never looked at porn?"

**Noseweek:** "Err, can't say I have. Have you?"

**Pienaar:** "Can't say I have. Thanks very much for phoning, but I'm really not interested in this conversation. It's negative, it's irrelevant in MTN at this stage. Why don't we find you a better story than that?"

Also pertinent to MTN clients, who are frequently the recipients of unsolicited porn, for which they are then charged via their MTN accounts.

MTN's chief HR officer, Themba Nyathi, the man who conducted the secret investigation into Paul Newman and his porn-addicted sales team members, says in a statement for *Noseweek*: "MTN has disciplined and dismissed top senior staff in the past for downloading and distribution of pornography, games, videos and films. Illegal and under-age porn is a menace to society, hence MTN's tough stance against it.

"MTN, like any responsible corporate citizen, does not allow staff to download and distribute porn, games, videos, films etc from company property during working hours. It takes up huge IT storage space and is tantamount to abuse of company property for personal use. MTN has well developed policies that outlaw such abuse practices.

"Any staff member that is found to have downloaded and distributed porn etc during working hours is subjected to the disciplinary code irrespective of rank. Each individual case is handled fairly by an independent chairman. Discovery of porn on anyone's computer is not an offence. However, downloading and distribution of porn during working hours is an offence, as it distracts and offends other staff members of different cultural and religious affiliations. In the past, some staff members have taken legal action against MTN for failing to protect them against receiving pornographic materials from colleagues." ■

# Pienaar refuses to confirm or deny that anything happened

# You don't think what you think you think

Prof Evan Gilbert
reviews
**THINKING, FAST AND SLOW**
(Allen Lane)
by **Daniel Kahneman**

I AM FASCINATED by how people – mainly business people – make investment decisions. I've always wondered how on earth anybody could ever commit large amounts of money to projects with very uncertain returns. John Maynard Keynes called this "animal spirits" – the desire for action that is not justified by (rational) analysis. Without it, we wouldn't get much business activity – it's very seldom that there is a "no brainer" investment opportunity in business.

It was thus with great interest that I read the psychologist Daniel Kahneman's new book *Thinking, Fast and Slow*. It's written in memory of Amos Tversky, his long-time friend and research collaborator who almost certainly would have won the Nobel Memorial Prize for Economics in 2002 along with Kahneman and Vernon L Smith. According to the citation, Kahneman won it for "having integrated insights from psychological research into economic science, especially concerning human judgement and decision-making under uncertainty."

The book presents a broad overview of the results of Kahneman's life work, mainly with Amos. They explored how people make decisions and identified two very different systems of thinking that we seem to use to guide ourselves through our lives – the "fast" and the "slow". The "fast" refers to our intuitive approach to decision making – the snap judgments that we make all the time, mostly accurately and helpfully, but almost always in an unconscious, and potentially biased manner. The "slow" refers to the rational, considered side of our decision-making selves. It's how we'd like to think we think, but as it is hard work, and we are essentially lazy, we generally try and avoid it if we can.

The analysis of the "fast" thinking mechanism was the bit of the book where I learned the most. As he puts it: "You believe you know what goes on in your mind, which often consists of one conscious thought leading in an orderly way to another. But that is not the only way the mind works, nor indeed is it the typical way." Our "fast" thinking system tries hard, but can be misled by experience or data that is available (but is incorrect or irrelevant), by its need to explain causation (we really want to explain why things happen when in reality randomness is far more common than we realise or admit) and finally when faced with difficult problems, our "fast" thinking tends to adopt heuristics – it answers different (but easier) questions. All of these factors mean that we are generally far more confident than we should be in our intuition.

The book presents many fascinating examples of how our environment influences our decision-making behaviour. Asking people to smile or frown while completing a task can affect the way they feel about the results of the task; seeing pictures of old people during a task affects the speed of the people leaving an experimental venue. Even our ability to conduct "slow" thinking is influenced by our environment. A worrying example of this was a study of judges' behaviour when considering parole applications. If your application was at the top of the list after lunch you had a systematically higher chance of being approved when compared to somebody at the bottom – presumably reviewed when the judges were more hungry.

What was most interesting to me was the extent to which the fast dominates the slow, and – because it is imperfect – the extent to which we are susceptible to systematic biases. This is both very worrying and comforting to me in my job as an investment advisor. I'm worried about their affecting my advice, but at the same time realise that their existence gives me an opportunity to provide such advice in the first place.

While covering academically important issues (as evidenced by his Nobel prize), Kahneman's new book is not a piece of academic writing. Far from it. In fact, he explicitly has written this book to make his work accessible to that peculiarly American institution – the water cooler conversation. I found myself discussing it – and its implications for me in my job – with my friends during mountain bike rides, so I think he achieved his purpose.

It's written in a beautifully accessible style: simple and clear, yet not patronising or simplistic. Anybody can read it and most will enjoy it – South Africa, please note.■

# Meanwhile, back at the ranch...

Len Ashton
reviews

**SEAL TARGET GERONIMO:**
**The Inside Story of the Mission to Kill Osama Bin Laden**
(Quercus)
by **Chuck Pfarrer**

NEVER underestimate the little people – for better or worse. While the lords of creation swig champagne in Washington, Bloemfontein, London, and ports beyond, their support staff are often plotting private, dangerous, petty courses.

Grandiose national strategies are all very well, but things can (and do) go seriously awry if weak leadership allows the Umpteen-Year-Plan to go wrong, go wrong. go wrong, due to infighting in the ranks.

Chuck Pfarrer, in his energetically macho and seriously persuasive *Seal Target Geronimo*, is contemptuous of the US bonfire of vanities which permitted the horrors of 9/11. He paints a picture of unforgiveable bureaucratic inertia in both the CIA and the FBI. Praise is contrastingly fulsome for the awe-inspiring derring-do of the SEAL teams, which killed al-Qaeda founder Osama bin Laden in his Pakistani hideaway.

The US Navy's SEALs are the elite special operations force in the United States military, operating directly under the Joint Special Operations Command (JSOC, pronounced Jaysoc).

The book bristles with technical acronyms, but it could be argued that the author is keen to prove his insider credentials in order to launch informed accusations of monumental incompetence in the vast security bureaucracy of America.

Pfarrer disdainfully lays into the hordes of time-servers and desk-wallahs who ignored a tide of secret agents' specific warnings of the plot to use passenger airliners as missiles aimed at symbolically significant US targets.

According to Pfarrer, the in-boxes of the security services were crammed with frantic calls-to-arms from agents in the field – but too many head office individuals were too busy defending their professional corners and pensions to bother about all that paperwork.

The recriminations are fascinating; so is the background to Bin Laden's

demise. Who would have thought that the most notorious villain in the world was actually a spoilt rich boy who thrived on the flattery of obsequious deputies with separate agendas?

For years, this moneyed son of a millionaire simply doled out cash to those who claimed to be plotting the demise of the West. And of course there were many seething with rage at the indignities inflicted on Arab lands by successive defeats in wars against American-backed Israel.

But Bin Laden had no military training or experience. When he pitched up in the Afghanistan interior with a rag-tag convoy of hangers-on, to give sustenance to the locals battling the Russians, he was dismissed by the warrior tribes as dangerously naive. Pfarrer lists sundry other instances of his above-it-all vacuity, in startling contrast to the murderous actions he sponsored. *Seal Target* insists that Iraq's weapons of mass destruction did exist, media scepticism to the contrary, and that Bin Ladin connived at the use of Saddam's secret stashes of nerve gases and the odd bottled plague.

Vanity made him vulnerable to the likes of brilliant Dr Ayman al-Zawahiri, who just happened to be a sociopath killer. The poisonous doctor exploited Bin Laden's orthodox Muslim piety with wild plans for the restoration of the caliphate – Arab dominance from Spain to China, like in the good old days.

As Bin Laden's rival courtiers plotted their own advancement, their numbers fell away suspiciously, till the slippery Zawahiri gained a dominant influence over their paymaster. The doctor, thinks Pfarrer, may have tipped off the Americans to the whereabouts of various al-Qaeda cadres – and eventually of Bin Laden himself. We shall never know. Zawahiri met an untidy end.

Pfarrer sometimes overwhelms the reader with techno talk of the astonishing array of sophisticated marterial employed by the SEALs, but he is a sufficiently intelligent writer to sustain the progressive tension of the hunt for Bin Laden .

His respect for the men who carried out that mission is huge. And, clearly, these are incredibly seasoned, tough, brave men – the direct opposite of the officials fighting for personal promotion Stateside. The two species must detest each other, if Pfarrer's sneers at the pen-pushers are remotely justified.

It would seem, however, that 9/11 had one significant benefit: it forced the realisation that navel-gazing bureaucracies have to learn to cooperate, however reluctantly, if America's security is not to be compromised. They must share intelligence or suffer the consequences. ■

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CUT ALONG THE DOTTED LINE

Issue 148



# War dance

I DON'T KNOW why war dancing seems to have gone out of fashion. When I was a small boy you could bet your life on it, here in Natal, when you got a dozen-or-so true men together with enough good booze, round about midnight one of them would leap up and start kicking his legs about and yelling Ayizikazimbazimbazimba! which is a very fierce Zulu war cry. Then they'd all leap up and cry Hold him down, you Zulu warrior! and stamp the floor fit to break their ankles. A dozen true Caucasian men, that is. Zulu men didn't do war dancing because they didn't have access to the good booze, see, all they were allowed to drink apart from tea was a sort of thin fermented porridge with an alcohol content of more or less zero. You'd die of ruptured kidneys before you got poegaai on that lot. Of course if you were a Zulu man with a daredevil white pal he might go and buy you a bottle of something nice, taking care not to leave his fingerprints on it and provided you didn't bring along another pal to witness the handing-over. But there still wasn't any war dancing. Zulu ladies never did any war dancing at all, since they hadn't ever done war.

Anyway, when I hit 15 I looked as if I might be 18, with a bit of imagination, and I would buy a bottle of that sort of brandy I supposed one might use for paint removal or washing windscreens, buy this I say for a mid-aged-looking bloke called Mkhize who worked at the bakery next door. He used to lap the stuff up, as the expression of the day had it, and get down to some serious goldminer-type sinuous soft stamping, and bust out in loud laughter. But where the war dance? Never! said Mkhize, that is what Red Indians do in America. They make a big fire and beat tomtoms and hop around in a circle and yodel war cries and wave small choppers about, called tomahawks. Me, I dance because I'm happy, like Fred Astaire. War dancing is not for soldiers, said Mkhize, it is for men with big feet and small guts. You mean big mouths and small hearts? said I. Something like that, said he. End of history lesson.

*They make a big fire and beat tomtoms and hop around*

Now it's 2008 and I'm off to Knysna with me old fishing chum Baruch, who has the presence of a small irritable garden gnome with a giant ginger moustache but, I tell you, what an angler! He has some kind of built-in fish sonar which I imagine to be in this 'tache, like radar antennae, also he has a small tin boat with a small outboard motor for silently nipping in amongst the monster vyf-honderd perdekrag cabin cruisers of the Gauteng rich on the St Lucia estuary. Making off with half the shoal the 'tache has picked up before, these monsters can up anchor and move across and make their first cast. Of course modesty forbids my saying I am the other half of our deadly team, but there you are.

And here we are on the Knysna lagoon, Baruch getting terribly irritable because I keep calling his tin boat the Bismarck and he hates my sarcasm and loves his boat like anything because it has a specially scientific shape of hull seen on no other vessel ever, including the Kriegsmarine behemoth of that name. And you don't seem to hear me when I tell you you're using your reel the wrong way, says he. Nag, nag, nag. But I'm pulling in as many fish as you, hey? say I, and there the matter rests because a kabeljou the size of your leg drags the Bismarck down to the gun'ls on his side and he needs me with the net. Now he's happy because this fish perhaps will win a big prize at the Grand Hotel angling contest this evening.

A big do, this. It's the height of the season and there's not a bed left for another tourist in any Knysna hotel, esp. the Grand which runs anually this tiptop national estuary-fishing contest. There's a weigh-in and braai in the evening with plenty beer and everybody smelling of bait, then all go off for a shower and shave and maybe a quick nap and put on a jacket and a tie and off to the hotel dining hall for a cabaret with good liquor and the presentation of trophies. Posh. The usual table staff of local klonkies have been given time off, German tourists want to see proper black Africans; handsome young Xhosa waiters have been brought down from a PE agency and done up in crisp white uniforms with red sashes and shiny shoes.

And these trophies are serious silver cups of trad classical design, 'ksê. There's a cup for every category of skill: the most fish, the biggest fish, a cup for each species, about 10 cups in all. But there's one cup left over. Nobody has caught a single steenbras, the emblem fish of Knysna. Puzzlement, and a bit of tension. But the booze is good, and plentiful, and after a bit Baruch is entirely pissed and leaps on to the stage and emits a bloodcurdling Ayizikazimbazimbazimba! and slams his feet about on the wooden planks and yells Hold him down, you Zulu chief! and the Xhosa waiters get the cramps laughing, it's quite the daftest most bloody stupid thing they've ever seen. I mean they really are clutching their bellies in agony, and the head Xhosa waiter staggers on to the stage and gasps Please please, he gasps, the extra cup should go to this gentleman for the best Zulu war dance of the evening, and all the Germans clap hands and whistle, so the manager can scarce disagree. He hands it to Baruch with a thin smile. Ja ja! cry the Germans. Ausgezeichnet! ■

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## PERSONAL

**Hopefully** ANCYL moronic intellect is not contagious to the general public. Mike.
**Noseweek** haven't increased subs for 3 YEARS – so what do you think about that? Noël.
**May the** POIA and all who sail in her rot! Thank you. KHH.
**Thanks Ntibs** for the best 21 years of my love. Peter.
**To Dr Roger Phillips** Happy 50th on 26th February. From those who hold you dear and love you.
**Dearest Bebé** Congratulations on your 70th! Brava Zulu! Kudu-House Team.
**To Mike** Hang in there cupcake. Lovies Joan.

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