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COLUMNS

FEATURES

Letters

Dereliction of fiduciary duties

Further to the municipal property undervaluation debate: the reasons why commercial property owners don't object to low municipal values are obvious, e.g. they pay less in rates. But one would expect that listed property funds, especially, have a fiduciary obligation to their shareholders to ensure that the municipal property values of the properties in their funds are reflected correctly at market value, in accordance with the principal of willing buyer/willing seller, as required by the Municipal Property Rates Act.

There should be no reason other than wilful ignorance of the Act by such owners and their advisors and it could surely be deemed a misrepresentation to their shareholders as to what their actual property values are – and their rates expenses should be.

Yes, we all know that property rates are passed on to the tenants and deemed part of building operating costs. And that increasing rentals based on the correct municipal values could cause widespread unhappiness. [*Surely no more unhappiness than increased rates cause individual owners?* – Ed.]

We also understand that any property valuation reflects the opinion of the valuer, but if based on poor and incorrect information, the valuation would be poor and incorrect.

It's one thing doing mass municipal valuations – commonly used and accepted as regards residential properties – but the valuation of commercial, retail and industrial property i a much more specialised process that requires appropriate skills and experience from valuers. In Tshwane for example, there are three A-grade office buildings located in close proximity to each other in the Menlyn and surrounding node with a combined gross lettable area of ±70,630m². These buildings were completed between 2010 and 2012, prior to the general valuation roll of 2013. The combined municipal value of these three office buildings reflected on the roll since 2013 is R180m. However, their combined market value at the time of completion was in excess of R1.2 billion. The estimated under-recovered rates sum exceeds R86m over the past three years.

These are just three examples of office buildings undervalued in the Tshwane Metro. According to my private database which comprises ± 3.67 million square metres of A- and B-grade office space throughout the Tshwane Metro, there are several hundred more commercial/business properties that are undervalued in the Tshwane Metro.

I suggest landlords of commercial/business properties collectively approach the Metro to lower the current rates tariff applicable to commercial and business premises, which will hopefully prevent the undervaluing of these by the municipal valuers.

It is imperative that landlords meet timeously with the Tshwane Metro regarding the proposed rates tariff applicable to commercial/business properties that will be presented in the forthcoming budget.

Gerrie Minnaar
Professional Valuer
Engel & Völkers Commercial
Pretoria

Exceedingly slow justice

At last Gary Porritt and Sue Bennett of Tigon infamy are standing trial, more than a decade after their arrest. Given the disgraceful ineptitude of our judicial system in prosecuting white collar crime (e.g. Fidentia and J Arthur Brown), I thought I would never see the day that these two would be brought to court.

An investment adviser and former stockbroker describes the Tigon debacle as a grave and sorry indictment of the regulatory competence of the JSE, the Financial Services Board and other watchdog authorities.

Tigon was never anything but a house of cards and it was clear many years before it all collapsed that the price of its thinly-traded share was being ramped.

He can remember the *Financial Mail* revealing in the nineties that a Hong Kong-based associate company was being used to pump up the share price, and the fact that this company was nominally an associate and not a subsidiary meant that its activities and results did not have to be included in full detail in Tigon's consolidated financial statements.

This was all before the arrival of Milne and the PSC Guaranteed Growth Fund, the active promotion of which involved investors being duped into believing the fund held a diversified portfolio of shares, when in reality their money was only used to ramp Tigon's share price. One of these "dupees" was my late husband, who was attracted by the supposed guaranteed return and invested for the benefit of our two daughters. It was all lost.

This could all have been stopped before maximum damage was done, had there been a proactive investigation by the JSE and other regulatory authorities into the *FM* story. But in all probability no one in these bodies even read it. Perish the thought that monitoring the financial media (and of course *Noseweek*) for early warnings of criminal activity should be an obligatory part of their function. No way, that sounds too much like work.

Louise Hellberg
Cape Town

The JSE is a company out to maximise the profits and salaries of its executives; investigating the suspect activities of its clients is costly and bad for business. What about the FSB? Dare we ask? They are two sides of the same coin: a society that has lost its sense of what is right. – Ed.

How must Mashile feel now?

Bheki Mashile, your correspondent from the Mpumalanga boondocks and lifelong ANC supporter come what may, clearly wrote his piece about the local government elections (*nose*203) before all the outcomes were known. Hence, after bemoaning the losses of Nelson Mandela Bay and Tshwane, he also berates his beloved party for "barely holding on to our economic hub of Jozi".

Brenthurst, owned by the Oppenheimers...
Dereliction of fiduciary duties

Local is lekker – as they say in Islamabad

Spotted at the Pick n Pay, Main Road, Kenilworth in Cape Town

Oh dear, how he must feel now, knowing that the Jozi council has also fallen to the nasties of the opposition. And that his favourite person, the anti-BEE Herman Mashaba, is the new mayor. Doubtless Mashile will pen a piece on these disgraceful shenanigans.

William Bowler
Hout Bay

No, he's simply pretending. Barberton is in Swaziland. – Ed.

Please Sir, more of just desserts

An avid reader of your magazine, I especially look forward to the graphically written and expertly researched exposés of the dastardly and all-too-often illegal activities that permeate South African life. However, to my disappointment, I rarely read of the comeuppance and just desserts that should be meted out to the miscreants you have exposed.

Please consider devoting a new section to such a topic; we want to know the fate of those you have exposed.

Stephen Jeffries
Green Point

I agree with Colin Bosman: of late there have been very few juicy scandals – social, in the arts, divorces, etc – in *Noseweek*; the sort of things readers like me enjoy. As (the late) reader Manfred Shevel wrote, there is too much one-sided corporate, banking and political emphasis in your articles.

I do enjoy Harold Strachan, but otherwise there is very little humour in your pages. I like the Books page and Anne Susskind, with her take on Australia. It's possible that you find it too expensive to commission columnists and journalists.

Most women do the magazine-buying and not all of us want to read about food, décor and fashion. You've never been afraid of being sued, so what about spicing up your magazine with some social satire and scandals?

Joan Schrauwen
Velddrif

It's been unfunny times for a while, so who doesn't yearn for a laugh or a skinner for light relief? Point taken. Trouble is, we get as many demands for the opposite. – Ed.

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Justice denied

ON OUR LETTERS PAGE A READER COMPLAINS that we too seldom report the outcomes of our investigations and exposés. Occasionally this might be an omission on our part, but, sadly more often it simply means there has been no outcome to report.

Both business and the government now ignore with impunity challenges to their integrity – e.g. Nedbank (on page 9) and Standard Bank (page 12). Others refuse, or simply ignore, perfectly reasonable requests for information: Absa Consultants (page 10) and Rawson Properties (page 22).

Information with potentially very serious implications involving a senior tax official was brought to the attention of SARS by a major bank in May. As we went to press four months later he was still at his desk, nothing said, nothing done. See page 7. Sometimes the battles are endless.

"I like what Minister Gordhan has been saying, that he would 'rather die than give money to the thieves'," suspended KwaZulu-Natal Hawks boss Johan Booysen recently told *Noseweek*. "My advice to him: Keep on fighting!"

Booysen was speaking at the launch of his riveting account of the Cato Manor saga: *Blood On Their Hands: General Johan Booysen Reveals his Truth*. (*Noseweek* first reported on the Cato Manor story in March 2012.) The book, co-written by investigative journalist Jessica Pitchford, lays out how Booysen has fought to keep his job and to defend himself against racketeering and other charges brought against him by a prosecuting authority intent on disabling his investigations of corrupt but politically well-connected businessmen and policemen. Chief among them were notorious Durban businessman, Thoshan Panday, KwaZulu-Natal provincial commissioner of police, Mmamonnye Ngobeni and (supposedly) suspended head of police crime intelligence, Richard Mdluli.

Last month (September), the new head of the NPA, Shaun Abrahams, announced that he had now decided to prosecute Panday as well as police procurement officer Navin Madhoe for corruption after all, a move that Booysen describes as "cynical". "They are doing this because I have challenged Abrahams for authorising my prosecution," he told *Noseweek*.

In February, Abrahams had re-instituted charges against Booysen, despite the courts having previously thrown out the same charges. In May, Booysen responded by launching a legal attack of his own on Abrahams in the high court in Pietermaritzburg.

In his papers, Booysen alleged that Abrahams's decision to reinstate racketeering charges against himself and 17 other policemen was part of a pattern of illegal activity by the NPA "aimed at prosecuting us for crimes we have not committed and with a clearly ulterior purpose".

"He obviously has to respond. It is no coincidence that he has hurriedly decided to prosecute Panday," said Booysen.

Four years on and there is no end in sight.

The Tigon/Porritt saga is a perfect example of how white collar criminals manage to avoid prosecution for years. Former Tigon CE Gary Porritt and his business partner, Sue Bennett, have kept their case in the courts for nearly 14 years, by bringing endless intervening court applications.

They face 3,160 charges related, inter alia, to tax fraud and numerous contraventions of exchange control regulations, after encouraging investors to take their money offshore via allegedly dodgy schemes (see *noses* 62, 63, 65 & 68), only for it be put to even more dodgy purposes. Porritt was arrested in December 2002 and Bennett in March 2003. Between January 2006 and May 2007 it is alleged they spent R23m in legal fees trying to stall their prosecution.

They finally appeared in the high court on July 27, a year after the court of appeals found their prosecutions could go ahead. What more can we say?

■ Noseweek journalist Jonathan Erasmus has left for America to take part in a three-week Investigative Journalism programme organised by the US State Department. He is the only South African among the 25 participants from around the globe. The programme is designed to expose the participants to investigative journalism in the United States while examining the challenges this industry is facing, with dwindling resources and shrinking newsrooms.

He will be involved in panel discussions, workshops and discussions with several media support and watchdog organisations such as the International Center for Journalists and the Knight Foundation, meet representatives from the *Washington Post* and the *Miami Herald*, visit small town news publications and large broadcast corporations as well as interact with academics and government officials.

The Editor

R13m tax debt waived – with just a scribbled note

The senior tax official fingered in recent news reports for the large number of "suspicious and unusual" cash deposits into his bank accounts, totalling at least R1.2 million, also featured prominently in the suspiciously bungled tax fraud case brought against notorious Durban tenderpreneurs Shauwn and S'bu Mpisane.

Noseweek has undertaken an extensive examination of the tax and other cases brought against the Mpisanes in Durban. What has emerged is a web of intrigue, punctuated by cash deliveries in parking lots, forged tax invoices, houses and cars being offered as bribes, wiretaps, former police commissioner Bheki Cele's giving a helping hand to some less salubrious friends, extortion and, yes, we almost forgot to mention: the story begins with a murder on the steps of the high court in Durban, with S'bu Mpisane, (then a police constable, now, recently retired), driving the getaway car. (The murderers were never arrested, and S'bu was never charged.)

Jonas Makwakwa, Chief Officer at SARS and career taxman, is being probed by the banking regulator for a large number of suspicious cash deposits made into his bank accounts between February 2010 and January 2016, according to a *Sunday Times* report by the AmaBhungane Centre for Investigative Journalism.

More curious still: while SARS was informed of these suspicious transactions in May, Makwakwa was still at his desk at SARS in September, when the AmaBhungane report appeared in the press.

These developments cast a whole new light on his role and his occasional appearances in the documents and other evidence in the aborted Durban tax case against the Mpisanes.

S'bu and Shauwn Mpisane are well known to *Noseweek* readers (see *noses* 103;109;125;150;195&203) and are rated founder members of KwaZulu-Natal's "Teflon Club" (motto: "No charge sticks").

Nowhere in the tax trial records is it suggested that Makwakwa deliberately sabotaged the tax probe and prosecution of the Mpisanes, but there are some disturbing incidents that compounded the problems that brought the politically charged criminal case to an abrupt end. In 2011 Shauwn, along with her company Zikhulise Cleaning Maintenance and Transport cc, faced 119 charges including forgery, tax fraud and the under-declaration of VAT.

Husband S'bu, while not a director, is directly involved in the business and was present in court behind his wife from the time she was charged in June 2011 until 30 January 2014 when she was acquitted of all charges.

Taxman Makwakwa's involvement in the Mpisane matter raised several red flags, the most notable being the couple's claim that, at an informal, out-of-office meeting, he had agreed to knock R13m off their R33m tax bill. He had calculated and scribbled the reduced payment, down to the cents that SARS would allegedly accept in settlement, on a piece of paper that happened to be available – and which was tendered as evidence in court. The bulk of the tax debt was for illegitimate VAT refunds the Mpisane company had claimed on their purchase of a Lamborghini, a Porsche, a Rolls Royce and a BMW.

Being rich and famous the Mpisane's had easy access to Makwakwa, who obliged them by agreeing to an "informal" meeting on 25 March 2009, ostensibly to work out a payment plan.

At this meeting Makwakwa jotted down – on the cover of the Zikhulise

Jonas Makwakwa

Jonas Makwakwa as seen by SARS

Jonas Makwakwa's qualifications include a B Com Accounting degree and a diploma in Business Management. He also completed the Global Executive Development Programme with GIBS, where he studied in Singapore and Malaysia.

Makwakwa joined SARS in 1995 and started his career as an auditor. During this time he played a major role in the transformation and advancement of young black people. After serving as regional auditor responsible for Gauteng, Makwakwa became the general manager for Enforcement. Jonas was responsible for benchmarking and aligning both the Audit and Enforcement divisions with international standards and he introduced training programmes for auditors. He is now the Chief Officer for Business and Individual Taxes.

Makwakwa represents SARS and South Africa at international forums like the OECD, CIAT, WCO, Global tax forum and ATAF. He also represents management in all engagements with organised labour.

2008 annual report that the Mpisane's had brought along for the meeting – the tax amounts owed by their company under eight headings, including income tax, STC, PAYE, UIF and VAT on fringe benefits.

After point eight, he scrawled, in larger handwriting than the rest, the figure R20,074,273 – which was not the total of the amounts listed. It was, said the Mpisanes, the reduced amount he agreed to accept in settlement of their total tax debt.

The trouble is, Makwakwa had no mandate to conclude such a settlement. In fact, no SARS official, not even the Commissioner, is legally authorised to make such a deal.

By March 2010 the couple had paid the just-more-than-R20m "settlement" figure, allegedly on the assumption that Makwakwa had waived the balance of R13m.

But SARS could not have waived the R13m. There was no official paper trail to confirm such a concession and eventually the Mpisanes were forced to hand over two Lamborghinis and a Rolls Royce to SARS as security in order to get their Tax Clearance Certificate – a must-have for anyone doing the large-scale business with the state they are accustomed to doing.

Upon receiving the vehicles, Makwakwa texted S'bu: "Thanks a lot. The TCC [*tax clearance certificate*] will be issued today. Good luck with your tender."

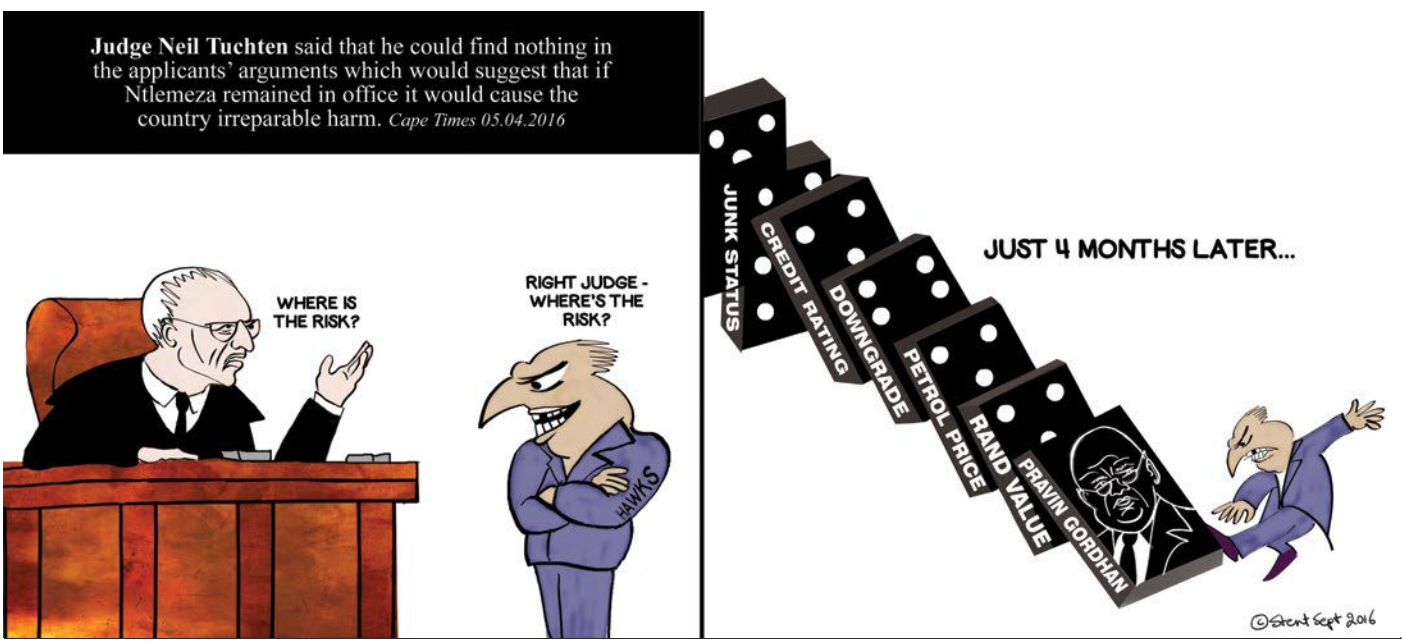

S'bu and Shauwn Mpisane

Makwakwa admitted in court that the assumption by Shauwn that she only owed R20m was correct, but then he claimed he had only calculated the figure "as an example". An example of what, is not asked or explained. The detailed listing of correct figures does not look like the setting out of a mere hypothesis.

The issue over the reduced tax was eventually highlighted as another inconsistency in the State's case to justify its withdrawal.

One more bungle on Makwakwa's watch was his allowing the couple's tax file – which had been kept under lock and key in Pretoria due to the high profile of the case – to be moved to Durban and left in the hands of a compromised rookie auditor to compile an audit report into Zikhulise Cleaning's financial affairs. The incompetently compiled report created so much reasonable doubt that eventually the NPA and SARS could agree to ditch the court case – falsely blaming the lead prosecutor, Advocate Meera Naidu, for the mess.

Noseweek, in a coming issue, will publish a detailed report on just how the State and SARS destroyed a solid case against the Mpisanes, and we will attempt to draw some conclusions on what their motives might have been. ■



Stent

Nedbank ducks and dives – but Tiaan stands fast

Retired Witsand businessman and disenchanted Nedbank client Tiaan Lamprecht finally has a court date – in March next year – having been systematically and shamelessly lied to by Nedbank for nearly 13 years in their determination to avoid liability for the wrongdoing of a senior employee that resulted in Lamprecht's losing his R1-million investment.

Lamprecht is by now so outraged by the bank's deceit that he is prepared to fight the matter "even from the grave".

His story was first reported in *nose*160. His approach to *Noseweek* was largely fuelled by what had happened shortly beforehand. In November 2012 Nedbank had managed to sweet-talk Lamprecht into withdrawing his pending court case against them in favour of private mediation.

He did so in good faith, then they screwed him: knowing that the cost of reinstating the case and getting it back on the trial roll was high, they offered him a paltry, non-negotiable R48,000. He had already enrolled the matter twice prior to that – at the South Gauteng High Court in Johannesburg – only to discover shortly before the trial day that the court file had disappeared.

The bank lost his investment by trading in the highly volatile Contracts for Difference (CFDs) – against Lamprecht's express, written instructions.

In 2001 Lamprecht approached Nedbank's senior financial advisor Karl Luck, based at the Johannesburg head office in Fox Street. Lamprecht knew Luck from previous dealings with the bank; dealings that went back 30 years.

Lamprecht had wanted to invest a portion of his pension in foreign exchange only. Luck recommended a "bank" called IFX, based in London, and even guaranteed the investment on behalf of Nedbank. But 12 months later he lost it all. Luck had put the investment in CFDs.

Luck was subjected to disciplinary procedures, but midway, he skipped the country to Europe. It is suspected he is working as a labourer in Germany.

Lamprecht, armed with his written guarantee and proof of a clear breach of his agreement, demanded to be reimbursed by Nedbank. Instead, Nedbank bizarrely denied that Luck had been in their employ.

Having informed them he would now seek *Noseweek's* help, just days before the magazine went to print with his story on 8 January 2013, Jan Steyn, from Nedbank's legal department, phoned him and asked if he would like to go to mediation – again. Apparently Steyn was also not too happy with the publicity.

On 15 January 2013, Lamprecht sent Steyn the following email: "The Falcon Trust (Lamprecht's vehicle for the investment) is not interested what Nedbank thinks or feels regarding the fact that we made contact with the media and that through the action we adversely affected our case with Nedbank – what a laugh.

"When Nedbank gets serious to negotiate for a settlement and stops trying to bully the Falcon Trust into the smallest possible amount and not what is fair, please be so kind as to contact my lawyer, Mr Julian Meltz."

Steyn replied, missing the irony: "I wish to point out that Nedbank was at all times (even now) prepared to reach a fair settlement but your attitude is that Nedbank must capitulate, which makes it very difficult to settle the matter."

It was nearly two years later, in October 2014, that Nedbank finally admitted to having employed Luck, after Lamprecht obtained an order compelling the bank to make his employment records available.

Luck's employment contract has gone missing. This fits nicely into Nedbank's claim that Luck was never allowed to close such a deal with Lamprecht and that he was rogue. The matter is due to be heard in March 2017.

"Nedbank hasn't produced any evidence that they are not responsible for their employee. They have repeatedly delayed the matter in the hope I will give up but I won't. I am sure any judge will see through their smoke and mirrors. Even if I die, my family will continue to fight for what is right," said Lamprecht. He is seeking his R1m back plus interest of 15% pa from 1 January 2002. ■

"Gee whiz, Mr Curtis, ten million dollars isn't old!"

Absa response to widow raises more questions than it answers

A rural KwaZulu-Natal Midlands widow who has been fighting for access to her late husband's provident fund for the past three years, was told that if she wants to know where the cash is, she must get a court order.

Noseweek first wrote about the case of Mandisa Happy Dlamini in November 2015 ("Absa accused of being 'shameless liars'", *nose*193). Ever since her husband Bernard died in May 2013, she has been in an endless battle with Absa Consultants and Actuaries (ACA), who manage the Private Security Sector Provident Fund (PSSPF), to pay out her late husband's death benefit. All in vain. In July 2013 Dlamini, who had been unemployed and pregnant with Bernard's child at the time of his death, asked her former employer Gail Meyer, an estate agent from Durban, for help.

It was only in October 2015, after *Noseweek* had contacted Absa Consultants, as well as Vunani Benefit, which claims to trace beneficiaries (generally unsuccessfully), and the PSS Provident Fund trustees, that Dlamini received a hurried payment of R51,184 into her bank account – but without any written or telephonic explanation.

On 21 January this year, after constant pestering, Meyer received a "Death Benefit Notice" explaining the October 2015 payment to Dlamini.

By Jonathan Erasmus

Apart from the awkwardly late condolence message, it raised more questions than it answered. The reckoning said that the provident fund, to which Bernard had contributed for 12 years, amounted to R118,940, of which 35% or R53,564 would go to Mandisa and a further 10% would be payable to Bernard's stepson. It made no mention of what would be payable to the newborn son, or anyone else – Bernard had two other children from other relationships.

Eventually Dlamini wrote a pleading letter to the PSSPF chairman Robert Dube on 9 May 2016:

"Mrs Meyer told me that when she asked you about [*the payments*] you said the balance was paid to Bernard's mom and his other two children from other girlfriends. This is not true. My mother-in-law received no money and there is no proof of payment to the other children. Had it not been for Mrs Meyer's help, I would have received nothing. You must please tell me how the money was divided. I believe I have a right to know, being Bernard's wife when he died".

She got no reply.

Then out of the blue on 5 June this year ACA fund manager Beverly Phillips informed Meyer that the money for Mandisa's baby boy would now be paid into a trust; set up by Bophelo Life which would collect fees along the way for this service.

"On receipt of the birth certificate (which is outstanding), his portion (21%) will be transferred to the Trust Fund to set up the Trust," said Phillips.

Meyer had already sent Vunani and ACA the birth certificate in October 2015. They, again, seemed to have lost the documents.

"ACA are a bunch of liars. How many more people like Mandisa are being treated like this? I have power of attorney, means of communication and a lawyer, working pro bono, but it has been a battle to get this far. It makes no sense to set up a trust for such a small amount (about R25,000) and it is bizarre that despite all our communications, this is the first time we have heard of such a trust. Surely Mrs Dlamini can be trusted to use the money in her child's best interests," said Meyer.

Fund chairman Dube told *Noseweek* that the only way Mandisa would know who had got what, was if she were to obtain a court order compelling them to release the trustees' resolution. He assured *Noseweek* that no funds had been deducted by the bank or Vunani "from a slice of [*Mandisa's*] benefit". But PSSPF did skim off R1,175 in "fees".

Meyer has since asked an attorney to pursue the court order. Meanwhile ACA was served a 120-day termination notice by the PSSPF in May. The fund said its reason was that they had "not been entirely satisfied with the service". Who would have thought?

Sent several questions by *Noseweek*, Zintle Letlaka, replying for ACA, said: "Absa acknowledges termination of its contract to the Private Security Sector Provident Fund (PSSPF). Absa will continue to fulfil its contractual obligations to PSSPF until the end of the notice period. Bound by client confidentiality, Absa will not comment further on the matter." ■

Mandisa Dlamini and child

Home Affairs gets a kick in the Trump

XENOPHOBIA IS ALIVE AND WELL, living in the Department of Home Affairs in Pretoria and secretly engaged to Donald Trump.

On 6 September 2016 the Supreme Court of Appeal (SCA) was set to hear the case of an eight-year-old stateless child born in South Africa who has steadfastly been denied her right to South African citizenship by Home Affairs officials.

The child, referred to only by her initials, DGLR, in court proceedings, has, since birth, clearly been entitled to South African citizenship in terms of Section 2(2) of the Citizenship Act. But Home Affairs officials brazenly informed Lawyers for Human Rights (LHR), who took up her case in 2013, that they did not intend ever applying that section of the law as "too many children" would qualify.

The department could have been in no doubt that they did not have a legal leg to stand on

In May 2014, after five years spent hitting the wall at Home Affairs, the child's mother applied to the North Gauteng High Court in Pretoria for assistance. The court ordered the department to immediately register the child as a citizen and issue her with an ID number and birth certificate. The court also ordered Minister Malusi Gigaba to promulgate regulations to Section 2(2) to facilitate its implementation. He has 18 months to comply with the order.

But Home Affairs was still having none of it: they took the high court judgment on appeal – and managed to drag out the appeal process for a further two years.

The department could have been in no doubt that they did not have a legal leg to stand on. Their position could only have been based on the supposition that, if faced with enough bureaucratic hostility, foreigners will succumb and decide to "go back to where they came from".

In this case the strategy had failed. The child and her mother were supported by Lawyers for Human Rights in opposing the appeal. So on the morning of 6 September, on the steps of the Appeal Court, Home Affairs agreed that the Appeal Court should confirm the high court's rulings.

DGLR was born in Cape Town in 2008 to Cuban parents. Cuban law does not allow children to obtain Cuban citizenship if they were born outside Cuba to parents who are considered "permanent emigrants" if they have lived outside Cuba for more than 11 months. They had.

South African law as a general rule awards citizenship based on the South African citizenship of the parents. Because DGLR's parents are Cuban, she was not assumed to be South African. Qualifying for neither citizenship, she was stateless – which brought Section 2(2) of the Citizenship Act into play. Mercifully, it provides for South African citizenship to be granted to stateless children born in the country.

Regarding themselves as above the law, the department refused to implement the section, leaving DGLR stateless for eight years. Stateless children can never leave South Africa, nor obtain legal status in the country without implementation of Section 2(2).

● *The judgment is to be found under reference: Minister of Home Affairs and others v DGLR and another (Case number 1051/2015 SCA). For more information contact Liesl Muller at Lawyers for Human Rights on 083 703 2496.* ■

Bank gets its sticky fingers on inventor's keyboard ideas

Did Standard Bank lie and cheat to steal an idea worth billions?

By Ciaran Ryan

When ATM and internet fraud started seeping into public consciousness in the 1990s, Joburg-based software development company Advertising Digital Services (ADS) came up with a novel solution to a growing problem: hackers had found a way to secretly install a program on computers that would record keystrokes and mouse-clicks when users were logging on to sensitive websites.

With this information, they could empty a bank account from anywhere in the world.

ADS's solution was to remove the keyboard as a point of entry to the computer and replace it with an on-screen virtual pin-pad that, each time it was used to input a password or PIN number, would rearrange the digits on its virtual keyboard.

ADS director Johan Reynders wanted to patent the system, but was advised against it because, in any event, the system was protected by copyright for 50 years.

To avoid any ambiguity about ownership, however, he uploaded it to the internet in the 1990s so that people around the world could download it free, but only with his permission and provided they acknowledged that the intellectual property rights remained with ADS. Importantly, he says, he chose not to provide any information on the uses and applications of the product so as to prevent software developers coming up with rip-offs. He knew the industry had not yet woken up to the threats from hackers. When it did, he planned to introduce his solution to potential clients.

By 2001 it was clear that others were ripping off ADS's intellectual property in breach of the user agreements, so Reynders updated the software licensing agreement to levy a penalty of $10,000 per machine using the random keypad without a certificate of authenticity. Legitimate users were charged a discounted rate of $250.

In early 2003, Reynders reckoned the time was ripe to introduce his solution to the market, and he approached all the local banks. All of them declined to meet with him, claiming they had no problems with internet security. But within months the national press was awash with stories of rampant internet banking fraud, prompting the Banking Council of South Africa to issue a public warning in July that year.

In the early days of August, Reynders received a call from Louis Lehmann, head of Standard Bank's IT security, requesting a meeting, as the bank wanted to find out exactly how the ADS system worked and how its software would eliminate the threats highlighted by the Banking Council. Reynders was happy to tell all, provided Standard Bank signed a non-disclosure and confidentiality agreement.

The meeting took place two weeks later, on 18 August 2003, with no fewer than 15 Standard Bank officials in attendance. They included Lehmann, Janie Basson (then head of Standard Bank Group), Anthony Olivier (senior manager for IT security), Michael Hawthorne (head of IT: personal and business banking), Guy Wigg (legal manager), Richard Seddon (head of

online share trading) and Herman Singh (CEO of Beyond Payments at Standard Bank). The weight of the contingent attending left Reynders in no doubt the bank was now seriously interested. Also in attendance, for reasons unknown, were two Investec employees. All willingly signed the non-disclosure agreement (NDA).

Reynders outlined three vulnerabilities in the Standard Bank website, two of which, it transpired, were as yet undiscovered by the bankers. He explained how his software provided three levels of protection against "spyware".

To his surprise, at the end of the meeting, the Standard Bank attendees, including its chief software engineer Corniel du Plessis, indicated they had no interest in his solution, and dismissed the threats to their internet banking services he had identified as "laughable" and "far-fetched." They also expressed the view that Reynders's randomised keypad, with its constantly changing number arrangement, would confuse their clients.

By signing his non-disclosure agreement, Standard Bank acknowledged that the information imparted to them was proprietary to ADS and "valuable, a special secret, and a unique asset". The agreement further prohibited the bank from disclosing this information to a third party without the written consent of ADS, or from exploiting or using it in any way.

But, barely two months later, when Reynders opened the *Sunday Times* he was confronted with a report in which Herman Singh, CEO of Beyond Payments (a division of Standard Bank) and one of those who had been present at the meeting, bloviated about the threats of online fraud and how Standard Bank had developed a solution to protect clients' cash. A day later, on 6 October 2003, Singh reported to Standard Bank's 280,000 internet banking clients that it had just updated its internet security.

Reynders had no doubt the security update that Singh had announced to the bank's customers was a direct rip-off of his intellectual property, and was therefore a breach of the confidentiality agreement they had signed.

Based on figures from Standard Bank itself, 500,000 internet transactions were recorded each day – a staggering 730 million over the four years the bank proceeded to use this particular security solution. Reynders reckons the bank owes him at least US$10 billion (R153bn) in damages.

The problem Reynders faced was how to enforce his rights against a bank with deep pockets and a squad of highly paid lawyers

Standard Bank discontinued use of the security system in 2007, coincidentally, just after Reynders deposited R200,000 into the bank's attorney's trust account as security for legal costs, as demanded by the bank as a precondition for the court hearing of his damages claim to proceed. He had no doubt this was done to mitigate any damages the court might in due course have seen fit to award him.

How Reynders comes to the $10bn damages figure is by a straightforward application of penalties outlined in his published user licence agreement. That is, $10,000 for every breach, multiplied by the estimated one million Standard Bank clients who used the system. To put this in perspective, Reynders's claim is a shade less than the bank's entire market capitalisation of about R180bn, and more than seven times last year's reported profit of R23.8bn. This does not include Standard Bank users outside South Africa, nor use by associates such as Investec, Bank of China and Bank of India.

The problem Reynders faced was how to enforce his rights against a bank with deep pockets and a squad of highly paid legal counsel at its disposal. He attempted to negotiate a settlement with the bank over the next two years, but this went precisely nowhere. He managed to track down a firm of attorneys willing to take on the case – a rarity in South Africa, as anyone with a gripe against the banks knows – and on 25 July 2005 they served summons on Standard Bank, claiming breach of confidentiality and "re-creation and exploitation" of ADS's intellectual property.

In its reply to the summons, Standard claimed that its chief software engineer, Corneil du Plessis (who had attended the meeting with Reynders, and had been particularly dismissive of the online threats and the type of technology proposed by Reynders) had coded algorithms on his computer that proved the bank was already working on a solution similar to that of ADS as early as 23 July 2003 – three weeks before Reynders disclosed his secrets to the bank. (But as it happens, at about the time the bank had called him seeking a meeting to be briefed on his scheme.) Which immediately raised the question: if the bank's own staff were already on top of the problem with an identical solution, why invite Reynders under false pretences to such a high-level meeting where he is persuaded to reveal all the detail of his scheme to the bankers, on a supposedly confidential basis? And after which he is told they see no merit in it. Why the outright lie?

That deception was their intention is further confirmed by the fact that at their meeting on 18 August 2003 they made no mention to him of their own attempts, that had commenced just three weeks earlier, to develop such a system.

In response to Standard Bank's plea of having had their own prior scheme that just happened to be almost identical to his, Reynders demanded proof that Standard Bank had beaten him to the punch.

Two forensic audits were commissioned, one independent, the other by the bank, to examine the computer hard drive of Corneil du Plessis, the Standard Bank man who, quite fortuitously, is said to have developed, inde-

pendently, a very similar system. The first was conducted by Mervin Pearce of Security Audit and Control Solutions, the second, by Dr Fritz Solms, an IT expert commissioned by the bank. Both experts concluded independently that there was no evidence on Du Plessis's hard drive to support the bank's plea that he had developed the security software prior to the meeting with Reynders on 18 August 2003. What they did find on the hard drive was a stack of pornography and links to illegal websites.

Mervin Pearce of Security and Audit Control Solutions, in a forensic report drafted in September 2006, states the following after an inspection of the Standard Bank's computer hard drive used for the program in question:

"The statement made by Corneil du Plessis (Standard Bank's IT expert) that the scrambling code was developed on or before the 23rd July 2003 is incorrect as the initial book-out by Corneil du Plessis of the common pinpad.jsf (not the scrambling software code) was on Wednesday the 30th of June 2003 at 11:05:05 in the morning. This is one week after the alleged meeting where internet security was discussed…

"The evidence on the hard disk drive indicates that the first occurrence of the scrambling for the Pinpad is on 3rd of October 2003."

In other words, the evidence suggests Du Plessis only started to work on the source code for the scrambled keypad after the meeting with Reynders on 18 August 2003.

Pearce goes on: "The critical analysis of Corneil's contemporaneous statement [*about*] when the development of the scrambling code took place on the hard disk is negated by the evidence found on the hard disk drive and the physical audit trail."

In summary, the forensic auditor found evidence that Standard Bank's programmers had been working on a type of screen keypad as early 23 July 2003 (three weeks prior to their meeting with Reynders), but the crucial scrambling code was only added in October – after the meeting with Reynders. Pearce concluded that ADS, not Standard Bank, was the proprietary owner of the software.

In his forensic report, Dr Fritz Solms notes that Standard Bank first publicly announced the planned use of a virtual pinpad on 25 July 2003, but the first mention of a scrambled pinpad was made on *ITWeb* – a prime source of IT news – on 6 October of that year. But, contrary to Pearce's view, Solms says: "In my opinion the technical implementation of a scrambled pinpad would not have posed a significant challenge to even junior software developers" ; adding that the algorithm for scrambling a sequence of numbers has been around since the 1980s.

This might have been true, had they thought of applying it as a means of further securing online banking transactions. They clearly had not, until Reynders told them about his idea.

Reynders says his case is not about the technical complexity of coding a scrambled keypad. He says his intellectual property relates to how this technology is applied to deal with the problem of online fraud – that is what has been pilfered from him by Standard Bank.

A trial date was set down for 14 April 2008. Just a few days prior to this, Standard Bank introduced ("discovered") a bombshell bit of new evidence – an undated letter on Investec's letterhead in which two senior officials of that bank claimed that Investec had implemented a technology similar to ADS's system on its website ten days before the Reynders meeting. The letter was signed by Paul Hanley, head of Investec Private Bank, and Tim Till, that bank's head of risk.

Reynders believes it to be an outright lie intended to run up legal costs and delay justice – and told everyone so

Reynders believes it to be an outright lie intended to run up legal costs and delay justice – and told everyone so.

Standard Bank stuck to its claim that the Investec letter was authentic, despite *ITWeb*'s reporting that Investec had uploaded similar technology to that provided by ADS some time after Reynders met with Standard Bank.

The Investec letter was supposed to support Standard Bank's contention that the technology was widely available prior to the bank's having signed the non-disclosure agreement with ADS and, if it was a breach of copyright, it was an unintentional breach.

By now, Reynders's legal team were getting cold feet. His attorney and legal counsel resigned, alleging threats from the bank's legal team.

The bank's advocate, Schalk Burger SC, approached Reynders on the day of the trial with an offer to settle, failing which he would ask the court to award costs against ADS. Reynders refused. In front of Judge Roland Sutherland, Reynders represented himself and asked for more time to get to the bottom of the Investec letter and find new legal representation. Judge Sutherland agreed.

Reynders appointed a new firm of attorneys, who pressed Investec on the authenticity of the letter it had provided Standard Bank. Investec simply refused to respond, reinforcing Reynders's suspicions.

Reynders's legal team also asked Standard Bank for a copy set of all the documents it would rely on in the upcoming trial, as he feared some of the documents might have gone missing when he changed attorneys.

To his amazement, he found that the duplicate set they supplied contained a copy of an email in which Corneil du Plessis discussed the security threats, that differed significantly from the copy of the same email that the bank had originally made available to him in the "discovery" stage of the case.

The copy of the email now provided by the bank had in the interim clearly been "doctored" by someone who presumed he was no longer in possession of the original. It looked like a crude cut-and-paste of some exculpatory text that would support the bank's

claim that it had had knowledge of the technology prior to its introduction by Reynders.

Reynders had now been given two versions of what purported to be the same email, one clearly a forgery. Why the forgery, other than to mislead the court with false evidence? This, says Reynders, is confirmed by an earlier affidavit, filed by Standard Bank's Louis Lehmann in 2006 in response to a request for discovery, in which Lehmann stated that the bank had no documentation of whatever nature that would support their plea.

Around this time the bank's attorney Aslam Moosajee of Deneys Reitz (later Norton Rose) argued that ADS was being deliberately slow in advancing the case, and requested the matter be placed under case management by a judge. The late Judge Mohamed Jajbhay was appointed to hear the matter, which would go to trial on 25 March 2010. If ADS was not ready by then, the case would be dismissed with costs. ADS wanted a postponement as it had not been able to elicit a response from Investec on its supposedly exculpatory letter, a bit of evidence potentially devastating to ADS's case – if it were true.

ADS's attorney at the time reported back to Reynders that Judge Jajbhay had "gone off at him" during the pretrial hearing, and threatened that the bank would be awarded a *de bonis propriis* cost order (where the loser's attorney – rather than his client – is ordered to pay all costs of the case), unless he withdrew the case against Standard Bank before it went to trial. Shocked, Reynders contacted Judge Jajhbay and asked why he had made this unseemly threat to his attorney, to which Jajbhay replied his comments were "in jest". But by then the damage was done: Reynders's attorneys had panicked and withdrawn from the case.

Judge Jajhbay, struggle stalwart and defender of press freedom in ruling for the *Sunday Times* when it published unlawfully obtained medical information about the late health minister Manto Tshabalala-Msimang, had interesting ties with Standard Bank and its legal team. Standard Bank was the major sponsor of SA cricket at the time, and Jajbhay served on the sports body's legal and

Johan Reynders

governance committee. The bank's attorney, Aslam Moosajee, is the brother of Mohammed Moosajee of SA Cricket fame. Adv AE Bham SC, who represented Standard Bank in this case, also previously provided legal counsel to SA Cricket.

Given these ties, Reynders didn't like his odds. On 25 March 2010, Reynders was in court again, this time before Judge Tsoka. Again he was unrepresented, and was forced to ask the judge for a postponement as he had still not been able to get to the bottom of the obviously critical Investec letter. Adv Burger made sport of this, claiming Reynders had a pattern of showing up in court without legal counsel. Reynders attempted to point out that his lack of representation was the result of the bank's bullying tactics. The trial was ordered to go ahead, or be dismissed with costs as per late Judge Jajbhay's orders.

Just before the trial commenced, Reynders received an email from the bank's attorneys advising him that they would not be using the contentious Investec letter in court. A reasonable deduction from this was that Investec was not prepared to testify under oath to the truth of its contents or be cross-examined on how they came to introduce the system at their bank.

Standard Bank's only witness at the trial was Du Plessis, who had already been found to be a liar by both forensic experts. The trial was tainted with irregularities: Du Plessis was allowed to read his testimony from prepared notes, and gave hearsay expert evidence without filing an expert notice, as would be normal in such trials.

Judge Tsoka dismissed Reynders's case and found in favour of the bank. He further refused ADS leave to appeal without giving reasons. The judgment contains several errors of fact, hearsay evidence and rulings on points that were not part of the bank's pleadings. For example, the judge states as fact that Reynders conceded that his software was not secret and was available freely on the internet – which is not what he conceded.

Reynders is now preparing to take his case on appeal to remove what he says are the errors of judgment handed down in the South Gauteng High Court. This time he plans to have some heavyweight legal counsel at his side. "Kenneth Makate won his case against Vodacom in the Concourt, which found he had been cheated out of his invention. According to media reports, Vodacom must pay him R10.5bn. But look what it cost him: sixteen years and R5.5bn in legal costs, which is what his legal funders are expected to receive from his winnings."

How is that fulfilling the Constitutional right of access to justice?

"It's been reported that Oscar Pistorius spent R30m on his defence. Imagine you are accused of murder – rightly or wrongly – and you don't have money. You'd rather run than come up against a justice system which bankrupts you," says Reynders.

When done with Standard Bank, he wants to press for specific legislation whereby anyone who is party to a legal fraud is criminally charged and jailed. God speed with that. ■

Zululand Uni lavishes cash on luxury homes for execs

As students struggle with fees, staff get upmarket houses with top-of-the range furnishings. By Jonathan Erasmus

As universities across the country face an uncertain future amid student revolts over fees and diminishing grants, the University of Zululand at Ngoye in North KwaZulu-Natal splashed out on nine luxury homes for its executives in an exclusive riverside estate – some still to be built.

In the end-of-year interlude between last year's student riots and this year's renewed riots, the university quietly spent R24 million, in cash, to purchase the properties – some of them still just vacant plots of land.

The university then furnished the houses with top-of-the-range sound systems, plasma-screen televisions, lounge suites and beds. The executives, who pocket between R1.3m for lowly officials, to R2.9m per annum for the vice chancellor, were intimately involved in the planning phase and some were even allowed to add a swimming pool or sauna – or both if they so wished. *Noseweek's* sources believe the total cost will be in excess of R35m.

The property purchase was made while the university had failed to pay for its outsourced whistleblower programme – a programme the VC was keen to can – and while outstanding student funding had not been paid over to the university to help needy students.

The homes are in the upmarket Zini River Estate, in Mtunzini on KZN's north coast, a 20-minute drive from the main university campus.

The estate has private access to the Umlalazi River, a private nature reserve, and is adjacent to the Mtunzini Country Club, with a nine-hole golf course, squash court, gym and two tennis courts. The decision to purchase was rushed through the university's council just 10 days before the university went into recess for the Christmas holidays.

Documents detailing the purchase feature in a labour dispute between the university and its former Chief Financial Officer, Josephine Naicker.

Confidential minutes of an executive council meeting held on 5 December 2015, a Saturday, record the acceptance of a proposal for "University accommodation for executive staff".

The proposal stated that the "remuneration philosophy" showed "a lack of incentives to attract and retain staff" and "accommodation was one of the key aspects that a prospective candidate considers".

It said its analysis established that houses were available on the market in the range of "R1.25m to R3.5m" but it would be "much cheaper if the university could buy a plot with an approved plan," and if it were to buy the homes in one place to make the project easier to manage.

The decision handed university bosses a blank cheque. There was no mention of cost or what the budget might be.

By Friday the following week, seven offers on properties had been made and accepted and a week later they were bought. Another two were bought in March this year.

The person with the most to gain was the Vice Chancellor Xoliswa Mtose, who at the time was acting VC when the decision to purchase the homes was made.

Her house, the biggest and most expensive of the lot, cost R5m and commands a 180-degree sea view, double garage, swimming pool and landscaped garden.

The remaining homes have since been allocated to Professor Neil Garrod, (DVC: Institutional Support, Rectorate), Dewald Edward Janse van Rensburg, (Registrar, VC's Office), and other executives.

The purchase, according to university communications head Gcina Nhleko, is part "of the University's strategy to recruit and retain qualified executive staff".

"Council decided to purchase houses to offer them as part of executive packages," said Nhleko.

Emails between Naicker and Garrod, who was standing in as the VC during the purchase period between 11-16 December 2015, reveal Naicker's discomfort with the deal and Garrod's continued reassurances that

Clockwise from top left: Zini River Estate; vice chancellor Xoliswa Mtose; Professor Neil Garrod; CFO Josephine Naicker; and the view across the development

all was above board.

A week after the council decision, Garrod requested Naicker to deposit R19.2m into the trust account of Kloppers Incorporated. She demanded more documentation, claiming she could not "make sound decisions without the relevant information"; but under sustained pressure she eventually released the cash.

Garrod told Naicker that the "rush" was necessary. He said a cash purchase was necessary because a bond "will not only reduce our borrowing capacity for larger infrastructure projects, such as student residences, but would delay the process yet further".

"The need for speed comes from us and us alone," said Garrod.

Garrod was intricately involved in the process of approving the building plans and insisted on a swimming pool

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for at least one of the houses. A standard household swimming pool retails between R60,000-R80,000.

The university already owned houses in Mtunzini – an entire duplex complex. They also own a house in Empangeni and eSikhawini, while accommodation is also provided for the VC on campus.

The majority of the properties were bought for between R2.7m and R3.1m, except for (Acting VC) Mtose's house. One plot of land cost R700,000.

The purchase is not reflected in the university's 2015/16 annual report.

The property deal was to be Naicker's undoing; she started in the post on 1 December 2015. On 28 March she emailed what she thought was a protected disclosure to the university's Finance Committee of Council (FCC) to draw their attention to "issues… destabilising finance".

Among these was the purchase of the houses, an instruction from Mtose to "structure a loan for an employee" of R400,000 to buy a house – despite there being no policy in place to allow this – and that Mtose "sourced quotes directly from suppliers and indicated that payments should be made to them" to furnish her new home, in contravention of all supply chain management rules, while using suppliers not on the vendors list.

"She insisted that [*Beds for Africa*] was the only company the beds should be purchased from," wrote Naicker to the FCC.

But a day later her letter to the FCC came before a full sitting of the executive committee, which dismissed her claims and instead stated that Naicker's "issue of non-performance should be dealt with".

That same day, 29 March, the council appointed Mtose as VC.

On 6 April a sitting of the FCC also rebuffed Naicker's assertions, after accepting that Mtose had "taken it upon herself" to buy furniture because "some executive staff were about to move into the houses" [*namely Mtose herself*], and that the "executive management [*Mtose*] wanted to set a standard in terms of furniture to be bought, with the exception of colour, given the budget available for this expenditure".

Five days later, Naicker was issued a "Notice of Precautionary Suspension" on charges of, among others, making false statements and failing to carry out instructions. Her labour dispute with the university is ongoing.

Naicker disputed whether the university had the funds to make the purchase. She obtained a confirmatory affidavit from her predecessor, Thabani Zulu, who had prepared the university's budget before leaving. He said it didn't include "the acquisition of the houses for the executive".

He said when he left he was not allowed to formally hand over to Naicker as "usual practice demands", instead he had to brief Garrod.

"I am inclined to believe that the denial of a proper handover was a deliberate attempt to ensure that the finance department operated without knowing exactly what the approved deliverables were. This situation is potentially dangerous as it opens the floodgates for the powers-that-be to dictate to the unit and the CFO what they want done," said Zulu.

The university was exposed in an alleged 20-year cash-for-degrees scam where it was believed 4,000 degrees had been sold

In Mtose's replying affidavit to Naicker's submission, she said they appointed Naicker as they "were desperate" to fill the post but had serious reservations about her capacity. She said that besides Naicker's handling of the property purchase, she was also suspended for her failure to pay staff salaries on time twice, failure to submit documents on time to respective committees, and that she undermined the chain of command. She said the university has since commissioned a forensic investigation into Naicker's conduct.

Naicker told *Noseweek* that she "really wanted to go back to the university" and continue her work.

"That is the reason why I am in this fight, otherwise I could have walked away. It is a university for the poorest of the poor yet it is a university that has produced Alumni such as Chief Justice Mogoeng Mogoeng. I will likely comment further on my case once this whole matter has been finalised," said Naicker.

In August, the university's tertiary calendar came to a halt after students embarked on a protest in support of a year-long wage dispute with rank and file staff. The protest turned violent at the main campus in Kwadlangezwa, just outside Empangeni, resulting in the campus being closed down on 30 August. Students were given two hours to vacate the premises.

Earlier in the year, the university was exposed in an alleged 20-year cash-for-degrees scam where it was believed 4,000 degrees had been sold.

Staff members went on strike at various times in June, the last incident went on for three weeks, until the university was closed "indefinitely" on 31 August. They are demanding the in-sourcing of contracted workers, conversion of fixed-term and temporary contracts to permanent positions and the implementation of pay progression systems previously agreed to.

In a press statement, Nehawu said it "finds it scandalous that the institution's management pleads poverty when they have recently spent around R30 million to purchase luxury houses and furniture for nine executives, while only budgeting R20m to attend to the long-overdue pay progression needs of 1,200 workers".

A source within the university said they only became aware of the housing scandal after the union's "deputy chairperson and academic representative" was suspended for "contravening council's confidentiality clauses" and blowing the whistle on the purchase.

"The fact that they did not budget for these houses, used money from the university's assets account, while also not following the supply chain management policy already has alarm bells ringing. They snuck this through. One would question whether these houses were used to secure council votes for the VC position (which Mtose was awarded)?"

Noseweek sent several questions to the university, including asking what the total cost had been to date for the purchase; if the purchase was prudent in the current economic situation in which universities find themselves; why executives were given the option of swimming pool or sauna; why the purchase was not declared in their annual report; and why the purchase was deliberately passed with secrecy. A short reply followed: "Many of your assertions are incorrect and your questions relate to matters of internal management," Nhleko responded. ■

The untrustworthy trust

The king may be fake and the land claim dodgy, but who's to complain when there's money to be made? By Jonathan Erasmus

A DISPUTE OVER A "TRIBAL" LAND claim in KwaZulu-Natal Midlands could be the key to exposing corruption involving suspect land claims that have benefited a wealthy elite – including land-claims officials – at the expense of the rural poor.

In 2003 a claim was made on 106 farms in the Camperdown area by 315 members of the Azibuye Emasisweni Maqamu Community Trust. Between 2007 and 2010 the state spent R25 million purchasing 12 of the farms to satisfy the claim. In September last year the process to reclaim the remaining farms was put into motion.

But somehow, depending on which faction of the now-fractured trust one speaks to, the land was hijacked by a man referred to as Inkosi Siphiwe Majozi. Although his title of inkosi (chief) is in dispute and he had no traditional territory over which he exercised authority (his detractors refer to him as having been "just another refugee from Msinga"), he did enjoy the backing of a senior land claims official. Which, say many observers, is what largely accounts for his success.

Whatever his real or imagined status, Majozi ran the trust's land like his own personal kingdom.

The growing controversy surrounding the re-claimed farm known as Broadview – conveniently adjacent to a provincial road – has thrown up clues as to how the government's land claims programme may have been corrupted to become just another means of dispensing political patronage.

From 2010, without township plans, approvals or services, Majozi began to "sell" plots on the farm to buyers for sums ranging from R10,000 to R50,000 – paid in cash. The buyers received no deed or document indicating they were owners. (Even in deep rural areas ruled by traditional authorities "owners" are given a "Permission to Occupy" slip – a legally recognised document.)

Still today the occupiers of plots purchased from Majozi have no access to potable water and electricity. There is no stormwater or sewerage system. (Boreholes, septic tanks and pit latrines exist side by side. There are no built roads. No municipal services are provided. No building plans are required. Indigenous bush was simply cleared to make way for the 250 upmarket homes now built on the once thriving cattle and game farm.

A former taxi driver, Majozi's entitlement to the local throne has long been disputed. His title of inkosi is widely believed to have been self-assumed, although he sat on the uMgungundlovu Local House of Traditional Leaders.

In September 2011 Majozi admitted to local newspaper *The Witness* that he was selling land. He claimed his family and "kingdom" have been here "since the 1800s". He said he was selling the

Land claims official and deal maker Walter Silaule tries on Mandarin costume for size while on an official visit to China

The Broadview Farm upmarket squatter camp

plots because "an inkosi cannot live in the vast area alone, and the buyers needed the plots".

Ironically he preferred to live in the upmarket Pietermaritzburg suburbs while his home on the farm had the humble address of 0 Broadview Farm.

The "sale" of the plots was done via word of mouth and on the buy-and -sell website Gumtree. A construction company called Dlaba Holdings uses an image of a R1.5m house they have built in the illegal development to advertise its services to prospective clients.

A potential buyer, Goodman Gasa, said he found himself screwed by the trust when, after paying a deposit to obtain a property, he was never allowed to occupy it. He was nevertheless refused a refund of the deposit he had paid into the "Amaqamu traditional authority" account. It is unclear if this was the trust's account or Majozi's personal account.

"He told me to advertise a plot for the price I had paid and then keep the money from the sale. We did this and I heard nothing more of it. I didn't know it was private land," said Gasa.

The nearest tribal authority leader not deemed landless is Inkosi SM Mlaba. He has confirmed that the properties owned by Majozi did not fall under any tribal authority or inkosi.

In 2011 Musa Mchunu, whose family were members of the trust, claimed they, along with the remaining 315 members were excluded from any decision-making bodies by Majozi and were not given access to the land. He vehemently denied Majozi's claim to ownership or any legitimacy with regard to the land claim, and says he long ago reported to both the Department of Rural Development and Land Reform and the Mkhambathini Municipality that Majozi was irregularly "selling" off the land. Both chose to ignore his complaints.

Eventually in October 2011 he, along with two other families, obtained a court interdict stopping the sale of land. Majozi stopped – but only for a short while.

Majozi died in May 2012, leaving a fractured, looted trust and its 315 members in even further turmoil as rival groups began to wrestle for control over what was – and has the potential to be – a very profitable business. It controls assets including a hotel, chick hatchery and several properties suitable for cattle farming. Only the hotel is operating. If its latest land claim is successful, it will become one of the biggest landowners in the region with prime property along the N3 highway.

"There is massive corruption going on at the expense of the poorest of the poor," said Mchunu who is now chairperson of a faction fighting another faction in the High Court in Pietermaritzburg for control of the trust.

"I told the municipality about the squatters. The buyers are washing money. It is corrupt money. Most of the buyers are government officials while others are lawyers from Pietermaritzburg. Majozi made himself king and tried to turn restitution land into his own tribal authority," said Mchunu.

He decried the lack of enthusiasm by the SAPS, the NPA, the local council and the land-reform department to investigate.

"The trust was given access to a R27m grant by the Land Reform department in order to provide production capacity to the farms. We have fought for several years to get documents related to the trust. We have been told that the R27m was apparently shared among the 315 claimants. This is not true. It is in the interest of those who stole the grant money to keep this trust in disarray because stability will allow us to find out where this money has gone," said Mchunu.

A third front has since opened on the trust war. So questionable is the land claim, also known as the Amaqamu claim, that the owners of the majority of white-owned farms still under claim are now fighting the trust in court, believing historical evidence will show that the claimants have no claim at all.

It was a black farmer who first revealed that Majozi was a charlatan, and drew attention to the non-responsive manner in which the Land Reform department continued to deal with these land claims.

Simon Gcumisa bought a farm in 1995 in the Camperdown region. In 2003 he was told by land claim official Walter Silaule it was being claimed by Majozi. While he had his reservations about Majozi, he decided to sell anyway, as he was suffering from ill-health. The official, Silaule, told him the land claim deal for his farm would be "settled within five months (before March 2004)".

But after the initial meeting he heard nothing for three years. Calls and messages went unanswered. On the two occasions that Silaule did promise to meet him, the land claims official didn't pitch.

On 22 March 2006 Gcumisa sent the department and Silaule a letter in which he stated: "Siphiwe Majozi to our knowledge is not an inkosi. He

does not come from a senior Majozi house. There is no conclusive evidence that the Majozis either owned or lived on the claimed land."

In the same letter he said the inordinate amount of time taken to finalise the claim had resulted in financial losses to his family. "We had a willing buyer who was aware of the existence of a claim, who was later discouraged by the land claims official Silaule, who told him he would regret it if he bought our property."

Gcumisa's letter gave the commission an ultimatum – buy the farm in 14 days or else he would sell. They did not respond. Gcumisa sold the farm to Dave Rigby.

Silaule is widely credited with having put together the land claim together with Majozi. Rigby recalls Silaule, in the company of Majozi, telling him in 2005 that he was going to "take all the farms" under claim. He also remembers how, on numerous occasions, Majozi could be seen parked outside in his Mercedes-Benz (with the registration number "Majozi-ZN") scoping his farm.

Much as Mchunu had done in 2012, in July 2014, Rigby, too, informed both the department and the Mkhambathini Municipality of the rampant illegal building taking place on the farm.

"They are advertising these sites on the Gumtree website. We are aware that various officials holding high office within the Land Claims Office in Pietermaritzburg are involved in this scheme, thus no action is being taken by those in authority," he wrote.

The department replied saying they would "look into it". The municipality didn't even bother to acknowledge receipt of his letter.

Like Mchunu, Rigby has no solid proof that an official is corrupt, just a hunch based on circumstantial evidence. Why, otherwise has the illegal development never been stopped? And why has the trust structure been unavailable for public viewing?

Mchunu says it was only after a legal challenge that they were allowed to get copies of a trust document that listed the beneficiaries – many of whom did not know they were on the list.

A rival faction, headed by Cyril Shabalala, has since produced a beneficiary list with a thousand names on it. Part of the legal challenge between Shabalala and Mchunu is about which list is the valid one.

Two years on, the building and selling continues. Such is the scale of the development that the local water authority is scheduled to pipe the area.

KZN Land claims commissioner Adv Bheki Mbili was unable to answer questions sent to him before *Noseweek's* deadline, although he committed to doing so. The questions included whether they accept that their department is riddled with corruption; why they have failed to act; and whether – judging by the trust's past behaviour – they should be allowed to make further claims.

Noseweek also put questions to the municipal manager. They included: Why had the municipality failed to act on this matter? Are municipal services being delivered to the illegal development? Has there been political interference in the municipality's handling of the matter? What have the municipality's lawyers done so far in relation to the matter?

Municipal Manager Thabisile Ndlela said the matter had been handed over to their lawyers and KZN's department of Cooperative Governance and Traditional Affairs. ■

Mchunu says it was only after a legal challenge that they were allowed to get copies of a trust document that listed the beneficiaries – many of whom did not know they were on the list

Murder widow wants answers from property mogul

Real estate tycoon Bill Rawson refuses to explain how a valuable franchise disappeared from the estate of family axe-murderer Tony Adlington. By Sue Barkly

Nearly 15 years ago in January 2002, Debbie Adlington lay in a coma in the intensive care unit at Groote Schuur Hospital, Cape Town, having been bludgeoned by her husband.

Estate agent, Tony Adlington, 42, attacked his 38-year-old wife in their Marina da Gama home with the blunt end of an axe, leaving her unconscious, before hacking the couple's three young children to death. He struck Kevin, 12, Katelyn, ten, and Craig, nine, with the sharp edge of the axe, before setting their bodies alight. He then shot himself in the head.

Debbie's devastated relations rushed from their homes in KwaZulu-Natal, to keep vigil at her bedside, hoping for signs of response.

After the initial shock, and with Debbie still in a coma, her father David MacInnes and her brothers, Nigel and Bruce, decided to start assessing the financial situation that Tony had left behind. A qualified CA, he had been operating a Rawson Property Group franchise, serving the lower Wynberg area. His office was in 2nd Avenue, Kenilworth, and he sold commercial and other properties. At one stage, he had nine agents working under him. The agency also managed bodies corporate, for which it earned fees.

So, while Debbie lay unconscious, attached to a heart-lung machine, her father and brothers called up Bill Rawson, chairman of the Rawson Property Group, to set up a meeting.

Her brothers later told her that they and their father (since deceased) had found Rawson's behaviour "a bit odd".

"He didn't want them near his office… when they asked him on the phone where his office was, he immediately insisted that they were not on any account to go to his office. He suggested they meet at the Blue Route Spur, which they did," Debbie told *Noseweek*.

"At the time, my family was obviously unable to ask me any questions… I would have said, 'Dad, speak to Rawson, there's a franchise there…' but I couldn't talk."

After the murders, Tony Adlington had burnt his computer, briefcase and documents before shooting himself. Debbie's father went back to the house and gathered up every piece of paper he could salvage. But he did not manage to find out very much. Nor did he get far in the meeting with Rawson.

It took several years before Debbie recovered sufficiently to start asking her own questions about her late husband's franchise with the Rawson group.

After her family tragedy, she had spent a year with her parents in Durban – "having this therapy and that therapy, one after the other" – before returning on her own to Cape Town to start life again in the city she loves, the place where she had raised her children. She bought a small home and settled into a new job, hoping to somehow rebuild her life. In 2005, she gave birth to her fourth child, Kylie-Ann, through in-vitro fertilisation.

"Coming out of all this, as the years went by, I became a lot stronger and eventually I remembered everything," said Debbie.

For her, the big issue was: what had become of the Rawson franchise that Tony owned at the time of his death? The family had been unable to find the contract document.

"I wanted to know what happened to the franchise that I know my husband bought in 1999. It should have gone into the estate, but there is no mention of it in the estate liquidation and distribution account compiled by executors, Maitland Trust.

"He had sold two lighting shops – one at the N1 City Mall and one in Noordhoek – to pay the R100,000 asked for this agency."

When Debbie Adlington returned to Cape Town, people in the industry kept asking her, "What happened to your husband's franchise?" So she started asking too. In her attempt to get to the bottom of the issue, Debbie phoned the Estate Agents Affairs Board (EAAB) and asked for her late husband's Fidelity Fund certificate number. She knew that every agent must be issued with one after passing the qualifying exams before they can work as an agent.

Once she'd got that, she set about trying to find proof of the franchise.

Picture: Gallo Images/Media 24/ Corrie Hansen

Debbie Adlington

"As I understand it, in order for him to acquire the franchise, he would have had to work as an agent under Bill Rawson… then, when he qualified, he would have bought the franchise – at a cost of R100,000 in 1999 – and become the franchisee principal."

In an affidavit signed in 2012, Clive Ashpol of the EAAB confirmed to Debbie Adlington's attorney David Bloch that the board had registered and issued the following fidelity fund certificates to Anthony John Adlington:

- "Fidelity fund certificate 98707733 in his capacity as a candidate estate agent in the service of Bill Rawson Estates CC on 14 October 1998 and valid for the period 14 October to 31 December 1998;
- "Fidelity fund certificate 99700402 in his capacity as a non-principal estate agent in the service of Bill Rawson Estates CC on 1 January 1999 and valid for the period 1 January to 31 December 1999;
- "Fidelity fund certificate 99209320 in his capacity as a principal estate agent of EB Shelf Investments 28 (Pty) Ltd, trading as Rawson Commercial on 17 June 1999 and valid for the period 17 June to 31 December 1999;
- "Fidelity fund certificate 00205265 in his capacity as a principal estate agent of EB Shelf Investments 28 (Pty) Ltd, trading as Rawson Commercial on 1 January 2000 and valid for the period 1 January to 31 December 2000;
- "Fidelity fund certificate 01207233 in his capacity as a principal estate agent of EB Shelf Investments 28 (Pty) Ltd, trading as Rawson Commercial on 1 January 2001 and valid for the period 1 January to 31 December 2001."

A search of the companies registry in Pretoria revealed that both Tony Adlington and Bill Rawson became directors of EB Shelf Investments on 24 February 1999, and that Rawson resigned as director on 1 August 2001, leaving Tony Adlington as the sole director.

Debbie was shocked when she later discovered, through the EAAB, that the franchise had been sold 18 months after the estate was wound up. The company was only deregistered in July 2010 after it had repeatedly failed to file annual returns.

"The question is, who signed the agency out of my husband's name or his company's name?"

She asked a lawyer to do a background business search on her husband. This came up with bookkeepers' reports – concluded at the end of 2001 – showing that tax was paid and showing a net profit in the bank.

She then asked her lawyer to write to the new owner of the franchise to ask to see her contract. "My lawyer hand-delivered the letter to her. She opened it… and went straight to Bill Rawson. We then got a letter (from Rawson) saying we were not allowed to have contact with her.

"What we wanted was to see what her contract said, when it was signed, and what she paid for it. I believe there was no justification for selling the franchise without the estate being paid for it," said Adlington.

Debbie Adlington believes that Bill Rawson should have handed the contract over to the estate, following her husband's death.

"The executors, Maitland Trust, might not have asked the questions that they should have asked… but Rawson should have come forward and done this."

It is not inconceivable, admits Debbie, that Maitland Trust was not made aware of the existence of the franchise. "There is also talk that Bill Rawson indicated that he could sue the estate for R100,000… I have asked the executors why they didn't ask more questions about this… but none of our questions in this regard have been answered,"

she said. (It doesn't help that, through Debbie Adlington's years of trying to get to the bottom of this, there have been numerous staff changes at Maitland.)

On 4 May 2012 Debbie's attorney David Bloch wrote to Bill Rawson "… with a view to resolving the as yet long unresolved issue of her late husband's estate's claim against Rawson Property Group.

"Our client has made numerous enquiries and it has become clear to her that Mr Adlington purchased a Wynberg franchise from the group in about 2000 [*in fact mid-1999*] which franchise he ran for over two years before his untimely death.

"In terms of your own requirements for the purchase of a Rawson's franchise, a franchisee is required to pay a 'once-off upfront premium, as well as ongoing royalties' for the franchise, Mrs Adlington is aware that her late husband bought such a franchise and that on his death the estate should have received the value of the franchise, either by way of a valuation thereof, or through the sale of his franchise.

"Furthermore he was in charge of collecting levies from the following body corporates, which brought in monies which should have become an asset in the estate: Queenspark Body Corporation… Central Park Body Corporation; Owerbosch Body Corporation… and Wellington Close Body Corporation…

"The franchise value was never determined and the estate was deprived of this asset. Ms Adlington has reopened the estate, as she is entitled to do, and urgently requires the financial information from yourselves with respect to her late husband's Rawson franchise. We then require a meeting in order to resolve the issue.

"We strongly suggest that we receive a positive response by no later than close of business on 26 May 2012, as we would like to keep the matter private and settle her ongoing concern in a reasonable manner. Ms Adlington is wanting to approach the media, as she feels wronged as the sole surviving heir of the estate, after all of these years…

"Should we not receive any response from you by that date or from your legal representative, then we shall assume you are ignoring our client and we shall inform her thereof and she will decide what further steps to take."

On 22 May 2012, Mr A Mcpherson of attorneys Smith Tabata Buchanan Boyes wrote back: "We act on behalf of Rawsons Property Group… Our client declines to enter into any correspondence with you in connection with this matter as your client has no claim against our client of any nature whatsoever. Our client furthermore has instructed us to place formally on record that it does not appreciate the threat contained in your letter to espouse any claims which your client alleges she has in the media. We have been authorised to accept service of any proceedings which your client may see fit to institute and advise you that all our client's rights are expressly reserved."

On 28 May 2012, David Bloch attorneys responded:

"We wish to point out that the standard reply received from your client is disappointing as this is no ordinary case. We remind your client that our client suffered the most terrible trauma of losing her husband and all three children in his moment of madness. She survived miraculously and has now become a motivational speaker. Deborah Adlington is looking for answers and one of those is to tie up the asset which her husband left behind, namely the Rawson franchise. We are not threatening anyone. Ms Adlington wants to act in some way to show that she was not informed of what happened to the franchise and any monies owed to the estate. We want to do this in a quiet and legal manner and not let her remove us from the case and do her own thing.

"Kindly request that your client reconsider his approach to this matter… Again we are writing without prejudice on this occasion as we are asking

What webs we weave

The website of the Rawson Property Group paints a picture of a family oriented business with "1,000 neighbourhood experts nationwide… from Soweto to Sandton, Melville to Bellville…"

"The Rawson Property Group, affectionately known as 'The Rawson Family', was founded in 1982 by William "Bill" Rawson, who entered the property industry in 1971 at the age of 21.

"We've always thought of our business as a family of property professionals who share and are connected by the same values and culture…

"We may be bigger than ever, but the Rawson family still prides itself on its openness and inclusivity. It is a family you'll feel part of whenever you deal with us, over a cup of tea, over the phone or online. With us, you're family!"

Under the section, "What we Believe in: …we feel a deep personal responsibility to our staff. We seek to create… an environment where everyone is given the opportunity to develop to his or her maximum potential… We aim to reward them commensurately with their contribution to the success of the company."

Under the section "Rawson Care… as you may have gathered, the Rawson Family is extremely big – but you may not be aware of our extended family.

"The Woodside Special Care Centre provides quality, integrated and comprehensive 24-hour care for profoundly intellectually disabled children and adults by educating and training them to their maximum potential…

"Our chairman and founder, Bill Rawson, has served as a trustee on the Board of the Woodside Special Care Centre since 1995. The Rawson Property Group corporately – and Bill Rawson personally – continues to embrace and support this special Centre both financially and through practical personal involvement.

"…Rawson Property Group runs an ongoing campaign wherein agents and franchises alike are afforded the opportunity of raising funds for Woodside on a monthly basis…" ■

for cooperation to resolve the issue by seeing the financials and what happened with the franchise to resolve the matter for her.

"More importantly, even as our client points out, the franchise belonged to Mr Adlington and, hence, the estate, and as such no one had the right to sell it other than the estate.

"Our client understands that the franchise was then sold illegally and as such the sale was invalid and or your client has acted in a way which he had no right to do.

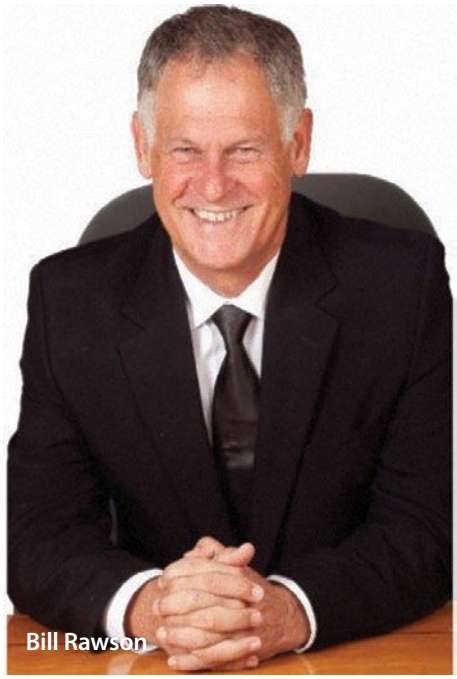
"This can lead to serious issues should he insist on ignoring Mrs Adlington's demands. Should we be brushed off now, then we shall deal with the matter differently. We do not want to go to the press but Mrs Adlington does want to go to *Carte Blanche* and we can only advise her and then she must make her own decisions. We trust that your client will respond to us shortly."

One year later, on 13 May 2013, David Bloch wrote again to McPherson at Smith Tabata Buchanan Boyes, again stating that, according to various inquiries, "it is clear that he (Tony Adlington) was a franchisee and a member of the Estate Agent's Affairs Board for three years or so, prior to his passing. As such, a written franchise agreement would have been concluded, presumably setting out the process for termination. Unfortunately our client does not have a copy of any such agreement and to date (bearing in mind the tragic circumstances) has made all reasonable attempts to ascertain the position of the estate vis a vis Rawsons with regard to the franchise.

"We now urgently request a copy of the franchise agreement between your client and Mr Adlington in order to resolve the issues which remain between the two parties…"

McPherson wrote back informing David Bloch attorneys that the contract had been destroyed.

So, on 10 June 2013, Bloch wrote to McPherson noting: "Your client's allegation that the contract was destroyed, we understand the franchise agreements are to be retained and not destroyed. Furthermore, it should have been produced for the executors of the estate in the first instance. If your client cannot produce the agreement, then we require a copy of a standard


Bill Rawson

franchise agreement to be produced within the next seven days."

On July 26 2013, Bloch, wrote again to McPherson: "Kindly reply to our recent emails by Monday 29 July, 2013, 17h00, failing which we shall be forced to take similar action to that which was taken against our firm by yours a few years ago, namely we shall have to report to the Cape Law Society that you do not respond to correspondence from another attorney.

"Your client has clearly sold the franchise which belonged to our client's late husband's estate. He had no right to do so and we shall now take the appropriate action, if we do not receive copies of the contract and sales agreement by Monday. Should he continue to claim that he destroyed the documentation then we require a copy of a similar contract for a franchisee, failing which we shall approach the current franchisee and put her franchise in dispute."

On 26 July, 2013, A McPherson wrote to Bloch: "We refer to your letters dated 8 and 26 July 2013. Our client does not intend entering into any further correspondence with you. We do not intend responding to your letter save to state that our failure to do so must not be construed as an admission of any of the allegations contained therein."

Debbie Adlington has spent years building her life again. She works as a receptionist at the head office of Pick n Pay and lives in a modest house in Kirstenhof with her daughter Kylie-Anne, now 11, who is "the apple of my eye". She keeps photos of her three murdered children on her fridge, and, when *Noseweek* visited, described each child's personality.

She said she'd never been afraid of her husband, that in fact, "you couldn't have asked for a better husband and father to our kids."

She cannot explain why he cracked except to venture that "he did fight in the Rhodesian war… he told me some of the stories of what they did to terrorists. I have been told that many men who fought in that war never recovered".

Despite the terrible tragedy, she says she is doing fine, apart from getting stressed sometimes "but, on the whole, I cope pretty well".

"And I have my daughter. I don't take anti-depressants, or anything, but I drink a lot of coffee. Coffee is my saving grace. And I go to gym every day. We have a gym here at Pick n Pay. I have to carry on, and be happy. I have no choice. I have a child to worry about."

But the years of struggling to get answers from Bill Rawson Properties about the franchise her husband owned with the group are taking their toll.

"I keep going back to what happened between him and my brothers and father when I was unconscious all those years ago. There was so much written in the newspapers about what happened. The papers were all saying my family was dead and I was fighting for survival. Millions of people knew about what happened – and I didn't even know that my children were dead.

"Maybe Rawson thought I would not make it… or maybe he thought I would have amnesia and forget about this franchise. But I did not.

"I want to know what he did with the franchise, number one. It is money that should have gone to the estate. If he had phoned me and said 'Debbie you have done the exams [*she, too, has qualified as an estate agent*], do you want to do property?' I could have said, 'no, sell it on my behalf'.

"I am a widow and I have been through hell. I have school fees and a bond to pay. I have tried to be civil about this. I am prepared to sit down and talk," she said. ■

Environment department diverts Sanral bypass plan

Harrismith and Platberg Nature Reserve get a reprieve – for now. By Ciaran Ryan

Sanral's rush to push through a plan to reroute the N3 highway between Johannesburg and Durban across De Beer's Pass, shaving just 14km off the existing route at – a cost of nearly R10 billion, has met with resistance from an unexpected quarter: the Department of Environmental Affairs.

Until now the bulk of the opposition faced by the SA National Roads Agency Ltd has come from the people of Harrismith, which is an important stop-off point along the route. Sanral's planned new route will cross the escarpment many kilometres from Harrismith. Cheerleaders for the proposed rerouting implausibly suggest that the town will lose only a handful of jobs as a result of being bypassed.

However, an economic impact assessment by Mike Schussler of Economists.co.za reckons Harrismith stands to lose annual business worth R890 million and more than 1,600 jobs if the De Beer's Pass project goes ahead.

The DEA estimates that the negative effects of the new highway will extend far beyond Harrismith – something that the environmental impact assessment (EIA) commissioned by Sanral failed to address. The DEA says the highway will permanently destroy wetlands in an important Vaal River catchment area, negatively affecting critical water supplies to Gauteng.

De Beer's Pass

In its report rejecting the EIA, Environmental Affairs focuses exclusively on environmental issues. In a letter addressed to Cave Klapwijk and Associates (CKA), the firm contracted by Sanral to prepare the scoping report for the De Beer's Pass Route, the DEA questions why the consultants recommended the new route, in the light of the negative "ecological, wetland, avifauna, heritage, visual, and noise" impacts, and despite the fact that "the environmental economics resource specialists are not in favour of the route…"

Among numerous points raised by the DEA, is the claim in Cave Klapwijk's report that the Platberg Private Nature Reserve is not a declared nature reserve (and therefore, presumably, need not be taken into account). It is.

To keep the party going, the concessionaires need the new bypass route. It will allow the N3 Toll Concession (N3TC), which manages the route and collects tolls between Cedara and Heidelberg, to get a fresh 30-year extension on the business and maybe even create a few tempting revolving-door job opportunities for Sanral suits once they exit the public sector.

(Sanral CEO Nazir Alli, who was supposed to have retired months ago, seems unable to vacate his seat until the e-tolls mess he helped create is brought to some kind of resolution.)

Nothing seems to be going right for Alli, whose plans to build toll roads from the Cape to KwaZulu-Natal and beyond, face opposition at every turn. Last year the Western Cape High Court threw out Sanral's plan to introduce urban tolling on the N1 and N2 Cape Winelands route, citing the lack of a document trail within the organisation to back its decision to build the proposed route.

Equally controversial, if not more so, is the proposed Wild Coast toll road, which local community members argue will ruin a fragile ecosystem, and allow Australian mining group MRC to extract titanium sands from its pristine beaches, further despoiling the area.

Now it is Harrismith's turn to feel Nazir Alli's (somewhat desperate) love.

With only 13 years left to run on the existing N3 concession, there is little time to waste for the N3TC. Especially now that the initial capital cost of building the N3 route has likely been fully paid off, so revenue (after deducting a small percentage for road maintenance, operational costs and payments to Sanral) go pretty much to the bottom line.

By some estimates, revenue from the N3 route is R2bn-to-R4bn a year.

The DEA's rejection of Sanral's EIA puts a crowbar in the works – for the moment. The DEA asks Cave Klapwijk to rectify the shortcomings listed in its rejection letter and then to resubmit its report. This will leave the door open for N3TC to make a second lunge at the De Beer's Pass Route, but opposition is likely to grow, rather than diminish.

Those who have watched Sanral squirm over its e-tolls boondoggle in Gauteng – the Organisation Undoing Tax Abuse (Outa) – reckon that stretch of highway has cost an average 321% more than similar roads elsewhere in the world.

Outa says it is starting to discern a pattern in the way Sanral conducts business. It questions, for example, why the 1999 N3 Toll Road Concession contract included a requirement for the De Beer's Pass Route, if not as a means to extend the life of the 30-year concession. Why, otherwise, it asks, should the concessionaires get the benefit of a route that is fully paid-up, once the current contract expires in 2029?


Sanral CEO Nazir Alli

Opponents argue that the route should be returned, as is, to Sanral and that tolls be scaled down to cover maintenance only, or be held at a modest level to fund other essential routes such as the Gauteng Freeway Improvement Project.

Equally controversial is the proposed Wild Coast toll road, which local community members argue will ruin a fragile eco-system

In any event, it's back to the drawing board for Cave Klapwijk & Associates.

Mary-Jane Morris of Morris Environmental & Groundwater issued a warning in *Noseweek* last year: "The traffic relief will be temporary, but the ecological changes that will result from building the road are forever."

The N3 is still several years away from reaching the point where the De Beer's Pass Route or an alternative route with more capacity would be required, says a transport study commissioned by the Harrismith Business Forum to side-check a Techworld Consulting Engineers' report, which had recommended proceeding with the De Beer's Pass Route.

"The expected traffic growth at a rate of 5%-a-year from 2016 to 2043 for heavy vehicles travelling on the route between Warden and Keeversfontein is contrary to experience, as cycles in the national economy will surely result in periods of lower growth," according to the study. Right now, traffic is declining.

Advisers to the forum are encouraged by the fact that the DEA is doing its job in rejecting the N3TC's proposed new route. "It's clear they are listening to the objectors.

It would be comforting to think that the Department of Environmental Affairs' rejection letter suggests it

is leaning towards a compromise in the form of an alternative route that would replace Van Reenen's Pass, but in a way that does not kill the town of Harrismith, allows the road to be upgraded in stages, and will be less costly to the environment. This remains to be seen.

The congeniality between Sanral, the tolling companies and the big construction firms who fixed prices and charged more than three-times the going rate for the Gauteng Freeway Improvement Project is now the stuff of legend. In May, Sanral announced it was claiming R760m from seven construction firms that had admitted colluding on tenders for various road projects – but this is a pittance compared with the R10.8bn over-payment for the Gauteng Freeway project that the Outa reckons went to the contractors.

This comes three years after the Competition Commission found evidence of collusion and bid-rigging among road construction firms on hundreds of projects, including the Gauteng Freeway project, a finding that should have seen them all blacklisted.

Toll roads have become the touchstone for popular protest – the public having sensed they were being taken for a ride by the developers

Old Mutual and Australian investment bank Macquarie own two investment funds with shares in all three concession operators: Bakwena (operating the N1 Tshwane to Bela-Bela, N1 Tshwane to Rustenburg, and N4 Rustenburg to Botswana), Trac (which operates the N4 from Pretoria to Mozambique) and the N3TC (Gauteng to Durban). Several construction firms are also shareholders in the tolling companies, creating obvious conflicts of interest.

The fact that Sanral has tentatively started issuing summonses to non-compliant e-toll users to recover debts, has not contributed to their popularity. Sanral's nemesis, Outa, has promised to defend its members against any legal threat and has briefed Gilbert Marcus SC to argue its case in court – which will likely drag on for years.

Toll roads have become the touchstone for popular protest across the country – the public having sensed they were being taken for a ride by the highway developers.

There is no easy way out of this mess for Sanral or its CEO Nazir Alli who, despite plans to retire, is hostage to the crisis he authored. ■

Paradise lost?

THE RESERVE THAT IS UNDER THREAT if Sanral's plans for the route through Platberg were to go ahead, is a gem, according to SA Venues, which writes: "Platberg Reserve (interchangeably referred to as a nature reserve and a game reserve) that covers the western slopes and summit of the mountain and includes the now derelict Drakensberg Botanical Garden (also known as the Harrismith Wildflower Garden), once a major drawcard to the reserve… Two dams in the former wildflower gardens are what remains of a series of channels, or aqueducts, delivering water from the Gibson Dam – the pretty dam on the summit of Platberg – to Harrismith.

"The top of Platberg has an ecosystem all its own. It absorbs rainfall like a sponge, allowing it to slowly seep from its sheer cliffs and kloofs as waterfalls and streams. There is an historical blockhouse built to guard the man-made aqueducts, but now you can barely reach it, the path is so overgrown.

"Herds of eland, blesbok, mountain reedbuck and black wildebeest live in the reserve, as well as waterbuck and fallow deer." ■

Platberg: the centrepiece of the eponymous nature reserve

Minister's R320m BBEE cut looks like a payoff for screwing the rand

Divorce unearths patronage gratuity worth a quarter of a billion rand, and much more. By Barry Sergeant

A RECENT POST-DIVORCE SCRAP IN the courts calls for a recap of a story that appeared in *Noseweek* in July last year (*nose*189). It recounted how, in July 2006, within two years of his quitting the South African Cabinet as Justice Minister, Penuell Maduna had spearheaded a so-called BBEE deal designed and implemented by Sasol (in recent years listed in both Johannesburg and New York).

Sasol said its new BBEE partner, Tshwarisano (Sesotho for "pulling together"), was comprised of "many historically disadvantaged groups around the country". Its chief "promoters" were named as Penuell Maduna, Hixonia Nyasulu and Reuel Khoza.

Did the three "promoters" benefit from the deal? Nothing was said about that, but if so, the suggestion was they would only be three among thousands.

Exactly a decade later, however, all was revealed in the court papers filed in a dispute between Penuell Maduna and his ex-wife Nompumelelo. In the court papers Maduna alleged that his ex-wife was scheming to make off with his stake in the Sasol deal – 17.9% of the BBEE shareholder (the Tshwarisano trust) – worth a whopping R260 million.

Why would Sasol secretly have gifted an individual with such a massive, unthinkable sum? Maduna's astonishing endowment (as it turned out) took place while Sasol was claiming that "the direct beneficiaries of Tshwarisano number many hundreds of thousands of historically disadvantaged South Africans".

Sasol provided "considerable facilitation and support for Tshwarisano's financing requirements" amounting to some R1.1 billion. It provided guarantees for the debt and agreed to not recover guarantee fees.

Tshwarisano's debt for its shares was to be paid off with the cash dividends it would receive over time as owner of 25% in Sasol Oil. The dividends were significant, to the extent that Tshwarisano's debt was paid off by early February this year.

At that point, Tshwarisano's shares in Sasol Oil were swapped out into shares directly in Sasol. Sasol then declared a R356m dividend to outgoing Tshwarisano shareholders, resulting in still more millions flowing to the trust beneficiaries. And even more money that – as alleged by Maduna – his ex-wife was planning to appropriate.

All else being equal, R60m-plus from this cash dividend would have gone to Penuell Maduna alone. Once again, why was the ex-minister of justice singled out by Sasol for such astonishingly generous treatment?

For potential answers, rewind to January 2002, when the then-president Thabo Mbeki announced a commission of enquiry into certain foreign exchange matters, following the calamitous fall across 2001 in the value of the rand. The month before, Kevin Wakeford, the then-CEO of the South African Chamber of Business (Sacob), blew the whistle on matters that could have explained the currency's crash.


Penuell Maduna

For a brief history rewind again: from the introduction of the rand in 1961 right through to 1982, R1 bought a princely US$1.40. Then depreciation gradually set in. But during 2001, the rand's depreciation accelerated massively: at the beginning of that year one dollar bought R7.60.

By the end of the year you got a whole R13.84 for your dollar.

As previously reported (in *nose*189), early in 2002, some of the most telling evidence at the Rand Commission's public hearings was given by Nedcor's Mark Parker. He explained that during and even prior to 2001, the rulebook of the exchange control authority, the South African Reserve Bank (SARB) had (at least in the eyes of the banks) become "impractical", and exchange-control regulations had simply been allowed to "fall into disuse".

An atmosphere, if not a culture, of non-compliance reigned across all foreign exchange dealing desks in South Africa.

The few big players with the most muscle could undoubtedly move the market, especially when the trend line was intensifying in a certain direction. Market players had identified opportunistic niches where monumental amounts of "one-way" money could be made. The SARB either did not notice – or care.

To quote from South Africa's Constitution:

"The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic."

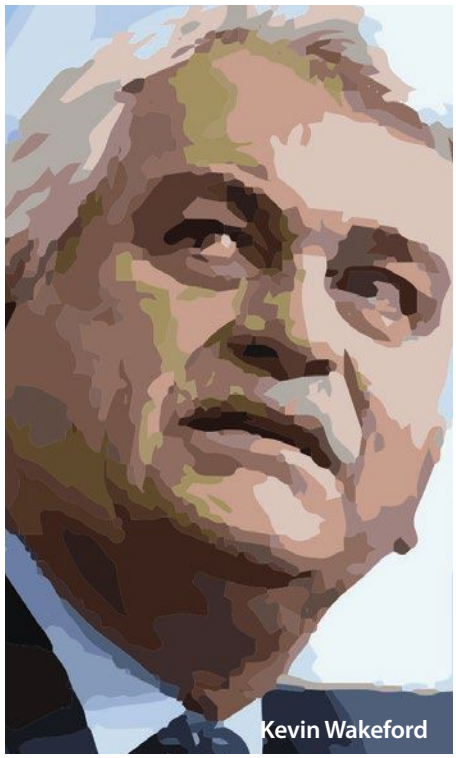
Reserve Bank Governor Tito Mboweni was having none of Wakeford's complaints and, despite one of the greatest meltdowns of any emerging market currency, the Rand Commission was closed down in mid-July 2002 by then-minister of justice, none other than Penuell Maduna – without its having completed its investigation.

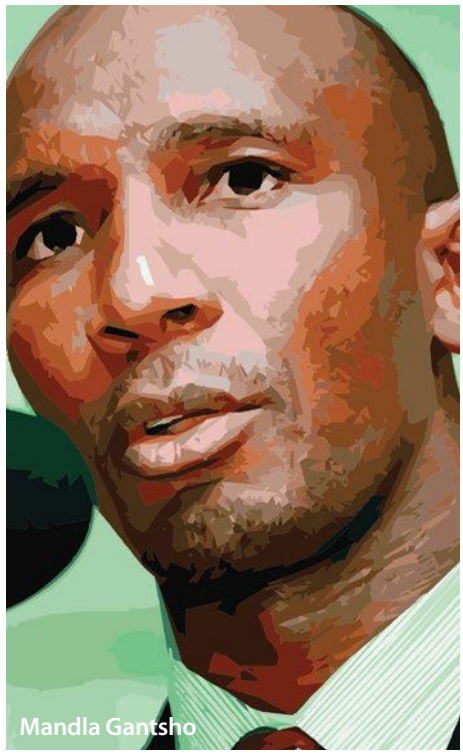
At the time, Wakeford interpreted the closing of the commission as premature. He had further concerns:

It was obvious that the commission failed to conduct widespread investigations and limited its efforts to certain areas.

Although the two executive summaries differ on some of their findings and recommendations, both reports refer to elements of delinquency in the markets. It is important to note that the commission did not investigate the possibility of collusion and manipulation in the markets.

Wakeford had mentioned a handful of "suspects" in his whistleblowing statement, including Deutsche Bank and, you guessed it, Sasol.


Kevin Wakeford


Mandla Gantsho

Was Sasol's selection of Maduna for significant participation in its massive BBEE deal pure coincidence? Maybe not.

In 2003, Mandla Gantsho, one of the three-member Rand Commission, was appointed a director – and eventually became chairman – of Sasol, the most seriously implicated non-bank in Wakeford's allegations. Gantsho was also appointed a director of, among others, SARB.

The commission chairman, John Myburgh, too, appeared to have run into some luck with further employment, as previously detailed in *nose*189. Inter alia, he was appointed chairman of the Sasol September 2004 Accident Trust, and in 2009 he was involved in the review of Sasol's competition-law compliance.

The apparent patronage extended to Maduna had seemingly filtered down from very high indeed. Early in October 2002, Wakeford had been sacked by Sacob chairman Christoph Köpke, whose boss (unbeknown to Wakeford at the time) was Jürgen Schrempp, the CEO of DaimlerChrysler International. Schrempp was on the advisory board of Deutsche Bank, which was most seriously implicated by Wakeford. Schrempp was also a non-executive director of Sasol.

After his spell as Ministerof Justice, Maduna went on to a career of being a very wealthy man. He was appointed vice-chairman of Bowman Gilfillan, a large Johannesburg-based law firm, traditionally one that was regarded as somehow more upright than its peers.

His notorious friend, the late Jackie Selebi, often used to scratch his head and express wonder over Maduna's immense riches. "We were both penniless in exile!" he would exclaim.

● On 19 May 2015 the Competition Commission announced it was launching an investigation into suspect foreign exchange dealing by certain banks

Once again, within days, the (then) minister of finance, Nhlanhla Nene was rushing around talking about it "not being in the national interest to undermine confidence in the banking sector" – the oldest defence of corrupt bankers when dealing with weak or deeply indebted governments.

The bankers had obviously already made some calls.

A year has passed and nothing further has been heard from the Competition Commission about its enquiry.

Career Watch has been alerted. ■

Mopping up after storm in a teacup

By Elisabeth Hamilton

When a reader pointed out *Noseweek's* mistake about the owner of the Constantia mansion once owned by Princess Diana's brother Earl Spencer, we discovered that it now belongs to the well-connected Frenchman who tried to snaffle South Africa's trademark rights to rooibos tea in Europe.

Unlike the red bush brand that he clandestinely tried to appropriate, lobbyist, art collector and obvious tea-lover Matthias Leridon had to pay a substantial sum for the Cape Town property which he bought in September last year: it cost him a cool R51.5 million.Then, of course, to avoid having any unruly neighbours, he also had to buy the plot next door, for R19.5m.

This (relatively) new arrival to the well-heeled area nestling among the Cape's oldest vineyards is unlikely to come knocking on a neighbour's door to offer croissants or to borrow a cup of flour. He is, after all a regular caller at the Élysée Palace, official residence of the French president, and owns a lobby firm called Tilder, whose clients include global blue-chip corporates such as Bombardier, Disney and French cable TV channel Canal+.

"Tilder is France's leading public relations and public affairs company. Tilder teams defend their clients' interests wherever needed. Tilder only works for private listed or private owned companies," Leridon boasted to *Noseweek* when asked if they lobby in Brussels and write policy for clients. In his earlier career, Leridon was a special adviser to former French civil service minister Hervé de Charette. Tilder's website describes Leridon as an agenda setter on radio *France Info,* where "he debates communications issues" and has been "a strong supporter of African economic development for over 20 years".

His Constantia residence, it seems, is intended to be a place where he can "get away from it all". His Paris home is adorned with photographs by South Africans Pieter Hugo, Guy Tillim and David Goldblatt, along with works by Malian Abdoulaye Konaté, Sudanese Hassan Musa, the Beninese Zinkpè, Mozambican Gonçalo Mabunda and Congolese Chéri Samba (Cheri Cherin). It is not open to the public.

So entrenched in the art world and big business is Leridon that in 2011 he became a spokesman/spin doctor for France's most prominent art dealer, Guy Wildenstein – who has since become notorious after his Nazi links were revealed, and who is currently on trial in Paris for money laundering and a US$600m tax fraud.


Gervanne and Matthias Leridon

In 2011 *The New York Times* reported that police raided one of Wildenstein's Paris buildings where they confiscated Degas drawings, a bronze sculpture by Rembrandt Bugatti and a painting of a Normandy cottage by French Impressionist Berthe Morisot.

"All had been reported missing or stolen, some by Jewish families whose property was looted by the Nazis, and others by heirs who said their treasures had vanished during the settlement of their family estates" wrote the *Times*.

In July 2013 Leridon's access to the powerful was made clear when French news magazine *Marianne* revealed he had been tasked (by Emmanuel Macron, then deputy secretary general of the Élysée, now presidential hopeful) with inviting "entrepreneurs" to dine at the Élysée with President François Hollande. It was speculated the dinner was a ruse to set up private meetings with party donors and Hollande.

But in South Africa his name was mud when in 2012, via his firm Compagnie de Trucy, Leridon tried to grab the trademark rights to rooibos in France. Had he succeeded, the move could have killed the European export market for local producers of the tea.

Leridon, who has an endowment fund to help African artists, told *Noseweek* that Compagnie de Trucy was named after "a small Burgundy village where [*his family*] has [*had a*] castle since the 14th century".

For a man who wrote a book called *L'Afrique va bien* (Africa is well) and who sat on a panel at a conference titled "L'Afrique, le continent du XXIème siècle: Utopie ou avenir proche?"(Africa, the continent of the 21st century: Utopia or near future?), trying to snaffle a trademark of an African brand reeks of hypocrisy.

Asked to comment, the spindoctor replied: "Compagnie de Trucy only applied for… five… trademarks after strategic analysis on behalf of a subsidiary: the African house of tea: Cape and Cape. This process was part of a global marketing strategy for this brand." Cape and Cape is a tea and coffee franchise in France.

It wasn't five trademarks applied for; it was 12. They were: The Rooibos Company; Compagnie Européenne du Rooibos; The Rooibos Board; The European Rooibos Company; Le Comptoir du Rooibos; Eleven O'Clock Rooibos; La Maison du Rooibos; Compagnie des thés et du Rooibos; Comptoir des thés du Rooibos; Rooibos Tea; South African Rooibos; and Palais du Rooibos.

The genuine Rooibos Council found out quite by chance and objected.

After Trade and Industry Minister Rob Davies added his weight to the objection in a note to the French Ambassador, Leridon's applications failed. Now, only Rooibos grown in South Africa can be called Rooibos in Europe. ■

SIBUSISO **BIYELA**

Sweet profits. Bitter truth

THERE IS A FAT MAN HOLDING MY girlfriend and waving his knife perilously near her tender throat. I ask that he not chew so loudly, as he is sitting in the row behind us at the cinema. He takes great offence at my request, even though I have sat through almost the entire movie without complaining once. He responds by inching the knife closer to my now-screaming date's throat, and all eyes on the shocked faces of the audience are now focussed on us.

Let me deconstruct this gruesome scene: I am the government; the audience is the Republic of South Africa; the fat man is The Beverages Association of South Africa; and my girlfriend is 60,000 jobs.

One wrong move and the jobs get it!

The Beverages Association of South Africa recently made claims that have been found to be "misleading" and "unproven" by the good folks at Africa Check. The claim that 60,000 – 72,000 jobs would be lost as a result of the excise tax on sugar-sweetened beverages was based on a study bankrolled by none other than (drum-roll) the Beverages Association of South Africa.

According to the reliable folks at BevSA, the sugar issue isn't as bad as the government and science set it out to be. They feel that this excise tax on sugary drinks is an overreaction to the role that sugar plays in the lives of South Africans. It can't be all that bad, right? Well…

The World Health Organisation says a normal human being should not consume more than six teaspoons of sugar a day, and luckily humans are known for their prowess in restraint. For example, that seemingly harmless 330ml of fizzy drink you had the other day is packed with around nine teaspoons of the sweet stuff, with fruit juices having around 10 teaspoons.

Our obsession with sugary drinks is evident in a US study that estimates sugar consumption has increased by 500% in 50 years. That same study notes that sugary drinks constitute around 7% of daily calorie intake which is probably as much as our ankle-biters do as well.

There is also the little matter of these drinks having no nutritional value at all. Why, with all the fibre completely removed from fruit juice, and sugar in its liquid form being most harmful, it's basically just type 2 diabetes in a bottle.

Think of the children! The sugary drinks industry's reputation when it comes to advertising their products to children has not been stellar. Research conducted in Soweto indicated that the average teenager (read: Wololo fan) consumes double the recommended daily sugar intake from sugar-sweetened beverages.

When the food and beverage industry was asked to promise not to advertise unhealthy products to children under a voluntary marketing pledge, some did so with fingers crossed. Another study in Soweto found a lot of billboards advertising sugar-sweetened beverages close to schools; and I can personally assert that nearly all the tuck shops at any township school are sponsored by our brown syrup-water overlords.

Left to their own devices, the boys and girls of the food and beverage industry in South Africa are stealth-bullies stealing our tuck money without us even realising.

Where has a sugar tax ever worked anyway? It has been shown to work in quite a number of cities and countries in South America, Europe and the United States. Mexico is often cited for a marked difference in consumption soon after a 10% sugar tax was introduced: purchases of sugary drinks fell by 12% in the first year as people switched to alternative drinks, including water.

Now, sugar tax is just one barrier against the perfect storm that keeps blowing South Africa straight to the number one spot on the fattest-in-Africa list. A sugar tax is not a silver bullet to solve our health problems, but it should be seen as a step in the right direction to raise awareness about the dangers of excessive sugar consumption, as it has in every country where it's been implemented.

How does sugar make you fat? Doesn't fat make you fat?

Our bodies get energy from three different sources: fat, carbohydrates and protein. (Bear with me.) Our bodies are equipped to deal with protein,

fat and carbs from meat and other foods, but sugar itself, a very simple type of carb, is relatively new on the evolutionary scene (having been refined and stuffed into all that we put in our mouths, thanks to the modern marvels of agriculture and industry).

Of all the carbohydrates we consume, sugar is the most versatile and palatable, and we tend to have a lot of it. If we have more than we need, the body converts it into fat in order to save up for a rainy day. We're primed for fat-storage because, back in the day, before we hunted and foraged in supermarkets, the phrase "get active" was the same as "find and eat all the things in case there's none for the next two weeks".

Sugar metabolism and fat storage is a complex biological process, but basically the body is not just a passive vessel that takes the fat in food and sends it to your bum. It is an active chemical plant with a lot going on in it that we don't yet fully understand, but we do know that both sugar and fat are part of the obesity epidemic.

The sugar tax cannot work in isolation. No one can really blame the Beverages Association of South Africa for reacting the way they have done. They've been swimming in sweet, sweet profits for decades by peddling carbonated, sweetened tap water as a preventative measure against dehydration, and we have loved it. Of course, with big business, when the profits are threatened, even a tiny bit, the jobs will be the first to get hit.

The sugar tax is relatively new territory for South Africa so it remains to be seen how the many people I know to be addicted to the throat-scratching sensation of Coca-Cola, will react to this new tax. It will be equally interesting to see if BevSA will really go ahead with their threat of sacrificing 60,000 livelihoods in order to save a few bucks.

We must also not be delusional in our thinking that the sugar tax will rid us of our potbellies and the many illnesses that come with it. As individuals, we need to take responsibility for our health, and the government needs to deploy educational programmes to inform citizens of the harmful effects of excessively consuming white gold.

We also must not ignore the fact that the Sugar Tax will hit the poorest the hardest, as is always the case with these excise taxes. This is where we need to ask where the revenue that the Treasury will gain from this tax will go. Of course, it's comforting to know that our government is renowned for spending taxpayer money where it's needed most.

Disclaimer: I ploughed through several cups of coffee, each with three teaspoons of sugar, and more chocolate cookies than is safe, to give you this article.

●*Sibusiso Biyela (25) is a digital science communicator at* ScienceLink, *South Africa's first digital science communication start-up, and he volunteers for local popular science* NPO SciBraai *("a civic technology lab using data and technology to drive social change").* ■

ANNE **SUSSKIND**

Spring fever. Mad, bad and sad

Spring has sprung, the wattle and bottlebrush are in bloom and here's a small nugget of optimism: Victoria is to ban all onshore unconventional gas exploration, including fracking and coal seam gas, after a parliamentary inquiry received more than 1,600 submissions, mostly opposed. The Greens called it a win over powerful and influential mining companies, and an adviser at the Australia Institute, Mark Ogge, said the ban was "sound economic and energy policy", given that the economic benefits promised by the gas industry in Queensland had failed to materialise. Research found that for every 10 new gas jobs, 18 agricultural jobs were lost.

Another nugget: young people aged 18-34 agree that drinking too much is a problem. A recent survey showed more than 75% happy with a 1.30am closing time and 3am last drinks for pubs, and more than half wanting these "lockouts" actually extended. It is they, commented a young journalist, who've seen firsthand the violence and punch-ups. The issue is "alcohol mixed with Australia's violent macho culture". Not being able to buy a bottle of wine in the early hours of morning is "a small frustration".

"While the law is a blunt tool… it's the only tool available to us to stop the headlines of murdered teenagers and 20-somethings. And these headlines have stopped," writes this sensible young woman. The first step to fixing a problem is accepting it exists. "As we can't change our violent culture overnight, we need to put other restrictions on ourselves in the meantime."

Damned if you do… When PM Malcolm Turnbull was snapped leaning over to give a homeless man a $5 bill recently, he was criticised on two fronts: the Mayor of Melbourne said he was encouraging begging and should give his money to buskers instead, while other eagle eyes noted he'd peeled the bill off a wad of cash. I felt for the perplexed Turnbull who didn't say much except, "It was a human reaction… there but for the grace of God go I."

Was it the mafia, was it drugs, was it poisoning, a religious cult perhaps? Some kind of coercion? Speculation ran wild, the nation was transfixed and newspapers created timelines and graphics for the Tromp family's movements. Why did they – a mother, father, and three normal-looking adult kids – disappear from their berry farm at the end of August and turn up, separately, in various states of disarray?

They'd fled the farm near Melbourne in their station wagon, minus passports and with only one phone because they had, it seems, some kind of collective breakdown. The phone went out the window, they travelled 1,500km to New South Wales, the children left, one daughter was found cowering and catatonic in the back of a ute (bakkie), the parents were sighted in the Blue Mountains before disappearing, and then the mother was hospitalised with her daughter, and the father was found running, disoriented, away from the family car down a deserted road.

"It became clear," opined one newspaper "that some great misfortune had befallen the family, in terms of their mental health." No more, no less, that's it; they haven't sold their story and they won't.

Mark Tromp

"I can see everyone's questions," son Mitchell told the press. "I can see why they want to know, but it's a family matter." Father Mark Tromp said he hoped his family would makes sense of the matter soon and apologised for the "hurt and concern" caused.

A four-year-old Sydney pre-schooler, about to enter kindergarten, has begun "transitioning" gender, while in Melbourne's Royal Children's Hospital some as young as three are being assisted by the gender dysphoria unit. Transgender advocates argue that children are generally right about their need to switch genders, while others say that the age of four is way too early for a child to change gender.

Getting back to straightforward bad news, with which we journalists are most comfortable: Police and terrorism experts have told Australians not to be concerned about "Islamic State propaganda" after a new online magazine, *Rumiyah,* exhorted readers to "Kill them on the streets of Brunswick, Broadmeadows, Bankstown and Bondi… Kill them at the MCG, the SCG, the Opera House and even in their backyards… Stab them, shoot them, poison them and run them down with your vehicles. Kill them wherever you find them until the hollowness of their arrogance is filled with terror and they find themselves on their knees with their backs broken under the weight of regret for having waged a war against the believers…"

Victoria's police commissioner Graham Ashton urged the public not to be alarmed or fearful of lone-wolf attacks and pointed out that much of the material had previously been published in Arabic. ■

BHEKI **MASHILE**

Living in Barberton. The bigger picture

FROM A VERY YOUNG AGE I CAME TO admire the notions of "for God and country" and of course John F Kennedy's "Ask not what your country can do for you; ask what you can do for your country".

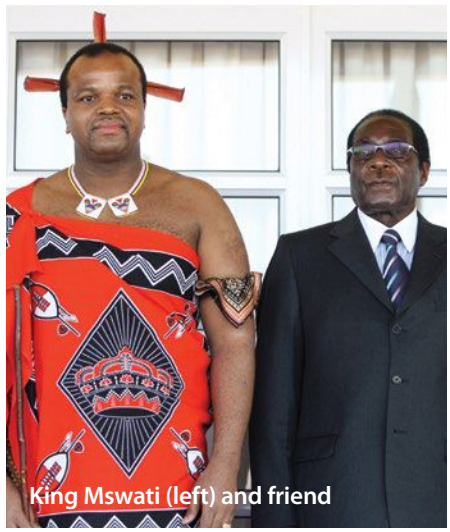
It is these two calls to patriotism that make me feel guilty whenever someone brings up the subject of my being a Swazi. You see, I am the offspring of a Swazi father, one who served as a diplomat for the kingdom, both at the United Nations and at the Embassy in Washington DC. My mother was a South African Sotho from Barberton, where my parents met and where I was born. This combination of nationalities has turned out to be both a blessing and a dilemma: I am often left feeling wracked with guilt.

You see, while the rest of my family returned to Swaziland after my father's 10-year diplomatic posting, I remained in the States to attend varsity and subsequently work there. However, upon my return in 1996 due to my father's death, it was not Swaziland I would return to but Barberton. As a result, over time I have faced accusations of not only abandoning Swaziland per se, but the country that gave me the opportunity to grow up and be educated in the "great" United States of America. Worse still, my American twang and assortment of general mannerisms were a clear indication that I had forgotten my roots, turned my back on my heritage.

When I wasn't finding these comments annoying – I was asking myself the same questions! And more often than not these comments closed with, "You are a Dlamini, a Swazi, and don't you forget that".

Sadly, unbeknownst to my critics I never lost sight of, or appreciation of, my Swazi heritage, despite being only eight years old when I arrived in the US.

There, we were almost always in the company of other Swazis visiting the US for business or pleasure. And my mother did everything in her power to ensure my brother and I did not become too Americanised or, better said, did not forget where we came from. She made sure that pap was not overtaken by pizza and spaghetti etc. On occasion, she went a bit too far by dressing us in shorts on our first day of school – a mistake that gave our new schoolmates the opportunity to introduce us to snowballs in a particularly painful way.



King Mswati (left) and friend

There were also the mandatory trips home every three or four years aimed at giving the foreign affairs contingent the opportunity to personally brief the king on their work and progress. However, at some stage my father pointed out that the trips were more than just holidays or required briefing sessions, they were insisted upon by then His Majesty King Sobhuza II to ensure that the family, more especially the children, did not lose touch with their Swazi heritage.

So, I have not turned my back on my Swazi heritage by choosing to settle just across the border in Barberton. Most people here – and across Mpumalanga – are Swazi, and all that comes with it: language, culture and traditions.

My having chosen to stay in Barberton on my return in 1996 had more to do with the desire to be in a bigger environment. Even had I opted to settle in the Kingdom, I most probably would eventually have followed on the heels of many fellow Swazis who've migrated to South Africa in search of greener pastures. And they range from professionals to illegal miners who remain fiercely loyal not only to their motherland but to the monarchy as well, despite the notorious excesses of the current monarch, King Mswati.

This is why I refer to my being born in South Africa as a blessing. My fellow Swazis who are in South Africa without work permits must make the trek back to the Kingdom at the end of every month, due to the 30-day entry limitation by South African Immigration. Needless to say I am glad I am spared this chore.

So, heritage aside, what about my feelings on the "motherland"? Well, as a professor at varsity said, "How you feel and what role you play in the society you live in must be determined by the understanding of its social, economic and political realities". In this context, under this monarch, the kingdom's economic reality, especially, does not inspire much patriotism. A reality shared by the many fellow Swazis I have met who take pride in our royal heritage but feel let down by the current monarch.

When my father's diplomatic stint ended in 1983 he was appointed Principal Secretary of Foreign Affairs. In that position, he had regular interactions with King Mswati. As he got to know the king better he would one day comment to my mom: "Under this boy, Swaziland is in trouble. All he seems to care about are the benefits of being king." Sadly, his observation was spot on. ■

LEN **ASHTON**

Mind-blowing. Truly, madly, deeply

LONELY HEARTS CLUB MEMBERS SEEKING comfort should go elsewhere. Sebastian Faulks weaves a suave mystery that commands sustained attention, while simultaneously depicting the emotional plight of the socially isolated hero. It's a compulsive read, in both psychological and emotional terms, but the reader is not invited to sob on the author's shoulder.

Dr Hendricks, world-weary psychiatrist, has seen (and heard) it all. Difficult childhood, harrowing wartime experience, and the woes of unhappy patients notwithstanding, he retains intellectual discipline. And kindness. Passion is a memory, rather than a constant in his occasional affairs with sundry women. Then this man of solitude receives an invitation from an unknown psychiatrist, which hints at revelations concerning Hendricks' dead father. Would Dr Hendricks care to visit an island off the Italian coast where his host, Dr Alexander Pereira, will explain?

All very novelettish, but the reference to the father is simply the bait for a suggestion that Hendricks become the literary executor of the aged Pereira's estate. It seems they have both, unknown to each other, been pursuing vaguely corresponding personal theories on the treatment of mental patients.

The two men probe each other's minds and memories with professional caution, and a bit of point-scoring on contrasting confessional techniques. Hendricks was a toddler when his father died, and he was raised by a mother who, memorably, always expected the worst.

The boy was bright, gained a place at university, and then World War II intervened. Young infantry officer Hendricks made lifelong friends in the trenches. Some did not survive. Wounded and shocked by the horrors of the Anzac disaster, Hendricks imagined echoes of his sorely missed father's oddly enigmatic death. Dr Pereira, all these years later, appears to know more about the father's fate than at first he is prepared to say.

Hendricks wonders how much of his own psychiatric work has been driven by a refusal to accept the realities of what he had seen in war. In a rare encounter with a retired officer he says: "That's why I never went back, never went to reunions. It was my way of saying I won't be defined by this experience. I didn't ever want to allow myself to complete the sentence you just started."

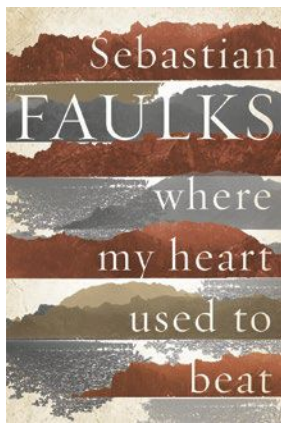
"You couldn't see what we saw and still…"

"Yes. That one."

And yet, the psychology student that was the young Hendricks retained sufficient idealism to identify with the scholars who did a bit of lateral thinking and managed to decipher ancient language tablets at Knossos. They inspired a hope, as he pounded down asylum corridors "among the wails and shouts and banging doors", that he would have a similar moment of enlightenment, to the benefit of the patients.

There are echoes of John Fowles's *The Magus* in the magical beauty of the remote island setting for the discussions and negotiations of the two men. A shameless nude bather on the beach seems entirely appropriate in context. Especially when she appears subsequently at dinner. Clothed. But then, the haunted ex-soldier has seen it all before. Or has he? ■

WHERE MY HEART USED TO BEAT
By Sebastian Faulks
(Penguin/ Random House)



Sebastian Faulks

HAROLD **STRACHAN**

Monkey business. Love in a time of Fanagalo

Exists there in Africa apes? says Grete Zimmermann in studied English. She has clearly taken great care structuring this sentence, it comes word by word from her lips with no intonation. Fair enough, we both of us have given much thought to the problem of opening a friendship, and now she's done it. I quickly structure a studied German reply for my own lips. It gives apes in quantities of great magnitude, say I. Without intonation.

We smile, spontaneously. We have been flung together by Fate. Well, to be precise we have been flung together by Professor Hundhausen. I call him Mister Doghouse and Grete laughs spontaneously, we're getting along just fine. Mr Doghouse flings us as a team of two among six teams in the Fresco Technique course at the Art Academy, built on the hill of rubble which once was part of Stuttgart, scraped together by the bulldozers in between the bombings.

If you study fresco techniques in Germany you don't just ooh and aah and gaze in awe at Giotto and Michelangelo prints, you learn how to make the lime plaster, then how to plaster the wall, one day's whack at a time, and how to lay the pigment into this plaster while it is still wet, that's why it's called fresco – fresh. Grete is great at all this mixing and hauling, but she has a problem with the plastering; it needs two hands and she has only one, the right. The other was blown off by British Lancasters one night.

But we quickly learn a system of three hands for two people. This exercise is a Giotto copy, full size. Twelve of us are buzzing away at it with a two-level scaffolding; Grete and I have been given a ground-level part, because she can't climb too well either, since she has only half a left leg. For balance, says she; the American B17s had to have a turn too, by day, so that

all was fair. Das bittere Gelächte, black humour, that. We find ourselves in bed soon enough, because she is, as one would say in studied isiZulu, too nice.

There is much mirth about our daft Anglo-German Fanagalo. It's happiness that makes people close, laughter. We explore each other: beneath the flowing auburn of her hair is a deep gash where a piece of skull is missing, her torso is generally lacerated, hammered about by blast and steel splinters. I am not pretty, says she. I am an old maid at twenty-three. There are not enough men in Germany to go round and I am no choice. Her English is coming along just fine. So is my Kraut. Have you not noticed down the middle of my face a long schnoz like a carrot, only pink, say I, nor noticed that my ribs are sunk deep down the middle from childhood asthma, nor that I am exceeding skinny from excessive marathon running? And as for the matter of men to go round, have you not noticed that I am one such, though not much of a choice either?

But I'm here only briefly, one year. Of course we don't dwell on that. Indeed we don't think of it at all. Grete has started singing, she sings all the time, as birds sing on a fine day. In the still of the night she sings love songs, lieder of Schubert, country love songs from Württemberg When I rest my head against her sternum just below the throat, I can hear the song coming straight from her heart. Why should we spoil all that by thinking of the future?

But the future soon enough becomes the present. What sort of work could I do here in Germany for a work permit? We fall silent and think, think, think. Well there's always one thing, say I; the new Luftwaffe is looking for aircrew and I could sign on as a pilot. There's a Cold War going on. My old Air Force friends have signed on in England, we could go there, perhaps. You would be a BOMBER PILOT? says she, in some alarm. Well I was one once, say I, but I take your point.

We fall silent. We think and think. The obvious solution, say I, is that you should come back to South Africa with me, there's plenty work there for both of us. She puts her hand to her face. No, she whispers, I've had enough horror. No civil war, no racial war, no big man dictator. No, no more! She's right. But I know I have to go back to SA.

And I do. But we have no civil war. We are neither Angola nor Mozambique. We have a good constitution and continuity and a civil society that works, with some bumps. I have a feeling of something good wasted. Fate made monkeys of us both. Apes all right. ■

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