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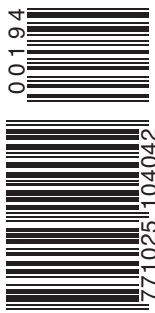
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What some bankers and lawyers will do for money



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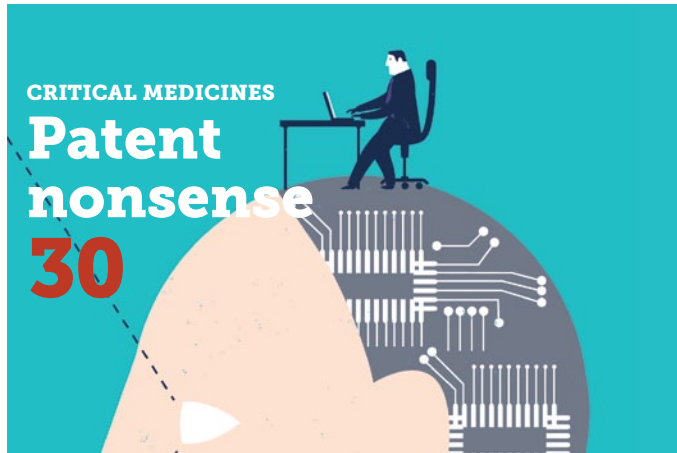


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ISSUE 194 • DECEMBER 2015



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Letters

Is this official racist extortion?

I HAVE HEARD FROM VARIOUS RATEPAYERS that the City of Johannesburg (COJ) suddenly, out of the blue, sends them an enormous account for electricity, under threat that their electricity and/or water will be disconnected. In most cases the ratepayer has no independent proof that they did not use this amount of electricity.

In anticipation, I had an extra private meter installed at my house. And lo and behold I was targeted this year with an account that is R20,000 more than the electricity I have used. I thought: Oh well, this is going to be easy since I do have independent verification that the COJ is wrong. But it turned out not to be so easy.

My wife and I went to the COJ's Randburg offices, and after a two-hour wait, while looking at clerks chatting and joking around instead of rapidly serving customers, we reached a Ms Naledi Udemeuzue. My wife informed her that the account from COJ does not tally with our private meter. Ms Udemeuzue immediately shouted at my wife: "What meter?"

My wife explained that we had had a separate meter installed by a qualified electrician. Ms Udemeuzue shouted again: "What meter?"

My wife produced a photograph of the meter, at which Ms Udemeuzue shouted: "I will not allow you to pay on your meter!" Agitated, I said to her: "Will you please listen to what we want to say?" Ms Udemeuzue shouted: "Don't raise your voice at me!"

I responded: "I will raise my voice

if you do not listen to what we have to say". She then shouted: "I will not serve you any further. Please leave!" I said we would not leave until she had served us. She jumped up, moved to another cubicle and called the next customer. I moved to this cubicle and told that customer that she could not serve him since she had not finished serving us. She then jumped up and walked away. I walked with her. She shouted: "Don't touch me, don't touch me!" I said I was not touching her. She shouted: "Then what are you doing?" I responded: "I am walking with you until you serve us."

Ms Udemeuzue then called a security guard and instructed him: "Please remove this man from this building." I told him: "If you touch me it will be assault, and I will defend myself with force." I then asked to be taken to somebody in charge.

I was taken to Ms Michelle van Staden, Operations Manager, Revenue. She was not Ms Udemeuzue's immediate superior, who I later learned is Mr Nkwane Mohlala, since he was not in the building. But Ms Van Staden took note of the situation and advised us to get a complaint number about our electricity account, and promised to bring it to the attention of Ms Udemeuzue's supervisor.

Once home I sent Van Staden an email to be forwarded to Mohlala, which she duly did. But I got no response. I then used the email Ms Van Staden had used for Mr Mohlala and found that my emails were being blocked. In retrospect I am convinced this was done on purpose.

We kept on getting notices that they were going to cut off our electricity and water. We wrote to the mayor, Mr Parks Tau, and were then contacted by telephone by "Morriss" who did not supply his full name. He asked whether we had a complaint number and assured us that since we had that, they could not cut our services. Soon after, another threatening notice was left on our gate. We phoned Morriss and he assured us again we had nothing to worry about.

But they did come and cut off our water. When we phoned, they said that they did clear our complaint. If they did, why did they not inform us and why are they still claiming R20,000 from us that we do not owe? We phoned Morriss, who now claimed there was nothing he could do. I told him it must be racism against white ratepayers. He did not deny this.

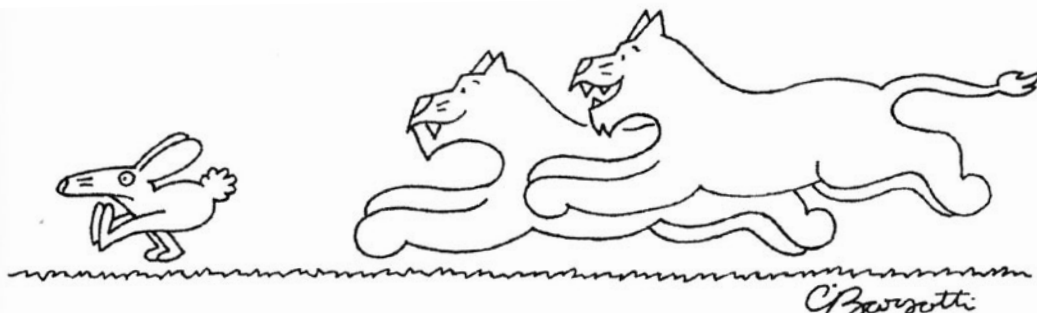
We were thus harassed and blackmailed into paying the R20,000 which we do not owe COJ. As a pensioner, I had to borrow this money and am thus paying unnecessary interest on it while COJ gets interest on money which they stole from me by blackmailing me. To add insult to injury, I also had to pay a reconnection fee.

Since then we've been asking around and at least three white people out of five have had the same experience. Owing to blackmail and harassment they had to pay over large amounts of money they do not owe. Interestingly I have not found a single lawyer who was targeted in the same manner. I have, however found people who offered to correct the account for a fee of R3,000. This indicates that they have contacts in COJ to which they pay kick-backs.

I can only conclude this is a well-thought-out, racist, criminal scam directed at white ratepayers. It also explains Ms Udemeuzue's aggression.

Against whom must one serve criminal charges: the mayor, Tau? Is it not also a violation of our human rights?

Dr Johan F Prins
Johannesburg



"The system's not perfect, but by God, it's transparent"



Mouthwash... Rhodes's secrets

Rhodes's secrets

IT'S QUITE IRONIC REALLY, THE GREATEST empire in history was run by a bunch of bumboys and kiddy fiddlers ("The Secret Rhodes", nose193). To this day the power of the pink dollar is not to be underestimated.

Richard Bennett
Online comment

■ Online response to the above:

BUMBOYS AND KIDDY FIDDLERS? THAT'S enough to get one's mouth washed out with soap in the Year 2015. Homosexuals and pederasts. And Rhodes did not leave his fortune to The Pink Dollar Society.

Rhodes and his "mates" do seem to have had a lot of time to do a lot of things. Is it so that in straight relationships there isn't enough time for all of this?

R Young
Rondebosch

■ THE RHODES ARTICLE'S OBSESSION WITH homosexuality is surely uncalled for.

Peter Mansfield
Durban

The issue is very relevant in its historical context. It helps explain, inter alia, the culture of secrecy in which Rhodes and his circle operated. It also raises an interesting proposition: a gay hegemony. And, those were the chapters of Robin Brown's new biography that the publisher offered us – not necessarily the ones I would have chosen, but fascinating nevertheless. – Ed.

Human killers

CATTLE WERE ONCE WILD. THEY ARE DOCILE beautiful intelligent creatures bred to be slaughtered – often under inhumane conditions. So why condemn farmers who make a living out of breeding lions (nose193)?

In the light of reason it must be acknowledged that the "canned lion industry" – unethical though it is – plays its part in preserving the real wild lions by diverting human killers from them.

Michael Crampton
Johannesburg

Mankind is omnivorous. We farm and kill cattle / sheep / chickens to eat, not for the pleasure of killing them. The argument that canned lion hunting helps preserve wild lions sounds as problematic as the argument that making drugs freely or cheaply available will help deal with the drug problem. It might also just help create a bigger market/more profit by lending legitimacy to a destructive activity. – Ed.

Organ donors have no say

THE ORGAN DONOR FOUNDATION RAISES funds, yet legislation dictates that next-of-kin must grant permission for organs to be donated; the deceased has zero say. So where is Organ Donor Foundation money going? Why is money even being raised?

Caroline
Cape Town

We look forward to ODF's response. – Ed.

Semper Helix

*In duplicate beside the pond
The mirrored fern unfurls its frond,
The twisting leaf escapes the tree
And flutters downward spirally.*

*All things expire. The spring of Time
Uncurls with tick and tock and chime
That knells the universal end
When knots unravel, curves unbend.
The straight line on the cardiograph:
A spirit-level epitaph.*

*So let us praise while yet we may
Those things that take the tortuous way,
Which twist and turn spontaneously
To stem the trend to entropy*

Gus Ferguson
from *Icarus Rising*, Selected Poems

Page turner

YOUR COMPELLING ARTICLE ON THE SOUTH Deep gold mine in nose193 suggests that it is a financial black hole.

Sadly, on page 27, the second half of the article has been overwritten by a repeat of the first half. Will there be a way of getting the full article?

James Sutherland
By email

A last-minute computer glitch that remained undetected until it was too late. The correct page was immediately placed on our website and posted (or emailed) to all who asked for it. Our claims to saintly perfection have, sadly, been demolished. Sorry. – Ed.

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A Christmas gift

LAST YEAR, TWO DAYS BEFORE CHRISTMAS, attorney Leonard Katz kept a promise that he'd made me two months earlier when I received a gift from him, delivered by the Sheriff of the High Court: a summons for "wrongful defamation".

In it, he demands not an apology – as is customary in such cases – but that I pay him R1 million for allegedly having "wrongfully defamed" him by publishing an image of Katz, captioned "The man who stole justice", on the cover of the July 2014 *Noseweek* and in two articles inside: one, headlined "Lennie the Liquidator makes mockery of the law"; the other, "Then there's Brakspear".

These articles, particularly the Brakspear one, he claims in his summons, wrongfully portray him as inter alia having devised fraudulent schemes; being dishonest; guilty of unprofessional conduct; having subverted the course of justice; being unfit to practise as an attorney; and being prepared to act unlawfully or unprofessionally on behalf of his clients, for money.

Katz's earlier letter to me (published in *nose182*) was prompted by the just-delivered judgment by Judge N F Kgomo in the Brakspear case – which Katz immediately circulated to his colleagues and clients (and me). He saw it as vindication, and (he would have everyone believe) a complete demolition of my reputation, and a refutation of *Noseweek's* reports on the Brakspear matter.

In the letter he says, "You are a vindictive and unpleasant man," and concludes: "With apologies to Bruce Willis, yippie-kai-yay, Martin Welz!" (Willis's famous words were, of course, "Yippie-kai-yay, motherfucker!").

By having his summons served at my office on 22 December, he was not, I must assume, wishing to be vindictive or unpleasant. Neither was his special instruction to the sheriff (so the latter politely informed my staff) which was to warn me that I had just 10 days to respond, failing which judgment would be taken against me "without further notice". (Which, as every lawyer would know, was entirely untrue. It being the Christmas court recess, days would only be counted from 15 January onwards.)

If Katz's R1m festive-season shock was "a vindictive, unpleasant" plan to spoil my Christmas, it failed. I was out of cellphone reach and only heard of the summons after New Year.

As I recall, years back Katz had an urgent high court application served at the office of Ian Brakspear in the week before Christmas, when Brakspear had already left on a family holiday, thereby successfully ruining it. Brakspear was rushed into hiring the only sort of lawyer one is likely to find available a that time of year, with catastrophic consequences for him.

Judge Kgomo's judgment which Mr Katz found so much to his liking, is undoubtedly



"We are gathered here today to honour all major credit cards."

the most arrogantly, ludicrously incompetent high court judgment I have read in my long career. On that score, it might have been just sadly unfortunate. However, it also reflects malicious bias, which makes it reprehensible.

Katz and his senior counsel must know that.

I am certain the judges of the Supreme Court of Appeal (Brakspear has petitioned that court for leave to take Judge Kgomo's judgment on appeal) need only compare the supposed factual findings in the judgment with the actual record of the trial and evidence, to come to the same conclusion.

Katz's summons was a gift. It offers me the opportunity to fully unpack all the damning evidence in an open courtroom, should it not have happened already elsewhere.

I (and *Noseweek's* publisher) have entered appearance to defend the case and have filed our defence pleas in which we deny having wrongfully defamed Mr Katz.

No trial date has been set yet. But the trial is likely to be a long one.

Meantime, imagine how pleasantly surprised I was when respected investigative journalist Barry Sergeant produced a fascinating update on the Keble story for this issue – in which my friend Lennie plays a starring role. See page 13.

Yes, it's Christmas time, time to remember one's friends.

Freedom, not a free lunch

EVERYONE WANTS FREE EDUCATION. Everyone thinks free tertiary education is a great idea. A must-have. What a wonderful, inspiring thing the student protests (just at the beginning of exam time) have been. Hang on there. Isn't all of this just another version of what James Bartholomew – quoted by Hermann Giliomee – calls "virtue signalling" without any thought to the real cause, implications and consequences? An easy way for people to advertise how kind, decent and virtuous they are, at no cost to themselves.

What about all that great wisdom packed into a single sentence: There's no such thing as a free lunch?

Expect to get half the education for half the price.

And we are conveniently ignoring all those other obvious but poorly expressed issues, such as the often unbearable strain, even pain, brought on by the process of social and political transition. Confronted with our daily reality, how difficult can that be to imagine?

There is no denying that, quite apart from the financial challenge, a student coming from a deprived township school background to a university with a white upper-class tradition, faces enormous cultural, social and intellectual challenges that are very difficult, possibly embarrassing to articulate.

The hidden rage of helplessness, of always being found wanting, finds easy relief in destructive, violent action.

Rhodes/anything/everything Must Fall! Burn the place down! Make the principal sit on the ground and grovel!

The phenomenon is not difficult to understand. But "virtue signalling" from the rest of us is definitely not an

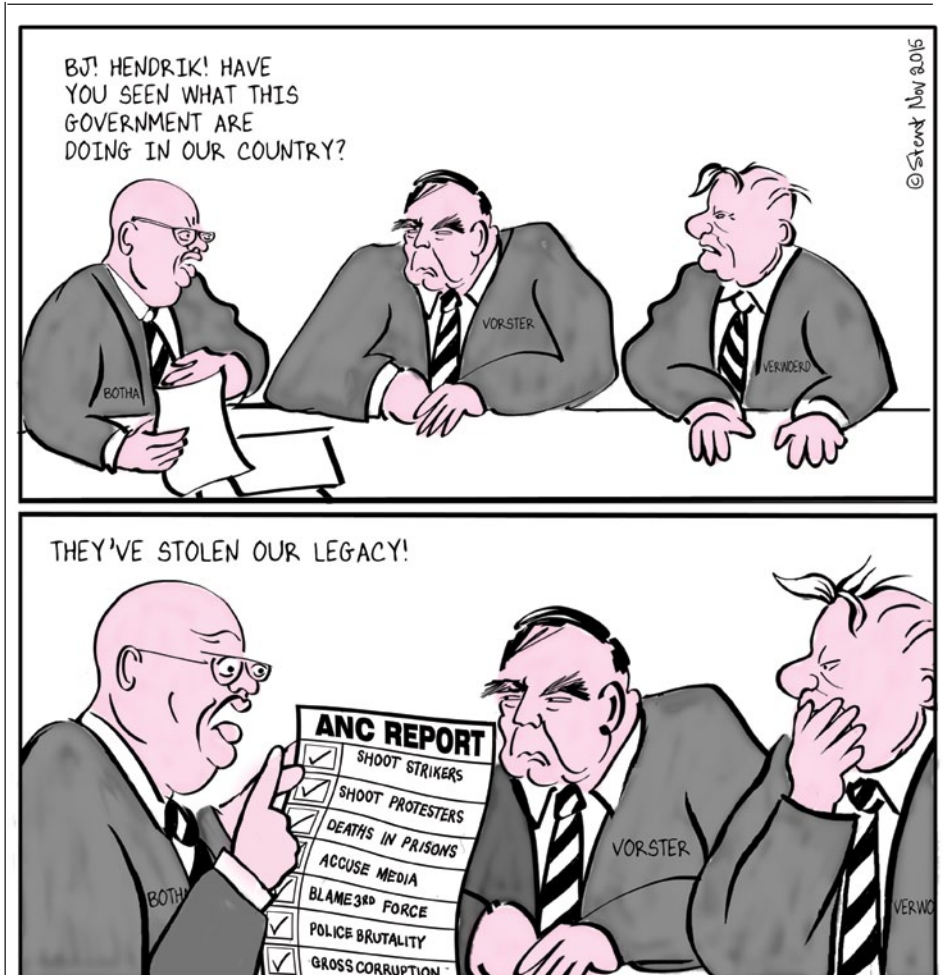
appropriate or meaningful response. It's a dangerously deceptive way of avoiding having to deal with the problem.

Perhaps we should start by asking a far more fundamental question: with our limited resources, is more, free tertiary education an appropriate response to the problem? Would our resources not be better applied to achieving meaningful improvement/transition at primary and secondary school levels? Have a smaller, more selective university intake. Rather aim to achieve a higher level of basic competence at secondary school level, which opens a much wider range of employment options for the school-leaver at an earlier stage.

Impoverished, understaffed, under-equipped universities are a decidedly poor option. A second-class education guarantees a second-class citizen.

A free education is like a free lunch: it isn't.

The Editor



Stent

Risky business

Investec scores R2bn from Brett Kebble's shady business empire, while lawyers walk off with a further R600 million of his tainted loot. By Barry Sergeant

WHAT WAS IT THAT BOUND Investec so intimately to Brett Kebble, and why did the banking group take risks that (still) could cause it irreparable damage? The answer is simple: enormous splodges of wonga. Up to now, Investec has profited to the tune of R2 billion-plus from the Kebble saga, mostly brought to account after the wannabe mining magnate was fatally gunned down on 27 September 2005.

And that is only part of the story. In addition, the two "Kebble companies" that Investec hijacked under the thin veneer of a "rescue package" in August 2005 – JCI and Randgold & Exploration – have since paid just under R600 million to lawyers, auditors, directors and other "professionals" appointed at Investec's behest.

The numbers are all in the public domain, audited and published. Why pay – and pay so handsomely – all these lawyers, accountants and directors? There are many possible reasons, but the main contender is

"cover-up and keep them sweet at all costs" – with the subtext, naturally, of "paid handsomely, but not by Investec."

More than half-a-billion rand stolen by Kebble was diverted to gold mining development company Western Areas, to develop South Deep, a new (then), ultra-deep gold mine west of Johannesburg. South Deep represented Kebble's biggest personal investment, via shareholdings he held in JCI, which in turn held a major stake in Western Areas.

Kebble would do anything to protect South Deep, Western Areas and JCI. He sold half of South Deep in 1998 but by 2001, Western Areas was (once again) way out of cash. This time, it was talked into a "hedge book" that would give it instant cash. [*For that sad story see nose181.*] For now, just keep in mind that Investec held a third of the hedge book.

Investec had long had a close relationship with Kebble, periodically lending him substantial sums. Already in 1997, its CEO, Stephen Kosoff, sat with him on the JCI board to

keep an eye on things and to ensure that Investec's loans were repaid from whatever cash became available. Thus, immediately the cash for the Western Areas hedge book was received in 2001, Western Areas paid off its debts to Investec.

In its annual report for the year to 31 March 2003, JCI disclosed that it had received substantial loans from Investec. It was clear that JCI, as ever, had no recurring incoming cash flows.

From inception in 1997, indeed, the "Kebble empire" had been technically insolvent. [*See the BNC Investments story on page 13.*]

From 1999 onwards, it was a teetering stack of cards propped up with stolen cash. Investec would have known that the Kebble empire was horribly and permanently cash deficient – but that it had assets that could be cornered ("ringfenced") to Investec's great advantage.

It was also public knowledge that Kebble was a miscreant. Late in 2002, he was, along with certain others, indicted for alleged fraud, conspiracy, insider trading and incitement. This was sensationally reported in the media and was for years a major talking point in financial circles.

Instead of questioning where Kebble was finding hundreds of millions of rand in cash (if they did not already know), Investec continued to embrace Kebble as their favourite client.

Early in 2004, Investec embarked with Kebble on the OSLA (overseas lending agreement). At this stage, as had been the case for years, Western Areas, JCI and Randgold were listed companies that regularly published financial statements. A desktop analysis of those, even by a non-banker, would have concluded that the only Randgold Resources shares owned by the three Kebble-controlled entities

Certain expenses: Randgold plus JCI (R000)						
31-Dec/ 31-Mar	Auditors	Forensic & consulting	Legal fees	Executive directors	Other directors	Total
2005/6	10,281	10,494	13,577	23,982	515	58,849
2006/7	11,085	17,693	24,136	9,789	631	63,334
2007/8	10,236	12,915	20,722	12,248	1,383	57,504
2008/9	9,150	26,406	39,184	24,243	1,651	100,634
2009/10	12,363	7,415	35,111	8,978	2,097	65,964
2010/11	15,998	8,785	21,288	25,422	2,605	74,098
2011/12	8,111	2,247	20,026	17,181	2,786	50,351
2012/13	4,485	4,592	20,602	7,013	2,426	39,118
2013/14	4,561	3,416	23,946	6,261	2,523	40,707
2014/15	4,391	3,212	17,385	14,574	2,620	42,182
Total	90,661	97,175	235,977	149,691	19,237	592,741

Sources: audited annual financial statements published by both companies. Certain JCI expenses for 2006 and 2007 have been estimated. JCI numbers for 2014 and 2015 have been estimated, based on other years.

Executive directors' fees	
Peter Gray	57,223,000
Marais Steyn	38,063,000
Les Maxwell	24,687,000
Chris Lamprecht	19,439,000
Vic Botha	10,279,000
Total	149,691,000

Legal expenses	
JCI	107,370,000
Randgold	128,607,000
Total	235,977,000

were owned by Randgold.

Even so, Investec waltzed into a deal in which 5,4m Randgold Resources shares stolen from Randgold were sold by Investec on the London market for the benefit of various entities – other than Randgold. [See nose179 for a full exposé of Investec's offshore money-laundering.] Investec had skin in the game: a portion of the proceeds from the sale of these stolen shares was to be used to repay JCI's debts to Investec, debts which JCI had earlier been unable to pay.

So, back to the beginning: why did Investec elect to seize control of JCI and Randgold, when it could have limited itself to (very profitably) supporting just Western Areas? The answer, in a nutshell: to cover up the facts surrounding the OSLA.

Investec's decision to take control of JCI and Randgold has created, over all time frames, one of the ugliest financial scenes in South African business history.

While neither JCI nor Randgold were ever operating entities, in the usual sense, both have coughed up hundreds of millions in professional fees since Kebble's death. Among the results: Randgold (the victim) never sued JCI (or put it into liquidation), and Investec in London settled with Randgold (by then controlled by Investec) for zero, in a case in which Randgold had originally sued Investec for the billions of rand lost as a result of the theft of its share holdings.

For some of the most tawdry litigation imaginable, Randgold (directed by Investec) has over the past decade paid lawyers, auditors, consultants, directors and other hangers-on a sum total of R346m. The only value-for-money were the formidable forensic reports (costing a fraction of the total) filed by JLMC during and before March 2006. [See page 13.]

Randgold's legal fees alone over the past decade have been close to R130m. Far from benefiting Randgold, the lawyers involved have simply played to Investec's tune of "protect Investec regardless". These legal luminaries include Andrew Legg of Van Hulsteyns and Gerald Farber SC.

The auditors, too, deserve a special mention. KPMG, Investec's long-term auditors, were appointed, of course, as auditors of both JCI and Randgold,

just after Kebble was dispatched. Under the expert management of Investec and KPMG, Randgold delayed for years the disclosure of JLMC's forensic reports which, in any event, were

released in carefully redacted form to heavily downplay the role of Investec.

As auditors at JCI and Randgold, KPMG has scored fees of R91m over the past decade. JCI and Randgold

Payments from "the Kebble companies" to Investec: 2001 to 2010, R million									
	Source	2001	2003	2004	2005	2006	2007	2010	Total
Western Areas (at 1/3 of hedge payments)		-383.6	38.1	82	96.5	107.8	1258		1198.8
Option premiums received	1	-414.1							-414.1
Option premiums paid	2	30.5	12.5	32.0	42.4	37.7			155.1
Realisation of options	3		25.6	50.0	54.1	70.1			199.8
Settlement of hedge book	4						1,258.0		1,258.0
JCI				-178.7		708.7		267.5	797.5
Overseas Securities Lending Agreement	5			-178.7		700.0			521.3
Repay Investec loan	5			78.8					78.8
Option premium	5			13.2					13.2
Security provided	5			-270.7					-270.7
Value of 5.46m Randgold Resources shares retained at closure	6					700.0			700.0
Raising fee into Investec Loan Agreement	7							267.5	267.5
Transaction advisor to sale of Letseng	8					7.2			7.2
Transaction advisor re sale of Western Areas	9					1.5			1.5
Total (millions of rands)		-383.6	38.1	-96.7	96.5	816.5	1,258.0	267.5	1,996.3

Sources:

- 1, 2 and 3: Western Areas annual financial statements
- 4: Gold Fields announcement, January 2007
- 5: Randgold circular, December 2008, page 99

6: Market value

- 7: Randgold Circular, May 2010
- 8: JCI circular, September 2006
- 9: JCI circular, October 2006

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have, in addition, together paid nearly R100m in “forensic and consulting” fees.

KPMG is everywhere and have scored hundreds of millions of rands more from other clients involved in the Kebble saga. These included Investec, Western Areas, SocGen Johannesburg (a major beneficiary of laundered stolen shares and cash), and T-Sec (the stockbroker which laundered hundreds of millions in dirty cash).

KPMG was also appointed by the now-defunct Scorpions, a state agency, to investigate the Kebble frauds. This investigation simply disappeared. Likewise, KPMG was appointed by the Reserve Bank to assist in investigating the illegal selling – in London – of shares stolen from Randgold. This investigation likewise simply disappeared. Given the huge conflict of in-

terest, were these state agencies simply careless in appointing KPMG or were they part of the conspiracy?

KPMG’s only defence has been to dismiss all accounts of its role in the Kebble saga as “fiction”, while continuing to rake in nonfiction fees in the tens, indeed, hundreds, of millions, month after month, year after year.

And then there have been the directors. Over the past decade, JCI and Randgold have paid directors more than R150m.

Upon Kebble’s demise, Investec’s David Nurek was appointed chairman of both JCI (the thief) and of Randgold (the victim). The JCI board was quickly populated with other Investec puppets. Nurek was also appointed a director of Western Areas where, inter alia, he took over the remuneration committee and established a phantom share scheme that benefited the new chairperson, ANC deployee Gill Marcus, to the tune of many millions of rand. Marcus would later head up the Reserve Bank.

Back at JCI and Randgold, Investec, backed by Allan Gray, the Cape Town-based money managers, inserted Peter Henry Gray, the erstwhile CEO of T-Sec, as CEO of both JCI and Randgold. Since Kebble departed the world, JCI and Randgold have paid Gray close to R60m. Nice job if you can get it. But then he probably knows everything there is to know that everyone else should not get to know.

Entities with regulatory powers, such as the Financial Services Board, the Registrar of Banks and the Johannesburg bourse, have chosen to turn a blind eye to all of this.

Everywhere, professional reputations have been compromised – by huge amounts of cash. *Noseweek* has already reported extensively on the Randgold minorities case, where a number of shareholders are suing Investec for oppressive conduct. Investec is dragging the case out; already fees on both sides top tens of millions of rand, and the main case is yet to get to court. (See *noses178&193*.)

The lawyers being paid, and accepting millions, for this kind of conduct, include Tony Rubens SC, Jonny Blou SC, and a junior, Shanee Stein, instructed by attorney Harold Jacobs of Werksmans

In most, if not all, senses, Investec has been operating in an increasingly unregulated environment. To revert to the OSLA, the device by which Investec London advanced JCI the equivalent of R271m in cash, against the security of (stolen) Randgold Resources shares: by the time the OSLA matured, the JCI board was fully under the control of Investec. The stolen Randgold Resources shares, still in the possession of Investec London, were worth around R700m. JCI, which had the right to buy back the stolen shares, and profit by more than R400m, did nothing. That profit went, instead, to Investec. ■

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Newly elected chairperson of the African National Congress in KwaZulu-Natal, Sihle Zikalala, is lifted onto the shoulders of his supporters at the party's provincial congress in Pietermaritzburg.

Talking the party line

Sihle Zikalala, newly elected ANC chairman in KZN, excites the young .

By Desiree Erasmus

TEN MINUTES WITH KWAZULU-Natal ANC's new chairman, Sihle Zikalala, and his youth appeal is understandable: the man is confident to the point of being cocky and unapologetic in his love for the African National Congress.

"He is the darling of the ANC Youth League a friend says; he's "incredibly strong", says an adoring staff member.

Zikalala literally grew up in the ANC. In his early teens he briefly flirted with the idea of teaching, but was already "politically conscientised" at the age of 15. "The only thing [*that matters*] besides politics is football," he says. The teams that matter most to him are Barcelona and Chiefs.

Born in Newcastle, he attended primary school in the village of Ndwedwe near Tongaat. Both his parents were "serious". Active in their local church, they instilled self-respect and the need for human dignity in their children.

As a teenager, so involved was Zikalala in the party that, for safety reasons, he left his secondary school to attend one in an area that was more ANC-friendly. "It was dangerous back then to be an ANC member in KwaZulu-Natal," he says. Ndwedwe was a hotspot, so the entire ANC branch operated out of Inanda.

After matriculating in 1992, there was no time for "anything else besides the ANC". It was in the youth league

that he cut his political teeth and first made a name for himself. Here Zikalala found a definitive voice, working as an organiser in the Ndwedwe region.

Within no time he was regional chairperson and in 2000 he was elected provincial secretary of the ANC Youth League, with a mandate to open new branches – something he was exceptionally good at. So successful were his membership drives that today no-one can get elected to a top position in the party without the KZN vote.

His ability to organise and mobilise are key strengths. In 2004 he was elected secretary general of the youth league and in 2009, became provincial secretary of the ANC proper in KZN.

Despite these impressive party credentials, to his detractors Zikalala is the political bogeyman of KZN: a ruthless opportunist dead-set on elevating himself to the top job (premier) by first ousting KZN Premier Senzo Mchunu from his seat as provincial ANC chairman and then working his way into the government.

Not true, supporters say. Portraying Zikalala as a conniving megalomaniac is simply a convenient way to scare more conservative (by which they mean older and less radical) ANC members into keeping Mchunu in power.

The accusations fly back and forth before the provincial conference: "Mchunu doesn't listen to the party";

"Zikalala puts the party first"; "Mchunu doesn't listen to the people"; "Zikalala moves with the people".

Zikalala's talk is all ANC; every sentence a reminder that he has no experience outside the party; that he lives and breathes ANC and wouldn't have it any other way. This is part of the reason that he enjoys such massive popularity and wields such party power.

Zikalala is known to support African Union Commission chairwoman Nkosazana Dlamini-Zuma as a successor to Jacob Zuma. Speculation is rife that (barring a political anomaly) Dlamini-Zuma will now make it to the presidential throne come December 2017. Leading the charge will be Zikalala and KZN and the so-called Premier League lobby group of Free State, Mpumalanga and North West.

While Dlamini-Zuma has said there is nothing wrong with ambition and "big ambition is a good thing", Zikalala is less comfortable with the word.

He brushes off questions about his political ambitions as though they are an all-too-frequent irritation. A week before he is elected KZN chairman, he tells me that he has "never been consulted" on standing for provincial chair and that he has "not put up his hand" for the position; if ANC members want him in the chair, it is their choice and a democratic election process will decide.

"It's not about ambition," he insists,

not deviating from the script.

“I don’t know whether [Mchunu] and I are contesting. I don’t know that. I have said that I am personally contesting. Your question implies that I have availed myself.

“In the ANC, our culture is that the party structures discuss the leadership. If your name gets in, at some point they will consult you. For now, nobody has consulted me. I hear there are nominations, I hear in the media and in the branches people are talking; you hear names discussed. But it is not about putting your ambitions first.”

Zikalala says he was on a candidate list for the Legislature and Parliament in 2014 but rejected both offers because the ANC said he was needed in the party. “So why is it that in 2009 I was [not accused of harbouring ambitions] but in 2015 I suddenly have those ambitions?”

He ignores the obvious answer: he didn’t then, but he does now. Who is starting the rumours?

“When people discuss leadership in the ANC, it becomes an issue. When word gets out, it becomes a competition... It could be people with their own agendas or it could be an exaggeration of the democratic process in the ANC.

“People believe that the debate about who must lead the ANC is about individuals. They quickly reduce leadership debates to individuals.”

Despite what he says, the contest between the two men is common knowledge in party ranks and the media, with words like “war” used to describe the battle between them. Despite this, Zikalala tells me that his relationship with Mchunu is good. “We have developed a situation of working like brothers.”

But he allows his competitor no claim to fame for his rigorous anti-corruption measures. He concedes Mchunu is doing “good work” on that score, but adds: “It’s work that all members of the ANC should do.”

“The fight [against corruption] started in the era of comrade Zweli Mkhize [KZN premier before Mchunu, current ANC Treasurer General, and a Zikalala ally]. He started many cost-cutting measures which Comrade Senzo has [merely] maintained.”

Zikalala’s words on corruption echo the rote stance now used by most ANC leaders since the party has been ac-

‘You cannot afford to have a role model in the country who is defined by being rich. For me that is not a role model’

knowledging that graft is eating away at its credibility. He says corruption is endemic because people “want to see themselves benefiting”. “What we must teach and inculcate is a culture of living within your means... what you earn must be what sustains you.

“You cannot afford to have a party role model who is defined by being rich. For me, that is not a role model,” he says. [Goodbye, Cyril. – Ed.]

Has that message reached the youth league? There are a number of leaders that the youth must emulate, he says.

“We need to inculcate a culture of studying and reading [in the ANCYL]. Our role models need to be defined by being excellent, hardworking and having strong values.” The emphasis should be on self-development and political development, he adds.

Zikalala really is the darling of the youth league. According to its provincial branch, Mchunu has had his time in the sun, served the party and must move over for a party man who is “more of a risk-taker” and understands a new generation of youth – like Zikalala.

A week before the provincial conference, the ANCYL circulated an emotional press release lambasting a group of alleged Mchunu supporters called Senzo-Se-Nhlakanipho for “working tirelessly but without success” to sabotage the upcoming conference.

“The reality is that the resounding

majority of ANC branches across the province wants the leadership of Cde Zikalala,” said the press release.

(Zikalala won with just 53% of the vote, hardly the landslide they had anticipated. In any event the result was being challenged by Mchunu’s supporters as *Noseweek* went to press. Citing various irregularities, they were demanding a rerun of the conference and leadership vote.)

Zikalala refuses to talk about “hypotheticals” when asked what his first priority would be if elected provincial chairman. “I will not answer you in that way – ‘if you are elected’. The question should be, ‘What is the first priority of the ANC?’ ”

That priority is to restore the unity of the organisation, he says firmly. “People must not be at the periphery... everyone must be participating in the political life of the ANC.”

Restoration of “ANC values” – whatever those may be – will be his second priority, while third place goes to ensuring that “members are of service to the people”.

“There must be no problems in the community while we have members of the ANC [in those communities].”

[With such a far-reaching promise a lot of ANC supporters are definitely going to be disappointed. – Ed.]

Another item on Zikalala’s list is to capture the “minority” vote. According to Zikalala, it is the most “critical, challenge facing the ANC today”.

“Minorities [and by that he means racial minorities] don’t feel as if they are part of the system, particularly Indians and coloureds, and there is still a strong element of white supremacy amongst some older whites, who see the ANC as dangerous.

“We might... have made a mistake, not emphasising the non-racial character of the ANC as an organisation, especially post-1997. I am not attributing that to [former] president Thabo Mbeki. As ANC, we might have placed more emphasis on Africans at the exclusion of other communities,” he says.

“The ANC must service the Indian community, must service the coloured community and must approach the whites, service them as government; treat everyone equally.”

● See next month’s issue for a profile of Senzo Mchunu, whose term as KZN premier officially ends only in 2019. ■

What some bankers and lawyers will do for money

The Kebble saga continues: might Investec's getaway plans still fall apart?
The devil lay coiled in a small unlisted company... By Barry Sergeant

THE WORLD WILL BE A DULLER PLACE, was *Noseweek's* first reaction (in October 2005) to the news that Brett Kebble had been deposed two months earlier as CEO of the three JSE-listed gold companies that he'd headed: JCI, Randgold & Exploration (RGE) and Western Areas.

But on second thoughts, the realisation: Kebble's departure had opened the way for a closer scrutiny of events.

For example, it had only just been discovered, to the surprise of RGE shareholders, that their company no longer owned a substantial part of its major asset, – 18.4 million shares in Randgold Resources, a London-listed spin-off from RGE. Kebble claimed that 9.9m of those shares (today worth R1 billion or more) had been “lent” to a company called Bookmark... and ended up as cash in the coffers of Western Areas.

Various questions sprang to mind: Why was that “loan” not authorised by RGE shareholders, as required by law? What did RGE get in return? What security was there for the loan? And, if it was a kosher deal, why did Kebble repeatedly misrepresent the situation before his ouster?

Another question that has since grown in relevance: Which banker advised on and facilitated the loan? (If it was Investec, and if it turns out that RGE made a huge loss on the deal, then Investec could be liable for damages.

“Perhaps that explains why Stephen Koseff of Investec is so touchy about questions posed by an RGE shareholder?” *Noseweek* suggested.

Ten years ago *Noseweek* was well on to the case. The report continued: “(Peter Henry) Gray's appointment as the new CEO of RGE – essentially at the behest of Investec – is controversial

because he has had a long business relationship with Kebble. Also because at the same time he has been appointed to head JCI – and RGE may have substantial claims against JCI.”

Only days after that *Noseweek* report went to press, Kebble died in a hail of bullets delivered by a hired assassin.

Whether it was murder or assisted suicide remains the subject of debate. Either way, Kebble could not blow the whistle on his co-conspirators and collaborators.

Only the following year would *Noseweek* learn that Gray had been Kebble's representative in negotiations with Investec Bank that began in early 2005 over a new loan for JCI Ltd (the source of stolen funds having run dry). And that those negotiations had culminated in the deal that saw Kebble's resignation in August, Gray's installation in his place and, ultimately, even Kebble's death a month later.

That Gray emerged from those secret negotiations as CEO, acceptable to both Kebble and Investec, suggests he must have shown an understanding of the “sensitivities” of the situation in a manner that both Kebble and the bank approved. But, the fact that it was at odds with the interests of shareholders and the principles of good corporate governance should be equally clear.

Perhaps the main reason for Randgold shareholder concern was that, simultaneously, Gray was also made CEO of JCI. Under Kebble's direction, JCI and Randgold had come to share near-identical boards of directors, making it possible for Kebble to misappropriate Randgold's assets for JCI's benefit.

It seemed common sense, many Randgold shareholders thought, to properly separate the affairs of the two compa-

nies, and for Randgold's claims against JCI to be properly identified and vigorously prosecuted by an independent Randgold board. By the same token, by keeping both companies with nearly identical boards, Investec, Gray and others were able to ensure that those claims were only ineffectually pursued, and that the status quo was substantially maintained.

Besides Gray's appointment as CEO of both Randgold and JCI, other executive directors of the new Randgold board, including chairman David Nurek (a long-time Investec stalwart) and financial director Chris Lamprecht (from gold miner Western Areas) occupied equal positions on the JCI board.

Another cause for suspicion was that the forensic audit initiated by Gray after he took over at Randgold, appeared to be dragging on indefinitely. Documents subsequently discovered in a court case brought by unhappy shareholders, confirmed their worst fears – it had been a specific condition of Investec's loan to JCI that the board of Randgold would be reconstituted in a manner “acceptable to Investec”. Investec's dream board included Gray as CEO, and all the other directors appointed since then.

Investec did not own shares in Randgold and had not lent it any money, therefore had no legitimate right to interfere in the affairs of Randgold or its shareholders. But Investec had to protect JCI from being pushed into bankruptcy – the obsession of Investec CEO Koseff for more than a decade.

The reasons were many, the main one being: Investec's single-biggest exposure within the Kebble swamp was to the so-called “hedge book” at Western Areas. For Investec, this was a massive asset, but only so long as Western Areas

and JCI, its controlling shareholder, were kept out of insolvency. If Randgold was left free to pursue its claims in court, JCI and Western Areas would be forced into insolvency and the “hedge book” would be worthless. (See *nose* 181)

As *Noseweek* reported, when JSE- and NYSE-listed Gold Fields were eventually persuaded to buy South Deep (including 50%-owner Western Areas) as a whole in 2007-2008, it paid a separate, massive US\$528m just to eliminate the Western Areas “hedge book”. This incredible windfall flowed to the three hedge banks, of which Investec was one.

To secure its interests, in the immediate aftermath of Kebble’s demise, Investec loaned JCI (the thief) approximately R1bn (later fully repaid by JCI), to prop up JCI’s support of Western Areas/South Deep.

Even after cashing in on the hedge book bonanza, Investec remained committed to protecting the JCI structure by annihilating as many as possible of Randgold’s claims, especially those against JCI which had received R896m of the proceeds of the stolen Randgold shares. To more fully protect JCI, Investec also had to protect – using various law firms and its tame auditors KPMG – the money-laundering brokerage T-Sec and Western Areas, a company in which Investec had a substantial shareholding (and which was at risk as the ultimate recipient of a further R522m derived from the sale of shares stolen from Randgold).

To control the situation to its best advantage, Investec had secured control of all sides of the situation: the plaintiff, the defendant and all the critical witnesses. But the devil lay hidden in a detail: an ostensibly insignificant unlisted company called BNC Investments (Pty) Ltd.

BNC, buried in the background, was the cornerstone of Kebble’s corrupt empire, effectively insolvent from shortly after it was formed in 1996, it had been propped up with illicit cash for years so that it was only finally placed in liquidation a decade later, on 11 April 2006.

It was only to be expected that the liquidator would institute a so-called “Section 417” (of the Companies Act) enquiry. Dangerous for the likes of Investec and Gray, but perhaps too obviously suspicious if no enquiry was held. Better, then, a well-controlled or “managed” enquiry, just as they had man-

aged and controlled the various listed company boards.

So, what threat lay coiled inside BNC? In May 1997 SocGen (Société Générale) Johannesburg agreed to invest R125m in Kebble’s company by buying its redeemable preference shares. The cash investment into BNC was signed off – inexplicably and contrary to every prudential requirement prevailing at SocGen – by the latter’s then MD, Peter Gray (yes, one and the same). (In justification, he is reputed to have “mumbled” later that Kebble had a “very valuable” art collection.)

In 2000, Gray was, for unknown reasons, demoted from MD to “senior advisor” at SocGen Johannesburg, and moved to an office with Frankel Consulting, which happened to have offices in the SocGen building. During 2002 Kebble assisted Gray by funding his purchase of the stockbrokerage Tradek from the failed Saambou Bank. Gray became its CEO and changed the name to Tlotlisa Securities – T-Sec.

In due course it would emerge in forensic reports (that have long been in the public domain, unchallenged) that under Gray, T-Sec laundered hundreds of millions of rand on behalf of Kebble – cash generated by the sale of shares purloined by Kebble from Randgold’s stock portfolio. Inter alia, no doubt to Gray’s relief, the BNC redeemable preference shares held by SocGen were redeemed in five tranches with a wack of the laundered Randgold share proceeds.

Gray’s role in the terrible saga had become apparent during and after the Randgold forensic team’s physical relocation, within months of Kebble’s death, to the epicentre of the fraud: the offices of T-Sec, the JSE-member stockbroking firm operated by Gray. It was at T-Sec where the theft, fraudulent scrip lending (and subsequent sale) of stolen Durban Roodepoort Deep (DRD) and Randgold Resources shares were traced through various T-Sec trading accounts. The R1.9bn cash proceeds of the stolen shares were used to fund a multitude of nefarious activities, not least, bribes to the police commissioner at the time, Jackie Selebi, and to various then-leading members of the ANC Youth League. And to pay Investec the odd R100m.

From Investec and Gray’s point of view, BNC had to be strategically wrapped up and buried, or things could go horribly wrong for both of them.

There were a number of attempts to ensure that the 417 enquiry into BNC never properly got off the ground. In the normal course of such an enquiry, Roger Kebble, co-director with his son Brett of the company throughout the period in question, would have been subjected to vigorous interrogation.

Instead Kebble senior and the omnipresent Peter Henry Gray rushed into settlement mode, reaching, on 1 October 2006, a first settlement agreement in terms of which Kebble Snr would pay just R30m to Randgold and R5m to JCI in full settlement of any and all claims against him. (Note that BNC had lodged a claim against the estate of his deceased co-director, Brett Kebble for R2.4 billion; the latter’s estate was then sequestered. Roger Kebble was let off the hook for just R35m and was not sequestered.)

In fact the next day after the settlement was reached, Randgold (under Investec surrogate Gray’s direction) would instruct its lawyers Tabacks, then still dealing with the liquidation of BNC, to postpone the Section 417 enquiry sine die (indefinitely) and then quietly withdrew its funding of the enquiry.

In a second settlement agreement concluded 18 months later (on 28 February 2008), Randgold undertook to address a letter to the liquidators of BNC requesting them to leave Roger Kebble alone. (The liquidators of BNC, who were not party to any of the settlement agreements, had in the interim obtained a court order directing Randgold to contribute towards the legal costs of litigation to recover the assets for BNC.)

The BNC enquiry remained safely dormant until 3 October 2008, when Randgold’s forensic investigators finally completed and delivered their report into the illegal redemption of BNC’s preference shares, raising all sorts of serious – and, to Investec, seriously threatening – issues. Investec hurriedly intervened to take firmer control of the situation. Randgold’s attorneys, Van Hulsteyns, were found to be conflicted because they also represented Gray, who was now potentially incriminated in the report.

No surprise, Randgold (directed by Investec) then appointed South Africa’s master of “managed” liquidations, ENS’s senior partner Leonard Katz (better known to *Noseweek* readers and

his many embittered victims as “Lennie the Liquidator”) to manage the enquiry, now relocated to ENS’s offices.

On the subject of conflict of interest:
● The fourth BNC tranche that flowed to SocGen, of R22.6m, was laundered through Frankel Consulting, whose owner, Sydney Frankel, is the brother-in-law of Michael Katz, the eternal chairman of ENS;

● The liquidator of BNC, Gavin Gainsford, works at KPMG, auditors to Investec, SocGen, T-Sec, Randgold, JCI and Western Areas;

● The fifth BNC tranche repaid to SocGen Johannesburg of R20m came from the sale in London (by Investec) of shares stolen from Randgold. (Investec itself kept some of the money in settlement of debts that both Kebble and various of his controlled entities owed the bank.)

● Roger Kebble, the other director (alongside his son, Brett) of BNC, refused to appear at the enquiry, stating under oath that he knew nothing about what BNC did; all he did know was that it had been formed “merely as a vehicle for fraud”.

Katz’s team for the occasion included advocates Brendon Manca SC and Johan Smit; the same team that regularly acts for Investec in liquidation cases instigated by the bank. Their task was to manage the resumed enquiry into “the trading, dealings, affairs and property” of BNC.

The resumed enquiry had hardly got under way when London-based Montague “Monty” Koppel and his son-in-law Denis Daly arrived one morning and hijacked the enquiry. Koppel simply stormed into the room and angrily demanded to know from the commissioner: who had authorised this enquiry, which was, he said, nothing more than “a total waste of time and money”.

In his inimitable billionaire fashion, the diminutive Koppel muttered on for about 45 minutes while his audience sat in stunned, if not in entirely respectful, silence. The reason for Koppel’s irritation: Kebble had repaid substantial debts he owed Koppel with JCI shares and Koppel was now annoyed at the prospect that their value might be seriously undermined should Randgold succeed with a massive claim against JCI. (See *nose180* and *nose190* for a hint at how Investec

settled up with Koppel.)

Roger Kebble never attended. Gray was allowed to leave after giving limited evidence of little consequence; Charles Orbach, JCI auditor in Kebble’s time, appeared senile and said he couldn’t hear any of the questions, so was allowed to go without saying anything of substance. Katz, who had started out as a small-time attorney in Cape Town, acted as if he had reached the Big League, where his conflicts-of-interest were no-one’s concern.

Katz had acted for JCI in the (not unrelated) Jaganda/Vulisango dispute, in which JCI was pitted against its BEE partner Simmer & Jack. The fact that Katz had acted for JCI did not deter him from acting for JCI’s ostensible opponent, Randgold, in the BNC enquiry. Nor did it deter him from shamelessly attacking – and disqualifying – at least one key witness for his supposed conflict of interest.

It was forensic reports commissioned by Randgold, investigated and compiled by JLMC, led by John Louw, that had established that JCI orchestrated the purloining of listed shares from Randgold that were sold on the markets for R1.9bn in cash; that Investec had been a major beneficiary; and as a consequence of the theft, Randgold had a massive claim against JCI.

During the JCI dispute with Jaganda/Vulisango, Louw had signed an affidavit confirming the allegations against JCI (Louw had, after all, worked for three years on assembling the cases that JCI would have to answer). Katz now cheekily accused Louw of a conflict of interest.

Taking the cue, Marais Steyn, CEO of Randgold and Gerald Farber, a senior counsel on Randgold’s payroll, terminated Louw’s mandate to act as forensic investigator for Randgold, effectively burying his incriminating reports. Which raises the question: what uncomfortable truth is still hidden in the SocGen woodpile?

The BNC enquiry was never concluded. It ended abruptly when Randgold announced it would no longer fund it – effectively abandoning BNC’s right to recover more than R100m – and conveniently protecting parties too numerous to mention. But Investec undoubtedly topped the list, followed closely by Gray. ■



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Dishonorable reception for honoured guest

Unisa and Home Affairs keep visiting professor unpaid and tied up in red tape for months. By Richard Penfold

EARLY IN 2013 THE UNIVERSITY OF South Africa (Unisa) in Pretoria wrote to Professor Ulrich van der Heyden in the theology faculty of Berlin's Humboldt University, inviting him to become a Visiting Researcher for 14 months in the theology faculty.

Prof Van der Heyden was particularly pleased to accept because, for most of his career as an historian and political scientist his focus has been on the southern part of Africa. The history of the German missionary societies in 19th century South Africa is one of his main research topics – which is what prompted the invitation.

Prof Willem Boshoff of the Department of Biblical and Ancient Studies at Unisa is, in addition, a mission archaeologist. The guest-professorship programme would make it possible for the two to collaborate in a research project aimed at producing a history of the Bakopa people who live north of Pretoria and who nearly fell victim to an ethnocide in the 19th century.

Boshoff has been engaged in archaeological research on the Bakopa for years. In the process, he laid the foundations for missionary archaeology being done globally. The project is aimed at scientifically reconstructing the pre-colonial history of African people who do not have written sources. The research could help the Bakopa clarify, preserve and strengthen their historically shaped ethnic identity.

Boshoff had excavated the foundations of buildings of the Gerlachshoop Mission Station, as well as the settlement remains of the associated African community, gaining important new insights into their history.

His German colleague, Van der Hey-

den, had published on the history of the Bakopa in Gerlachshoop and Maleo's Kop, based on his research in the extensive archives of the Berlin Mission Society. They hoped to combine their efforts, insights and resources – the purpose of the exchange programme.

The Bakopa have only oral sources for the reconstruction of their history, which includes resisting colonial oppression and fighting apartheid. Written documents or works on their history barely exist in South Africa. But there are documents written by German missionaries that are of major importance. Recognising this – and in agreement with the elders of the Bakopa – the thought grew to “give back” their history. This could be achieved by producing a book, written in popular style yet based on scientific research, that could be used as a textbook. All in all a result-oriented project.

Van der Heyden regarded the invitation from the world's biggest open university as a great honour. But it had come at too short notice, so had to be delayed till September 2013.

At that stage, all Van der Heyden had received from Unisa was a memo outlining only the rudimentary facts about a visiting professorship, such as its duration and the financial arrangements. It was apparent that he would have to sign a legally binding contract.

Via Boshoff, he asked for the contract to be emailed to him for inspection. “Surely it cannot be asking too much to want to know the conditions before setting out on a journey to the other end of the earth? That was my reasoning,” he said.

“Not possible”, said the office of the acting director of the research management directorate of Unisa, so



Professor Ulrich van der Heyden

Van der Heyden was unable to familiarise himself with the requirements of the contract before setting out. Despite the uncertainty, he said he “trusted the reputation of Unisa”.

“On the day of my arrival I called ‘my’ new department and the research administration to report my commencement of work and to ask once more for the handover of the contract. I still did not know what exactly I was expected to do at the university; for example, my hours of compulsory attendance, participation in the academic life, regulations for business trips, holiday entitlements.

“Despite my repeated requests, it was impossible to get a copy of the contract during my first week in Pretoria. So I started my research in the library and archive of Unisa, where they kindly permitted me to use their PC to check and answer my emails.

“The theology department was unable to provide me with an office or a PC, because I did not have a signed work contract. After ten days of uncertainty, I received a call in the library

from Mr Harry Bopape in university management, summoning me to collect my contract. The procedure for which I had been waiting ten days took about three minutes.

“Over the next few days I discussed individual paragraphs with my new colleagues, got some corrections made and it was then signed by all relevant parties. At last, a legally binding contract meant we could get started!”

Far from it. When the prof tried to open a bank account in Pretoria – a requirement for his salary to be paid – he was told he needed a temporary work permit to do so.

“Why did no-one tell me this when I was offered the position? Why had they not attached a list of all the regulatory requirements? I could have got a work permit at the South African consulate in Berlin before leaving!”

“More urgently: How could I get this indispensable work permit now, when I was already in Pretoria?”

Unisa’s research office showed no enthusiasm to help. He soon discovered he was not the first foreign visiting scholar to find themselves in the same boat. “Some of them gave up exasperated and went back to their homelands after a few weeks,” he told *Noseweek*.

Colleagues at Unisa had debated whether the administrative obfuscation was the result of political hostility or just helpless incompetence. “The university receives government money for this ‘guest programme,’” he explained. “Maybe they’d prefer to hang on to the funds rather than use the money for the intended purpose?”

“I could never get an answer to the question: why are invitees treated like supplicants who appear unannounced, out of the blue?”

Unlike some others before him, he decided to press on in demanding fulfilment of the signed and legally binding contract and paid repeated visits to the Unisa admin offices. Again and again he was required to submit copies of all his documents – those previously delivered having been mislaid.

“They copied my CV and my list of publications four or five times although this was absolutely irrelevant for a request for a permit.” They also required certified copies of his degrees, which the university already had.

Weeks went by and he still needed to open a bank account before Unisa

could pay him. And because he lacked a work permit, he was not granted a Unisa staff ID card, so could not eat in the canteen; was not permitted to work in the library; nor could he use any other university services.

After more than 20 days, at the very moment when his list of publications was being copied for the umpteenth time, a young man entered the room who knew what to do, because he’d worked there before.

“Thanks to this man, a post-graduate student, I decided to press on.”

He learned that, to apply for a work permit, he needed a medical report, more specifically a radiological report which he easily could have got in Germany before departure. Now it meant hours of waiting in doctors’ surgeries, notching up fees, while short of funds.

Then somebody remembered he needed a letter from his German university confirming his employment there. “I calmed down, since this was no problem in the age of the internet. One day later I had it on my laptop.

But after submitting this via email, the official demanded a hard copy.

Next, Unisa informed him that a police clearance certificate from Germany was also required. A call to the German Consulate in Pretoria revealed that this laborious and expensive administrative procedure would take three weeks.

“Six weeks of ineffective struggle with the Unisa bureaucracy, with no work permit in sight, brought me to the realisation that I may as well go back to Germany to ap-

ply for a suitable visa there.

“On landing in Berlin after one-and-a-half lost months in South Africa, I called on the South African Consulate and handed over the documents listed on the internet through a visitor’s window. A not-very-friendly consular officer asked me in the tone of a teacher if it was possible to have documents certified by a postmaster in Germany, waving copies of my PhD degrees and the medical reports whose originals were kept at Unisa. The copies had been certified by the post office there at Unisa’s suggestion.

“Possibly not,” I replied, “but in your homeland, I was alerted to this service by the post office who, as you can see, also have a stamp for this purpose.”

The consular officer obviously felt offended and threw the documents at me – as far as the glass panel allowed him – saying: “Bring the correct documents next time.”

● *That was by far not the end of it. The rest of the sorry saga continues in our forthcoming issue.* ■



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News at last for Leaderguard scam victims. But is it good?

The case of the inscrutable Chinese and KPMG. By Jack Lundin

A BLAST FROM THE PAST: THE TEN-year-old Leaderguard Spot Forex investment scam is back in the news. But a cloud of secrecy and intrigue still surrounds the planned relaunch of a court action by the liquidator of Leaderguard against the company's auditors in Mauritius, KPMG.

That global audit firm wields enormous power in the Indian Ocean island and over the years has done its utmost to prevent the airing of evidence, suggesting that its senior partner Jean-Claude Liong lied in order to fend off a massive damages claim.

And, is the same Jean-Claude Liong telling the truth in a more recent (unrelated) clash over compensation with a powerful Mauritian cabinet member?

Yes, this could be relevant.

The Leaderguard Spot Forex scam surfaced ten years ago. It saw 1,200 investors, many of them pensioners, stripped of their savings to the tune of \$55 million – more than R760m today. (*See page 21 for background.*)

The battle to bring KPMG to account in Mauritius has been long and grueling. As one seasoned South African advocate puts it: "One doesn't fully know what's at play on that little island. We go over there and see things as pretty clear. The Mauritian counsel and the lawyers see it very differently."

First crack against KPMG was launched by Leaderguard's liquidator Jose Thibaut in the Supreme Court of Mauritius in 2007. Beset by delays, it was finally withdrawn following a 2009 House of Lords majority decision that a liquidator cannot sue the auditors of a company whose directors had dirty hands, as their testimony would be un-

trustworthy. (Mauritius, a French colony for 200 years, then under British rule until 1968, has a hybrid legal system based on English and French law.)

That setback moved liquidator Thibaut to claim against Swiss-based KPMG International in South Africa. The case went all the way to our Supreme Court of Appeal, which threw it out on the grounds that locally owned and managed KPMG in Mauritius is merely a member firm of the worldwide co-operative, a licensee of the KPMG marks but responsible for its own obligations and liabilities.

It was with some trepidation that Thibaut realigned his sights back on the Mauritian courts. "The reality is, we have been let down by the attorneys/counsel in Mauritius, who have not prosecuted this claim as expected," he wrote to investors in November 2012. "In short, we've had a number of unacceptable and unexplained delays. I have, accordingly, had to seek replacements for both the attorney and the counsel."

Thibaut added that Advocate Sydney Alberts from Durban would travel to the island "and ensure that the process is brought back on track". Six months later the liquidator reported that this had been done and that Alberts himself would argue the matter when it got to court, which "all things being equal will be before the end of November 2013".

After this, a deafening silence and essentially, a news blackout for investors. In Mauritius, Thibaut refused their phone calls and, in Durban, Advocate Alberts's phone just played – and still plays – a recorded message: "Please will you send me an SMS as I do not listen to messages."

We can reveal that the 2013 pleadings drafted by Alberts contained explosive stuff. This time, to get round the House of Lords ruling that scuppered the previous action, the key witnesses against KPMG were not tainted Leaderguard directors, but two independent brokers from Cape Town, Christo Malan and Michal Calitz.

Filed by Mauritian attorney Roshan Rajroop in the Commercial Division of the Supreme Court of Mauritius, the plaint quoted detailed assurances and safeguards that KPMG's Jean-Claude Liong allegedly gave to Malan and Calitz when they visited KPMG Centre at 30 St George Street in Port Louis on 18 February 2003.

In short, in addition to KPMG's auditing function, Liong promised that his firm would monitor and supervise Leaderguard's spot forex trading activities.

According to Christo Malan's affidavit, when discussing the practical implementation of investors' trading mandates, Liong told Leaderguard's Stefan Pretorius, who was also there: "I will close you down if you exceed the written mandate". Liong's assurances, said Malan, provided him with "a great deal of comfort" and he subsequently recommended investments in Leaderguard to his clients, albeit limited to 5% of their available savings.

If the brokers are telling the truth, and, had their evidence been accepted in court, it could have had devastating consequences for Jean-Claude Liong and KPMG in Mauritius. For *Noseweek* holds a letter written by Liong to Leaderguard's liquidator, Thibaut, in which he claims: "We deny having met certain brokers and/or made any representa-

**Clockwise from right:
Independent broker Christo Malan;
Mauritian finance minister Roshi
Badain; KPMG's Jean-Claude Liong;
and Mauritian Chief Justice Yeung
Sik Yuen**



tions as alleged incorrectly by you.”

Christo Malan is no cowboy. His Autus Fund Managers in Cape Town has R800m under management and the company won a 2014 Raging Bull award for best SA multi-asset flexible fund. Malan is still outraged by Liong’s claim that their meeting never took place. “This is totally untrue,” he tells *Noseweek*. “I’ve still got his original business card that he gave me, airline tickets, everything.”

Michal Calitz, who now heads Impact Financial Consultants, also made an affidavit which confirms Malan’s account of the meeting. (More recently Calitz hit the headlines when the Fais Ombudsman (Financial Advisory and Intermediary Services) ordered him to repay more than R10m to 16 investors to whom he had recommended investments in Herman Pretorius’s collapsed Relative Value Arbitrage Fund (RVAF). Calitz hasn’t paid up and says he’s appealing the ombudsman’s determinations.

In the event, the 2013 Mauritius Leaderguard case with its sensational allegations was suddenly withdrawn from the Supreme Court roll in Port Louis by the liquidator.

To this day the Leaderguard investors have not been made aware of the case’s demise, let alone the apparent reasons, as now recounted to *Noseweek*. A well-placed senior lawyer tells us: “There was a summons issued, then it was withdrawn because of certain tactical reasons. They’ve changed the courts there now. Up until a year ago the Chief Justice had what they

**It’s a small island
and everybody
knows everybody.
The concern was:
where would the
loyalties lie?**

called a Commercial Court. The presiding officer was a Chinese guy linked to KPMG, so it was thought inappropriate at that time to proceed.” Pressed to elaborate, the lawyer continues: “I’m telling you about the concerns of the legal advisers in Mauritius at the time. There was a Chinese judge and Chinese guys who controlled KPMG. The Chinese are the two primary shareholders of KPMG Mauritius. KPMG has a very strong presence in Mauritius. It’s a small island and everybody knows everybody. The concern was: where would the loyalties lie?”

Mauritius has a small but powerful community of Mauritians of Chinese origin, known as Sino-Mauritians. Although making up only 2-3% of the 1.3m population, 25 of the top 100 companies on the island are owned by Sino-Mauritians. Chief Justice of the Supreme Court when the Leaderguard summons was filed in mid-2013 was Yeung Sik Yuen. A notable Sino-Mauritian who was called to the bar at Lincoln’s Inn, Yeung Sik Yuen had sat as a judge in the Supreme Court of Mauritius since 1989. He stepped down as Chief Justice on 31 December 2013, on the eve of his 67th birthday.

KPMG Mauritius was established in 1985 and for 25 years its managing partner and chairman was Wilfred Koon Kam King, a powerful Sino-Mauritian and freemason (member of the Lodge of Friendship No.1696). Sino-Mauritian Jean-Claude Liong (full name Jean-Claude Liong Wee Kwong), was elevated to take the senior partner’s position in 2010. Liong’s Linked-In entry describes him as “partner and owner of KPMG”.

Whether there was skulduggery, or whether the Sino-Mauritian connection between judge and senior partner had merely fed the notorious paranoia of the Mauritian lawyers and the equally notorious suspicions of Leaderguard’s liquidator, the appointment of Khesgoe Parsad Matadeen as the new Chief Justice from the beginning of 2014 neutralised any possible danger of Sino-Mauritian intrigue.

Following Chief Justice Matadeen’s arrival, Advocate Alberts urged Thibaut to re-launch Durban businessman Sergio Domiro’s test case in Port Louis. He prepared a new plaint and after it was delivered to new Mauritian counsel, Thibaut eventually agreed to pro-

ceed. “Due to KPMG’s strong presence in Mauritius they’ve had tremendous difficulties finding representation,” says a seasoned observer. “They’ve had multiple legal representatives – way more than eight.”

Domiro, who claims R5m damages against KPMG for failure in its duty of care, confirms that the case is proceeding. “These things have been in and out of court there for years. I’ve lost a hell of a lot of money and if we’re successful it’ll be a bonus,” he says.

“Most of the investors’ \$4m fighting fund, the pot, is gone to the liquidator and the lawyers – they got paid handsomely. If anything’s left, it’s just a question of time before they eat that as well.”

News of the new action will be welcomed by the less cynical of the Leaderguard investors. They have been in a state of puzzlement for the past three months since receiving an email from Advocate Alberts forwarding a communiqué that he had received from liquidator Thibaut. The communiqué, issued by KPMG management in Mauritius on September 16, had been published in the Mauritian press. Bafflingly, it referred to KPMG’s role as auditors of companies in an entity called the BAI Group, particularly BAI Co (Mauritius) and its Bramer Banking Corporation. [*Baffling because Bramer’s lender’s licence was revoked in April over allegations that it was running a \$693m Ponzi scheme.*]

The communiqué referred to a September 4 meeting between its senior

‘If anything’s left, it’s just a question of time before they eat that as well’

partner Jean-Claude Liong, Trevor Hoole (senior partner and CEO of KPMG South Africa) and Roshi Bhadain, the Mauritian minister of financial services. It emerges that a week after this meeting, Minister Bhadain announced in a live TV programme that at the meeting, KPMG (Liong) had agreed to pay fines and penalties over the Bramer debacle.

This statement by the minister was untrue, declared KPMG’s communiqué. “KPMG did not commit or agree to any settlement or compensation at that meeting.” In his accompanying email, liquidator Thibaut asked Advocate Alberts to pass the following message to all South African investors: “On my part we are waiting for the next step from the Mauritian government and the investors in BAI Group to launch the Leaderguard case.”

This clumsily-worded message by the French-speaking liquidator has caused enormous confusion among investors. What have BAI Group, BAI Co and Bramer Banking to do with Leaderguard? And what’s this about launching “the Leaderguard case”?

What Thibaut meant was that he had decided to delay the launch of Sergio Domero’s test case against KPMG while he awaited the Mauritian government’s “next step” in respect of BAI Co. Since KPMG states in the communiqué that its senior partner had made no concessions at all to the minister on September 4, this makes no sense.

So now we have – eight years apart – two denials by or for Jean-Claude Liong of statements he is alleged to

have made, both of which could be highly compromising for the KPMG firm that he apparently owns. The communiqué’s statement that the minister was untruthful on live television is surprising. Bhadain is a barrister and chartered accountant who returned to Mauritius in 2008 after a glittering career with KPMG Forensic in London, where he led fraud risk management projects for blue chip clients and undertook financial crime-busting assignments around the world. He was appointed Minister of Financial Services in Prime Minister Anerood Jugnauth’s cabinet a year ago.

What is also surprising is the unexplained presence of Trevor Hoole, senior partner of KPMG South Africa, at the disputed meeting with the minister. Hoole will not discuss with *Noseweek* his recollection of what Jean-Claude Liong promised or didn’t promise the minister on September 4. However, if KPMG Mauritius is responsible for its own obligations and liabilities, as tediously described by KPMG International’s deputy general counsel from Zug in Switzerland, back in the abortive South African action, what was Hoole doing involving himself now in Liong’s problem with BAIC? Possibly because, as well as senior partner and CEO of KPMG South Africa, Hoole is CEO of KPMG Africa Ltd, a separate legal entity incorporated offshore in the distant Cayman Islands comprising 14 national practices across sub-Saharan Africa, including Mauritius. The literature states these are all sub-licensees of KPMG Africa, managed “from a client’s perspective” as one firm.

Doubtless from some other convoluted perspective there’s a clever clause to get Hoole off the hook. But meantime why doesn’t Leaderguard’s liquidator go after KPMG Africa Ltd as well?

Jose Thibaut, liquidator of Leaderguard; Jean-Claude Liong, senior partner KPMG Mauritius; Roshi Bhadain, Mauritian Minister of Financial Services; and Trevor Hoole, senior partner KPMG South Africa did not respond to written questions.

● For more about the sort of services KPMG provides for its bigger, wealthier clients see *nose167* (Global Trader); *noses41, 43 & 65* (Saambou, Investec, SA Reserve Bank); *nose53* (SA Breweries); *nose180* (Randgold, “Shifty shades of Gray”). ■



KPMG's Trevor Hoole

A feast for lawyers and auditors

BASIE VENTER AND SON JUAN, Stefan Pretorius and Renso du Plessis were the principal directors of the Leaderguard group of companies. Juan Venter and Renso du Plessis arrived fresh from Prozet, their defunct forex investment company that went into liquidation in 2001; R80m of investors' money down the drain.

The same year Juan Venter and Du Plessis formed Leaderguard Securities (LS) in South Africa, with plush offices in Sandton. Its function: to bring in the punters and their money for a new forex trading venture. Initially, trading in this most hazardous of markets was supervised by LS. Late in 2003 Leaderguard Spot Forex (LSF), incorporated in Mauritius, took over.

KPMG on the island was retained as company auditors – plus, it is claimed, to perform crucial verification procedures, including regular confirmation of investors' separate balances on their trading accounts. KPMG has maintained that its only function was to conduct an annual audit.

LSF paid a monthly commission of 1.85% to LS on total initial amounts placed with LSF, regardless of how trading was performing. This regular windfall maintained the directors' lavish lifestyle but placed enormous pressure on LSF to perform. As trading losses built up, more and more funds were required to pay the commissions. Additional investors were suckered in with TV advertisements that ran alongside the then-popular soap *Egoli*.

Initially, the forex trading was done in London by GNI, then a subsidiary of Old Mutual. From October 2003 this function was taken over by the Danish investment bank Saxo, in Copenhagen.

A KPMG audit signed off in 2004 failed to disclose any significant losses, or show a statement indicating whether trading mandates had been adhered to. Later the liquidator would reveal

that \$10m to \$12m under management at GNI in London had been lost. By August 2004 around 58% of funds under management at Saxo in Denmark had been lost/dissipated. Three months later more than 20% of Leaderguard's remaining funds at the bank had gone.

Although Leaderguard claimed to have around \$56m under management in February 2005, by then most of it had been lost. LSF directors were aware of the losses, but concealed them from investors with false information.

LSF was placed under judicial management in Mauritius on April Fool's day 2005. Mauritian liquidator Jose Thibaut was appointed the following January. Thibaut seized what cash and assets there were – he got R2.9m for the Leaderguard game farm and R3.4m for a building in Mauritius. It all produced a kitty said to total around \$4m, which investors opted for the liquidator to use as a fighting fund to recover their losses, rather than take a token payout.

So far Thibaut has had no success

and in ten years the fighting fund has been all but eaten up in his fees and all the legal costs.

Thibaut and his legal team flew to London, where leading counsel advised it would cost at least £3m to go against GNI. So that proposed action was dropped. The liquidator felt there was a good chance of success against privately-owned Saxo Bank, which had received the funds and done the forex trading. The commercial court in Copenhagen found that Saxo indeed had a case to answer, but insisted that 5m kroner (R10m today) be put up as security for costs before the case could proceed.

This was reduced to 2m kroner (R4m) on appeal. Thibaut wanted the investors to come up with 1.47% of what each had invested to meet this demand. But only a handful came up with a deposit so that action was withdrawn – collecting an order to pay Saxo's legal costs – amounting to 2m kroner. The investors' Johannesburg attorney Sean Sim said in a confidential report at the time: "There is no doubt that Saxo was relying on this hurdle to prevent the investors proceeding with their claims."

In a decade, there has been little in the way of criminal retribution. In October 2005 the Leaderguard masterminds received slap-on-the-wrist fines in the intermediate court of Mauritius. Stefan Pretorius and Basie Venter were each fined 800,000 Mauritian rupees (R304,000 today) after pleading guilty to four counts of falsification of documents. Renso du Plessis was fined 400,000 rupees (R152,000) on two counts of the same offence.

The merry band that pulled the scam returned to South Africa – Basie Venter, to run a car wash in Sandton; Renso du Plessis, to land a job as sales manager with JSE-listed retail company Verimark.

The Scorpions investigated. But nothing ever came of it. ■

Directors were aware of the losses, but concealed them from investors with false information



Something's rotten...

People live in Glen Austin and surrounds for the peace and quiet, and to be next to the dams in the area. But it stinks, and the birds are dying. And neither the council nor the local dump site will take responsibility. By Helen Grange

FOR THE PAST SIX MONTHS, RESIDENTS of Glen Austin near Olifantsfontein in Midrand have woken up to the unbearable reek of rotten eggs. Suspicion immediately fell on the Interwaste FG landfill site. Many locals have come down with health problems including stinging eyes, skin allergies, sinusitis, asthma, coughing and other respiratory ailments.

It is not only humans who are suffering. Scores of birds are dying daily and horses are coughing, yet there has been little or no official explanation of the smelly air, and possible poisoning of the environment. On September 23 during a clean-up, nearly 50 African sacred ibises were found dead at the Glen Austin Bird Sanctuary and the Bullfrog Reserve, as well as ten blacksmith plovers, one moorhen and a dog.

In vain, residents have asked both the Ekurhuleni council and Interwaste for an explanation, and have launched a petition calling on Ekurhuleni Metro as well as the provincial and national governments to “stop pollution of our streams, rivers, wetlands, stormwater channels and other water bodies with the continuous overflowing of sewerage and other toxic materials”.

The affected areas are North Eastern Johannesburg, incorporating Glen Aus-

tin, Clayville, Midstream and Olifantsfontein, as well as parts of Centurion. At a Midstream Estate residents’ meeting on 14 October, 77% complained that they were living with the stench constantly and some said they had gone so far as to tape up their doors and windows to keep out the smell.

Residents are convinced the source of the stench is Interwaste – which has denied responsibility, yet assured residents in an email on October 9 that it had installed aerators at the leachate collection dam.

“Aeration will lead to a short increase in smells from the dam, but thereafter there will be a noticeable reduction... Interwaste intends running the aerators all weekend to eliminate the current sulphuric smell,” wrote area manager Marius Conradie. But having since visited the site, *Noseweek* can confirm the stink still fills the air.

Resident Sandy Harvey emailed all stakeholders, including Johannesburg’s environmental health chief and the *Carte Blanche* team, asking: “How can one company do so much damage and be allowed to get away with it? The stench and chemical fumes emanating from the dumpsite... is starting to cause health problems... To try and go to sleep with the fumes... and to wake

up to that same smell is unbearable.

“Both human beings and livestock in this area are starting to show signs of slow poisoning. Bear in mind the animals live out in paddocks and are inhaling this poison on a daily basis. Why should we have to live with our windows closed because the people we turn to for protection from this kind of exploitation are sitting by and doing absolutely nothing?”

After inquiries by *Noseweek*, Interwaste released a media statement. It devotes the first page to its credentials and accreditation and the type of waste it accepts. CEO Alan Willcocks says in it that most of their waste is “general municipal and domestic” but that they also accept commercial and industrial waste and “smaller quantities of delisted hazardous and Type 2, 3 and 4 (moderate to low risk) waste”.

“The main odours emanating from the site are a result of the disposal of food waste and waste from the food and beverage industry. Interwaste is diverting in excess of 1,000 tons of this kind of waste per month to a facility which utilises it for the generation of electricity through an anaerobic digestion process,” wrote Willcocks.

Addressing the residents’ concerns – and admitting that the smell may



emanate from the landfill site – he said Interwaste had installed permanent aerators in the leachate dam and was implementing “air-quality monitoring”. It would also sponsor an “autopsy of any animals/birds that perish on or off our property within a radius of 3km,” over the next month, and would appoint an occupational health professional, on nightly standby for six weeks, from whom residents could request air quality sampling. Once all the results had been obtained, Interwaste would hold an extraordinary monitoring meeting.

Willcocks said weather conditions would be recorded and the results compared with the time, location and frequency of complaints. “This will be useful for assessing the source of the odour, given that there are a number of other potential sources of nuisance in the area including sewerage, a hazardous waste incinerator and illegal dumping by external parties”. Other culprits, he suggested, included a medical waste disposal facility and tyre processing plant in the area.

Residents are not convinced. They’ve been given the runaround for more than a year, despite having escalated the matter to Ekurhuleni council.

At the time of going to press, two weeks after Interwaste’s undertaking, the stink was as bad as ever, and some residents had taken to collecting dead birds for examination. One resident, Dave Allanby, has forked out R1,549 to have an independent autopsy done on a Loerie at Onderstepoort Veterinary Hospital in Pretoria, to obviate any possible meddling by Interwaste.

Even Johannesburg’s environmental health manager, Jacques Scholtz, has felt obliged to intervene, urging

Gauteng’s Water and Sanitation manager Mogale Matseba to establish why there has been no response to complaints – either from the Department of Agriculture and Rural Development or from Ekurhuleni’s Environmental Resource Development Department head, Patricia Sithebe.

“Kindly be advised that your department’s urgent intervention will be appreciated, as the City of Johannesburg has no legal jurisdiction in this regard but will need to protect its residents from being exposed to this unaccep-

table situation,” Scholtz wrote in an email on 13 October.

Back in May, the issue came up in Parliament, when the DA’s Johni Steenkamp asked environmental affairs minister Edna Molewa what businesses in the area had applied for certification under the Air Quality Act, and asked when last air quality tests had been done.

The answer was that an Ekurhuleni mobile ambient air quality monitoring station had measured sulphur dioxide (SO₂) levels which “occasionally exceeded the NAAQS (National Ambient Air Quality Standards) mainly due to the large volume of heavy duty trucks that operate in the area”.

To date, nothing has been done and residents, especially in the low-lying Midstream Hill, Tembisa, Ivory Park and Glen Austin Ext1” areas, are being affected, with the number of asthma and sinus cases rising sharply according to a local doctor. Says one resident, “the whole area has become inhospitable, thanks to the renegade landfill site and no government intervention”. ■

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Brave lawyer has regrets

Richard Spoor won the battle against the mining giants – but lost to Facebook. By John Clarke

PEERING DOWN FROM THE PRESS gallery in the Constitutional Court on 17 August 2010 one couldn't help but notice the asymmetry between the “for” and “against” benches. That was the day that Thembekile Mankayi vs AngloGold Ashanti Ltd was being argued. On the applicant's side of the court a single attorney “David” (Richard Spoor) stood with a British law student and a social worker passing him ammunition as he aimed his slingshot at the “Goliath” ranged against him – the gold mining industry.

Spoor was in pursuit of a claim for R2,6 million on behalf of his client because “AngloGold negligently exposed him to harmful dusts and gases as a result of which he contracted diseases

in the form of tuberculosis, silicosis and chronic obstructive airways which have rendered him unable to work as a miner or in any other occupation”.

AngloGold did not deny the cause of Mankayi's illness but argued that the R16,300 compensation he had already received under the prevailing legislation was all he was legally entitled to.

En route to the Constitutional Court, both the High Court and Supreme Court of Appeal had agreed with AngloGold. With an unpaid bill for the advocates he had briefed hitherto, Spoor had no option but to robe himself with an inky cloak, borrow a ruff and seek leave to appeal to the Constitutional Court. He was five days late in doing so because he had been scrambling for money.



Richard Spoor in a sea of briefs



Seven months later on 3 March 2011 Judge Sisi Kampepe handed down a unanimous landmark judgment that condoned the late application, granted him leave to appeal and granted Mankayi's application. Sadly Mankayi had succumbed to his illness the previous week, but the judgment opened the door for every mineworker suffering from silicosis or TB because of unhealthy working conditions underground, to also sue their former employees. That could be as many as 300,000 people. If they each claimed R2,5m the gold mining industry would have to cough up R750 billion. Thus the judgment has the potential to be far more significant than Spoor's previous success in 2003 when he negotiated a R460m settlement with Gencor mining on behalf of people sickened by asbestosis as a result of Gencor's asbestos mining operations. The settlement led to the formation of the Asbestos Relief Trust and the Kgalagadi Relief Trust for the benefit of the thousands affected.



“We now know that if the full health and environmental costs of asbestos mining had been anticipated and factored into the risk profile of the industry, asbestos would never have been mined” Spoor says. “The cost benefit ratio was totally skewed against asbestos ever adding public value”.

Empowered by the lessons he had learned about the congenital failure of the mining industry to do full cost accounting he continued along the learning curve to subject the gold mining industry to similar scrutiny. “It was clear they were not dealing with the slow onset chronic health problems and disease burden to society of workers inhaling silica dust.”

It has taken five years for Spoor to get back into court. On the way two other law firms, Abrahams Kiewitz Inc and the Legal Resources Centre have consolidated their efforts to gather and assess possible claimants to mount a class action suit against the mining industry, but the largest courtroom in the

Johannesburg High Court was not big enough to accommodate all the legal teams who crowded in to argue whether the necessary and sufficient conditions for a class action suit existed. A

**Black lawyers
lament that they
'are on their own'.
I have been on my
own for 30 years**

head count yielded 65 lawyers in the benches and several more in the public gallery and standing in the aisles. In contrast to the lonely figure he had cut in the Constitutional Court, Spoor was now surrounded by nine advocates to represent worker interests. Alas, journalists could not help noticing that the benches of both sides were overwhelmingly populated by white men.

Since this happened in a country that seems to have lost its way between the Red Sea and the River Jordan in a desert of racial recrimination, that glaring racial and gender asymmetry was always going to threaten to eclipse the substantive issue. Nobody expected that it would be Richard Spoor who would be the catalyst to turn what ought to have been a historic event in the bending of the arc of history toward justice into an ugly race row.

Spoor, who uses Facebook as a confessional to ventilate his thoughts, tried to explain the racial asymmetry (at least from the side of the sick mine-workers' team) on somebody else's timeline. It backfired spectacularly. The black legal fraternity, led by the Chair of the Johannesburg Bar Association and President of Advocates for Transformation (AFT), Advocate Dali Mpofu SC, refused to accept Spoor's apology and retraction, spurned his offer to meet with them and did not rule out the prospect of pressing charges against Spoor in the Equality Court.

“We believe one cannot apologise for harbouring and articulating racist beliefs about the inherent inferiority of fellow human beings”, fumed Dali Mpofu, reading from a statement from AFT on the final day of the case, having been given permission by the court to address the court on the matter.

A succession of opinion pieces from aggrieved black lawyers who interpreted Spoor's comments as directed at them personally, suggests the issue is not going to blow over.

In the meantime one emergent truth has surfaced. Spoor was probably the only lawyer who could have argued the Mankayi case five years ago. Even if there had been an advocate willing to do so pro bono, none of them had sufficient immersion in the issues or the experience he brought with him fighting Gencor for so long to obtain a settlement for asbestosis victims.

That is not because of the pigmenta-

tion or personal values of any lawyers, but because the law remains an ass, as Charles Dickens famously observed, notwithstanding the law reforms that have occurred in the past 200 years. The whole point of Dickens's oft-quoted line was that, for want of eye-opening real-life experience, the abstract suppositions of the law were prone to idiocy. From a legal layman's point of view that a sick miner should have the right to sue their former employer for causing them to contract a chronic disease was self-evident. Why should it have needed all that time and money spent to persuade the Constitutional Court to approve it?

Dickens's other observation about the law, made in *Bleak House*, seemed to be the real motive energy "...to make business for itself. There is no other principle distinctly, certainly, and consistently maintained through all its narrow turnings. Viewed by this light it becomes a coherent scheme and not the monstrous maze the laity are apt to think it. Let them but once clearly perceive that its grand principle is to make business for itself at their expense, and surely they will cease to grumble."

Obsession with money and preoccupation with legal abstractions causes another disease: chronic ass syndrome.

Richard Spoor may appear to be an idiot for some of his posts in the highly



Richard Spoor greeted at court by old friend and one-time client Zwelinzima Vavi

virtualised reality of Facebook but he has no rivals with the same experience-based understanding of occupational health and safety jurisprudence.

"Richard the blacksmith has been toiling away in isolation for years in his humble, hot, noisy, gritty workshop forging something new for society – something radical like jurisprudence," says Dr Jim te Water Naude, with whom Spoor has worked extensively on dust diseases. "He takes a step back to reflect, wiping his face, and some onlooker with sanitised hands says

"There aren't enough blacksmiths in there'."

Had an advocate (black or white) argued the Mankayi case five years ago, with Spoor briefing them, they would probably have still won. What is indisputable is that, had Richard Spoor not gone out on a very brittle limb to argue the case himself, a black female judge would never have had the opportunity to write a ground-breaking judgment that offered some hope for suffering ex-mineworkers and some treatment for the chronic donkey syndrome that afflicts the law.

Neither would any lawyers, black or white, have a large bone of billions of rand in legal fees to fight over.

"Richard Spoor is one of the few lawyers whose track record speaks of someone who has consistently and courageously sought to make the law an instrument of social justice rather than a means toward more money and more power for those who don't deserve either" says Pasika Nontshiza, a land rights activist and independent ward councillor from Umtata, who has worked with Spoor as a paralegal in the preparation of the case.

Spoor deeply regrets his ill-considered comments – as well as the shallow and highly defensive attitude from his colleagues. "Black lawyers lament that 'they are on their own' and cannot expect white lawyers to help them. I have been on my own for 30 years and could do with some help from them myself." ■

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Hospital horrors torture patient

Farcical treatment delays likely to leave young father a cripple. By Susan Puren

WHEN LINAH MKHONTO'S BOY was born on 16 December 1980 she named him Dingaan, after the Zulu king whose impis were defeated by the Voortrekkers at the Battle of Blood River 142 years earlier, on the 16 December 1838. If his mother hoped to prepare him for battle, her choice of name was prescient: today the 34-year old Dingaan Mngomezulu is fighting the battle of his life – for the medical care to which he is entitled.

In the process, Mpumalanga's MEC for Health, Gillion Mashego, has narrowly escaped being locked up – but the Sheriff was barred from entering the provincial offices ostensibly because it is a national key point.

After matriculating in 2003, Mngomezulu established himself as a handyman in the small farming town of Hazyview, next to the Kruger National Park. Times were tough, but some months he managed to earn R5,000 to provide for wife, Edith, and their three children, now 14, 10 and 8.

But on 2 April this year Dingaan fractured the femur of his right leg while at work in his rural village, Marite. Although that same day he was admitted to the nearest medical facility, Matikwana Hospital, about 10km from Marite, he was seen by a doctor only two weeks later.

Meantime, his leg had been placed in makeshift traction, using building bricks as weights.

Mngomezulu needed orthopaedic surgery which could be performed at Themba Hospital near White River or the Rob Ferreira Hospital in Nelspruit

(Mbombela) but neither had beds available; 12 weeks later, the once-active young man was still confined to his hospital bed at Matikwana.

On the 26 June – after a request from a family member – he was allowed to go home. He was given no option but to sign the standard form that stated he was refusing hospital treatment.

A friend then took him to the Rob Ferreira Hospital but he was told to return later because there were still no beds available. After returning several times he was eventually told the hospital did not have the pins and screws required to perform the surgery he needed.

Desperate to save his leg, Mngomezulu then knocked at the door of Dr Corne Ackermann, a private orthopaedic surgeon in Nelspruit. She found that the fracture had not healed and that the femur was now 5cm shorter. In addition, Mngomezulu had no control over the movements of his leg; his thigh bent awkwardly when he tried to sit down; his Achilles tendon had shortened as a result of the prolonged period of traction; and his quadriceps muscles had wasted away, she wrote in the medical report that was later handed in to court.

On 2 October, Mngomezulu's lawyers brought an urgent application before the North Gauteng High Court in Pretoria to compel Mpumalanga's MEC for Health, Gillion Mashego, to provide Mngomezulu with the necessary medical treatment. But Judge Mmonoa J Teffo ruled that the case was not urgent.

"We were shocked," says Lesley



Breytenbach, Mngomezulu's lawyer. "This man was about to become permanently disabled and yet it is ruled that his case is not urgent?"

When the case eventually landed before Judge Hans-Joachim Fabricius in the motion court, he ordered the MEC to immediately provide appropriate care by an orthopaedic surgeon at a proper health facility. And, in an unprecedented move, the judge appointed himself as the case manager. He instructed MEC Mashego to provide him with a weekly report stating all the steps taken in order to comply with the order. Failure to comply would be contempt of court.

Jolted into action, Mpumalanga health authorities acted speedily. They told Mngomezulu to report to Matikwana Hospital because that was the proper procedure. But a vicious circle of arrogance and incompetence was once more set in motion.

Matikwana transferred him to Rob

Ferreira, which sent him by ambulance to Steve Biko Hospital, Pretoria, 400km away and in a different province. But Gauteng health authorities were unwilling to deal with Mpumalanga's problems, so they sent Mngomezulu back to Rob Ferreira, where he arrived late at night after another 400km journey.

Now wheelchair-bound, Mngomezulu waited through the night to be re-admitted. But that did not happen. Instead he was sent to Themba Hospital, Kabokweni, outside Nelspruit.

"I am desperate, I am heartbroken, how can this be?" Mngomezulu told *Noseweek* from his hospital bed.

The sheriff in Nelspruit has been unable to serve any court orders on the office of the MEC. Apparently the Sheriff had to apply for permission to have access to the building because it is a national keypoint.

Simply put, the fact that the Sheriff of the High Court of South Africa is not allowed in a government building is in principle shocking, says lawyer Breytenbach.

Mngomezulu's story is similar to that of hundreds of other patients waiting for orthopaedic surgery in Mpumalanga's Themba and Rob Ferreira hospitals. But this is only a small part of the picture, says an insider: "If you have to add all the patients attending the clinics and who are told to come back week after week because there are no beds, as well as those who were discharged after failing to get their operations, then you are looking at a minimum of 1,000 patients.

"At least nine state hospitals in the province refer orthopaedic patients to Rob Ferreira and Themba. Patients who need surgery but can walk are often discharged and told to follow up at the two hospitals' orthopaedic clinics. The clinics often don't have beds available for the patients who need surgery but because they are able to walk, they get told to come back the following week and when they return, they get told the same story.

"This may happen three or four times by which time it is too late for surgery. The patient is then permanently disabled without ever getting surgery," he says.

With orthopaedic trauma, where patients have fractures and tendon injuries, there is often a time-frame in

"They don't manufacture anything, somehow win a tender, then go to India and China to find implant suppliers"

which surgery is useful – a few days for some injuries and a few weeks for others. Without surgery, a broken bone for example will heal in an abnormal position and the patient will be permanently disabled – which is what happened to Mngomezulu.

"Scores of patients are now wheelchair bound or in crutches and will be in pain for years to follow."

But remember that Mngomezulu was told by Rob Ferreira Hospital that they did not have the pins and screws required for the surgery?

Noseweek's insider says the reputable and well-established companies that supplied the Mpumalanga Health Department with orthopaedic implants for years, were recently replaced by four newcomers, some of which have supplied implants made by a Chinese company previously unknown and not used by South African orthopaedic surgeons. During the first few operations using these implants, the screws and drill bits started breaking inside the patients, so the doctors in the orthopaedic department refused to continue using them.

The insider says that from the outset, the head of orthopaedics at Rob Ferreira refused to use implants from any of these newly-appointed providers because he was concerned about the quality of their products.

As a result, no orthopaedic surgery requiring implants has been performed at Rob Ferreira for the past

five months, says the insider.

One of the four suppliers, Clinipro, seems to be a ghost company, says the insider. All the others have sent representatives to the hospitals to show their products and encourage doctors to use them. But there has been no contact from Clinipro and attempts to get hold of them have failed.

Why would a company that has won a large tender not supply its products or try to promote them? It's the old story of the fly-by-night middleman, says the insider.

"They don't manufacture anything, somehow win a tender, then go to India and China to find implant suppliers.

"Established companies have surgical reps that are well trained in the use of their products and often are in theatre with the surgeon to advise on the best way to apply the implants. But fly-by-nights don't have any reps so even if they somehow manage to buy stock from China or India it remains difficult to use their products."

However, the backlog of patients waiting for surgery is only partly due to lack of implants. There are other problems too, says *Noseweek's* source. Operations at Themba and Rob Ferreira are repeatedly cancelled due to lack of linen, broken mobile X-ray machines and broken autoclave machines for the sterilization of instruments. A few months ago the theatre time allocated to orthopaedics at Themba was cut by about 50% by hospital management and allocated to other departments. Only three of the hospital's six operating theatres are in use despite there being enough doctors and nurses to run at least five of them.

It's all because of management incompetence, says the source.

But the wheels of justice turn slowly. On 9 November Mngomezulu's team of dedicated lawyers who had worked tirelessly without remuneration, heard that he will have to wait until the end of November for his operation. There are no guarantees for that.

Mngomezulu was devastated by the news. Numerous procedures could have been performed with all the money wasted on transport and fighting court cases, says a disappointed Breytenbach. "Why do South Africans have to turn to the courts to get government officials to do the jobs they are paid to do?" ■

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Patent nonsense

Experts say the draft intellectual property laws are laughable. By Hans Muhlberg

THE FIX THE PATENT LAWS (FTPL) Campaign issued a press release on 29 October, announcing that it had called on the Department of Trade and Industry (DTI) “to end years of pharmaceutical company price-gouging and broken promises for patent law reform, and produce a final intellectual property (IP) policy and bill to amend the Patents Act.”

The FTPL justified its call by saying that the prices of certain medicines for cancer, HIV and mental health “remain significantly higher in South Africa than in other countries, which prevents significant numbers of patients from getting the medicines they need”.

It said that it had drawn DTI Minister Rob Davies’s attention to the fact that there were a number of medicines “for which generic and biosimilar products are available outside South Africa, but are blocked locally due to South Africa’s problematic patent laws”.

The FTPL placed much of the blame at the door of the drugs companies, talking of “significant efforts made by the large multinational pharmaceutical industry in the US and Europe to sideline reform”, and the so-called “Pharmagate” plot, “in which international pharmaceutical companies sought to influence South Africa’s patent law reform process through a US-directed and funded front organisation”.

(When talk of this “plot” first emerged last year, Minister of Health Aaron Motsoaledi reacted in a way that certainly caught people’s attention, accusing the big drugs companies of being involved in an IP conspiracy of “satanic magnitude” and a “plan for genocide”).

The FTPL was, however, also critical

of the government. It quoted the General Secretary of the Treatment Action Campaign (TAC), Anele Yawa: “It is more than two years since the period for public comment on the draft Intellectual Property Policy ended and the policy appears to have been shelved... Minister Davies has repeatedly ignored requests from the Fix the Patent Laws coalition on when the policy will be finalised and a bill to amend the Patents Act brought before Parliament.”

What’s this all about? Many people believe that pharmaceutical prices in South Africa are artificially high, and that the patent system is to blame. South Africa has what’s known as a “deposit system” for patent registration, which means the authorities do not examine applications to make sure they comply with the conditions of the Patents Act, such as that what’s being claimed is new and involves an “inventive step”. Or that it must be capable of being applied in trade, industry or agriculture, or must not fall within a host of exclusions including scientific theory, a method of doing business, or the presentation of information.

No, in South Africa, getting a patent is pretty easy: get the formalities right and your patent will be granted.

The validity of a local patent only comes into issue if challenged by a third party. That’s only likely if the patent owner threatens or sues someone who’s supposedly infringing the patent and the alleged infringer thinks the patent is bad – and is prepared to take on the patent owner. This seldom happens because patents are often owned by multinationals that are wont to engage large and expensive law firms.



The effect of this rather odd state of affairs is that there are possibly a number of “bad” patents in South Africa. These may inhibit people from doing what they should be entitled to do.

The deposit system has little merit other than to keep down the cost of registration; in countries where there is an “examination system” (generally, developed countries), the fees to be paid to the government are often higher than in South Africa – for the simple reason that these countries need to employ teams of expensive science grads to examine the applications.

The issue of patent examination is a particularly hot issue in South Africa because of what’s known as the “evergreening” of patents. This relates to the fact that pharmaceutical companies like to extend the 20-year life of their patents to keep the generics at bay by patenting slight modifications, for example to the process of manufacture. You can see why they like to use the word “evergreening”. It’s so much nicer than a phrase like “artificially extending the term of the monopoly”.

The issue of evergreening came to the fore in a recent Indian court case, where the highest court ruled that Novartis could not patent an improved version of its best-selling Glivec drug because it amounted to evergreening.

The South African government clearly believes that evergreening is a sig-

nificant cause of high pharmaceutical prices, and that it can stop evergreening by introducing patent examination.

In 2013 the DTI published something called Draft National Policy on Intellectual Property. It was seemingly meant as a statement of intent. To describe this document as poor would be a laughable understatement.

IP experts shook their heads and whispered in corners. Those who don't have to kiss arse in order to survive, however, did not hold back. This is what retired Appeal Court judge and IP expert Louis Harms had to say of the document: "It is unfortunate that ... the document was not drafted with care... embarrassingly, the policy document shows some lack of appreciation of South African IP law... one cannot escape the conclusion that as policy, it promises candy-floss: it is very sweet but it becomes sticky if you touch it and it disintegrates on eating, leaving no aftertaste."

The stand-out feature of the policy document is the very clear suggestion that the South African patent system will change from a deposit system to an examination system. That's all very well, said those in the know, but just where are you going to find all these science types who will need to examine the patent applications? After all, the policy document itself describes South Africa as a developing country "with the bare minimum of a technological, economic or social base".

And, as they might have added, had they had the prescience, bear in mind that our universities will be in a state of complete turmoil in a few years' time.

Some people started speculating about how patent examination might work in South Africa. Professor Caroline Ncube of the University of Cape Town's law faculty published a paper in which she discussed various alternatives. These include collaboration between the South African patent office and those of other countries (seemingly a form of out-sourcing of the examination function), a limitation of examination to certain types of patents such as pharmaceuticals, and provision for third parties to oppose patent applications. But all the signs are that the government intends to go ahead with full-scale patent examination.

In early 2015 IP lawyers were informed that patent examination

Judge Harms said the draft policy statement was an embarrassment

would be going ahead. A few months later the Companies and Intellectual Property Commission advertised positions for 20 patent searchers. In each case a science or engineering degree is a requirement.

The word is that the plan is to get the examination system operational by 2017-2018. So the people from FTPL and TAC – not to mention all those patients struggling to pay for their drugs – will have to wait at least that long before any new measures that may affect drugs prices are in place. And quite

possibly longer, if the estimate turns out to be a tad optimistic.

It's not only in South Africa where patents are under scrutiny. In the developed world there's also a debate centred on the software patents that find their application in smartphones and mobile devices. These have, of course, led to billion-dollar damages awards. They are often owned by "patent trolls" – companies with no interest in working the patents, simply in licensing or enforcing them. Some argue that these should enjoy a much shorter term of protection. Twenty years does seem absurd for a feature that appears on an iPhone.

Ironically they claim it's the patents so vilified in South Africa – pharmaceutical patents – that are the "poster child" of the patent system, and fully deserving of the lengthy protection they get. The thinking is that, once there's an examination process, applications for evergreen patents will be refused on the basis that what's being sought is not new but simply an modification of an existing drug.

The effect of this will be that, once the original patent has expired, generics will be able to enter the market. ■



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Turf wars. Two tales of a city

HERE'S A TALE OF TWO BOOKS WHICH have nothing, and everything, to do with each other.

We are all dimly conscious of the fact that South Africa's umpteen tribes live in parallel worlds. Further social fragmentations within the groupings create a cultural kaleidoscope that defies national analysis. So it's amusing when two contemporary tales confirm the infinite human variety of this our land.

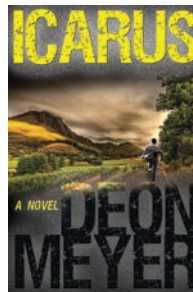
Sensible tourists sometimes try to bone up on their holiday destinations by reading popular local novels. If they tried to use *Icarus* and *The Fetch* as guides, they might have the impression that they speak of different lands.

Deon Meyer's now familiar world of the Benny Griessel series is entertaining snap/crackle/pop big city stuff; Finuala Dowling rejoices in the natural world, with intriguing drop-out characters.

The wildly contradictory stories confirm the pointlessness of seeking to generalise about our vividly individual population. The territory is the same, the time frame is here and now, but each caste represents a confidently independent social pigeon-hole.

Meyer's raffish bunch of detectives, familiars of his lively series, battle on in a

ICARUS
By Deon Meyer
(Hodder and Stoughton)



THE FETCH
By Finuala Dowling
(Kwela)



wicked world. The pathetically dignified, booze-soaked hero Bennie Griessel has fallen off the wagon again, but his shrink, his lover and his Alcoholics Anonymous sponsor loyally guide his tottering steps, more or less in the direction of righteousness.

There's a murder to solve, a satisfying number of suspects, and a surprisingly techie approach to crime-solving. The convincingly detailed police work is impressive. Example: the depiction of the good cop/bad cop routine. It seems that intimidation in a good cause can be a handy instrument.

All you have to do is create a dynamic of inevitability, of an irreversible process with one endpoint, and a very unpleasant one at that. Now and then you get an instant confession. But mostly it kicks off a process of negotiation where the detectives have the upper hand.

It turns out that Bennie's alcoholism arises from an overdose of violence, in which his inability to protect his family, his society, from surging crime rates creates a sense of guilt which can only be assuaged by another *dop*. And another.

Cupido, his gung-ho confrere, does his level best to keep Bennie focused, but it ain't easy. Not when your mate keeps

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sneaking out for a sip. It doesn't help that much of the action is set in the Cape winelands.

Meyer's constant incorporation of recent news events, from the Dewani trial onwards, gives the tale immediacy. The ripe language is translated from the Afrikaans, with a lengthy glossary for the comfort of *enkeltaliges*. There is also an impressive bibliography on wine. Meyer is clearly a diligent researcher.

While murder and mayhem are taking place in Meyer's world, Dowling is

steeped in nature and eccentrics on the other side of the bay. Ever the observant witness, she renders sympathetic portraits of those who flee suburbia for the quiet life. There are shenanigans when the local young laird shakes things up during weekend excesses at the decaying seaside manor/holiday house. The decadence applies also to the charming, selfish owner. But the villagers are tolerant of his excesses, and each other. Until things go too far.

There's romance, or the possibility thereof, and nature is very much pre-

sent in the form of Cape cobras, wild flowers, and the joys of simplicity. Not that the characters are simple. They are as unpredictable, stubborn and surprising as humans tend to be.

So – two very different books set in the same territory. There are probably as many South Africans as there are South Africans. Which is probably not a bad thing, despite the politicians' pious injunctions to merge individuality in favour of an obedient voting mass. But pity the poor tourist who seeks social definition. ■

War in a time of jollity

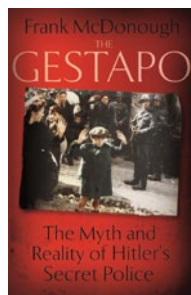
TIS THE SEASON TO BE jolly, as the supermarket public address systems insist. Odd then, that the publishers have just now poured out a veritable avalanche of wartime suffering.

Latest offerings include additions to the endless wash of WWII analysis, adorned with snapshots of the toothbrush-moustached little man who caused all the trouble. Randall Hansen has written *Disobeying Hitler – German resistance in the last year of the war* (Faber & Faber). Cover



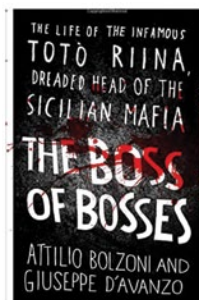
notes hint that Field Marshal Rommel was planning to open the Western Front to Allied forces as part of the German plot to assassinate Hitler.

Then there's *The Gestapo – The Myth and Reality of*



Hitler's Secret Police by Frank McDonough (Coronet) which draws on previously unpublished files describing the activities of ordinary people who opposed the Nazi regime.

Closer to home is *Recce – Small Team Missions Behind Enemy Lines* by Koos Stadler (Tafelberg). In the initial euphoria at the birth of the new South Africa, many harrowing tales of the Border War were



forgotten. Stadler promises nail-biting action revelations on dangerous missions by elite troops.

If that lot is insufficiently bloody for the war-minded, why not try a gory varia-

tion with *The Boss of Bosses – The Life of the Infamous Toto Riina, Dreaded Head of the Infamous Sicilian Mafia* by Attilio Bolzoni and Giuseppe d'Avanzo (Orion).

Len Ashton

Flame in the Snow

THE LOVE LETTERS OF ANDRÉ BRINK & INGRID JONKER

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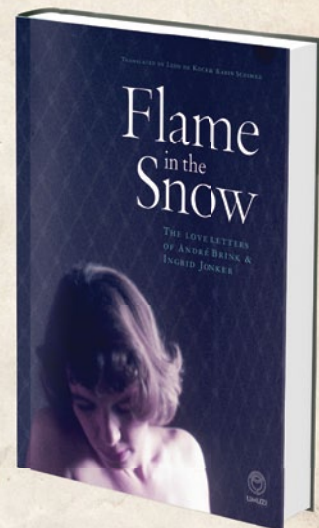
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Going places

Young South African tenor, Levy Sekgapane, has German opera audiences on their feet, cheering. The London Financial Times reviewer notes his ability to “nonchalantly deliver both fiendish coloratura and stratospheric high notes while giving every appearance of enjoying himself.” Yves van der Haeghen interviews Sekgapane after his recent starring performance in Germany.

HAVE TO BE GREAT; THESE PEOPLE COME for *Non più mesta* (the final pyrotechnical aria of Rossini’s *Barber of Seville*) and I can’t disappoint them, says Levy Sekgapane.

He’s still flushed with the success of the previous evening’s premiere in Krefeld, in Germany’s glum Ruhr Valley, where the audience was roused to a boisterously drawn-out standing ovation for the young South African tenor. Germany is home to a third of the opera houses in the world, and its audiences are notoriously hard to win over.

Sekgapane on the other hand is eager to please. The music critic Shirley Apthorp, who’s travelled five hours from Berlin for the show, tells me that he delights in putting in all the embellishments, and in holding the hard notes just a little longer than is needed, because he likes to treat his audiences. And as for that aria, it’s often cut, she says, because it’s too difficult for most tenors.

Sekgapane, a graduate of the University of Cape Town Opera School, is clearly up for it, and it’s paying off with a string of awards. He says that winning the Mimi Coertse Singing Competition in 2013 gave him the confidence to believe he could make it on the world stage, and this year he has won the Hans Gabor Belvedere Singing Competition in Amsterdam (in which four of the new wave of South African singers were finalists), the Montserrat Caballé International Singing Competition in Spain, and the Samro Best Western Art Music Singer prize.

The boy from Kroonstad wears his laurels lightly as he orders a chicken wrap in the Grill Pallast restaurant near the Krefeld station as we chat. “No spices,” he tells the waitress. “Gives me reflux,” he says, “and that’s not good for my throat”. The post-premiere celebrations carried on into the early hours. It’s now Sunday afternoon and Sekgapane’s looking fresh. Celebrations are a muted affair for him. He doesn’t drink or smoke. Yes, he used to enjoy a few beers during his rugby-playing days at university, but in his fourth year he decided it wasn’t doing his voice any good and he hasn’t had a drink since then. It’s all about discipline, he says.

“Talent takes you only so far. The rest is very hard work.” And keeping in shape physically is crucial. He’s sporty, so he enjoys keeping fit. He played first team hockey and rugby at Stellenberg High School in Cape Town, where he was a boarder, and he had dreams of playing fullback for the Springboks. “But I’m too small,” he says. A Kaizer Chiefs supporter, he enjoyed soccer too, but it wasn’t offered at school, where only rugby mattered. Now he keeps fit from gym and a bit of cycling, and he’s taken some tennis lessons for good measure. “It helps for balance and coordination in performance.”

There it is again, the single-minded discipline. Sekgapane wants to be the best, and apart from the brief Springbok dream, it was always going to be music. For most of his early life, he was set on becoming a concert pianist. His uncle, a conductor with the Johannes-

burg Philharmonic Orchestra, thought his voice had the greater potential. He persevered with the piano, although he continued to sing in choirs, but in his second year at university he had to accept that his voice had outstripped his piano skills and that his career lay, beyond doubt, in opera. And with it, the sacrifices. Cutting off his dreadlocks in June is the least of it: “I can’t do Rossini with dreads; it doesn’t fit.”

There is the fun part. He gets to travel, which he loves. Ever the cosmopolitan, this lover of baroque, and Bach especially, is thrilled to be able to observe, in Barcelona, “Ah, the Spanish do this,” or in Dresden (where he has a three-year scholarship) “Ah, the Germans do this”. It’s in Barcelona that he wants to buy a house, “when I’m rich”. I ask why: “Ahhhh, the weather”. Snow’s fine, “I love it”, but Barcelona has sun “like nowhere else”.

But as Apthorp says when I speak to her about Sekgapane’s rise to fame, there is a flipside. “Succeeding as an opera singer is a lot less glamorous than it sounds... You have to want it more than anything else, because the price is so high – you’re basically opting for a future lived in hotel rooms, and you’re giving up home, stability, family, and personal relationships...”

“Sure, some stars end up in relationships or with families, but because of the endless travel, it’s a great deal harder for them than for ‘normal’ people. You need a single-minded passion for the music itself, and Levy has that.”

Sekgapane has no illusions about



Mr Sekgapane changes trains: Levy in Germany

this, but he's got everything under control. He's only 25, but says "I've planned out everything myself. I know where I want to be and I know what I need to do."

He'll do Rossini for another 15 years or so, while he's young. "Then some more French *bel canto* to preserve my voice for a bit longer, and then I'll take on Verdi, who really pushes the voice." He considers himself lucky that he's not being pushed beyond his limits by either his agents, or his mentor, the South African director (himself a tenor) Kobie van Rensburg, who also directed the Krefeld performance.

"So many singers have broken their voices by pushing too hard too fast," says Sekgapane.

Apthorp notes that his strength is that he has a hunger for knowledge and he learns fast. "You have to be able to take criticism (and for a singer, everything is personal, because your instrument is your own body and soul), and to work constantly on self-improvement. These are the things that have taken Sekgapane from the place of promising student in Cape Town to that of promising young winner on the international vocal scene."

There are also things that keep him grounded. One, he says, is his faith. "I take on only what the Lord brings my way". Another is that he nurtures the Sotho in himself. "I get to speak Sotho on the phone to my brother, and that's important... as you know, you can take the man out of the 'hood but you can't take the 'hood out of the man." And when he gets to setting up his flat in Dresden, he's looking forward to get-

ting channel TV to pick up South African programmes, "especially *Generations* and *Isidingo*".

All this, he feels, keeps him true to himself. What he values most, apart from loyalty, is "to be as honest as possible, to be true, and always tell people who you are, so that they know 'he's honest, he's natural'." In the same vein, when talking about the promising singers coming out of South Africa, he says they have to use what they have and be proud. "We're not proud enough of what we have, and the country's losing good people."

And so, as we part on the train taking him back home from Krefeld, I ask if we'll be seeing him in South Africa. "It would be nice," he says, "but I don't think they'll be able to afford me."

Music critic Shirley Apthorp, reviewing the Krefeld production of Rossini's *Barber of Seville* in the *Financial*

Times of London, wrote: "It is not the first opera production to merge the worlds of cinema fantasy and opera with the aid of blue screen technology and projection. But it is both new in Germany and significant as the world's first low-budget blue screen opera.

"With the aid of just two consumer video cameras, several tins of blue paint, a cheesy 1960s aesthetic, many solo hours at his laptop, and a fevered imagination, director Kobie van Rensburg has created a '*Barbiere*' for the multi-tasking generation – raucous, bold, and teeming with action on multiple levels.

"A double screen above the stage gives us cinematic close-ups of the characters and creates a magical universe of rooms and objects that are not really there. Gauzes dropped behind or in front of the action allow projections onto the stage itself.

"This kind of work calls for a new generation of performers, agile singers who can think ahead, sing to the camera, and still hit their high notes.

"The evening draws much of its sparkle from young South African tenor Levy Sekgapane [*who*] has the nonchalance of a young Juan Diego Florez, an ability not only to deliver both fiendish coloratura and stratospheric high notes flawlessly but also to give every appearance of enjoying himself in the process.

"As the evening progresses, this becomes a sock-it-to-them glee that sends the audience wild. Add solid musical intelligence and diction rich in communicative nuance, and you have the charisma of a star in the making." ■

**Will we see him
in SA? 'It would
be nice but I
don't think they
can afford me'**



Mad as hell. Fed up with the litter

A NOSE READER TOOK THE TIME TO write me a very nice letter in response to our October edition. Yes, Ms Marx of the Eastern Cape, I received your letter and I cannot thank you enough for the appreciation you have of the *Nose* and my column.

On to business. First there's the appalling habit of my people – black people that is – of littering wherever they go. For the life of me – throwing rubbish out of car windows is a filthy habit that, well, seems only to be practised by our black people. No racism here, just the plain truth.

Check this: earlier this month I'm in a taxi travelling from Nelspruit. A little boy sitting in the same row as I am is eating chocolate and the driver says, "Give me the wrapper". Great, I think to myself, he's going to put it in some rubbish container in the front. But what does he do? He opens the window and throws the wrapper out.

I take out my camera so that I can name and shame this idiot. But the woman sitting next to me blurts out: Oh Bheki, now you're going to take this man's photo and expose him! Shush, be quiet, I tell her. One thing I know is you don't mess with taxi drivers. Fortunately he did not hear the mama with the big mouth.

As we get into Barberton, there's another taxi in front of us. Lo and behold, some other idiot in it throws out a whole grocery bag of banana peels, cold drink cans, you name it, right smack on to General Street, the town's main thoroughfare.

This is too much. I go to the back window and give the culprit a piece of my mind. And what does he say? "Voetsek! I'm creating work for cleaners. Who made you the guardian of rubbish?"

Our government occasionally spends good money on what I would call public service advertisements. Well, it's time to run an anti-littering campaign. From a black man's point of view, littering is plain embarrassing. I never see white drivers doing that. What is wrong with



holding on to your rubbish until you get home?

Next I want to express my total support of the police execution of that idiot who took eight shots at them, prompting the boys in blue to get fed up and execute the fucker. A policeman friend of mine in Barberton died in the line of duty under the same circumstances – chasing a suspect who did not hesitate to shoot at the police.

In similar vein, I wish to put in a word of appreciation for the FBI, going after South African officials for FIFA bribery. These officials can hide behind denials to us, the public, but not the FBI, whose motto is: the FBI always gets its man!

Finally, the most relevant issue I need to talk about is land reform. I recently received a media invitation to attend a land hand-over ceremony in Piet Retief. The Department of Rural Development and Land Reform is giving away one-hectare plots there to 26 households.

How can the government continue handing out farmland when those who have already received it do not have the necessary resources to make good of what we have been allocated? And just one hectare! What the hell is this? A replication of the American policy of one acre and one mule for every freed slave (see the Emancipation Proclamation)? It did not work. They all became

share croppers or ended up in Chicago playing the blues or in Harlem strung on heroin.

What on earth are these people going to do with one hectare as part of the land reform programme? So much for food security.

To wind up, some good news: Remember that story we ran about the child whose penis was accidentally amputated at Barberton General Hospital? Well, according to the lawyer, Mr M Labe, who took the case on risk (thanks, Labe), the Department of Health is about to finalise a settlement. Mr Labe hit them for R10 million, albeit money that cannot replace the boy's pleasure of life.

I understand that *Noseweek* readers' responses to that story had a big influence in prompting the department to do right by the child.

Which reminds me: at our first meeting, the editor of this here *Noseweek* asked me: Bheki do you think we make a difference? Yes! Mr Welz we do.

Who would have guessed that I have a fan in the Eastern Cape? Just goes to show that the *Nose* is a powerful medium. And I am proud to be part of the team.

Lastly, do me a favour *Nose* readers, if you see one of my brothers-from-the-other-mother throwing rubbish out a car window, cut him off and smack him.

[Dear reader, I must apologise for the violent disposition that our Barberton correspondent has suddenly developed. We have booked him in for anger management therapy which should sort him out; otherwise we might just find ourselves at the receiving end of a disappointing smack – or bullet. – Ed.] ■



Encounters. Make my day

WELL NOW, ALL YOU UNATHLETES out there, it may interest you to know that many of the major marathon events these days have also a 10km fun run for one's family, so they don't feel left out. That doesn't mean they have to run, of course, they can walk it if they like, and bring the dog too. The serious club runners start first, see, so the kids and cripples and geriatrics don't get under their feet, but all arrive at the finish in good time for a nice Sunday breakfast braai, with beer.

Me, I qualify for the fun run on two counts: Cripple and Geriatric. What happened to me in 2012 was real Mad German Scientist stuff, I tell you. Like the old horror movies where there's this dippy old German dude with steel-rimmed specs all cockeyed on his schnoz and covered in dandruff, and he's at a marble-top workbench with somebody lying on it, lights-out. He has an assistant called Schultz, and what they've done is take bits from inside this body's legs and stick them in his heart. I mean next thing you know is they'll be taking bits from one's genitalia and sticking them in one's brain. Don't laugh.

I recently met quite by chance a crumpled-up old Emeritus Professor of Something who was with me in WW2, and he said to me, he said, he felt okay about being all crumpled up and ready for the hereafter because he had humped 300 women in his lifetime and that's what you call success, whatcher think, hey? And what I thought was this ou has for sure got bits of his dick diced up by some psychopath sangoma and stuck in his brain.

But anyway, here I am with my flesh all knitted together from surgery, like an old jersey, and one day I suddenly feel it's a matter of simple dignity that I should be able to say to the world that I am once again a marathon man, I should right here and now go into training for the eThekwin. Well, a bit of it, that is to say, the walking bit.

I put on my old stink-tekkies and sally forth, with careful sitting down wherever there's a flat place. And the first such place I come across is a long wooden bench outside some PnP, with a discreet little notice saying this bench is for old toppies. I qualify. I sit down with two fat old Zulu mamas.

After a bit, mama number one raises a forefinger and starts marking a slow time, and both begin to sing, softly and oh so delicately. They modulate their voices, each to match the other; it is very gentle singing in a new world of



electronic gadoomp! din. After five minutes or so they stop and smile and I say That was a lovely song.

You think so? says Mama One, she smiles sweetly and takes my hand and makes like a little pigeon pie between hers. We have an English song too, for you, says she. She whispers to Mama Two and they sing: *Greensleeves*. They sing it as Henry VIII would have sung it, with perfect thirds and fifths to the octave. Clearly they learned their singing somewhere without a piano, which has perfect octaves and all notes in between sli-i-ightly sharp or sli-i-ightly flat. I quite suddenly realise it is this that gives Zulu singing its wistful nature. Its nostalgia.

That song was written by the King of England, say I, and you sang it as he would have sung it, very beautifully. You mean the Queen? says Mama Two. No, the King, called Henry, in 1540, say I. Wew! say both mamas in unison,

so old! Yes, say I, and still fresh-fresh. Where did you learn your singing? In Nongoma at a mission school, says Mama Two. No piano? say I. No, just a guitar, says she. I rise to go, shake hands and bow. You have made my day, say I. And you have made us too heppy! they say. Out in the street I rather feel like running. The sun shines upon me, man, but I exercise restraint and discipline and watch out for the next resting spot.

And there it is, a bus stop seat 'neath a shady uMkhuhlu tree, and there sits Doctor Groats, sociologist, Commentator on All of Life. Hullo ducky, say I, and how's the world treating you today? How long do we have to submit to this? says she. Submit to what? say I. Everything, she says. The country is failing before our very eyes and there's nothing we can do about it, we are governed by corruption and crime. Just look at this hole in the pavement, she says, they dug it up only last year and now they're digging it up again, they can't get even such a simple job done properly. It's not

the government digging holes, say I, it was the municipality last year replacing certain hundred-year-old ceramic water pipes with new plastic pipes, a huge job. This now is the telephone people replacing copper cables with optical fibres, an even bigger job.

There are no excuses, says she, we're a failed state. I've been sitting here half an hour and the bus just doesn't come. But the government doesn't run Durban's bus service, say I. Ohhhh no! says she, the state is failing. Well you should vote for a different government, say I. What for? says she, you can go to any polling station and see the corruption before your very eyes, voting means nothing any more. Ja, say I, it's a bugger, isn't it? Excuse me, please, I'm running the eThekwin Marathon. And it's such a relief to get away from the old cow I find myself actually running. The sun still shines upon me, my day has still been made. ■

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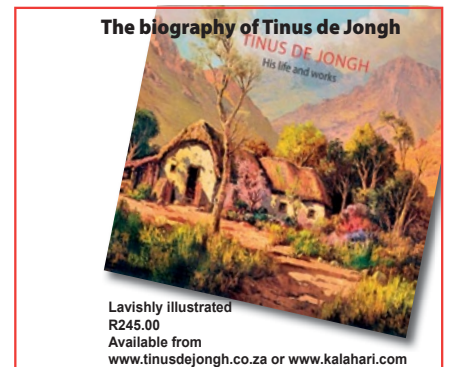
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Thank you Arlene, I love you. Eddie.
Irene, Clara, Mila & Xander – love you very much. Jurgens.





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