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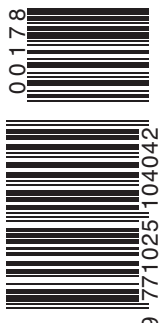
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**Nightmare
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Judges must court honesty

READING YOUR “LENNIE THE LIQUIDATOR” article (*nose177*) makes one seriously wonder about our judiciary and our legal system: whether the powers-that-be are not indirectly somehow benefiting from the “engineered” misfortune of others.

It smacks of Mafia-style crime syndicates that can only be eradicated by forceful action and a judiciary alert to the growing lack of ethics in the legal profession. Judges who are naively trusting of the senior counsel that appear before them quickly become part of the problem.

Until now, it seems, there has been no real will to address the problem, I suspect because of the benefits to be derived by various players from the current situation.

What is most disturbing about the Brakspear case is that not one court official, attorney, advocate or judge appears to have bothered to check the authority of the purported claimant or demand proof of the alleged loan debt before agreeing to a liquidation order against a respondent who has denied liability and on the court record, in writing and under oath, alleged the claim is fraudulent.

By corrupt means the onus is then placed on the innocent party to appeal the case and prove that no such loan was ever received – presuming he or she can find someone willing to fund the legal assistance required to present and argue the evidence in court. (Not to speak of having to run the risk of his own attorney “bungling” the case, either through incompetence or corrupt design.)

The same situation exists in the banking sector, where banks attach property in terms of mortgage bonds that they have long since secretly securitised and ceded to third parties and to which they therefore no longer have any legal claim.

The courts keep on issuing these illegal attachment orders, by the hundreds, without any proof having been offered or questions asked. From the high incidence of these cases one

must deduce that many judges are naively trusting of banks and the over-paid lawyers that represent them. This is tantamount to judicial prejudice in the banks’ favour. Either that, or the lawyers and judges are deliberately blind to the illegality and therefore avoid asking the obvious, fundamental questions.

On the rare occasion that a victim of the fraud has the knowledge and funds to appeal, well, that just helps the lawyers maximise their fees.

All this begs the question: How does an ordinary mortal defend themselves against this apparently court-endorsed fraud? The cases quoted are but the tip of the iceberg, as can be seen from your articles.

In short, the whole system is rotten to the core. When Ian Brakspear wins his case, various state agencies, various attorneys (including “Africa’s largest law firm” ENS) and possibly even some members of our judiciary could face large damages claims and the destruction of their careers and (ill-deserved) reputations. As they should. If he does not, it will signal the total moral disintegration of our justice system.

Peter Nolting
Randburg



On dodgy drugs...

YOU’RE DOING A GREAT SERVICE IN POINTING your readers to Rxisk.com where adverse effects of pharmaceutical drugs can be found and reported (*nose177*).

People rely on self-regulatory bodies for their safety in the remedy field but such bodies are worse than useless, giving the false impression that they are protecting the public meanwhile they only promote their own interests.

I noticed years ago that whenever I took Paracetamol (Panado) for pain, I would suffer transient depression, intestinal discomfort and rectal bleeding for a couple of days afterwards. When I mentioned this to GPs or specialists they acted deaf. I reported the adverse effects to the Medicines Control Council and received this reply on 30 November 1992 (22 years ago):

“The MCC is well aware of the adverse effects of excessive intake of Paracetamol (Panado). The matter is currently being investigated and it is foreseen that restrictive measures might be taken. With regard to the specific side effects experienced by you, the report will be forwarded to the section of Council where each case is investigated individually.”

The amount I was taking was minimal and not anywhere near “excessive intake”, yet I suffered noticeable harmful effects. Nevertheless the MCC did not investigate my case and no restrictive measures were ever taken.

On 28 May this year an article entitled “What’s wrong with the world’s favourite painkiller” appeared in *New Scientist*, citing a study done on Paracetamol by Michael Doherty of Nottingham City Hospital, UK. His results showed that this “safe”, widely prescribed over-the-counter medicine, which is used for minor aches and pains – and given to children because it is on the first rung of the World Health Organisation’s “analgesic ladder” – is as unsafe as non-steroidal anti-inflammatories and less effective.

The teams of medical and pharmaceutical professionals, who have set



The Lennie eyes have it... Judges must court honesty

up Rxisk.com, deserve the Nobel Prize for advances in the field of medicine. Their site will put an end to the “safe and efficacious” false advertising that leads to needless, excessive use of dangerous pharmaceutical drugs.

Mary Fanner
Oranjezicht

Not for us to reason why

YOUR ARTICLE, “WHEN IS A HOUSE AN eyesore?” (*nose177*) suggests that the City of Cape Town, in its dealings with Alex Bleker, is not acting reasonably. That’s just one case. There are thousands of others involving unreasonable behaviour at every level of government. No explanations are ever forthcoming – after all, you cannot give a reason for something that is not reasonable, can you? As a result, citizens and visitors alike incur huge inconvenience, often at great cost.

So I draw the attention of readers to the following extract from Chapter 2 of the Constitution, which sets out the Bill of Rights. Section 33 reads:

“Just Administrative Action:

“(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

“(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.”

Surely it means just what it says: Citizens should be able to demand, and be given, written reasons for what the authorities do, or fail to do. And, if the reasons are not forthcoming, or

are not reasonable, citizens should be able to get the courts to compel the authorities to be reasonable.

The problem, of course, is that the journey through the courts is a long and expensive one. Perhaps we long-suffering citizens should pool our resources, and our grievances, pick on an issue, and mount a test case. That way the Constitution may yet prove to be worth the paper it’s written on.

Ron McGregor
Mowbray, Cape Town

Forewarned – in the nick of time

I HAVE JUST PURCHASED AN ARTICLE entitled “Something blue at Something Fishy” that appeared in 2006 (*nose84*) from your website for R30, and it has turned out to be the best investment of my life. It has saved me from losing thousands unwittingly in an extremely clever (and well planned) scam.

What I read in that old *Noseweek* story was almost word-for-word what happened on 7 June this year when I received a call on my cell regarding a “lucrative business opportunity”.

Because of the meticulous and detailed way “Bev” had told her story in *Noseweek*, I immediately realised that I was dealing with the same person/group/syndicate. And this happened only a few hours before my scheduled meeting with exactly the same buyer (“Mr Ashley Williams”) regarding exactly the same goods (“ostrich and crocodile skin goods”) as replacement for exactly the same

previous middleman (Mr Brown)!

I am so glad there are people out there like Bev and John who decided to go the extra mile and were brave enough to expose the scam in *Noseweek*. Their decision has had a positive effect in my life – eight years later.

I have already contacted the SAPS and hope that I can further contribute and continue with the process Bev and John started so many years ago.

Would the real Bev and John please contact me? I would like to thank them personally. Thanks also to *Noseweek* for making all this possible.

Stefan Snyman
Randburg

Requests to contact Mr Snyman may be sent to editor@noseweek.co.za for forwarding to him.

For the best, advance to Lexus

THANKS FOR EXPOSING MERCEDES-BENZ SA. (*noses138,139,140,171,172&173.*) I was considering buying the E250, but now, f**k ’em, I’ll be buying a Lexus.

Len Palmer
Johannesburg

Wise man. As far back as 2011 (nose140) MercedesBenz SA was revealed to be lying through their teeth about major design faults that were costing unsuspecting customers vast sums to fix; nothing has changed. German engineering clearly isn’t what it once was, so now they’re having to rely on customers’ being blinded by the romance of their marque – or lies and stubborn denial. – Ed.



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Editor

Martin Welz
editor@noseweek.co.za

Managing Editor

Donwald Pressly

Designer

Tony Pinchuck

Consultant

Len Ashton

Sub-editor

Fiona Harrison

Contributors

Len Ashton, Chris Bateman, Gavin Foster, Helen Grange, Barry Sergeant, Sue Segar, Harold Strachan, Anne Susskind

Cartoons

Gus Ferguson, Stacey Stent

Accounts

Nicci van Doesburgh
accounts@noseweek.co.za

Subscriptions

Maud Petersen
subs@noseweek.co.za

Advertising sales executive

Godfrey Lancellas
godfrey@madhattermedia.co.za

Advertising co-ordinator

Adrienne de Jongh
ads@noseweek.co.za

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'I pay the cops every week'

Joburg criminal lawyer admits to bribing

LAST MONTH *NOSEWEEK* AND OTHER MEDIA reported that the chief financial officer of the Financial Services Board, Dawood Seedat, had suddenly resigned following disclosures that he had received large sums in cash from wealthy Johannesburg businessman Edrees Ahmed Hathurani, MD and major shareholder of a large retail chain, Africa Cash 'n Carry. The payments, totalling several million rand, had allegedly been extorted from him by Seedat and associates in the South African Revenue Service (SARS) in return for making his tax troubles "go away".

It transpires the issue has a long and complicated history, and that Hathurani and some of his associates and advisors may themselves yet have a lot more to explain. And that they are not new to the idea of paying to have their problems with officialdom disappear.

Court records show that in February 2010 Hathurani received an income-tax assessment requiring him to pay a spectacular R580 million in respect of arrear income tax, penalties and interest. He lodged an appeal with the Tax Court against the assessment but SARS insisted on immediate payment on the so-called "pay-now-argue-later" principle.

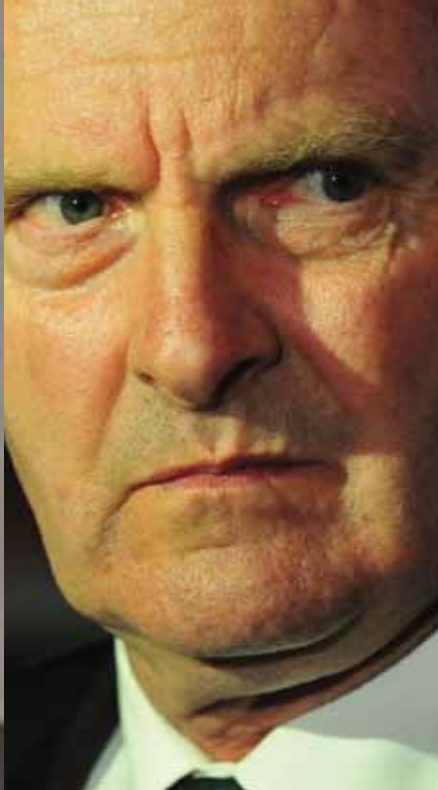
In October 2010 he appealed to the Commissioner for Inland Revenue to suspend

his obligation to pay the assessed tax, pending his appeal to the tax court. The commissioner refused and, in December 2010, proceeded to obtain a judgment in the Magistrate's Court for payment of the full amount of R580m, giving SARS the immediate power to attach Hathurani's assets.

Hathurani then rushed to the North Gauteng High Court, hoping not only to get the judgment suspended but also arguing that he'd had an agreement with SARS in terms of which he alleged he was to have been granted the same low penalty and interest terms granted to errant taxpayers in an amnesty period – a period that had already expired by the time he decided to come clean to the taxman – and that SARS had reneged on the deal.

The court record shows that Hathurani failed to disclose – over a 15-year period from 1983 to 1998 – the substantial income he received from Surus Cash and Carry, a close corporation that traded under the name Jumbo Cash & Carry. By 2006, Hathurani's tax affairs and those of Africa Cash 'n Carry (Pty) Ltd had been the subject of investigation by SARS for some time. Hathurani had a 40% interest in Africa Cash 'n Carry.

In the course of the tax investigation Hathurani told SARS representatives that he wished to settle his tax affairs and, in the



Attorney Saleem Ebrahim (left) and investigator Paul O'Sullivan (above).

hope of receiving more lenient treatment, offered to disclose irregularities relating to other members of Jumbo Cash & Carry who had allegedly also not disclosed their income to SARS – and illegally moved substantial sums offshore. [A *dangerous move, as it would transpire, since those partners then, in turn, found it in their interests to tell SARS more about Hathurani's further tax defaults and frauds.* – Ed.]

Hathurani argued in court that he had made the offer on the understanding he'd be given the same benefit as those who had applied for and received exchange control and tax amnesty in terms of the Exchange Control Amnesty and Amendment and Tax Laws Act. (At the time he made his offer, the advertised amnesty period under the Amnesty Act had expired.)

Among the disclosures he made was that R200m in income from Jumbo Cash and Carry had been expatriated, of which only 40% (R80m) had accrued to him personally. He also revealed that R16m of the proceeds of the sale of his share in the Jumbo Group had also been illegally expatriated.

In April 2011 Judge BR du Plessis refused Hathurani's application. He found that, while Hathurani had suggested to SARS that he should be

treated as though he had made disclosure during the amnesty period, there was no record of SARS's having agreed to such a deal. In fact SARS's legal counsel argued that such a deal would in any event have been void, since, by law, they were not allowed to agree to such terms.

In the meantime it was now open warfare between Hathurani and his fellow Africa Cash 'n Carry co-director, Cassim Aysen, who resigned from the company earlier this year. Hathurani laid charges with the Hawks against Aysen and various employees allied to him, alleging that the company had lost R168m due to fraud and theft perpetrated by them.

Some time later he accused Hawks boss General Shadrack Sibiya of having received huge bribes from Aysen to make the cases against him disappear.

Hathurani also wanted the court to interdict the police from investigating charges against himself.

Evidence produced and handed to the police by well-known private investigator and forensic examiner Paul O'Sullivan, suggests that Hathurani and his attorney, Saleem Ebrahim, were not new to such "arrangements" themselves – and that various officials were equally amenable to making such

arrangements with them, on terms that were to their personal financial advantage.

Within days of reports appearing in *Noseweek* and other media about cash payments totalling millions to Seedat, allegedly extorted from Hathurani, O'Sullivan transferred R214,000 which he had received (in R100 and R200 notes) from Hathurani's attorney, Ebrahim.

Noseweek was told that the funds were paid to O'Sullivan as a fee to "find dirt" on General Sibiya.

Asked by *Noseweek* to explain how he'd come to accept a brief from Hathurani's attorney when he was already commissioned by Hathurani's former co-director, Aysen, O'Sullivan said Ebrahim had approached him in March this year. At the time he had had no dealings with Sibiya, whom he was briefed to investigate.

He however became suspicious of Ebrahim's brief when payment was tendered in cash notes.

"I immediately asked for the amount to be Fica-ed and I made it my business to investigate the origins of the cash. I obtained numerous sworn statements and original vouchers and documents from people formerly employed in Africa Cash 'n Carry's cash office, which show the cash was in all likelihood the proceeds of crime."

O'Sullivan insists he lodged charges with the police against Ebrahim, not as an agent of his client Aysen, but in his own right as a responsible citizen.

In May police were handed a video recording that was secretly made in 2007 of a conversation between attorney Ebrahim and a former client, Mohsin Alli. *Noseweek* has a transcript. Some extracts:

Alli tells attorney Ebrahim he is facing criminal charges, and is then asked who the police investigating officer is. On being told it is a certain Warrant Officer at Johannesburg Central Police Station, Ebrahim is heard to declare: "I know this oke, he takes money from me all the bloody time. A greedy bastard. I gave him like two hundred, three hundred bucks. He'll come and ask me for R1,000, but he'll take R200."

Alli: "But does he sort things out?"

Ebrahim: "Ja, he will sort it out."

And later: "I can take copies of the docket from him before. Honest to God, I'm going to try that."

Again, later: "What you need to do is make sure the docket doesn't come to court, two times, three times and [then] it gets kicked out [of court]."

Speaking of Johannesburg Central Police Station, Ebrahim is heard to boast: "All those cops, every single one ... they come here every week to collect money here."

In a schedule of "Attached documents relating to cash monies held at ACC [Africa Cash 'n Carry]", a cash payment of R250,000 made on 13 September last year is annotated "payment to police in Saleem Ebrahim's office". The cash is recorded as having been collected for delivery by Edrees Hathurani and his son Mohamed Hathurani, who signed for it.

Muneer Peer, who had been employed in ACC's cash office since 2002, says in a sworn statement: "On 13 September 2013 some cops came looking for Moosa

Loonat... but he wasn't there. It seems Edrees arranged it... but had forgotten to organise the cash. Moosa later told me he'd been told to go with Mohamed Hathurani to take the cash through to Saleem Ebrahim's office and pay the R250,000..."

Moosa Loonat Ebrahim, who'd been working in the cash office since 1998, states: "My duties entailed handling all aspects of cash management. My job was terminated on 2014-03-18 and I was arrested on false charges, by police officers on the payroll of Saleem Ebrahim and or Edrees Hathurani..."

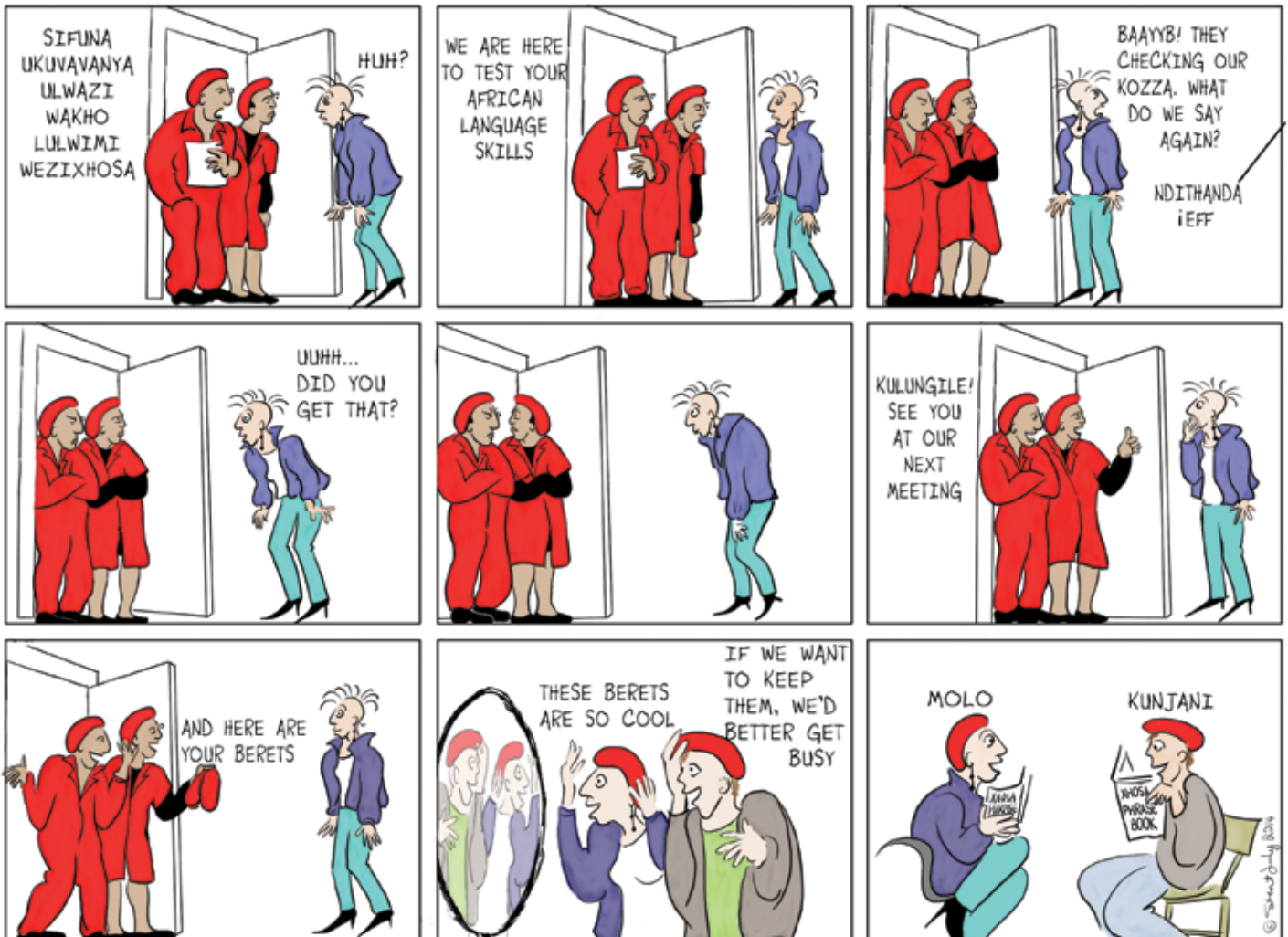
"I am aware of the 'ooplang' that takes place at ACC, The 'ooplang' is where cash is removed from the business, without disclosure to SARS. [Such tax evasion is traditionally justified with a 2% charity donation. - Ed.]

In February 2014 there was a fallout between Aysen and Edrees Hathurani,

which led to Aysen's leaving and the "ooplang" being done by handwritten notes kept in a separate cash book... I have a photocopy of these in case there was any dispute... all sorts of allegations were flung around, people wrongfully accused of theft and so on. Even I was dragged into the war.

On 13 September 2013, some cops came looking for me. I do not know why. I went with Imran Khan - Mohamed Hathurani came afterwards - to Saleem Ebrahim's office. There were two cops there in plain clothes. Mohamed Hathurani had the cash with him and was writing a statement in Saleem's office. We were there until late. It was Friday and we got KFC or Chicken Licken in. The money was handed over to Saleem Ebrahim... I assume that the money was paid to the cops...

Edrees's son wrote: "Moosa case" on the cash slip. ■



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POPULAR MECHANICS cordially invites you to sign up for its second **FutureTech** conference, an exciting one-day event that forms part of the official programme for World Design Capital Cape Town 2014.

Attracting curious, information-hungry people from all over South Africa, the conference aims to demystify our world and introduce us to concepts and breakthroughs across multiple disciplines, including some that will push the boundaries of our knowledge. Prepare to be entertained and impressed. Autodesk, the multinational 3D CAD software company, is underwriting the conference as well as PM's annual **Inventor of the Year** competition (see details on www.popularmechanics.co.za).

Here's a sample of our compelling line-up, with more announcements to come soon:



Afterlife are Cape Town-based specialists in audiovisual performance, video mapping, 3D animation, sound design and other cool stuff, regularly delivering a stunning combination of visual and auditory sensations at major events from AfrikaBurn to Oppikoppi (and lots in between). Craig Shackleton and Wayne Ellis will demonstrate their skills, unpack their technology and show us how it works.



Dr Andrew Forbes and his group of mathematical optics researchers at the CSIR (Council for Scientific and Industrial Research) are studying various aspects of modern optics, including laser beam shaping, laser beam propagation and novel resonators. Dr Forbes will discuss some amazing applications for lasers and reveal more about his group's breakthrough "flame lens".



Jonathan Crossley, one of South Africa's leading jazz guitarists (and a PhD candidate at Wits University), will discuss his work and deliver a unique interpretation of "organised noise". Jonathan has designed a technologically enhanced ("cyberpunk") jazz guitar that's like nothing you've ever seen or heard before. His performance will give new meaning to "out there".



Amanda Weltman, an award-winning cosmologist and theoretical physicist at the University of Cape Town, will provide a new perspective on our Universe and the way it (probably) works. Dr Weltman has co-created an entirely new sub-field of research through her work on the so-called "chameleon" mechanism, which aims to explain dark energy – the mysterious force that scientists believe is responsible for the ever-quickenening expansion of the Universe.



Richard van As, carpenter and inventor extraordinaire. After severing the fingers of his right hand in a workshop accident, Richard enlisted the help of some acquaintances and promptly built himself a crude but effective prosthesis. That was the birth of Robohand, followed later by Robofinger, Roboarm, RoboLeg – simple and affordable prostheses that have already changed hundreds of lives. Refreshingly straight-talking and practical by inclination, Richard will recount his roller-coaster journey and give us a heads-up on what's still to come.



Alan Duggan, founding editor of POPULAR MECHANICS, will deliver an invigorating dose of "future shock" in a talk titled "Your World in 2020". He'll predict what you can expect in the fields of medicine, transport, energy, robotics, consumer technology, and more.



Professor Sandra Swart of Stellenbosch University, president of the Southern African Historical Society and a tireless adventurer (a recent trip took her to Outer Mongolia, where she lived in *gers* and conducted her field-work on horseback), will lead our audience into unexpected byways along history's long, many branched road. Be prepared for some interesting revelations.

+ PITCH IT TO THE PANEL

"PITCH IT TO THE PANEL", making a return after two years, allows inventors an opportunity to showcase their ideas for advice, comment and criticism by our panel of experts and you, the audience. This remains a popular element of PM's annual **Inventor of the Year** competition, which offers prizes worth **R40 000** in two categories, **Emerging Genius** and **Cutting Edge**.

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Randgold: explosive as the Arms Deal

Investec claim they are, effectively, free to benefit from crime. By Barry Sergeant

ASAGE ONCE SAID THAT WHEN IN A hole, the first rule to observe is to stop digging. This advice seems to have bypassed Johannesburg-based Investec over the never-ending Kebble saga.

In the latest chapter of what has been dubbed the biggest unprosecuted fraud in South African history, Investec and a small army of lawyers are arguing – very seriously – that, in essence, shareholders have no rights. This is breathtaking stuff, all right.

The case is known as *Smyth et al versus Investec*, involving 47 minority shareholders of Randgold & Exploration who are challenging the bank.

In an 18 June media release, Investec said – once again – that it is “contesting” the claim of the Randgold minorities – a figure that runs into billions of rand. Investec stated: “We believe the case has no merit whatsoever”.

But Investec has already spent millions of rand on lawyers. There are two senior advocates, Tony Rubens and Jonny Blou, and a junior, Shanee Stein, instructed by the law firm Werksmans, in the form of attorney Harold Jacobs. This is not all.

Although cited in the case, no relief was sought against Randgold. At the foundation of the dispute is the allegation that Investec prevented Randgold from following due legal process in suing various parties that benefited from R1.9 billion in illicit cash – the

proceeds of shares stolen from Randgold by the late Brett Kebble and certain of his cronies. The facts surrounding the R1.9bn have been in the public domain for years and have not been challenged. On 5 December 2008, Randgold published a JSE-sanctioned circular – including a forensic report suppressed for years – which carried details of the extent of the late Brett Kebble’s incredible fraudulent genius. Between pages 86 and 107 of the circular, four key numbers (which aggregate R1.9bn) and names emerge:

- JCI (Kebble’s mother company), recipient of R896 million in stolen cash;
- Western Areas (later, Gold Fields Operations), R522m;
- Kebble and his father Roger, R378m;
- Investec, R106m.

These may all be fairly described as having benefited from the proceeds of crime.

Randgold has long been held in Investec’s tender tentacles. In this case, Randgold has been far from content to place the “true facts” before the court. Instead, it took the decision to join forces with Investec. This course of action has not yet been explained by Randgold or its CEO, Marais Steyn.

Randgold is not only opposing the relief sought by the Randgold minorities, but has also joined Investec in contesting anything and everything claimed by the Randgold minorities. Then again, Investec is bankrolling Randgold’s

participation in the proceedings. The Randgold minorities have been forced to fight on two fronts – at twice the cost.

Lawyers for Randgold include two senior counsel, Gerald Farber – notorious for being able to make mountains out of a molehills – and Nicholas Konstantinides, instructed by attorney Andrew Legg of law firm Van Hulsteyns.

Given the small army of lawyers representing Investec and Randgold, the Randgold minorities have been forced to hire some of the best lawyers in the country. The court team is headed by Chris Loxton and Japie Vorster, both senior counsel, assisted by Paul Farlam and Diane Davis, as instructed by Simeon Korber of attorneys Korbers.

Investec has always had the choice of saying “let’s give the Randgold minorities their day in court, with their case that has no merit whatsoever”. In practice, however, Investec has done everything imaginable to keep the case from going to trial.

By agreement, the overall case has been split into two parts. The first concerns Section 252 of the Companies Act, which provides “a remedy to a member of a company against acts of the company that are unfairly prejudicial, unjust or inequitable to him”. The main matter – “the merits” – will be heard in second place. Investec is betting on this never taking place.

In the “first place” case can be found astonishing technicalities, hingeing on



Randgold CEO Marais Steyn (left) and Investec's inscrutable David Nurek

locus standi – the legal right or standing to bring the case to court. Investec is spending millions arguing that the Randgold minority shareholders have no *locus standi*, so cannot bring any case at all against Investec.

At this stage, the Randgold minorities lawyers' heads of argument for the "main case" – complex as it is – run to 2,800 words. The heads of argument for the technicalities raised by Investec run to an epic 32,000 words.

Investec is saying, in effect, that it is impossible to mess with Investec. Despite the industrial quantities of fog Investec has generated around the case, the crisp question (as so fondly put by many lawyers) is whether or not, on a proper interpretation of Section 252, the word "member" means a registered member to the exclusion of a beneficial owner, where the registered member is a nominee of the beneficial owner.

For context: South Africa, like any number of other countries, uses nominee companies to assist in the administration of the turnover of literally millions of shares a day – if not each hour – in listed companies. As a matter of history and convenience, in nearly 100% of instances, the beneficial shareholder allows a nominee company (of repute) to become the registered shareholder.

This assists in handling dividend payments, correspondence, trading, and so on. Investec's argument is that only the nominee companies (the registered

shareholders) have a right to bring a case under Section 252. Investec argues further that because the nominee companies have no interest in whether or not damages have been sustained, they too have no right to sue.

Conclusion: beneficial shareholders who hold their shares through nominees, as opposed to holding them in their own name, as 95% of beneficial shareholders do, are not "members" as contemplated under Section 252.

Bottom line: Investec is free to benefit

Investec's reasoning is that the case is still being heard. Certainly, it spent four days being heard in the North Gauteng High Court, Pretoria, in June, and has been adjourned until November.

If Investec's arguments are upheld, it would mean that more than 95% of shareholders in JSE-listed stocks have no rights. Investec Asset Management, which manages billions of rand's worth of investments "on behalf of clients" refuses to answer questions on whether it

A forensic report carried details of Kebble's fraudulent genius

from crime and no one can do anything about it. If this sounds shocking, even absurd, it probably is. According to Investec, these beneficial shareholders (those who actually paid for the shares) have no rights.

No court in South Africa has ever been required to determine the issue. Moreover, no court, has yet considered the anomalies, absurdities and inequities attendant upon denying such a beneficial shareholder the rights afforded by Section 252.

Investec flatly refuses to discuss the implications of its argument for all its clients.

has informed its clients that Investec is arguing strenuously in court that such clients have no rights, should their bank choose to act contrary to their interests.

There is a distinct possibility that the *locus standi* case could backfire on Investec. At the same time, it should be noted that Investec had long made extraordinary efforts to kill off the overall case.

One tactic, clearly, is attrition – by throwing millions against the opposition in the form of lawyers who are only too happy to "act on instruction".

The trial has been one of torture, mi-

cromanaged by Investec.

On 7 December 2011, nearly nine months after the Randgold minorities initiated their case against Investec, the bank replied with a massive bundle of 7,537 pages of documents, starting with an affidavit by the intransigent Avrom Krengel of Investec (285 pages plus 1,081 pages of annexures), along with supporting affidavits by the inscrutable David Nurek of Investec, the bumbling Déan Friedman of KPMG Services, the bedside-voiced Peter Henry Gray, CEO of JCI and former CEO of Randgold, the petulant Lesley Arthur Maxwell, financial director of JCI and the charming Ian Stephen Liddle, chief investment officer of Allan Gray, along with an opinion from an English barrister, Guy Phillips QC.

Add to this the main answering affidavit of Marais Steyn, lapdog CEO of Randgold (647 pages and 5,524 pages of annexures). As noted, he is batting for the other side.

If Investec believes the case brought by the Randgold minorities “has no merit whatsoever”, then what is Investec so worried about? Plenty. Investec, has recognised – apparently belatedly – that there is about to be a raft of bad publicity surrounding its litigation strategy. Consider that Investec’s 18 June media release is crafted with half-truths about the “circumstances

leading up to the death of Brett Kebble and the unravelling of his business empire”.

Investec asserts that it entered into a loan agreement with JCI in 2005 and that “the loan transaction essentially facilitated the preservation of the value of the assets in JCI, Randgold and Western Areas (the core of the Kebble business empire) with shareholders and creditors of all three companies benefiting substantially”.

In fact, Investec’s loan agreement was concluded on condition that Kebble resign as chief executive of JCI and Randgold.

Investec states categorically that it was never a party to – nor had any knowledge of – any underhand dealings that Kebble may have been involved in during his time at JCI, Randgold and Western Areas...

Was Investec blind or plain stupid or both? By the time Kebble was murdered on 27 September 2005, there had long been copious information in the public domain pointing directly to his criminal tendencies. To take but one example: Kebble’s firing on 13 January 2000 as CEO of Western Areas received domestic and international attention. He may have been reinstated later that year, but Kebble was hit with a formal criminal case in December 2002.

Information about the indictment

was broadcast far and wide, not least in annual regulatory filings by Randgold with the US Securities and Exchange Commission (SEC) in Washington: “A criminal action, brought on December 6, 2002, is pending in the High Court of South Africa, Witwatersrand Local Division, against Western Areas, R Brett Kebble, Hendrik C Buitendag and Roger AR Kebble on charges of fraud.”

Perhaps the most lip-smacking issue is the extraordinary “scrip lending agreement” entered into between Investec UK and JCI. Again, the details have been in the public domain for years. This transaction, properly and fully analysed, was nothing more than a disguised collateralised loan, involving the theft of 5.46 million Randgold Resources shares by JCI from Randgold.

Such stolen Randgold Resources shares were then “lent” to Investec UK by JCI. The stolen shares were then sold by Investec UK to fund a loan back to JCI. JCI failed to repay the loan and the stolen shares were never returned to their legal owner, Randgold.

Investec, contrary to what it states in its 18 June media release, did not enter any scrip-lending agreement with Randgold. Why is Investec so loose with facts?

Randgold’s stolen shares were used in the irregular scrip lending. Randgold was not a party to the agreement. Investec, as banker to JCI, must have known – lawyers call it “constructive knowledge” – that JCI held no Randgold Resources shares, valued at the time at R271m, which underpinned the irregular scrip-lending agreement. This business, moreover, was clearly not concluded “in the ordinary course of business”, as asserted.

If this were not enough, and as mentioned above, Investec retained R106m of the cash raised from selling the stolen shares, to repay debt owed to Investec by Kebble personally (think of Lear and Gulfstream jets and other basic perks) and by various companies of which he was the controlling mind. Randgold received nothing from the sale of the stolen shares.

It’s also worth focusing on the treatment of Western Areas and JCI. The forensic findings, as mentioned, as published in a circular to shareholders on 5 December 2008, culminated in various summonses and claims being prepared

What Investec forgot to say...

Some of the facts Investec failed to mention in its 18 June media release:

- Randgold was neither a subsidiary nor an associate of JCI;
- Prior to the August 2005 Investec loan to JCI, Investec had no involvement in the affairs of Randgold. Even so, Investec prescribed the composition of Randgold’s board. It appointed one of its senior executives as chairman of the Randgold board and also the CEO of the thief (JCI) as also the CEO of Randgold, the victim;
- Western Areas was the principal recipient, either directly or through JCI, of the proceeds derived from the theft of Randgold’s share portfolio;
- The receipt of proceeds from the sale of the share portfolio stolen from Randgold by JCI (R896m) and Western Areas (R522m)

resulted in claims of R21.3bn and R18.2bn respectively by June 2010, which, if perfected, would have rendered both insolvent;

- Investec was exposed to JCI and Western Areas. The liquidation of either would inevitably have led to an insolvency inquiry and inter alia scrutiny of the conduct of Investec and its nominated directors on the JCI (and Randgold) boards;
- Of the value of R783m placed by Randgold in its 2010 annual report on the settlement received from JCI, R163m was represented by valueless shares in the insolvent JCI;
- The claim of the 47 Randgold minorities against Investec Bank is for R1.4bn or 6% of Investec Bank’s equity of R25.6bn at 31 March 2014; the claim will increase if further minorities join the application ■

by Randgold against a number of parties, not least Western Areas (which had received R522m in stolen cash) and JCI (which had received R896m in stolen cash). These claims had been formulated by Randgold's legal team on several bases, including:

- The cash proceeds realised from the theft of shares, and
- The highest price of the shares subsequent to their theft (*condictio furtiva*, an action with a history and precedents dating back to Roman Dutch law).

Based on *condictio furtiva*, by June 2010, the claims against Western Areas and JCI stood at R18.2bn and R21.3bn, respectively; both companies would be rendered insolvent. On the same basis, the claim against JCI would have reached R26.1bn by November 2011.

Ironically, perhaps, the claims as formulated were prepared under the guidance of Gerald Farber, the very same counsel Investec is paying (hugely) to represent Randgold in blocking the minority shareholders' oppression case. It

said to have benefited the creditors. JCI's largest (unrecorded) creditor was Randgold, which has been thwarted at every stage from asserting its claim against JCI.

The hopelessly insolvent JCI has continued to trade as a "going concern" for almost a decade since Randgold's uncontested forensic findings against JCI emerged in late 2005 and early 2006, as JCI remained propped up by ongoing funding from Investec. JCI, which sold a further stake in Boschendal in June, continues to be funded by Investec.

Investec states that in terms of the 2005-2006 "Investec Loan" Investec ultimately lent circa R1bn to JCI via an SPV structure, which was collateralised by a range of assets. "Through this process", argues Investec, "over R8bn of assets were preserved for JCI, Randgold and Western Areas shareholders".

What Investec fails to mention, persistently, is that Randgold was the victim of crime, amounting to R1.9bn

Randgold was the victim of crime amounting to R9bn

was Farber who introduced the concept of *condictio furtiva*, a claim which Investec now derides as being "completely fictitious" in its media release.

Staying with the media release, Investec says it "lent money to JCI in 2005 which assisted the company to continue to operate". Why, it may be asked, did Investec lend circa R1bn to the thief of R896m in cash and ignore the victim, Randgold? Part of the answer is that JCI needed to further fund Western Areas, recipient of more than half-a-billion rand in stolen cash.

The Investec loan, moreover, was advanced after Randgold's assets had been misappropriated and sold – not only to fund Western Areas, the insolvent JCI and Kebble's largesse – but also to settle JCI's indebtedness to Investec itself.

The Investec loan could hardly be said to have secured and preserved Randgold's assets – there were no assets of any substance (other than unrecorded claims) when the loan was advanced. Further, the loan cannot be

in stolen cash and that Randgold was prevented from pressing its claims, which had escalated due to *condictio furtiva* from R1.9bn to more than R20bn, against the recipients of the stolen cash.

Living off the proceeds of crime were JCI, which had received R896m in stolen cash, and Western Areas (later, Gold Fields Operations), which had received R522m in stolen cash.

Randgold started filing its forensic reports during the closing months of 2005, when Investec executive David Nurek was the chairman of both JCI and Randgold.

Rather than capitulating to the realities, Investec continued digging.

The massive summons prepared by Randgold – at enormous cost – to sue JCI, was literally shredded.

Who did that? Given the horrors, it would seem fair to describe Investec's attempts to thwart the Randgold minorities as a disgrace of unmentionable shabbiness. At the end of the day, this is the private sector's Arms Deal. ■

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FACING THE SHAME

The black middle class must confront SA's problems – or be forced to handle serious accusations, says Pumla Gobodo-Madikizela. Interview by Sue Segar

PUMLA GOBODO-MADIKIZELA IS A busy woman. As I wait for our interview on a Saturday afternoon at her unpretentious home in Fish Hoek, Cape Town, I witness the departure of her lunch guest, American colleague Jennifer Fish, who is chair and associate professor of the Women's Studies Department at the Old Dominion University in Virginia. "Goodbye, my manifestation of all things peaceful and sisterly," says the friend as they embrace at the front door.

South Africans know Gobodo-Madikizela as a clinical psychologist, a member of the Truth and Reconciliation Commission (TRC), one-time University of Cape Town academic and author of the award-winning book *A Human Being Died That Night: A South African Story of Forgiveness*. The book is an account of her prison interviews with apartheid hit-squad commander Eugene de Kock, who was sentenced to life imprisonment, and the extraordinary relationship that developed between the two.

The theatre production of the play, by Nicholas Wright, at Cape Town's Fugard Studio Theatre and at London's Hampstead Theatre earlier this year, was also widely acclaimed.

For the past two-and-a-half years, Gobodo-Madikizela has been Senior Research Professor in Trauma, For-

giveness and Reconciliation at the University of the Free State. While she loves her work in Bloemfontein, she considers Cape Town to be home and she returns to Fish Hoek as often as she can.

Besides her work on forgiveness and reconciliation, Gobodo-Madikizela remains closely plugged into current developments in South Africa. These days, the comfortable indifference of the black middle class is a red flag to this concerned member of their ranks, who loves opera, jazz, movies, gardening and walking at the seaside.

Gobodo-Madikizela, is about to launch her latest book, *Dare We Hope? Facing our Past to find a New Future* – a collection of local and international writing that offers a unique perspective on healing a wounded South Africa. She has become increasingly preoccupied with the need for engagement by the black middle class. Her book tackles, head on, the lack of hope that seems to have taken root in South Africa in a context of scandals, corruption and protests.

She argues that it is only by confronting our past that we will find ways of forging a new and different future. Key to this process is the involvement of the middle class, black as well as white.

"Black middle-class people who have benefited from transformation must start engaging

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Pumla Gobodo-Madikizela

A woman for all seasons

PUMLA GOBODO-MADIKIZELA, THE ELDEST DAUGHTER OF WILLIAM Wilberforce Tukela and Khathazile Nobantu Gobodo, was born in 1955 in the township of Langa outside Cape Town.

Her father started his career as a schoolteacher before becoming an entrepreneur who ran a general dealer's shop in the township. Her mother was a nurse. "She was one of those nurses who rode a bicycle to her patients all over the wider Cape Flats while my dad sold clothes from a suitcase. When he started the shop, she resigned to work with him."

Despite apartheid, she recalls having had a happy childhood during which her parents instilled a deep sense of integrity, hard work and caring values in her.

"Even though I grew up in a small township home, my mom had great style and my father loved things of beauty... in that small township home they had a garden and flowers. I was always encouraged to create things of beauty to affirm my identity, even when the world was hostile and in the absence of all other rewards."

She poignantly recalls how she never felt she was South African... "You won't believe it but even though you can see Table Mountain from Langa, I never really saw the mountain until I was much older and started travelling... I remember, later in my life, hearing people talking about how beautiful Cape Town was. When I was in Santa Barbara in the US, people said, 'Doesn't this remind you of Sea Point?' And I couldn't relate. It was not my city, not my country. Only now do I see its beauty."

When her parents moved to the Eastern Cape, Gobodo-Madikizela was sent to boarding school at the Inanda Seminary near Durban, the country's only private school for black girls. There, she became involved in the Black Consciousness Movement. "My friends and I used to sneak out to Wentworth to hear people like Steve Biko and Mamphela Ramphele speak. They were our role models."

Despite being a top student, who was particularly strong in mathematics and science, Gobodo-Madikizela was expelled from the seminary when she was in Grade 11, for refusing to rat on fellow students involved in organising a strike at the school. Her "upset" parents then sent her to Shawbury High School, a co-ed school in the Eastern Cape.

"The principal, who was a friend

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with and taking action on the country's problems, or else they will face the same kind of guilt and shame that white people who benefited from apartheid face today," she says.

"It is precisely because we are black that we should not wait too long to take action, lest we be faced with serious accusations against us." According to the respected academic, the whites who benefited from apartheid are reminded constantly that they were beneficiaries of apartheid's evil.

"Twenty years after democracy, even black people who are comfortable in their positions in the new South Africa and who have their homes and two or three cars are still pointing fingers at white people. Very, very rarely do we, as black people who have had these advantages, point the finger at ourselves.

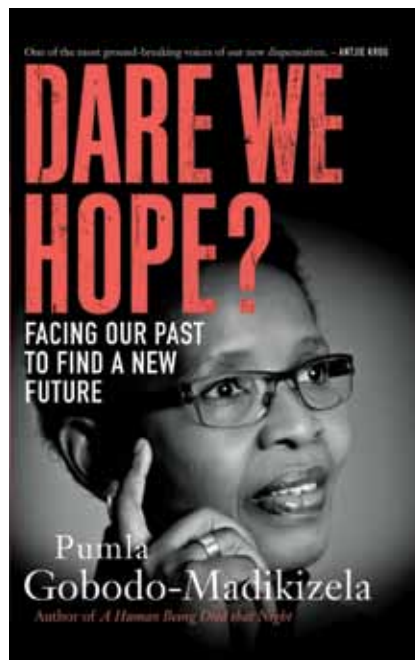
"Who is speaking for the poor? Who is identifying with them and engaging with the critical issues of poverty and inequality? Certainly not the ANC government," she says.

The growing appeal of Julius Malema exists precisely because he has shown a willingness to engage with the issues of the poor and disempowered people of South Africa, she says. "At the moment, he is the only person who identifies with the poor and who best defines their identity."

Gobodo-Madikizela cites the example of the women who recently barricaded Chris Hani Road in Diepkloof, Soweto, and resorted to exposing themselves in protest against the bucket system and other service-delivery failures.

"We saw them out in the streets, baring their bottoms, just crying out to be heard. What they were saying is, 'if you can't hear my words, my voice, then I will show you my bottom... You are not shocked enough to hear my pain about the conditions I live under so I will show you my nakedness. I will shock you... just so that I am heard'.

"Julius Malema speaks for those very voices. He is very important for us right now. All this support [for Malema] is about 'who identifies my identity best'. He hears them saying, 'we are the poor, we are the children of the domestic workers, the children who sometimes had to go to bed with no food, who have been downtrodden in the past and who



still are downtrodden'.

"Never mind that Malema had a multi-million-rand house. He has had these experiences and can articulate them because they are real. His power lies in the fact that he shows he is engaged and that he promises to do something about it.

"So, also the women... Malema speaks for them. The ANC does not.

"If the black middle class doesn't get involved now, we will face the same kind of guilt and we will struggle to deny it... the pattern will play out all over again. That is a danger that we have to keep in mind."

Gobodo-Madikizela's preoccupation coincides with what she calls a dramatic change in the perceptions of South Africa.

"I remember going to the United States after the TRC... the interest in South Africa was phenomenal. Everybody wanted to know more about us. The words, 'behold, I do a new thing...' come to mind. It was as though South Africa was standing on the top of the mountain shouting, 'behold I do a new thing'... and the world was watching.

"But these days, when I go back to the States... people are asking difficult questions – about the leadership of our country, about the government and our president.

"On a recent trip, I was so ashamed and embarrassed. I walked out of a lecture and thought, 'this must be the same kind of shame that white people felt when they travelled abroad during apartheid... because this is my government, it's a black government and all these questions are coming, and all this stuff is happening now and how do I hide myself? But I can't hide myself. I

have to face the shame."

Gobodo-Madikizela's position at Free State University, involves looking particularly at how transformation comes about. "I focus on what are the experiences that bring about transformative moments, for instance, in the relationships between former enemies, or between survivors or victims and perpetrators. When these two sides come together, what are the moments that shift the relationship in a particular direction? So my work focuses on deepening the understanding of change and transformation..."

It is clear that Gobodo-Madikizela is not only loving the work: ("I supervise masters and doctoral students, some from South Africa, some from Rwanda, some from Kenya") but she is also in awe of the man at the helm of the institution, the inimitable Jonathan Jansen.

"Fascination and awe is a good way to describe my experiences here," she says. "This place is truly a hub for transformation..."

"Of course, it's complicated as there is also the other side, which is resistance, but the overwhelming, most visible side is the incredible transformation and process of change that's happened here. There are negative stories, but the change is visible at Free State University".

Her experiences at the university are all the more intriguing to her because of her first visit to the Free State.

"The last and only time I went to the University of Free State before going to work there was in 1987 for my first ever academic conference. I was unsure about driving to the Free State and I couldn't find any accommodation... So my father, who was chair of a Roman Catholic orphanage in the Eastern Cape, organised accommodation for me through the nuns in Bloemfontein. That's where I stayed. I went to the university to give my talk, then I drove back... that was my only experience ... Today, the change is palpable. You walk on campus and you can feel it.

"What sets Jonathan Jansen apart is his selfless sense of empathy and his absolute commitment and desire for things to change... With many leaders it is all about the self, but with him it is done out of a real concern for the human aspects of change. It's not about the financial bottom line, it is about the

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of my parents, was a wonderful man. He said, 'no politics here in the Eastern Cape'... but he realised that we were young and energetic and could not be silenced, so he opened another door for me and encouraged me to start a drama group." Thus Gobodo-Madikizela directed and acted in her first play, *A Man for All Seasons*.

She graduated with a BA degree from Fort Hare University in 1977 and completed her Honours in Psychology in 1979 before going on to train as a clinical psychologist at Rhodes University, where she received a Masters in Clinical Psychology in 1984. After a few years working at the psychiatric clinic in Mthatha, she took up a lecturing post in psychology at the institution now known as the Walter Sisulu University.

In the mid-1980s, she married Msimang Madikizela, with whom she had her only child, a son, Bahle. They divorced in 1987.

In 1991, Gobodo-Madikizela moved to Cape Town to study for her PhD, researching necklace murders and crowd violence. While spending 1994/1995 at Harvard University on a dissertation-writing fellowship, she was asked to join the Truth and Reconciliation Commission. She returned to South Africa and served as coordinator of the victims' public hearings in the Western Cape. In that capacity, she mediated between family members of the victims of gross human rights violations and the perpetrators who were responsible for these. The experience led to her decision to write the award-winning book *A Human Being Died That Night* about her interviews

with Eugene de Kock, the commander of the secret police hit-squad based at Vlakplaas. It also caused her to ponder which features of the TRC process were effective in opening up the possibility of transformation.

In May 1998, Gobodo-Madikizela returned to Harvard University for a fellowship at the Radcliffe Institute for Advanced Study. She completed her doctoral dissertation and graduated from UCT in June 2000. During this period, she started focusing on the notion of "forgiving the unforgivable", based on what she learnt at the TRC.

In *A Human Being Died That Night*, Gobodo-Madikizela claims that apology and forgiveness for acts of radical evil are possible. This flew in the face of German-American political philosopher Hannah Arendt's be-



lecture ("The Face of the Other: Human Dialogue at Solms Delta and the Meaning of Moral Imagination") to her parents.

In 2012, she took up a position as Senior Research Professor for Trauma, Forgiveness and Reconciliation at the University of the Free State.

Gobodo-Madikizela has written and edited several books. When she is not working, she enjoys gardening, movies and going to

'When they rise to applaud a black female singer, I cry'

lief that there are some acts of "radical evil" that can neither be forgiven nor punished.

In her work Gobodo focuses on the processes of forgiveness and the role of dialogue in breaking repeated cycles of trauma through the generations.

Gobodo-Madikizela became associate professor of Psychology at UCT in 2003 and a full professor there in 2010. She movingly dedicated her professorial inaugural

jazz shows or to the opera, "especially to listen to the black voices".

"When people like Pretty Yende are performing, I get so emotional. I stand in the audience at Artscape, which seats 1,500, and it is always mainly white people... and when I see them all rise to applaud a black female singer I cry... because now these voices have the opportunity to be heard and we are celebrating them." ■



The way we were: Pumla Gobodo-Madikizela with her brother Mkubukeli and her parents William Wilberforce Tukela and Khathazile Nobantu Gobodo (far left); in blue dress, extreme right, back row (above); and with her mother in Fish Hoek

Historic steps will rise again

Locals puffed up and down the flight for 125 years, but then it was closed for repairs – which took an inconvenient ten years.

By Donwald Pressly

THE HISTORIC DE SMIDT STREET steps, which run down the lower slopes of Signal Hill from Loader Street to Waterkant Street in Cape Town's tourist magnet of De Waterkant, have been closed and "under repair" for the past 10 years because, it seems, the city authorities simply can't get their act together.

The once handsome dressed-stone stairs had provided an essential pedestrian link in the neighbourhood for a least 125 years, but were already in serious need of maintenance ten years ago. Major renovations to a neighbouring building appear to have hastened the deterioration to a state of threatened collapse in 2005.

The threat of lawsuits, should anyone be injured in such an eventuality, saw the council rushing to erect barricades barring public access. But that's where official efficiency ended. No-one in the council seemed to know what to do next – or to care, until local preservation activists started kicking up a fuss.

A brief flicker of enthusiasm burnt out when a debate in the council ad-

ministration as to whether the neighbouring developer could be held liable for at least part of the cost of repairs paralysed the bureaucrats and politicians into inaction for at least five years. In the meantime the barriers and temporary scaffolding holding up the crumbling structure were stolen.

In late 2009, independent consulting engineers were finally commissioned to prepare a report on what was required to be done. They recommended what amounted to a complete reconstruction with reinforced concrete, clad in the traditional sandstone to restore the stairs' historical appearance.

They estimated the cost at less than half a million rand.

This appears to have had the council in a renewed state of paralysis for another two years.

Says local resident and conservation activist Dr Gert Coetzee: "The steps are documented in maps going back to 1890, giving access to the Bayside Terrace walkway.

"The houses along the terrace are said to have belonged to ship-owners, giving them a direct view over the harbour."



Residents were elated when, finally, in January 2011 the Roads and Stormwater Department (of the city) acknowledged that the city should take responsibility.

This time it took over a year before the sub-council announced in March 2012 that the necessary documentation would be completed in a month's time, the design by June, and that the tender and appointment would be finalised by October. Completion of the project was set for March last year.

But only in November 2012 did the Roads and Stormwater Department report that "the design stage of restoration is going very well".

The tender deadline was finally set for February last year and there were eight tenders. Ikapa Construction was declared the preferred bidder at just over R1.1 million. (Since the first estimate in 2009, the cost had more than doubled.)

The contract was awarded in April last year but in May the council's



Ikapa Construction had run out of funds and couldn't complete the job

documents indicated that there was a problem with the contractor's tax clearance certificate. "No alarm bells rang," says Coetzee.

The job was set to be completed by 15 August last year. Residents however noted that during the construction period there had been weeks when there was no activity on site.

Time and again they pointed this out to the city officials.

There was a brief flurry of activity on the site in December last year, after which it was simply abandoned in a state of devastation.

Apparently Ikapa Construction had

run out of funds and couldn't complete the job.

Mayoral committee member for transport, Brett Herron, says Ikapa was paid R517,393 – or 46% of the total contract sum of R1.12m.

He denied that the city had flouted its own supply chain management policy, but agreed that the company had defaulted.

The city had since followed "due processes" to terminate the contract, he said.

In response to Coetzee's request to the city ombudsman to investigate, Herron insisted: "No investigation

is required as the winning bidder/tenderer complied with the supply chain management requirements and policy... hence the award having been made.

"The job has already been re-tendered and the bid adjudication committee (BAC) report is being finalised. It will be considered by the committee by the end of July. After the BAC has made an award, there is a 21-day appeal period, and if no objections are made, the contractor will be on site in September".

That will be one for the record books. ■

A right stuff-up for London

South Africa's big fish in the British capital turns out to be just another bottom feeder. By Gavin Foster

ON 12 MARCH *BUSINESS DAY* RAN an editorial headed “Obed Mlaba – the right stuff for London”, shortly after it had been announced that Mlaba was President Jacob Zuma’s choice as the new ambassador there. The piece gushed on about the former Durban mayor’s business acumen, saying “Mr Mlaba showed a strong bias to business when he ran Durban and it is clear that he will try to bring new energy to the relationship with the UK”.

The newspaper noted that “it is in Britain where we lay the groundwork for our relationships with the industrialised world. The quality and vitality of our diplomacy in London, because it is where we still have so many friends, has never been more important”.

Whoever wrote this obviously hasn’t kept up to date with what went on in Durban under Mlaba’s rule. And when he presented his credentials to Queen Elizabeth, the package is unlikely to have included a copy of the damning 7,051-page Manase Report into corruption in Durban.

The Mercury ran a front-page story on 30 June, “Millions set aside for lawyers”, saying the eThekweni Municipality faced a barrage of civil lawsuits ranging from damages claims for injuries caused by pot-holes, to libel. Despite having its own legal department employing 28 advisers, Durban has set aside R12.8 million to brief 22 law firms to act for it this year – up from R600,000 in 2012 and R5.9m last year.

Two cases due to be heard within months involve Mlaba. In one, the municipality is being sued by environmental solutions and waste management

company Re-Ethical Environmental Re-Engineering (KZN) (Pty) Ltd for damages and costs resulting from the collapse of a contract to develop and manage a zero-waste programme at the Mariannhill landfill site.

In the other, Mlaba is suing Re-Ethical for allegedly defaming him in affidavits relating to the first case. Both actions, however, are closely linked to Mlaba’s alleged hijacking of a R3-billion tender to implement a waste volume reduction project at eThekweni’s Bisasar Road landfill site.

eThekweni called for tenders in 2009 from companies prepared to run a waste volume reduction project at Bisasar Rd. The initial 17 applications were whittled down to six, then three, one of which was by Re-Ethical.

CEO of the municipality’s Durban Solid Waste (DSW) operation, Raymond Rampersad, and the deputy head of Plant and Engineering at DSW, John Parkin, reviewed the proposals of the three finalists. They rated Re-Ethical as “well established in the recycling business” and described their proposal as “very well” set out.

Also shortlisted was EWS (Pty) Ltd of which they said: “Claimed numerous orders. None appears to be operating in developed countries (one has to question why)... a newly formed company with directors from three overseas companies... the BEE partners do not appear to be part of the mainstream company... Very uncomfortable with this proposal”. EWS was nevertheless shortlisted along with Re-Ethical and another well-established company, Interwaste.

In court papers the municipality’s

Parkin of DSW, said of Re-Ethical’s effort: “This was the only proposal admitted that actually complied with the requirements of the request document”.

A representative of the French Development Bank, one of the potential financiers, technical specialist Christian de Gromard, assessed the three proposals and ranked Re-Ethical first, Interwaste, second, and EWS, third. Parkin reported this and added: “It is clear that EWS has not been totally forthcoming in its communications thus far... Claims are made that cannot be substantiated or have been shown to be not true. There are discrepancies in the description of the technologies... that would indicate that the scribe may not be au fait with the technology. Additional correspondence has done nothing to change this perception... of more concern is that the company now appears to be altering its original offer, as recent correspondence indicates there will not be any funds forthcoming from the ‘trust’. Of further concern is that the company that we were originally corresponding with (EWS) has now changed and we are receiving correspondence from a country with a completely different letterhead.” More on this later...

On 9 September 2009 EWS contacted Re-Ethical to discuss potential future cooperation between the two companies should either win the Bisasar contract. A meeting was arranged between Re-Ethical and EWS’s principals and shareholders for 30 November that year at the offices of KPMG which was also attended by a KPMG director Farouk Ebrahim.

Tadek Tomaszewski of Re-Ethical



der to enter into final negotiations for the project.

Re-Ethical appealed the decision but before the hearing Tomaszewski was summoned to a meeting with the Durban Solid Waste CEO Rampersad, who told him “in no uncertain terms” the applicant (Re-Ethical) had to withdraw its appeal otherwise there would be serious consequences for the company concerning other contracts it held with the municipality, including one called Material Recovery Facility (MRF).

“Rampersad made it clear to me that if Re-Ethical persisted with its appeal and its intention to disclose the fact that Mlaba, at the time the bid selection was occurring, had a direct interest in the company that was ultimately awarded the bid, the municipality would take steps to ensure that all of Re-Ethical’s contracts would be cancelled. Further, there would be no cooperation between the municipality and Re-Ethical in respect of the other contracts while the appeal was being pursued.”

After much thought, Re-Ethical withdrew the appeal in the interests of maintaining the existing smaller contracts, and because it believed its appeal would not receive a fair hearing.

Tomaszewski says in his affidavit that he then met the then City Man-

Mlaba made it clear he would soon be leaving his mayoral position and would like to become involved in waste management

was astonished to find that the meeting was chaired by Obed Mlaba, then Mayor of Durban. In his affidavit filed with the court Tomaszewski stated: “It turned out that the meeting was to be chaired by Mlaba who made it clear... that he had initiated and was driving the Bisasar Road project and that he had a major interest in EWS.

“He made it clear he would soon be leaving his mayoral position and would like to become involved in the waste management industry. He further indicated that he had done a lot of homework on the waste management industry in general and described the Bisasar Road project as his ‘pension

fund’.” Mlaba also allegedly expressed the view that Bisasar Road was just the first of a number of similar contracts nationwide.

Tomaszewski’s affidavit says that he made it clear the contract had not yet been awarded and, while he was willing to consider a joint venture with EWS, it was a major concern to him that Mlaba was involved.

Mlaba, he claims, then declared “this meeting has never taken place”. It did, and the minutes reflect that it was chaired by Mlaba.

On 25 February 2010 Re-Ethical received a letter indicating that EWS had been selected as the preferred bid-

der Michael Sutcliffe, who told him he was aware of Mlaba’s involvement in unlawful and illegal activities and requested that Tomaszewski submit an affidavit to the Manase Commission of Inquiry into allegations of corruption in eThekweni. Sutcliffe, according to the court documents, also stated that he had reported the mayor’s activities to the Auditor General and the KwaZulu-Natal premier.

Tomaszewski did as Sutcliffe had requested but his company, Re-Ethical, nevertheless lost various municipal contracts. And he claims eThekweni did its best to sabotage the successful MRF operation at the Mariannhill landfill

site that is the subject of the forthcoming court case.

The arrangement was that Re-Ethical would set up a facility and staff to sort through and categorise the waste that it could then sell to different end users for its own profit. The municipality on the other hand would ensure that enough trash was delivered to the landfill site to make the process economically viable. The municipality would thus be doing its bit for the environment and Re-Ethical would make a profit, albeit nowhere near the envisaged R3bn of the later contract at the Bisasar landfill site.

The Mariannahill project had been run successfully since 2007 and had been extended twice. Tomaszewski said that eThekweni had agreed to send an additional 100 tonnes of household waste on top of the contracted 300 tonnes of commercial waste to Mariannahill every day to enable the business to remain viable after the MRF was expanded.

After the run-in with Mlaba, this did not happen and the supply of rubbish

stationery was solved in March 2011, when *The Mercury* revealed that Mlaba had surreptitiously formed a second company called EWS with his two daughters, Thandeka and Thabiso, substituting the original EWS with it in the tender process.

When the “old” EWS majority shareholder heard that EWS had been selected as the sole surviving candidate he was elated until he found out that it was not his company (in which Mlaba also had a significant shareholding), but the “other” EWS.

When he wrote to the city querying this he received a cease-and-desist letter from the usurpers’ lawyers.

When the Manase Report into corruption in Durban was finally released last year – after the ANC council for more than a year had vigorously resisted all efforts to make it public – it strongly supported Re-Ethical’s claims.

The Bisasar Road project died in the water and the landfill is on the brink of closing down because it’s full. Trucks are now hauling refuse at huge expense



The litigation may simply provide a smokescreen for the erstwhile mayor to behind because ‘the matter is sub judice’

to be recycled and sold dwindled.

The court documents show that the problem was compounded when Durban Solid Waste started dumping medical waste at Mariannahill, which the dump was not qualified to process, and despite Tomaszewski’s repeatedly having written to the municipality pointing out the disruptive effects as well as the hazard to both municipal and Re-Ethical’s workers.

“This medical waste seems to be coming in DSW trucks that are not even on a route that collects from any medical institution!” he wrote on 31 May 2010.

Re-Ethical also alleges that DSW destroyed any chance the MRF had of running at a profit by subsequently entering into an orange bag contract with Mondi, diverting all paper waste to that company and further reducing the supply to Mariannahill.

The mystery of the changes in EWS

to a site near Verulam, and Re-Ethical has shut down the Mariannahill MRF because it was impossible to run profitably without the cooperation of DSW.

Re-Ethical is suing for R14m for this, and Mlaba is suing Re-Ethical for R150,000 for defamation of character, based upon what is in the company’s affidavits.

Despite kicking off the action, Mlaba has not applied for a court date, and more cynical sorts may suspect the litigation may simply provide a smokescreen for the erstwhile mayor to hide behind on the basis that “there’s a defamation case on the go and the matter is sub judice”.

The Queen is unlikely to be amused. Although Mlaba won’t be the first corrupt politician she’s had to tea.

Where did he learn how to wheel and deal like this? His CV on the Durban city website lists an MBA in Strategic

Marketing Management from the International Management Centre (IMC) based in Buckingham, UK.

An internet search reveals that IMC “degrees” are not accredited in most countries and are actually awarded by Revans University, a.k.a. The University of Action Learning.

Revans’s physical address is in Port Villa, Vanuatu, which is a tiny group of islands about 1,700km east of Australia in the South Pacific. The Wikipedia entry on Revans says it has no physical campus and all of its activities take place online.

The Times Educational Supplement described Revans’s process of awarding PhD degrees as “unique” because it and the International Managers Centres dish out doctorates “based upon a short, 10,000-word document describing a candidate’s professional experience and original contributions to knowledge”. ■

Murder mystery delays R17m insurance payout

Discovery Life tries to dodge claim by victim's partner

ALLEXANDER KLENCOVLJEVIC, 29, had been in a permanent relationship, living "as a married couple" with mega-millionaire Jeffery Mark Wiggill, 54, for nine years – bringing up five children together – when Wiggill was murdered on 19 June last year. For the past year Discovery Life has been desperately trying to hold off having to pay out R17 million on the two life policies they sold to Wiggill in 2005 and 2010.

Klencovljevic, the major nominated beneficiary, recently launched a high court application to force the insurer to pay out on the two claims where he is the major nominated beneficiary. In court papers he states that during their relationship, Wiggill adopted four children, now aged between three and 18, while Klencovljevic himself adopted a fifth child, now aged six. He needs the money to support them.

He adds: "When I met Wiggill he was clearly of immense wealth. Wiggill and I lived a lavish and extravagant lifestyle and frequently enjoyed international holidays. I and our adopted children wanted for nothing."

Klencovljevic had always simply seen Wiggill as a very successful business person. Only after Wiggill's death did he learn that his life partner was believed to have committed frauds on various financial institutions resulting in losses reported to exceed R1 billion.

At the time of his death, Wiggill was MD and a substantial shareholder in First Strut (RF) Ltd, a holding company that had interests and subsidi-



Murdered businessman Jeffery Wiggill

aries in many industries and spheres of business in South Africa. The non-performance of one of these is alleged to have contributed substantially to the catastrophic late completion of Eskom's Medupi power station.

It appears that Discovery Life is holding off payment to the beneficiaries (including Klencovljevic) on the off-chance that the secret inquiries being conducted by First Strut's liquidators, and the pending criminal trial of a man arrested in connection with Wiggill's murder, will produce evidence that will somehow allow the insurer to void the policies. But the insurer has no hard evidence that might justify its failing to pay out – evidently basing its hopes

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entirely on theoretical possibilities and hypotheses, some verging on libel.

So, for example, the head of Discovery's legal department, Glenn Hickling, admits in court papers that Discovery has no evidence to suggest Klencovljevic had a hand in Wiggill's murder, but nevertheless states: "The circumstances of death are unknown at present and will no doubt be revealed through the process of the criminal investigation. Until such time as those investigations have been completed, Discovery is not in a position to say whether or not the applicant [*Klencovljevic*] had any part to play in Wiggill's death."

In terms of South African common law, a "bloody hand does not inherit". The insinuation is that, should Klencovljevic be found to have played any role in the murder, he would not be able to claim a benefit resulting from it. Presumably Discovery is delaying payment while pegging its hopes on this

part in Wiggill's death, was taken totally by surprise when it occurred, and to my knowledge, he is in fact dead. I also identified his body six days after his murder, along with six of his relatives."

Discovery accepts that Wiggill was in fact murdered. The insurer's hopes of avoiding having to pay out are based on the supposition that the company liquidation inquiries will unearth evidence that (1) Wiggill was "engaged in criminal activity in the conduct of his business" and (2) "a large portion" of Wiggill's income can qualify as "the proceeds of unlawful activities" – proceeds they say were used to pay his life insurance premiums.

Discovery has been informed by the attorneys representing the liquidators of First Strut – ENS – that "Once the relevant inquiries [*which have already been convened*] are concluded, and through liaison with the attorneys representing the liquidators... Discov-

no entitlement to those... in the event the policy is voided, a situation that appears the most probable eventuality."

Even assuming a court were to find that an insurer may delay payment of insurance benefits for years, in the uncertain hope that third parties over which it has no control might yet unearth evidence sufficient to justify repudiation, the probabilities of such an eventuality in this case are perhaps not as overwhelming as Hickling suggests.

In his heads of argument Klencovljevic's counsel advocate Dirk Vetten says Discovery's allegations are "as breathtaking in their novelty as in their absence of any factual substance".

"The factual high-point is that the deceased is accused of having committed a fraud that caused significant damage to certain financial institutions. There is no fact adduced to suggest this happened at the time the policies were entered into and even less any fact to sug-

The only inference to be drawn is that Discovery cannot produce any evidence – because there is none

possibility, among others.

Referring to the murder, Klencovljevic states in his founding affidavit: "Information at my disposal is to the effect that Wiggill was shot a number of times in the head and died at the place where he was shot. The SAPS at Protea Glen are currently conducting criminal investigations... and have arrested and intend prosecuting a person, Thulani Cele, a friend of Wiggill, who was apparently on the scene when Wiggill was killed. (I do not know Cele and have never met him.) [*Cele's trail is set to commence on 6 October in the high court, sitting in Palm Ridge, Soweto.*]

"Subsequent to his death, Wiggill's body was identified on 21 June at the Diepkloof mortuary by a friend of Wiggill, attorney William Hunter Thyne."

He points this out "because of wild speculation in the press at the time" that Wiggill might have faked his own death so that his life partner would receive the proceeds of his life policies and somehow, divert them to Wiggill who would by then be living abroad.

"I categorically state that I played no

ery will seek to verify that Wiggill was, indeed, engaged in criminal activity in the conduct of the business... and that a large portion of his income can properly qualify as 'the proceeds of unlawful activities'," Discovery's Hickling says in his court papers.

He goes on to say that, such evidence, should it emerge, would entitle Discovery to void the policy retrospectively. [*Is Discovery implying that Wiggill's supposed intention to defraud banks might materially have influenced their assessment of his risk of getting murdered, precipitating an early claim? And that Wiggill already had those intentions – and should have disclosed them to Discovery – at the time he signed up for the policies in 2005 and 2010? – Ed.*]

Hickling concludes: "Discovery is not in control of either the [*liquidation/insolvency*] inquiries or the criminal investigation [*so*] is not in a position to determine the time-frame within which those inquiries will be completed.

"[*Meantime*] it cannot reasonably be expected... Discovery pay Klencovljevic the substantial sums [*as*] he will have

gest that the premiums... were part of the proceeds of the deceased's alleged unlawful activities.

"The fact that a corporate entity may have been used as a vehicle for the fraud makes it even more difficult for Discovery to taint all income in the hands of the deceased [*with fraud*]."

The fraud is alleged to have been perpetrated through First Strut, but at the time of the insurance application in 2005 Wiggill had no involvement in First Strut and was identified as a CEO earning R70,000 a month. By the time he applied for the second policy in 2010, he was the MD of a company called First Tech and earning a gross income of R400,000 a month.

According to Vetten, the only inference to be drawn [*from Discovery's 'reliance on investigations by third parties over which it has no control'*] is that it cannot produce such evidence – because there is none. "It is simply stalling without any lawful basis for withholding payment."

The application is set down for 28 July. ■

Beware smooth-tongued villain

Victims keep falling for charmer's wiles

THERE'S A CONMAN ON THE LOOSE in the Western Cape. He may be small fry, but he's slick and he's caused a lot of grief, so be careful if you meet a man called Duncan Briggs – a "Bishops boy".

Briggs, 45, is charming, smooth-talking and convincing. A few years ago he took the good people of Hermanus for an almighty ride. People like Leigh Murray, a personal trainer from Johannesburg, who had moved there with her children when her marriage was in trouble. They struck up a romance and Briggs charmed Murray with grand ideas of buying a farm together in nearby Bot Rivier, where she could establish the wellness centre she'd dreamt of owning.

In no time Briggs had persuaded Murray to lend him money. "In fact," she says, "this guy is so good, I ended up suggesting the loan." The money was to help Briggs's timber business, Dream Catcher Trading. In November 2005, Murray lent Briggs R600,000 that she raised by taking out a bond against her property in Hermanus. He promised to repay the loan over four years, at a rate of R15,000 a month. An acknowledgment of debt was signed, and Briggs made a few payments totalling R72,000. Then nothing.

Needless to say the relationship broke down and Murray ended up suing Briggs. She got a judgment for the outstanding amount but has received not a cent because Briggs claims to have nothing. So, for the next 17 years, Murray must pay her bank R8,000 a month to clear the debt. To manage that, she has had to let her house and move back in with her ex-husband Steve, who by then had also moved to Hermanus.

Somehow Briggs got to meet Steve, who was soon persuaded to lend him R50,000, repayable at R10,000 a month. Again, the deal was documented in an acknowledgment of debt. Again, Briggs reneged.

Others who have been deceived include Jacques Bosman, who was an

employee of Briggs at Dream Catcher Trading, and who is now R280,000 the poorer. Briggs persuaded his employee to lend him R32,000, after sweet-talking him into buying tractors for the business. Briggs failed to repay the loan, took the tractors without reimbursing Bosman, and then short-changed him on his salary.

Greg Smith (not his real name, as he doesn't want to be identified) was another victim, and was persuaded by Briggs to join him in setting up an internet café. Briggs kept asking Smith for money for the rent, computers, stools... and Smith was down R250,000 before he realised he'd been hoodwinked.

Noseweek has learnt that a wine estate owner in the Hemel en Aarde Valley was also stung, but doesn't want to talk about his experience.

Credit checks show that in 2007 a company called Denis Poole and Marius Myburgh (Pty) Ltd took a judgment against Briggs in the Hermanus Magistrate's Court for R15,000; as did Hermanus Rentals, for R5,000.

Briggs moved on to Ceres, where he bought a Rawson estate agency franchise from Keith and Cheryl Vos. In no time he was taking money from the agency's trust account, a problem he got around by persuading an investor to come in as a partner. Rawson realised Briggs was bad news and quickly closed down its Ceres office.

A good thing too, because in 2009 Briggs pleaded guilty in the Ceres Magistrate's Court to charges of possessing child pornography. So, no, Briggs is not all charm and style.

Next stop Grabouw. In late 2010 Briggs bought a restaurant there called Amor's Country Kitchen. One customer, Hope Wiersun, liked the restaurant so much she hosted her staff Christmas party there, and she persuaded her darts club to use it for its weekly get-togethers.



When Briggs asked Hope for a loan of R5,575 to pay a high electricity account, she didn't hesitate. And Hope's husband Simon, who owns a security company, installed equipment worth R2,469 at the restaurant. Briggs didn't repay the loan or pay for the equipment. Neither did he repay Johan Mostert, who lent him R7,000; nor pharmacist Conrad Snyman, who lent him R5,000.

Briggs told restaurant patron Stiaan Boucher that he also had a company called Geyserswise, so Boucher gave him R1,400 for a geyser that did not materialise. When Briggs left Grabouw after six months, the restaurant's landlord, Stella Cappon, was owed R18,000 in rent.

Where is Briggs now?

Back in Cape Town, having just been divorced by his third wife – a widow when they married – but only after he'd taken control of her inheritance from her first husband's estate. ■



Eurolab feels heat over generic cancer drug

Company failed to disclose problems with treatment to Medicines Control Council

EARLY LAST YEAR NOSEWEEK SHONE the spotlight on the marketing of generic drugs – particularly those prescribed for the treatment of cancer (nose162) – and on a generic drug distributor, Eurolab.

The company, supplies oncology practices with what is ostensibly data-collection software, but is in effect a program that ensures any practice using it will prescribe or dispense Eurolab's products wherever possible.

Eurolab distributes an oncology product, Axtere, manufactured by a company called Accord. The product is also known as Accord Docetaxel; Docetaxel being the name of the formulation. Axtere is a generic of an established cancer drug for which the patent belonged to another, unrelated company called Sanofi, but which has since come out of patent.

Sanofi's original product is marketed in two versions called Taxotere and Docetere respectively; both are administered intravenously through infusion lines. Taxotere is a concentrate that needs to be mixed with a solvent, whereas Docetere is a ready-to-use formulation for infusion. In each case the drug must be stored below 25°C and be prepared and infused at room temperature. Noseweek is not aware of any

problem with these products.

Soon after it made its appearance on the market, Eurolab's generic version of the drug, Axtere was found to be seriously problematic: oncology practices complained that Axtere "turned into jelly in the lines". In other words, it separated, blocking the infusion lines and making it impossible to administer intravenously.

The oncologists objected to using it but Eurolab told them to "just heat the stuff up to 38°C and it'll be fine" and "Here, use these heating devices".

What's wrong with that? Quite a lot, experts say – on condition of anonymity. Precipitation after mixing can adversely affect the safety, quality and efficacy of the medicine. And heating may affect its chemical stability. Possible consequences include therapeutic failure and adverse reactions in patients. One oncologist produced a paper on Docetaxel (a variant of Axtere) by a Dr Fabio Carli, in which he says precipitation causes problems with filtration and infusion of the drug to patients. Accord's UK generic medicine registration for Accord Docetaxel (Axtere), says clearly that the product must be discarded if precipitation occurs – as does the package insert for Accord Docetaxel.

South African experts consulted by Noseweek agreed that it is highly unlikely that the precipitation problem was disclosed to the Medicines Control Council (MCC) when Axtere was registered as a generic. When registering a generic, it is only necessary to show that it has the same composition as the original, previously patented, drug. Efficacy is assumed although some tests for purity and active ingredients are supposed to be done.

Noseweek was told that, had the precipitation problem been revealed, the MCC would have required the heating instruction to be part of the package insert. But the Axtere small print did not mention the need to heat the product and when experts picked up on this, Eurolab could no longer avoid the issue.

Having apparently engaged with the MCC, in mid-April, it issued a short letter to its customers: "We are in the process of updating the Axtere Packaging Insert with the MCC. Until such time as we have received their approval, please could you quarantine all your Axtere stock until further notification is given. We trust this will not be a lengthy process but will keep you informed. We sincerely apologise for any inconvenience caused."

Interesting! No mention of the precipitation problem, just an indication that the package insert would be changed. No recall of the product, either, simply a request to quarantine.

Sources told Noseweek that the MCC always requires a total recall of the product in cases like this.

Noseweek asked the MCC how Axtere had been registered, whether the problem had been disclosed at the time, and whether, on becoming aware of the problem, the MCC had ordered Eurolab to recall all stocks or simply quarantine them. Sources told Noseweek that Eurolab seems to get its products registered very quickly at the MCC.

A brief response came from the MCC's Registrar of Medicines, Mandisa Hela, simply describing how registration takes place: "The MCC registers generic medicines based on data submitted in support of safety, quality and efficacy in accordance with current requirements as reflected in applicable Guidelines."

Hela confirmed that the problem had not been disclosed at the time of registration: "A post registration complaint was received from the public and the MCC initiated an investigation."

She confirmed that the MCC had ordered a recall, not quarantine: "Eurolab, in consultation with the MCC, recalled the product that was on the market."

Noseweek approached oncology practices, asking: Do you use Axtere? Have you encountered this problem? Have you been told to heat it up? Do you heat up any other oncology product (or any other intravenous medicine for that matter)?

Most ignored the queries. The one who did answer, Dr Coenraad Slabber, said he had never used Axtere and that he hadn't heard of any problems with it. He went on to say there are some drugs that need to be heated to above room temperature, adding: "Provided that proper technique is followed, there should not be any problems with heating a drug if it is done according to registered guidelines. Obviously if a drug is heated without following the correct procedures, the stability and efficacy may be compromised."

Noseweek asked Eurolab owner Gabe Simaan for comment on the Axtere problems, as well as claims that he has a significant financial interest in Dis-Chem.

Has he negotiated deals on Dis-Chem's behalf with oncology practices, whereby they undertake to buy all their oncology drugs from Dis-Chem, which basically means they end up with Eurolab products?

A strange thing happened – Simaan kept shtumm but sent these queries on to two other parties.

The first was Axtere manufacturer Accord Healthcare, whose Responsible Pharmacist and Executive Officer Reshlan Nagoor responded with a weird non-answer: the package insert recommends admixing at 25 degrees; some practices experienced difficulties so Accord did investigations and discovered there were varying room

substitution as required by the doctor and by statutory processes; Dis-Chem has a generic equivalent list that is scientifically justifiable and legally compliant; Dis-Chem supplies what has been prescribed by the oncologist unless it is authorised to supply a generic as a result of funding constraints, in which case it must substitute on the basis prescribed in the Medicines Act. And in more specific terms: Dis-Chem does have non-exclusive supply agreements with oncology practices [see footnote]; Simaan has no interest in Dis-Chem; Dis-Chem does not have an arrangement to favour Eurolab's products.

And from the heart: "Although we

Oncology practices complained that the drug 'turned into jelly in the lines'

temperatures in oncology practices [pretty obvious, surely?]; the problems only arose in rooms with temperatures below 25 degrees; best mixing results were achieved at temperatures between 25 and 38 degrees [surely you'd determine that before you launched the product?]; Accord consulted with the MCC and decided to recall the product so that it could file an application for amendment of the admixture instructions; all Axtere products have been recalled pending the package amendment; Axtere is not currently being distributed.

What Accord Healthcare didn't reveal was whether anyone knew of the problem when the product was registered. Or whether oncologists were told to heat the product up and given heating devices. Or whether the MCC ordered a recall or simply a quarantine of the product.

The second party to be consulted was none other than Ivan Saltzman, CEO of Dis-Chem. Yes that's right, the company that has the arm's-length relationship with Eurolab. Saltzman, responded in general terms too – another non-answer: Dis-Chem does generic

appreciate that your magazine... likes to 'dig up' controversial issues, it is clear you have been fed a pack of lies by competitors of Dis-Chem for their own ulterior motives."

Noseweek understands that Axtere stocks have now been recalled. But seemingly only because Noseweek has been nosing around. Sales figures for Axtere show that there were sales of Axtere during May this year [after the quarantine supposedly came into effect] however sales were down significantly for the preceding months.

Breaking news: the word is that Dis-Chem and Discovery are close to doing a deal that will award Dis-Chem "preferred supplier" status for Discovery oncology patients. Which would suggest that those people who have the double misfortune of having cancer and belonging to Discovery may well find that they will soon be administered Eurolab's products, whether they want them or not.

• One example of Dis-Chem's having agreements with oncology practices to supply all the medicines they need, is that of the large national oncology specialists chain, GVI. ■

Rough justice at Corobrik

IN NOVEMBER 2013 JOHANN PRETORIUS manager of Corobrik's South Coast Centre – a man with 18 years' service – was dismissed following a disciplinary hearing when the company uncovered a R2.8 million fraud involving false credit notes.

Although it was clear that the fraud was not committed by Pretorius but by an employee, Mohan Amichand, Pretorius was charged in a supervisory capacity – with gross negligence – on the basis that Amichand reported to him.

Pretorius was alleged to have given the password necessary to issue credit notes to Amichand, and was accused of failing to check certain financial reports that would have revealed abuse of the system.

Pretorius was also charged with dishonesty, for lying to Corobrik's security manager about having given Amichand the password. At the internal disciplinary hearing Pretorius was found guilty of both charges. He took the matter to the CCMA, claiming that his dismissal had been unfair in terms of both substance and procedure.

As neither Corobrik nor Pretorius could talk to *Noseweek* because of a confidentiality agreement, this story comes from the CCMA Arbitration Award of 20 February in the case of Johann Andre Pretorius and Corobrik. It was handed down by Commissioner Jabulani Mgwane.

Corobrik's policy is that the passwords necessary for giving credit notes are only known by centre managers and their assistants. In the case of the South Coast Centre, the password was known only by Pretorius and his assistant, Silo Reddy.

Pretorius was frequently absent as he spent a lot of time on the road

drumming up new business (something he was quite good at) which meant that Reddy was frequently in charge. In fact, of the 606 fraudulent credit notes that Amichand issued over a 19-month period, 390 were issued when Pretorius was not there.

There's no suggestion that Reddy was involved in the scam. On the contrary, it was Reddy who discovered the fraud and reported it to Pretorius, who in turn reported it to his boss, named only as Vukile. Corobrik's security manager, Ron Basset, then took over the investigation.

Basset questioned Pretorius, who denied having compromised the password. Amichand then faced a disciplinary hearing at which he claimed Pretorius had given him the password, but Pretorius was not invited to attend this hearing, and therefore had no opportunity to contradict this claim.

Pretorius then faced a disciplinary hearing of his own – before the man who had chaired Amichand's hearing, Allin Dangers, Corobrik's Director of Inland Sales. Pretorius was found guilty on both charges and was fired.

The CCMA commissioner was unimpressed with what he saw and heard. For starters, he was surprised that Amichand had been believed when he fingered Pretorius during his disciplinary hearing, saying: "I would not attach a lot of weight, if any, on what a discredited employee, a fraudster who was losing his job under a cloud, says about another employee who had blown the whistle on him."

The commissioner was highly critical of Dangers's conduct at Pretorius's



After an internal fraud is uncovered at Corobrik, employees wonder why some people have been targeted and others not

hearing, making this observation of the transcript: "I cannot help but whistle with disbelief".

He said that Dangers had played an unusually active part in the proceedings and had exceeded his authority. He said Dangers had been impatient, had failed to give Pretorius an opportunity to explain himself, had butted in when Pretorius (whose first language is Afrikaans) spoke too slowly for his liking, and he had ignored Pretorius's objections. He said that Dangers had used abrasive language such as: "We are going to be very tough/hard".

On top of that, the commissioner felt that Dangers had shown little sympathy for the fact that Pretorius was confused and unclear about whether he had or hadn't given the password to Amichand. He said Dangers had been wrong to interpret the vacillation between "I didn't give him the password" and "I don't think I gave him the password" as some sort of admission of guilt. The commissioner said Dangers should rather have seen it as the caution of "a man who does not want to make an unequivocal statement when he isn't sure".

The commissioner said Dangers had



had been dismissed for gross misconduct, another long-serving Corobrik employee, Nomsa Kunene, who had been charged with gross negligence and dishonesty in a similar matter, was given a final warning.

The commissioner described this as “a glaring inconsistency”, citing a precedent, Early Bird Farms, where the Labour Court said that if two employees are guilty of the same offence they must get the same punishment.

Noseweek asked Corobrik to comment on the matter: why was Pretorius not reinstated; why were people in oversight roles like finance and IT not fired? Why were Pretorius and Vukile fired, whereas Reddy wasn't even charged – leading to a possible perception that the company used the case as an opportunity to get rid of expensive staff?

Or, bearing in mind that Investec is Corobrik's controlling shareholder, maybe just enough to support an insurance claim for losses resulting from staff negligence or dishonesty? – Ed.

Corobrik's response, which came from MD Dirk Meyer, said, “The case

'I cannot help but whistle with disbelief'

– The Commissioner

“bulldozed” Pretorius into making admissions. Even though disciplinary proceedings did not need to be run “with the precision of a criminal court”, there was “still a requirement to steer clear of the perception of bias by a chairperson”.

The commissioner was, in fact, not at all convinced that Pretorius had given Amichand the password, a finding that appears to have been influenced by the fact that Pretorius at one stage told a fellow Corobrik employee that he had “fucked up”, an expression that could, of course, be interpreted in different ways.

The commissioner described Pretorius as an “old faithful... a guy who is so honest and simple without any frills, who tells it as it is”. And he believed Pretorius who, by the time he appeared at the CCMA hearing, was quite clear that he had not ever compromised the password.

The commissioner commented on the fact that, although part of the case against Pretorius was that he had

failed to make use of an internal system known as the Daily Sales Listing – which may well have revealed the fraud – he had never used that system in all the years he had been at Corobrik, instead having chosen to use another system, Daily Gate Sheets, with the approval of his boss, Vukile.

The commissioner also commented on the fact that Pretorius was not the only one who had failed to notice the fraud – periodic internal and external audits (by BDO) had failed to alert the company to the problem.

The commissioner found it noteworthy that Pretorius's boss, Vukile, had been fired as a result of the fraud. First, he said, it was unfair to charge and fire Pretorius for the same thing that his boss had been charged and fired for. And second, if that was to be the policy, then why not also Pretorius's assistant, Reddy, who had been in charge when much of the fraud occurred?

The commissioner also found it highly relevant that, although Pretorius

arose out of the company incurring a loss of more than R2.6 million as a consequence of unmitigated criminal activity on the part of an employee (not Mr Johan Pretorius) of the company”.

“Corobrik is an ethical company and is satisfied that the various inquiries and hearings around the loss with all those implicated were conducted fairly and ethically. All levels of employees, this including management where applicable, have been held accountable for the fraud.”

● In a ruling handed down in February, the CCMA ordered Corobrik to re-instate Pretorius retrospectively to 29 November 2012, the date of his dismissal, without any loss of benefits that might have accrued since that date. The company was ordered to pay him R410,000 in arrear salary within 30 days of the award. Rather than reinstate him, the company chose to reach a confidential settlement with Pretorius, which no doubt entailed paying him a further substantial sum. ■

WHAT DO YOU DO AS A PRIVATE property owner and landlord when your tenant owes you more than R70,000 – a year’s worth of outstanding rent – and steadfastly refuses to move out, having bolted the door from the inside? That, and you already owe the city council R20,000 for water and electricity that she continues to use?

This is the predicament of Lebo and Zakhele Zulu, who let their three-bedroom house in Ormonde, south of Johannesburg, to Avril Adams for R6,000 a month. Four months into the deal Adams stopped paying and ignored letters from the rental agent, Rawsons Property. Only after the Zulus resorted to engaging a lawyer in December was a court date set – August 11 – to hear their application for an eviction order.

The Zulus have been from pillar to post to try to get Adams to pay up or get out; they’ve done the Small Claims Court and the Rental Housing Tribunal. At one point, they managed to get the council to cut off the water and electricity but Adams had it reconnected and the bill keeps climbing.

“We can’t even enter our own property. In November we tried to lock her out, only to find that she’d got to changing the locks before us. She also put in deadbolts from the inside to prevent the sheriff from removing furniture after we got a judgment in our favour at the Small Claims Court,” says Lebo Zulu.

Adams moved into the Zulus’ house in April “in a hurry” and paid R6,000 up front plus half the deposit. For the first four months, payment was made, then abruptly stopped in August. “We went to see her and she said her brother had died and she was expecting money from a policy, and that she would pay double the following month. We insisted she give this undertaking in writing, which she did,” says Zulu.

Despite the written undertaking, no rent was paid the following month. “So again we went to see her and told her we wanted to terminate the lease. We provided a letter to this effect. She then said she thought the rent was too high and there were things she did not like in the house, but refused to point out what the problem was. In October, we went to the house to ask her to hand over the keys, only to find that she had not packed. She told us flat out she was



Landlord Hell

Nightmare tenants plunge property owners into a frightening spiral of debt. By Helen Grange

not moving,” says Zulu.

In November when the Zulus went to their house, they found their tenant had had all the locks changed. In desperation they consulted attorneys Vermaak & Partners who wrote to Adams formally cancelling the lease and applied to court to have her evicted. Adams has opposed the eviction, claiming she is now unemployed and has nowhere else to live.

“This is a common plea by tenants who know how to manipulate the system in their favour. Ultimately, these tenants do get evicted but the owner is losing several months of rent while a lengthy legal process unfolds,” says Greg Vermaak, senior partner of the firm and expert in the field.

Adams, meanwhile, is unrepentant. Contacted by *Noseweek*, she confirmed that she has not paid rent since late last year “because of a death in my family in August”.

“I was willing to pay but then the Zulus cut the lights and water off, so I went to the council and they reconnect-

ed it, because they can’t just do that”.

Adams says she was fired from her job in December, “because of all this trauma, which has affected my daughter especially, so I was constantly taking time off”. A lie. Zulu has an email from Adams’s employer, Nielsen, to prove it. It reads: “Avril never returned to work from 23rd December 2013 and did not notify the company. Numerous attempts were made to engage with her on this unexplained absence. A disciplinary hearing was convened on 14th January 2014 which she did not attend. She was dismissed for desertion on the 14th January 2014.”

Vermaak says that owners can apply to the council to disconnect power, but this process is also typically slow. “We have gone back to the council again to disconnect water and electricity, but nothing has been done and the bill is skyrocketing,” says Lebo.

Owners are also prohibited from changing locks, disconnecting electricity or evicting by force, as these actions amount to “spoliation” (taking the law

into your own hands) in terms of the Prevention of Illegal Eviction provisions of the Unlawful Occupation of Land Act.

“Some owners have changed the locks and even removed the roof, and in truth some have had success, but the problem is, it’s not legal. A canny tenant will lodge a complaint with the Rental Housing Tribunal or magistrate’s court, and get a spoliation order forcing the landlord to restore access

they leased their Somerset West home left them with over R240,000 in outstanding rent and a water and electricity bill of about R80,000. They have since laid a charge against their tenant, Michael Turner, for issuing fraudulent cheques.

Turner moved into the Teeling’s four-bedroom house in April 2012, having responded to an ad on Gumtree. He undertook to pay R130,000 upfront, equivalent to six months’ rent.

was finally heard, Turner was given three months to find alternative accommodation. Towards the end of that period, he applied for a stay of execution and got another month. We finally got him out in April this year,” says Gareth Teeling.

Like the Zulus, Teeling applied to Cape Town City Council to have the water and lights disconnected, but Turner immediately went to the magistrate’s court and got an order for the

‘She changed the locks, and dead-bolted the door from the inside’ — Lebo Zulu, homeowner owed R70 000

to the property at their expense,” says Vermaak.

Vermaak says that if owners end up with a “bandit” tenant, they often waste months on having letters written and seeking help from the Rental Housing Tribunal, “which is effective if both parties are honestly trying to resolve an issue, but not in cases where the tenant is just playing for time”.

“Owners need to see a lawyer and seek a motion to evict as soon as possible. Just get the legal process going, because it can take months as we’ve seen in the Zulus’ case,” he advises, adding that pursuing outstanding rent is usually fruitless. “It just prolongs the matter. The priority is to get the tenant out of your property,” he says.

Another matter Vermaak is dealing with, is that of an elderly woman who owns a block of flats in Johannesburg and who is owed nearly R400,000 in rent that has been outstanding since March 2012. Since then the tenants have played a cat-and-mouse game, managing to get several court postponements due to non-compliance with trivial document requirements, or by failing to file replying papers when due, or by requesting a change of legal representative at the last minute.

“This case has all the hallmarks of the building being hijacked, which is a cruel injustice to an individual who lives off the rental. The courts are not paying enough attention to the rights of landowners,” says Vermaak.

In Cape Town, meanwhile, home owners Gareth and Caroline Teeling are still reeling after a tenant to whom

“He showed us a print-out of the bank transfer, then hurriedly moved in. But days later the money wasn’t there. Within a week we realised we needed to engage an attorney and begin eviction proceedings.”

Turner paid rent intermittently for a few months, then defaulted again and did not resume payments. The case took a year to be set down for hearing. However, that was only the beginning of another merry-go-round for the Teelings. “Two weeks before the court hearing, the documents went missing and we had to apply again. When the case

services to be reconnected.

“How can the council, without my permission or signature, reconnect services that I’ll be liable for? I am considering suing the council for the money they’re billing us. I’d like to test this grossly unfair situation facing landlords. It is slowly killing off a viable sector of the economy. If we’d had a bond on our house, we’d have lost it to the bank by now,” he says.

Vermaak concurs. “A major property investor told me recently that if eviction processes take any longer, they will be pulling out of the market.” ■



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Neighbourhood news

Sacrificial Lamb. Phantom blogger teases Zim politicians

POLICE IN ZIMBABWE HAVE ARRESTED a top editor suspected of being the mystery blogger who seriously embarrassed Zimbabwe African National Union-Patriotic Front (Zanu-PF) during the elections – but he denies all charges

The Baba Jukwa affair – “Baba Jukwa” being the pseudonym of the anonymous blogger who tweaked the tails of Zanu-PF leaders during last year’s election campaign – is taking a more sombre turn. Baba (“Father” in Shona) Jukwa leaked unerringly accurate Zanu-PF secrets and election ploys on his Facebook page, setting off a frenzied manhunt by the security forces.

Edmund Kudzayi, 28, was arrested in Bulawayo on 19 June and was granted bail of \$5,200 on July 4. He was ordered to surrender the password for his Gmail email address and ordered to report twice a day at the Criminal Investigations Department’s law and order section, surrender his passport and not to travel 40km out of Harare without the court’s consent. Kudzayi was also ordered to surrender the title deeds to his Hillside property and not to interfere with State witnesses and investigations.

Kudzayi’s brother, Phillip, has also been arrested in connection with the issue. Accused of trying to overthrow the government and of “attempting to commit an act of insurgency, banditry, sabotage or terrorism”, he could receive a life sentence if convicted.

Zanu-PF politicians are determined to take revenge on someone they believe subverted the party’s election campaign, causing embarrassment and humiliation. Kudzayi, however, denies the charge and says that Zanu-PF members trying to impress President Robert Mugabe have turned him into a “sacrificial lamb”. He says they are also trying to protect those party members who leaked the damaging information to Baba Jukwa. Far from being the perpetrator, Kudzayi was working with the government to expose the anonymous blogger, he insists.

A graphic designer and computer buff

originally based in Britain, Kudzayi returned to Zimbabwe in mid-2013 and was working alongside Information Minister Jonathan Moyo at the heart of the Zanu-PF election machine. He was also, by his own admission, working with police and the Defence Ministry to hunt down Baba Jukwa. Moyo was so impressed with his work that he appointed him to counter the mystery blogger by writing an Amia (“Mother”) Jukwa column in the *Daily Herald*. Moyo then appointed Kudzayi editor of the state-owned *Sunday Mail* in March.

His elder brother Phillip has also been charged. The State says that Baba Jukwa’s email account was created using Phillip’s mobile phone. More ominously, it is also alleging that they and their accomplices were styling themselves the Gunda Nleya Brigade [a secret grouping that claims on its Facebook page to be constituted of members of the Zimbabwe police and armed forces disenchanted with their corrupt leadership] and the Zimbabwe Revolutionary Army, and called for others to join them in overthrowing the government by “waging war”.

Police want to charge four alleged accessories, two South African-based journalists and Wilf and Trish Mbanga, the British-based editors of the anti-regime weekly, *The Zimbabwean*. Mbanga told *Africa Confidential* neither he, Trish, nor the two South African-based journalists knew or were involved with Kudzayi in any way. Mbanga had, though, sent an email to Baba Jukwa seeking more information to use in an article. The State has obtained Baba Jukwa’s email account.

Mbanga, a veteran exiled Zimbabwean journalist and publisher, was long ago declared an “enemy of the people” in Zimbabwe.

Baba Jukwa’s first postings on Facebook quickly went viral as they revealed inside information on Zanu-PF’s strategy and disinformation campaigns. Initially dismissed as satirical fun, the more the improbable scenarios became reality, the more seriously he was taken.



The reports on these two pages are reproduced from UK-based **Africa Confidential** (www.africa-confidential.com), the authoritative fortnightly bulletin on Africa.

Independent media and opposition parties latched on as the number of followers soared and there was mild panic in Zanu-PF as its gameplan to gerrymander constituencies, stifle voter registration and fiddle the electoral rolls was exposed.

Whether or not Kudzayi is the real Baba Jukwa, evidence at his trial could further embarrass Zanu-PF because of the sensitivity of the leaks. One Baba Jukwa post said that enemies of Edward Chindori-Chininga, Chairman of the Parliamentary Committee on Mining and Minerals and author of a critical report on the government and the mining industry, were “planning to sink [him] and replace him with their puppet”. One week later, on 19 June, Chindori-Chininga died in a car crash, widely viewed with suspicion, since it involved no other vehicle.

Baba Jukwa also published all the phone numbers of members of the political and security establishment, urging his followers to call them and urge change. Baba Jukwa is still posting on Facebook but opinion is divided on whether the original author is still in charge.

Before Kudzayi’s arrest, Moyo’s star was already in sharp decline. Under



Edmund Kudzayi

Personal security trumps food security at AU summit

AFRICA'S LEADERS ARE MORE concerned about their own security, than about food security.

The theme of the African Union summit in Equatorial Guinea on 26-27 June was "Agriculture and Food Security" but the part that really resonated among leaders was the word "security".

Egypt was readmitted to the AU after last month's election and on 26 June, President Abdel Fattah el Sisi denounced Islamism as the overwhelming threat of the day, to thunderous applause. The day before, a bomb had exploded in Abuja, killing 21 people, which prompted Nigerian President Goodluck Jonathan to fly home just hours after he had arrived in Malabo.

The massacres in northern Kenya reinforced concern about a belt of worsening instability across the middle of Africa and the lack of effective forces to stop it.

AU Peace and Security Commissioner Smail Chergui insists that an African Standby Force will be ready for action by the end of next year. Yet some governments are reluctant to second troops to a continental force.

Chad's President Idriss Déby is offering his capital as a base for African and Western forces to tackle Boko Haram, the Islamist militia in northern Nigeria and its border zones.

In power since 1979, the summit host, President Teodoro Obiang Nguema Mbasogo, is also keen on regime security. His opening speech called for reform of the United Nations to stop foreign meddling in Africa. Unsurprisingly, Obiang is a great supporter of the protocol for an African Court of Justice that would try suspects for war crimes and human rights abuses – but would exempt serving heads of state and senior officials from prosecution.

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Kudzayi's editorship the *Sunday Mail* ran a front-page lead on 25 May about compromises being made on the controversial indigenisation programme, headlined "Government in major climb-down", basing much of the story on an interview with Moyo. The Zanu-PF faction of Vice-President Joice Mujuru, already riled by what it saw as Moyo's targeting of its supporters in his "Salarygate" offensive, pounced on the article and demanded satisfaction.

After an acrimonious Politburo meeting and a public dressing-down by Mugabe, in which the president described Moyo as a "devil incarnate" for appointing editors hostile to Zanu-PF, Moyo was served with an effective four-year gagging order by the president.

Moyo probably only avoided dismissal because that would have been seen as a triumph for the Mujuru camp. His dismissal could also have undermined Mugabe's strategy of clinging to power by fostering creative tension between the Mujuru camp and that of Justice Minister Emerson Mnangagwa in the build up to Zanu-PF's elective congress in December.

Kudzayi's trial is likely to be protracted, even without more senior party figures being drawn in. With the congress season looming, political considerations will take precedence over economic ones.

The economy looks set to continue its downward drift for the rest of the year: a senior Reserve Bank official, Simon Nyarota, warned industrialists that "the decline will be similar to 2007/08 only worse, as we do not have anything or a policy that will stabilise the economy immediately".

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Dark heritage. Maggie to the rescue

CHARLOTTE OTTER HAS DONE A COURAGEOUS and intelligent thing. *Balthasar's Gift* (*A Maggie Cloete Mystery*) is a rare excitement – a thriller entwined in a compelling reincarnation of South Africa's appalling Aids denial scandal.

South African fiction and political writing tend to inhabit parallel universes, seldom exploiting each other's truths. Otter mixes with gusto.

German fans of Otter's formidable heroine Maggie Cloete, a young journalist, scourge of villains in darkest KwaZulu-Natal, say they hope *Balthasar* will spark a long series (*Die Welt*). And *Das Stern* gushes: "Abrasive, fast and instructive." South African readers will surely concur.

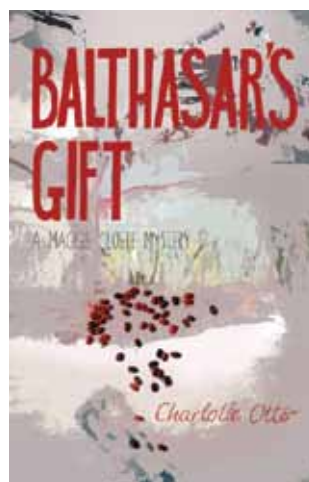
The German connection seemingly came about because Otter, previously a KwaZulu-Natal journalist, is now based in Heidelberg, where she works in IT corporate communications, and lives with her husband and three children. Friends say she is an engaging companion, wholly unlike her feisty heroine. Perhaps life beneath the romantic heights of Heidelberg's castle doesn't quite measure up to the hectic thrills of corrupt gamesmanship in KwaZulu-Natal.

Otter reiterates that ex-president Thabo Mbeki's delays and suspicions of dark foreign plots caused Aids chaos, but her focus on the suffering caused by vultures who exploited the confusion is a heartbreaking tale. The vast majority of South Africans, weary of the politics of greed and personal power, prefer to consign memories of the outbreak of the Aids crisis to the back burner. It's all too embarrassing. Too horrific. *Balthasar* is a timely reminder of the ghastly truths that simply won't go away.

Otter tears into the hyenas who profit from the Aids mess, the gangster promoters of fake cures, the "incidental" mark-ups for coffins and scandalously high-priced loans for funerals.

But the most terrifying, and ongoing, aspect of this plague is the damage to orphaned children, including the rapes of tiny mites by ignorant men seeking cures.

BALTHASAR'S GIFT
by Charlotte Otter
(Modjaji Books)



So *Balthasar* is a heady mix of the consequences of historic tragedy, featuring a crew of sinister exploiters of all races – and then there's the indomitable Maggie Cloete to cheer us up with her fierce search for the facts of guilt.

She may be the despair of her newspaper seniors, who fear that her brusque idealism will provoke official displeasure, but Maggie is admired by her colleagues. Otter's portrayal of classic newsroom characters is amusingly accurate. Her portrait of a gutsy heroine riding to the rescue on her beloved Chicken (don't ask) is both affectionate and convincing. Will Maggie, always in the dwang, find love and expose the truth? Not if she over-indulges in too many suspect KZN curries, burgers and booze. But there is hope and idealism behind that battered exterior.

The denouement is a shade too Gotterdammerung (a whiff of operatic Heidelberg?), and there are the odd typographical blapses, but it's a riveting read.

We must hear more of Maggie. ■



Charlotte Otter



Borderline. Bye Bye Bruce

DEPENDING WHAT COUNTRY THEY come from, the Australian government has offered asylum-seekers in its Manus and Nauru offshore detention centres up to AU\$10,000 (R100,500) to go home. Those who don't volunteer will spend a "very, very long time" in the centres, the Immigration Minister has threatened. Lebanese asylum-seekers are reportedly being paid \$10,000; while Iranians and Sudanese get \$7,000; Iraqis \$6,000; Afghans \$4,000; and Pakistani, Nepalese and Burmese asylum-seekers, only \$3,300.

Elaine Pearson, Australia Director of Human Rights Watch, said the government had made conditions in the centres "so awful that people are encouraged to go back to active conflict zones".

All this despite Australia's being party to the 1951 Refugee Convention, which prohibits the return of asylum-seekers to potential persecution.

What's the difference between a big O and a little one? A great deal, it seems, when it relates to the occupied status of East Jerusalem. Last year, the Australian government announced it was "rebalancing" its position on the Middle East and abstaining from UN resolutions condemning the expansion of Israeli settlements.

On June 6, Attorney-General George Brandis said that the term "Occupied East Jerusalem" had pejorative implications and was "not useful or appropriate". Prime Minister Tony Abbott said his government would "refuse" to use the word occupied, instead, referring to "disputed" territories.

Among those who took exception were the Organisation of Islamic Cooperation which represents 57 Islamic countries and – with threats of trade sanctions and a backlash from Australian farmers – rural politicians concerned about the AU\$2 billion sheep and cattle trade. It was left to foreign



Mother Dear: Gina Rinehart

minister Julie Bishop to untangle the mess. According to Izzat Abdulhadi, who was part of a Palestinian delegation that met Bishop, Senator Brandis meant only the capital "O" in Occupied when used as part of a noun or name; the government would continue to use occupied with a small "o".

Still on the international front, Unesco's World Heritage Committee took less than ten minutes to unanimously reject the Abbott government's attempt to have World Heritage protection removed from 74,000 hectares of Tasmanian native forest, and open up for logging "the tallest flowering forest on earth".

While conservationists breathed a sigh of relief on that score, the government's policy of fast-tracking highly controversial port developments close to the Unesco-protected Great Barrier Reef grinds on. So it was that actor Leonardo DiCaprio used his celebrity clout to highlight the fact that the Queensland reef, where he goes diving, was a wonderland 20 years ago but now is "riddled with bleached coral reefs and massive dead zones".

Perhaps Australians, who have

inched their politicians slowly to the right, are at last baulking. A Nielsen poll of 1,400 respondents showed that for the first time, 61% judged the federal government's recent budget "not fair". Another poll – of 1,145 Australians – on behalf of The Climate Institute, found only 20% were satisfied that the government was taking the climate-change threat seriously. John Connor, the chief executive of the institute, has been quoted as saying that "the dinosaurs in politics and business are roaring across our landscape".

The planned buy-out of Australian billionaire Solomon Lew's 11.8% stake in the Country Road clothing business by "the South Africans" (Woolworths) is seen in the Australian media as a "windfall" and "a breathtaking victory" for Smart Solly, to whom Woolworths has "capitulated". Lew, regarded as a master tactician, is set to make AU\$207 million profit from the deal, plus AU\$200 million for his 10% of the associated David Jones sale to Woolworths.

Australia's richest family, the Rineharts, is once again publicly tearing itself apart over who gets control of a AU\$5 billion trust fund, a position vacated by the family's matriarch, mining magnate Gina Rinehart after allegations of misconduct by three of her children. In the Supreme Court in June, daughter Bianca Rinehart said she'd invited none of her family to her wedding in Hawaii last year because she'd wanted it to be "a happy affair". She had been subjected to repeated threats and intimidation by her mother, her lawyer said.

In the meantime, mother Gina, says Australians have too much of an entitlement mentality and are living beyond their means and she's worried about the country's economy in a world where Africans "will labour for \$2 a day". ■

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Murderous intent. Tintin bites the bullet

WHEN YOU'RE NEARING YOUR nineties and you don't get around much any more it's a good idea to take your time over supermarket chores, linger awhile on old folks' benches and enjoy the passing show. Small kids are the best. Here at the Spar they have special little trolleys for the jongspan, and here they come, hopping, skipping, gambolling at the prospect of doing their grown-up style of buying, small Chinese Barbie dolls and gaudy sweets and chips. On the wall there's a notice in three languages saying that these benches are for elderly citizens. A young mum comes by with her daughter who is just learning to read. Daughter spells out the notice; Hey Mum, says she, can we have some of those for lunch? Some of what? says Mum. The seniorburgers, says daughter.

Feeling a bit inedible and overripe I contemplate my rôle upon this Earth. And as I thus contemplate, a great big dark shadow falls over me, that of Ray Saddler, police officer, and his pretty young missus who has become a pretty old missus. Ray Saddler is now pretty old too, I must add. Cheese Crise! say I, where've you been, man? I am not Cheese Crise, say he, and I've been sitting in the sun since retirement. Time, ah time! say I; much water has flowed 'neath the bridge. He looks upwards and does mental arithmetic. Ja, says he, thirty-eight years of it. It was 1976 and time of the Soweto riots, says he. I nod; the whole country was bleeding and highly strung fit to bust out in civil war, I remember it vividly. I notice Ray Saddler still has a curious facial tic, a pulling back of the head and lower jaw and narrowing of the eyes as if confronted by something too sickening to see. He got this tic in Port Elizabeth, a seething volcano I tell you, where they'd deployed him and a Durban squad to contain the riots.

Back in '76, Overport in Durbs still had something nice and old-fashioned about it; we had a quaint 1906 wood-and-iron house and a garden with avos

and litchis, the Saddlers, a modest brick 1920s family cottage down the end of the next block. A quiet suburb we, of kids, dogs and yesteryear's motor-cars, peaceful.

Peaceful enough even for me under house arrest. Peaceful until one day at 2.45am, 1976, a vehicle pulls up at our front gate and certain gents with army R4 assault rifles rake our tin house with gunfire, some rounds going right through walls and all and into



the avo trees in the back yard. I don't know why my kids aren't killed. Many policemen arrive. The street outside is shut off. Blue lights flash all about. Dit wemel met die kops. The Murder and Robbery squad go with white chalk and draw circles round all the bullet entry holes in our furniture. Other experts with long long measuring tapes used for plotting football fields measure the distance from front gate to avo trees. All is abuzz. Who? and why? In those days you could get your milk delivered every morning, and there stands the milkman with his trolley, a crippled old Zulu, totally confused. Eventually somebody asks him if he saw anything. Ja, baas, says he, you mean those men

in the green Combi? They went that way, pointing. They were six.

The police have a good time, they think it's all too too funny. They giggle when you speak to them. The Security Branch, the political police, the elite Gestapo, they're here all right, but they don't giggle, they smile in a condescending sort of way.

Can you blokes give me any protection? I ask. No you'd have to employ a security company for that, they say. They know I don't even have a job, it's a wry little joke, jy weet mos.

Men Herrilt, they say, why don't you just leave the country?

If you lot think there's not enough room in this country for you and me, I reply, you can leave. You know, piss off.

But whatthehell. This being a Sunday morning, when the hubbub has died down, we manage to catch a good kip till lunch time and make a plan in the afternoon. I know how to weld and lay bricks, I'll buy a whole lot of bricks and ship's plate and fortify our tin castle. Meanwhile let's most importantly put the kids' minds at rest, get a good supper going, chicken curry with some nice afters; môre is nog 'n dag. All this we do, and as we're washing up there's a sudden gentle ring at the front gate, and there stands Warrant Officer Ray Saddler in plain clothes, with his facial tic and a bloody great Walther revolver holstered on his hip.

I hope I'm not intruding, says he, but I happened to notice that your son has a collection of Tintin books in his room and I thought I might have a nice read now and then because I am a Tintin fan.

This Walther is a German artillery piece, man; tangle with this thing and it's Hullo Satan but soon, 'ksê. On uncertain evenings and at irregular hours the W/O arrives off-duty, very visibly to all about, and settles down on young Joe's bed with the Tintin library. We bring him cups of tea. Sometimes we entirely forget he's there, he's so unobtrusive. It's just that he doesn't like murderers, you see. ■

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