P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

CASE NUMBER: 59/2012

DATE OF HEARING: 28 NOVEMBER 2012
JUDGMENT RELEASE DATE: 20 DECEMBER 2012

SERGEANT **COMPLAINANT**

vs

TALK RADIO 702 **RESPONDENT**

TRIBUNAL: **PROF JCW VAN ROOYEN SC (CHAIRPERSON)**
ADV B MMUSINYANE
PROF S LÖTTER (CO-OPTED)

For the Complainant: The Complainant in person accompanied By Mr Johann Blersch, advisor/ Accountant.

For the Respondent: Ms Pheladi Gwangwa, Station Manager, Talk Radio 702.

Right to Reply – accusations in news item answered in interview– Sergeant vs Talk Radio 702; Case No: 59/2012(BCCSA).

SUMMARY

The Registrar received a complaint against Radio 702 in regard to a news item followed up by an interview with the Complainant. The news item accused the recently published book of the Complainant, quoting a firm of auditors, KPMG, as amounting to fiction and as riddled with errors. Investec, a bank, also denied any knowledge of underhand dealings or having been a party to such dealings. The book deals with losses suffered by Randgold which were attributable to Brett Kebble, who had stolen R1, 6 billion Randgold shares and sold them for cash. According to the book, Investec was, unknowingly, involved in

tremendous losses for Randgold shareholders that followed upon that sale by Kebble. It needs to be added that Kebble was murdered a few years ago.

Five days after the news item an interview with the author was broadcast. The author complains that he was not afforded a proper opportunity of replying to the accusations levelled against him in the news item, that he was accused of committing an offence by not disclosing his knowledge of who were involved in the planning of the murder of Kebble and, lastly, that the interviewer, in his opinion, was in cahoots with Investec and KPMG and that that contributed to the unfair interview.

The Tribunal held as follows:

1. **When considering the interview as a whole, Mr Sergeant conveyed the enormous amount of research he had done and also demonstrated this well when he described the sale of Randgold shares, the huge loss suffered by Randgold shareholders and the roles of Investec and KPMG in this process. The accusation of "fiction" and "riddled with mistakes" was, at least, answered.**

2. **Mr Sergeant complains that Mr Whitfield accused him of a crime in not revealing details as to who were involved in the "conspiracy" to kill Brett Kebble. The answer to this is that no such *accusation* was made. Although the questioning about not disclosing the facts had an element of cross-examination to it, there was no accusation of wrongdoing. Interviews are, within a modern democracy, which claims to be built on transparency, often hard-hitting. To *ask* whether a person is not perverting the course of justice by not disclosing the identity or identities of persons, who conspired to murder another human being, is a perfectly permissible question. The mere posing of the question does not mean that a crime was committed by Mr Sergeant in not reporting the identities.**

3. **There was no basis for concluding that Mr. Whitfield was biased in his questioning or that he was, in any manner, in cahoots with KPMG or Investec. Tough questioning, as one finds in the matter of disclosure of identities at the end of the interview, is a typical feature of interviews and does not justify any inference of bias. The public has a right to know, and the interviewer is its mouthpiece.**

The complaint was not upheld

JUDGMENT

PROF JCW VAN ROOYEN SC

[1] The Registrar received a complaint against Radio 702 in regard to a news item followed up by an interview with the Complainant. The news item accused the recently published book of the Complainant, quoting a firm of auditors, KPMG, as amounting to fiction and

as riddled with errors. Investec, a bank, also denied any knowledge of underhand dealings or having been a party to such dealings. The book, inter alia, deals with losses suffered by Randgold which were attributable to Brett Kebble, who had stolen R1, 6 billion Randgold shares and sold them for cash. According to the book, Investec was, unknowingly, involved in tremendous losses for Randgold shareholders that followed upon that sale by Kebble. It needs to be added that Keble was murdered a few years ago. Five days after the news item an interview with the author was broadcast. The author complains that he was not afforded a proper opportunity of replying to the accusations levelled against him in the news item, that he was accused of committing an offence by not disclosing his knowledge of who were involved in the planning of the murder of Kebble and, lastly, that the interviewer, in his opinion, was in cahoots with Investec and KPMG and that that contributed to the unfair interview. I referred the matter to a Tribunal for a hearing and a decision on the complaint.

[2] **The Complaint reads as follows:**

"**COMPLAINT CONCERNING SEVERAL PERSONS, SOME UNKNOWN, AT 702 RADIO STATION, A SUBSIDIARY OF PRIMEDIA**

My name is Barry Sergeant. My narrative in this filing with the BCCSA is in italics, to differentiate from other materials.

I am an author and journalist. On 2 October, my new book, "The Kebble Collusion" was launched to the media. The book, like my previous one, immediately went into the bestseller lists after it was available nationally.

On 3 October, 702 broadcast and published to the following effect(the highlights are mine).

Firms dismiss fraud claims in Kebble book
Mandy Wiener | 03 October 2012

JOHANNESBURG - Claims contained in a new book about mining magnate Brett Kebble's financial dealings have been labelled as "unfounded" and "fictional".

Financial journalist Barry Sergeant accused Investec bank and auditing firm KPMG of covering up massive fraud amounting to R26 billion.

In 2005, Kebble was killed in an apparent assisted suicide in Melrose, north of Johannesburg.

He was on the brink of financial ruin as his business empire crumbled.

Investec denied ever being party to or having knowledge of any underhand dealings that Kebble may have been involved in.

KPMG is also distancing itself from the allegations.

The auditing firm's head of risk management Danie Van Heerden said, "The book is riddled with factual inaccuracies, unfounded allegations and inappropriate conclusions. It can be described as a work of fiction."

Both firms are considering legal action against the author.

Sergeant said he would welcome being sued.

(Edited by Zethu Zulu)

The underlined sectors are falsehoods. My manuscript was checked and corrected, by among others, two of the country's top forensic auditors. The irony is that the core numbers in my book are based on a Randgold circular, which was signed off by KPMG. This has long been in the public domain; it was published on 12 May 2010:

http://www.randgoldexp.co.za/news.html

The statement, above, attributed to Investec, is easily demonstrated as false. To take just one instance, in December 2002, Brett Kebble (along with three others) was publicly – very publicly – indicted on charges of conspiracy, incitement, insider trading and fraud. For Investec to nakedly imply that the entire Investec establishment was unaware of this is so unlikely as to be untrue.

If I am given the opportunity to present viva voce and other evidence to the BCCSA, it will be shown that the offending sectors above are falsehoods.

At no time prior to the broadcast and/or publication of the offending material above did anyone at 702 contact me. 702 was apparently completely happy to repeat the falsehoods from Investec and KPMG, which defame and belittle me, and undermine my reputation.

I pause to point out that the journalist to whom the written material is attributed has never contacted me at any point in my life.

I was then invited to appear in studio on 702, which I did, on Monday, 08 October 2012, at 19:15 to 19:30. The interview was a debacle, from my viewpoint. After considering my options, and wanting especially to avoid causing a row in the media, I complained informally to 702, as follows:(this letter and the next one are placed in a footnote so as to make the judgment easier to read: Chairperson[1])

[1] *"Greetings Editor I am always one to look for a win-win situation; prior to a considered filing with the BCCSA, I would like to give you a right of reply to see if there is some mutually straight way to settle this. Earlier this month, you ran the story below [now cited above]. This book, "The Kebble Collusion" took me 15 years to stitch together. It was edited and corrected by, among others, two of South Africa's top forensic experts. If it comes to it, these and other professionals will be available to testify on my behalf. Only then, perhaps, will you get some idea of the effort I put into this book.*

The figures that are used in the book are ALL in the public domain, and have been signed off previously by KPMG. This is indisputable. Where necessary or appropriate, I have updated figures to take account of subsequent stock price changes. ***Yes, KPMG is calling its own figures "fictitious".*** *You may find that hard to digest. But it's true. Investec elsewhere called my work "fictitious", but you did not repeat that, so far as I am aware. I would never expect anyone at 702 to recognise, never mind promote, my effort, but I find your hostility nothing less than inexplicable. You promote "Lead SA", and yet you mercilessly condemn my sincere attempt to do exactly that.You dismiss my 470-page effort at promoting transparency and fairness in South Africa in a cruel headline. You publish material that insults me, never mind defaming me. This is to say nothing, for now, about the threats that you*

I pause to point out that on 9 October,[2] I e-mailed Bruce Whitfield, pointing out that KPMG was calling its own numbers fictitious*:*

If it needs any mention, Bruce Whitfield never mind so much acknowledged receiving this e-mail, never mind replying.

My attempt to settle this matter amicably ended when I received the following e-mail:

"Dear Mr Sergeant

> *The correspondence below between yourself and Ms Katopodis our Group Editor-in-Chief refers.*
>
> > *While it is a fact that one of our news bulletins reported on the story you mention at the bottom of your email, it is also a fact that subsequent to the said news bulletin, you were interviewed on Bruce Whitfield's show. To our minds, you were thus afforded an opportunity to put your side of the story out to the listeners. As a result, we are of the firm view that we have discharged our obligation to afford you a right of reply."*

To me it makes no sense at all that 702 can baldly state that it offered me a right of reply.

If it pleases the BCCSA, I can ask any number of people to give viva voce evidence. This would include the likes of Martin Williams, the editor of The Citizen, who has described The Kebble

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repeated. Clearly, it never occurred to anyone at 702 to give me a right of reply. If anyone at 702 had actually read the book, which appears not to be the case, it would have been clear that I spent many months waiting for reactions on my manuscript from a number of parties, including KPMG and Investec. The account of the latter attempt is attached, if you care to look. I have dedicated my career to promoting a better world. For that, you treat me like a common vermin. Separately, your Bruce Whitfield, rather than interviewing me on the book, spent 15 minutes trying to trip me up and accused me of withholding information on a murder. If true, this amounts to obstructing the ends of justice and is a crime. Mr Whitfield essentially called me a criminal, or certainly tried to. What a pleasant surprise to travel all the way to your studios, only to be accused of being a criminal. I pointed out to Mr Whitfield that KPMG was calling its own figures fictitious, and he risibly ignored me. If anyone at 702 thought that I published a book that would not stand up in a court, whether criminal or civil, then clearly, you have absolutely no idea of how much I care for my work. Before you reach for your tissues, spare a thought for yourself, and nothing for me."

[2] "*Greetings Bruce I enjoyed your jibe about Wilbur Smith last night – of course he has only ever written fiction. You were kind enough to keep that off air. Talking of fiction, I noticed how you deftly sidestepped a wee issue last night.*

- *I referred to two figures that stand out in the Kebble saga.*

First, the R1.9 billion in cash that Brett Kebble raised from selling shares stolen from Randgold. Second, that to replace these shares today would cost R26 billion. Last week KPMG said I was writing "fiction". Yet the R1.9 billion arises from a Randgold circular published on 5 December 2008 (Annexure 3 pp 86 to 107). This is a public document that was signed off by KPMG, auditors to Randgold (and of course, Investec). As for the R26 billion, that first appeared in a public (again) Randgold (again) circular (again) published on 12 May 2010, signed off by KPMG (again). The number at that stage was R19 billion - all I have done is update it to take account of changes in share prices. Last week, Investec called the R26 billion number "fictitious". Whatever it is they're smoking down at KPMG and Investec, I want lots of it - I want truckloads of the bastard stuff. How can KPMG call its own figures "fiction"? How can Investec call KPMG's figures "fiction"? Is it true that KPMG are auditors to fiction, and also to Investec?"

PS Since my book when to print, the damages suffered by Randgold have risen to R29 billion. Eish!

Collusion as “an astonishingly good book”. I look forward to this matter being resolved. In the meantime, I am canvassing potential sponsors in an effort to place paid advertisements in order to try and reverse some of the damages I have so far suffered. It is going to make an interesting story, in itself.”

[3] The broadcaster requested that the BCCSA Tribunal consider its response to the Complainant as their official response to the complaint.

Evaluation

[4] To judge the matter in perspective, one needs to go back to the original news item on 3 October 2012. The following was broadcast:

> *“Claims contained in a new book about mining magnate Brett Kebble's financial dealings have been labeled as “unfounded” and “fictional”.*
>
> *Financial journalist Barry Sergeant accused Investec Bank and auditing firm KPMG of covering up massive fraud amounting to R26 billion.*
>
> *In 2005, Kebble was killed in an apparent assisted suicide in Melrose, north of Johannesburg.*
>
> *He was on the brink of financial ruin as his business empire crumbled.*
>
> *Investec denied ever being party to or having knowledge of any underhand dealings that Kebble may have been involved in.*
>
> *KPMG is also distancing itself from the allegations.*
>
> *The auditing firm’s head of risk management Danie Van Heerden said, “The book is riddled with factual inaccuracies, unfounded allegations and inappropriate conclusions. It can be described as a work of fiction.”*
>
> *Both firms are considering legal action against the author.*
>
> *Sergeant said he would welcome being sued.*

[5] The Complainant has delineated the main issues before us in the following letter to Bruce Whitfield after the interview:

> *First, the R1.9 billion in cash that Brett Kebble raised from selling shares stolen from Randgold. Second, that to replace these shares today would cost R26 billion. Last week KPMG said I was writing "fiction". Yet the R1.9 billion arises from a Randgold circular published on 5 December 2008 (Annexure 3 pp 86 to 107). This is a public document that was signed off by KPMG, auditors to Randgold (and of course, Investec). As for the R26 billion, that first appeared in a public (again) Randgold (again) circular (again) published on 12 May 2010, signed off by KPMG (again). The number at that stage was R19 billion - all I have done is update it to take account of changes in share prices. Last week, Investec called the R26 billion number "fictitious". Whatever it is they're smoking down at KPMG and Investec, I want lots of it - I want truckloads of the bastard stuff. How can*

KPMG call its own figures "fiction"? How can Investec call KPMG's figures "fiction"? Is it true that KPMG are auditors to fiction, and also to Investec?"

PS Since my book when to print, the damages suffered by Randgold have risen to R29 billion. Eish!

The letter in footnote 1 must be read with the aforegoing paragraph

[6] What the Complainant is demanding is essentially a right of reply to the interview. He is firstly arguing that the interview which he had with Bruce Whitfield did not take care of the right to reply which followed upon the 3 December news item on his book. Secondly the Complainant also argues that the interview was unfair in that Bruce Whitfield accused him of a crime in not providing information on the murder of Brett Kebble. Thirdly it was argued before us at the hearing that it would seem as if Bruce Whitfield was in cahoots with Investec and KPMG and that led to what he termed to be an unfair interview.

[7] Clause 13 of the Broadcasting Code provides as follows:

13. Controversial Issues of Public Importance

(1) In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within reasonable period of time of the original broadcast and within substantially the same time slot.

(2) A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impracticable, reasonable opportunity to respond to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

[8] The interview commences as follows:

Bruce Whitfield: Combined summons from the Witwatersrand Local Division. It is dated the 8/9/1997.In the matter between Peter Flack, Mark Bristow, Richard de Villiers,Roger Kebble and Roger Brett Kebble and picking a fight with a man called Barry Sergeant.

So this fight goes back to 1997. These are the Court papers which Barry Sergeant has just presented to me, ... and they form the basis of the start of a book, "The Kebble Collusion: Ten Fateful days in a R26 billion Fraud". This is Barry Sergeant's second take at the Kebble story.

What didn't you get the first time that you got the second time with this book, what's the difference?

Barry Sergeant: Bruce when I signed off the first book in April 2006

Bruce Whitfield: He'd been dead for less than 6 months by then

Barry Sergeant: Indeed and there were still a lot of things that were sensitive, not only around the murder but also around the frauds …. What's happened since then is that I've looked at this book, specifically at the frauds ... I'm hoping to do a trilogy that will be about the murder and that will be a third book in about 2-3 years-time. What's happened the past 5-6 years is that there were five Court cases where Investec has been sued and there are literally tens of thousands of court papers that have been produced and that has enabled me to rely on very different types of quality when it comes to the materials. But I've got sufficient integrity of material to have put this book together, 470 pages, there are about 120 pages of sources, backup analysis, etc, etc. So to me it's a bomb proof book.

Bruce Whitfield: A bomb proof book! Well it needs to be bomb proof because basically you're accusing Investec and KPMG and amongst others as being crooks.

Barry Sergeant: Well, what happened, if I can just go into two of the allegations?

Bruce Whitfield: Sure, maybe before we go into your allegations against the big companies, let's then just do a little bit of a blow by blow view of this book. Because it feels somewhat autobiographical, because as I suggested in the beginning you have Court papers that date back to 1997.

Barry Sergeant: Yes

Bruce Whitfield: You and Brett Kebble didn't get on right from the beginning when you met.

Barry Sergeant: Well, I mean this..; I made it quite clear in this book that it is part autobiographical. What happened after Brett Kebble and his four ... I was going to say accomplices, fellow directors sued me in September 1997 is that.

Bruce Whitfield: Why did they sue you, you issued an analyst report they did not like!

Barry Sergeant: Well, yes, I kind of in those days, I put together material that show, in my view anyway, that Randgold had done a very dodgy deal ... and Brett Kebble, not unlike some people today, does not like to be accused of doing anything underhand so he threatened me in various ways and eventually I was sued.

The interview then deals with how the author was summoned to the JSE for a meeting with Brett Kebble, how the matter was settled on the steps of the Court and how Kebble, by implication, appointed Mr Sergeant as his biographer. Mr Sergeant then relates that he had a particularly valuable interview with Kebble two months before his murder. Then follows more about the writing of the Kebble story, some observations about the

personality of Kebble, the dedication in Sergeant's book and Kebble's view and perspective on corruption. Then the following:

Bruce Whitfield: Let's talk about the 1.9 billion because that is the amount of money we know that he stole.

Barry Sergeant: Yah, now what happened, they were especially during 2002, 2003 and 2005 those three years. Brett Kebble stole shares that were owned by Randgold and sold them for cash. Now we know that he raised a total of R1.9 billion in cash and that was first put in the public domain 5 December 2008, and that was a Randgold circular under the auspices of the JSE and it was signed off by Auditors KPMG and I remind here that KPMG are Investec's auditors and have been for many years. Now the other number that counts appeared for the first time 12 May 2010 and that is again in a Randgold circular and again signed off by KPMG and it shows the Randgold there that is on page 174, so it's buried in the detail. Randgold has formulated its claims as being R19 billion, R19 billion, now all I've done to get to the R26 billion is I've updated that because the main component there is Randgold Resources, it's a company listed in London and America.

Bruce Whitfield: Now even in this brief moment my eyes have glazed over and I know this stuff fairly well and I've observed it, I've read the book and I've read the first book and I've worked through the first book as best I could, but it is so tied up in legalese, complexity, stock exchange jargon,.. the complexity… it is difficult to tell the difference between Randgold Expiration and Rand Gold Resources and the vast myriad of companies that operate in this space. It's a very difficult story to tell from that perspective.

Barry Sergeant: No Bruce, I disagree, I mean I can get this into one sentence, without any full stops.

Bruce Whitfield: Please

Barry Sergeant: Brett Kebble stole shares from Randgold. Sold them for cash of R1.9 billion.To replace those shares today would cost R26 billion.

Bruce Whitfield: And in that you say Investec and KPMG helped him steal that money. Now that is a strong allegation that could get the pants sued off you.

Barry Sergeant: Well, yah, ok, let me just go into that very briefly. Now one of the companies that Randgold sued was Investec. Investec was involved in selling 5.46 million shares, and I make it clear that there is no evidence that Investec knew those shares were stolen. But Investec did keep R106 million of the proceeds. Now, a fact Randgold sued Investec for R4 billion in respect of that transaction. The case was settled for zero. Now that might sound wonderful for Investec, but it certainly wasn't wonderful for Randgold's shareholders. So the bottom line is that Randgold which had proven damages of R26 billion was settled out in 2010 for roughly 650 million, a pittance, an absolute pittance.

Bruce Whitfield: But you, you used the terminology "stole" is this not in the normal course of business. Companies will finance deals, they will support business people, they will do good deals, they will do bad deals from time to time,

they will support people with undesirable morals and at some point they may wake up to the fact and try and get out of the deal and cut their losses in the normal course of business. How does this vary from what might be generally accepted as normal course of good business practice versus something like theft?

Barry Sergeant: Well, you might have seen last week, Investec said in reaction to the book that they had no idea until after Brett Kebble was thrown out of the companies, which is August 2005, that he was involved in any kind of misconduct.Whereas, I can give you a number of examples. I kind of blew the whistle back in 97. In December 2002 Kebble was one of four parties charged with insider trading, incitement, conspiracy and fraud. You might remember that.

Bruce Whitfield: I do

Barry Sergeant: Now it seems that no one at Investec was aware about that, now isn't that a bit strange?

Bruce Whitfield: Those allegations are contained in the book. The book is called "The Kebble Collusion" from Barry Sergeant. You say there's even more explosive stuff, why is it not in the book?

Barry Sergeant: Well, Bruce as time goes by, I think you know things become less sensitive and memories get a bit dulled and people some people, pass on and unfortunately that becomes a factor in treating certain materials.

Bruce Whitfield: And in English that means what?

Barry Sergeant: That I'd feel a lot happier putting out the rest of the stuff in two to three years- time.

Bruce Whitfield: You say you know who killed Brett Kebble, but it's not in the book.

Barry Sergeant: I know who was involved in the conspiracy, yes.

Bruce Whitfield: Okay, so Mickey Schultz pulled the trigger, you don't dispute that for a second.

Barry Sergeant: No, no that is not the issue.

Bruce Whitfield: Did Mickey Schultz pull the trigger?

Barry Sergeant: I'm not going to answer that, but I'm saying it's not the issue.

Bruce Whitfield: But if you know who was involved in a conspiracy to kill another human being. Are you not guilty of some kind of.. I don't know... ah withholding evidence some kind of perverting the course of justice? If you know that there is somebody out there who conspired to kill somebody else, is it not your public, your civic duty to declare that?

Barry Sergeant: Bruce, let me answer that in this way. In this case, the fraud case, there's R26 billion worth of proven damages, not a single person has been prosecuted, now, am I involved in covering that up, no, I'm not but I'm putting it in the public domain and asking why, where you've got it in

	the public circulars, that had been signed off by KPMG, that R26 billion worth of damages has been allowed to go walkabouts.
Bruce Whitfield:	But if you know of a collusion to kill another human being as you claim and was reported in *The Star* last week, do you not have a civic duty to disclose that publicly?
Barry Sergeant:	I think the answer to that is, it depends on who I trust and in this case whether it's to do with fraud or anyone else. The only person I trust is myself.
.	
Bruce Whitfield:	Do you feel like when you write this.. When you put this book in the public domain, do you feel like you are in any danger?
Barry Sergeant:	No, because the people that might want to come after me, they know I'm not scared of them.
Bruce Whitfield:	Barry Sergeant, The Kebble Collusion: Ten Fateful days of the R26 billion fraud it's part (autobiographical) and it is a fascinating incite of Barry Sergeant's relationship with Brett Kebble through many years and it goes into the complexity of Kebble's structures and deals. We will have to wait for the third book to get more.

[9] What appears from the above is that Mr Sergeant was granted the opportunity to indicate what his research amounted to. t is clear from the answers of Mr Sergeant that a large amount of research had taken place. Mr Sergeant concludes that the book is "bomb proof". It is not our task to decide, within the ambit of this hearing, whether the book is "bomb proof". What we must decide is whether an adequate opportunity was granted to Mr Sergeant to address the following accusation by the head of risk management at KPMG during the 702 News: "The book is riddled with factual inaccuracies, unfounded allegations and inappropriate conclusions. It can be described as a work of fiction." He is also challenged by the interviewer at the beginning of the interview as to the basis of the book's being "bomb proof" and cautioned that basically he is making KPMG and Investec out to be "crooks", among other things. This amounted to an invitation to go to the core of the matter. It was then up to Mr Sergeant to deal with that. When considering the interview as a whole, Mr Sergeant conveyed the enormous amount of research he had done and also demonstrated this well when he described the sale of Randgold shares, the huge loss suffered by Randgold shareholders and the roles of Investec and KPMG in this process. The accusation of "fiction" and "riddled with mistakes" was, at least, answered. And, if I may say so, competently.

Secondly Mr Sergeant complains Mr Whitfield of having accused him of a crime in not revealing details as to who were involved in the "conspiracy" to kill Brett Kebble. The answer to this is that no such *accusation* was made. Although the questioning about not disclosing the facts had an element of cross-examination to it, there was no accusation of wrongdoing. Interviews are, within a modern democracy, which claims to be built on transparency, often hard-hitting. To *ask* whether a person is not perverting the course of justice by not disclosing the identity or identities of persons, who conspired to murder another human being, is a perfectly permissible question. The mere posing of the question does not mean that a crime was committed by Mr Sergeant in not reporting the identities.

Lastly, there was no basis for concluding that Mr. Whitfield was biased in his questioning or that he was, in any manner, in cahoots with KPMG or Investec. Tough questioning, as one finds in the matter of disclosure of identities at the end of the interview, is a typical feature of interviews and does not justify any inference of bias. The public has a right to know, and the interviewer is its mouthpiece. The following, often quoted, words of Ludorf J in *Pienaar and Another v Argus Printing and Publishing Co Ltd* 1956 (4) SA 310 (W) at 318C-E tend to come to mind when considering the role and style of interviewers, especially in our new democracy:

> "I think that the Courts must not avoid the reality that in South Africa political matters are usually discussed in forthright terms. Strong epithets are used and accusations come readily to the tongue. I think, too, that the public and readers of newspapers that debate political matters, are aware of this. *How soon the audiences of political speakers would dwindle if the speakers were to use the tones, terms and expressions that one could expect from a lecturer at a meeting of the ladies' agricultural union on the subject of pruning roses!*' (emphasis added)

The Complaint is not upheld.

PROF JCW VAN ROOYEN SC
CHAIRPERSON

Commissioner Mmusinyane and Co-opted Member Lötter concurred in the above judgment of the Chairperson.