

**COUNCIL FOR DEBT COLLECTORS
COUNCIL IN TERMS OF ACT 114 OF 1998**

Saakno: 8/6KOC002/06

In the matter:

COUNCIL FOR DEBT COLLECTORS

THE COUNCIL

and

KOCHNEL BANJES & PARTNERS PTY LTD

As represented by Hendrik Wessel Nel 1st Respondent

ABRAHAM JOHANNES KOCK 2nd Respondent

HENDRIK WESSEL NEL 3rd Respondent

ALEXANDER PETRUS BANJES 4th Respondent

**NOTICE IN TERMS OF REGULATION 7(8)(a) OF THE REGULATIONS
RELATING TO DEBT COLLECTORS, 2003**

WHEREAS: the Council for Debt Collectors received complaints of improper conduct against the Respondents.

AND WHEREAS: the 1st, 2nd and 4th Respondent are/were registered debt collectors in terms of section 8(1) read with section 9 of Act 114 of 1998 as amended, with Council registration numbers 4973/03;4991/03 and 4993/03, respectively, at the time of the alleged improper conduct.

The 2nd and 4th Respondents are/were during the period in question directors of the 1st Respondent, a private company incorporated and registered with the registrar of Companies, in terms of the Companies Act 61 of 1973, as amended, with registration number 2002/014882/07. The 3rd Respondent is a registered debt collector in terms of section 8(1) read with section 9 of the Act, Act 114 of 1998 as amended, with Council registration number 4992/03, and was an officer and subsequently became a director of the 1st Respondent, during the period of the alleged improper conduct.

AND WHEREAS the 1st Respondent is also hereby represented by the 3rd Respondent.

NOW THEN TAKE NOTICE THAT: The Council for Debt Collectors (hereinafter called the Council) as per decision of the Executive Committee of the Council on 18 September 2006, decided to charge the Respondent with the following improper conduct:

COUNT 1

That during the period 8 July 2005 to 22 May 2006 the Respondent acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that Johan Jansen was registered as a director of the 1st Respondent on 8 July 2005, with the registrar of Companies and the Respondents did not simultaneously register him as a debt collector and/or the Respondents did not ensure that he was so properly registered in terms of the mentioned Act.

COUNT 2

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Connie Maria Skosana in

her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNT 3

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Samantha Colleen Campbell in her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNT 4

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Emmerentia Magrietha Magdalena Rowe in her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNT 5

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Magdalena Jacomina maria Naude in her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNT 6

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Cindy-Jean Steenekamp in her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNT 7

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Glenesta Wilhelmina Botes in her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNT 8

That during the period 2003 until 22 May 2006 the Respondents acted in contravention of section 8(1), read with sections 15(1)(g) and 25 of Act 114 of 1998 as amended, in that the Respondents employed Natali Delicia Adams in her capacity as an officer/employee of the 1st Respondent, concerned with debt collecting, during the mentioned period, without registering the mentioned officer/employee and/or ensuring that same was registered as a debt collector in terms of the mentioned Act.

COUNTS 9-295 (listed in column A below)

That during the period 2004-2005 the Respondents acted in contravention of paragraph 3 of the code of conduct, read with paragraphs 2(2);2(3);5(3);5(3)(q);7(1);7(3) and 8 and sections 14;15(1)(c);15(1)(f) and 15(1)(g) of Act 114 of 1998, as amended, as follows:

The Respondents compiled or had compiled and/or submitted false and/or forged documentation, purporting to be valid court orders (Judgment and/or Emoluments Attachment Orders, in terms of sections 58 and 65 of the Magistrates courts Act 32 of 1944 as amended.) legitimately issued by the Magistrate's court Johannesburg as per the alleged case numbers listed in column B, purportedly acting legitimately on behalf of and/or with signing rights/powers and/or with the knowledge and consent of the entities listed in column C, to various Sheriff's offices for service and/or to the various employers of the judgment debtors listed in column D. As a result hereof monies were either illegitimately deducted from the salaries and/or remuneration of the mentioned judgment debtors, and/or the Respondents illegitimately instructed that monies be so deducted, and/or the Respondents illegitimately attempted to so deduct monies or to have monies so deducted. Monies were subsequently either illegitimately paid to the 1st Respondent's trust account, and/or illegitimate instructions to this effect were so given by the Respondents, in settlement of the alleged outstanding capital amounts of the judgment debtors, as per column E. In so doing the Respondents, in the process of administering and/or collecting debts:

1. Did not at all times behave in a just and/or fair and/or honest manner and deliberately lied about and/or misrepresented facts and/or truths and/or instructions and/or their mandate with the intention of benefiting the Respondent/s or their employer or principal at the cost or expense of debtors, creditors or any member of the public; and/or
3. Utilized communications which simulate legal or judicial processes and/or
4. Gave to any person, by implication, inference or express statement, any false or misleading information that may be detrimental to a debtor, his or her spouse or any member of his or her family.

ALTERNATIVELY TO COUNTS 9-295(listed in column A above)

FIRST ALTERNATIVE:

That during the period 2004-2005 the Respondents acted in contravention of paragraph 7A of the Code of Conduct, read with paragraphs 2(2);2(3);5(3)(c);5(3)(q);7(1);7(3) and 8; and sections 14;15(1)(c);15(1)(f) and 15(1)(g) of Act 114 of 1998, as amended as follows:

The Respondents compiled or had compiled and/or submitted false and/or fraudulent and/or forged documentation, purporting to be valid court orders (Judgment and/or Emoluments Attachment Orders, in terms of sections 58 and 65 of the Magistrates Courts Act 32 of 1944 as amended), legitimately issued by

the Magistrates Court Johannesburg, as per the alleged case numbers listed in column B, purportedly acting legitimately on behalf of and/or with signing rights/powers and/or with the knowledge and consent of the entities listed in column C, to the various sheriffs offices for service and/or to the various employers of the judgment debtors listed in column D. as a result hereof monies were either illegitimately deducted from the salaries and/or remuneration of the mentioned judgment debtors, and/or the Respondents illegitimately instructed that monies be so deducted and/or the Respondents illegitimately attempted to so deduct monies or to have monies so deducted. Monies were subsequently either illegitimately paid to the 1st Respondent and/or in the 1st respondents trust account, and/or illegitimate instructions to this effect were so given by the Respondents, in settlement of the alleged outstanding capital amount of the judgment debtors, as per column E. In so doing the Respondents, in terms of a debt collector's general duty to the members of the public and other persons and bodies:

1. In conducting their business, did or omitted to do any act/s that is/are or may be contrary to the integrity of debt collectors in general: and/or
2. Failed to protect the interest if their client/s at all times to the best of their ability, with due respect to all other parties concerned: and/or
3. willfully or negligently failed to perform any work or duties with such degree of care and skill as might reasonably be expected from a debt collector.

ALTERNATIVELY TO COUNTS 9-295(listed in column A above)

SECOND ALTERNATIVE:

That during the period 2004-2005 the Respondents acted in contravention of paragraph 7A of the Code of Conduct, read with paragraphs 2(2);2(3);5(3)(c);5(3)(q);7(1);7(3) and 8; and sections 14;15(1)(c);15(1)(f) and 15(1)(g) of Act 114 of 1998, as amended as follows:

The Respondents compiled or had compiled and/or submitted false and/or fraudulent and/or forged documentation, purporting to be valid court orders (Judgment and/or Emoluments Attachment Orders, in terms of sections 58 and 65 of the Magistrates Courts Act 32 of 1944 as amended), legitimately issued by the Magistrates Court Johannesburg, as per the alleged case numbers listed in column B, purportedly acting legitimately on behalf of and/or with signing rights/powers and/or with the knowledge and consent of the entities listed in column C, to the various sheriffs offices for service and/or to the various employers of the judgment debtors listed in column D. as a result hereof monies were either illegitimately deducted from the salaries and/or remuneration of the mentioned judgment debtors, and/or the Respondents illegitimately instructed that monies be so deducted and/or the Respondents illegitimately attempted to so deduct monies or to have monies so deducted. Monies were subsequently either illegitimately paid to the 1st Respondent and/or in the 1st respondents trust account, and/or illegitimate instructions to this effect were so given by the Respondents, in settlement of the alleged outstanding capital amount of the judgment debtors, as per column E. In so doing the Respondents, in the process of administering and collecting debts:

1. Did not ensure that the collection processes were handled professionally, and/or
2. Did not ensure that criteria of fairness and activities of the highest moral standards were at all times maintained or adhered to.

COUNT 296 (only in respect of the 2nd Respondent)

That during the period 3 May 2005 to date, the 2nd Respondent acted in contravention of Regulation 2A(1)(1) read with Regulations 2A(1)(2) of the Regulations to Act 114 of 1998, as amended, in that the 2nd Respondent resigned as a director of the 1st Respondent, on 3 May 2005, with the Registrar of Companies, and failed to date to inform the Council thereof and failed to forward the certificate of registration to the Council, as contemplated in the mentioned Regulations.

TAKE FURTHER NOTICE THAT:

- a. In terms of Regulation 7(9) you **must within 14 days** from service of this notice, reply in writing to the charge as set out above, by either admitting or denying the charge.
- b. Provide the Council, together with the above mentioned notice, with a physical address where you will accept service of process and notices in this matter.
- c. That failure to respond as requested above will not prohibit the Council from continuing with the process as set out in Regulation 7 of the Regulations to act 114 of 1998, as amended.

INVESTIGATION IN TERMS OF SECTION 15(2), ACT 114 / 1998

ONDERSOEK i.g.v ARTIKEL 15(2), WET 114/ 1998

1. Gehou te **Pretoria** op **22/11/2006, 17/01/2007, 12 – 14/03/2007, 04 – 06/09/2007, 17/10/2007, 19/10/2007, 05/12/2007, 31/01/2008, 19/03/2008, 23/07/2008, 20/01/2009 and 25/06/2009.**

Held at _____ on ____ / ____ / 20____

2. Investigating Committee (Sect 15(2) and Reg 7(1)(a))

Ondersoek Komitee (Art 15(2) en Reg 7(1)(a))

Chairman / Voorsitter **Adv. J. Noeth SC**

Member / Lid **Mr H van Rooyen**

Member / Lid **Mr Clyde Johnston**

3. Particulars of Debt Collector(s) charged /

Besonderhede van Skuldinvorderaar(s) aangekla

1. Kochnel Bantjes and Partners (Pty) Ltd

1st Respondent

2. Abraham Johannes Koch

2nd Respondent

3. Hendrik Wessel Nel

3rd Respondent

4. Alexander Petrus Bantjes

4th Respondent

4. Person appointed to lead evidence (Reg 7(8)(b))

Adv. J. Adams

Persoon aangestel om getuienis te lei (Reg 7(8)(b)) _____

5. Particulars of person(s) appearing on behalf of Debt Collector(s) /

Besonderhede van persone wat namens Skuldin-vorderaar(s) verskyn

(a) Adv. Bert Bam SC

(b) Adv. Andre Wilkins

(c) R.J. Smuts of Boshoff and Associates, Pretoria

6. Charge(s) / Klagte(s)

As per chargesheet annexed hereto /

Soos per klagstaat hierby aangeheg.

7. Plea / Pleit:

All charges withdrawn against Respondent 2. Respondent 1 pleaded guilty to charges 1 and 297 and not guilty on remaining charges.

Respondents 3 and 4 pleaded not guilty on all charges.

8. The proceedings are recorded by mechanical means/

Die verrigtinge word meganies opgeneem

9. Finding/Bevinding:

Respondents 1, 3 and 4 guilty on all charges.

10. Sentence / Vonnis:

1. Charges 1 to 8 are taken together for purposes of sentence The three respondents are in terms of section 15(3)(c) of the Debt Collectors Act, 1998 jointly and

2. severally sentenced to a fine of R 10 000.00.

3. On charge 297 the three respondents are in terms of section 15(3)(d) of the Act reprimanded.

- 4. On charges 9 to 295 the respondents are in terms of section 15(3)(c) of the Act jointly and severally sentenced to a fine of R5000.00 in respect of each charge. A total fine of R 1 435 000.00.**
- 5. The three respondents' individual certificates of registration are in terms of section 15(3)(b) of the Act suspended for a period of 6 months. This suspension is in terms of section 15(4) of the Act**
- 6. suspended on the following conditions:**
 - (i) That the respondents are not during the period of suspension again convicted of a contravention of section 15 of the Act.**
 - (ii) That the fines imposed are paid within 6 months from date hereof.**
- 7. In terms of section 15(3)(e) of the Act the respondents are jointly and severally ordered to pay an amount of R 170 000.00 for the costs incurred by the Council in connection with the investigation.**
- 8. Should the three respondents wish to appeal to the full Council a Notice of Appeal must be filed with the Council on or before 20 July 2009, failing which the sentences will be immediately effective.**

JUDGMENT

This part of the judgment must be read with the unanimous judgment given by the Committee on 5 December 2007.

Counts 1 to 8 all refer to the non-registration of employees of Kochnel, Bantjes and Partners as debt collectors.

In their plea explanation set out in par 5 of exhibit C the Respondents stated the following:

"5.1 Die Eerste Respondent voer aan dat die persone in die aanklagtes genoem pligte in die maatskappy-opset verrig het wat suiwer administratief en/of klerklik en/of andersins ondergeskik was aan die werklike beroep van skuldinvorderaar.

5.2 Alternatiewelik pleit die Eerste Respondent dat daar redelikerwys geglo en aanvaar is, na samesprekinge met 'n beampte van die Raad vir Skuldinvorderaars, dat die genoemde persone in aanklagtes 2 tot 8 nie skuldinvorderaars ingevolge die terminologie van die Wet op Skuldinvorderaars, Wet 114 van 1998, is nie, en gevolglik nie as skuldinvorderaars geregistreer moes word nie."

It is common course that the persons mentioned in the charges were not registered with the Council at the time.

The evidence of Mr Gous, Me Ronelle Joubert and Me Doreen van der Walt are relevant in respect of these charges.

Mr Gous testified that he met Johan Jansen on occasion in the offices of Kochnel, Bantjes when he went there to serve documents. They then discussed the persons in the office of Kochnel, Bantjes and he mentioned to Mr Jansen that according to the Council's records he, Mr Jansen, has not been registered as a debt collector. Immediately afterwards he came to register.

He also saw a number of other people in their offices and he asked Mr Jansen what they were doing. Mr Jansen then explained their functions and they had a debate around the matter. He said to Mr Jansen that he was of the opinion that they should be registered as debt collectors in view of the functions they were performing. To the credit of Mr Jansen he soon afterwards brought the application forms to register them.

He never advised him not to register the persons concerned, "want volgens wat ek verstaan het wat hul funksie is, was dit duidelik dat hulle skuldinvordering gedoen het en derhalwe my advies aan mnr Jansen om hulle te laat registreer, wat hy soos ek sê getrou aan sy woord dan onmiddellik laat doen het". This visit was on 24 April 2006.

Later in his evidence continued as follow:

"Ek het, kom ek sê vir jou so ek het sonder om voorskriftelik te klink, het ek geen twyfel in my gemoed gehad dat hierdie mense werk as skuldinvorderaars en dat hulle as skuldinvorderaars behoort geregistreer te wees nie. Maar ek het nie dit as voorskriftelik gesê: en jy moet nou gaan nie, maar dit wat vir my gesê is wat hulle gedoen het, het by my geen twyfel gelaat dat hulle wel skuldinvordering doen nie".

In cross-examination by Adv Bam he said that he knew Ronelle Coetzer, now Joubert, who was the System Manageress at the Council. Adv Bam then said that the person referred to in paragraph 5.2 of the plea of the respondents is in fact Ronelle Coetzer.

Ronelle Joubert was from January 2003 to February 2005 responsible for applications by debt collectors to register

with the Council. She referred to E1 from bundle 1, which contains three debt collector registration certificates of Kochnel, Bantjes and Partners. The company was registered on 11 August 2003. Mr Abraham Johannes Kock was also registered on 11 August 2006 (See exhibit E2). Mr Hendrik Wessel Nel was registered on 11 August 2005. She cannot remember that she had discussions with the respondents concerning the registration of the persons mentioned in charges 2 to 8.

She denied that she gave the advice mentioned in paragraph 5.2 of the plea to wit that the persons mentioned in the charge sheet in counts 2 to 8 need not register with the Council. She said: "Nee want ek is nie by magte om sulke raad te gee nie. Wat ons gewoonlik vir die mense sê is, die Raad kan nie 'n opinie gee oor wie geregistreer moet word en wie nie. As die mense onseker is dan sê ek gewoonlik vir hulle, hulle moet 'n regsopinie gaan kry en as hulle aandring dat ons 'n antwoord moet gee dan skakel ek hulle deur na mnr De Meyer toe."

Sy was self nooit by Kochnel, Bantjes om te sien wat doen die mense nie. She forwarded exhibits H4 and H5 dated 12 July 2006 and 12 September 2006 respectively to Kochnel, Bantjes and Partners.

Under cross-examination she stated that she was previously Ronelle Coetzer. She also explained the delay in dealing with the requests contained in H1 dated 19 July 2005.

She repeated once again that she cannot tell any person whether he should register or not.

Adv Bam then continued as follow:

"ADV BAM: Wel kom ek sê vir u so, my instruksies is dat daar twee persone op 'n dag in daardie tyd, ek het nie 'n datum nie, by u was. Die twee persone was mnr Nel en mnr Koch van K&B, Kochnel Bantjes, en dat hulle die situasie met u bespreek het en dat u toe vir hulle gesê maar dit is nie nodig dat daardie mense registreer nie.

MEV JOUBERT: Indien hulle vir my sou genoem het dat die mense 100% administratiewe werk doen en glad nie met skuldenare te doen het nie, glad nie, dan hoef hulle nie te registreer nie. Maar soos ek aan u genoem het, ek weet nie wat by die kantoor aangaan nie. Ek kan net reageer op inligting wat ek kry.

ADV BAM: So dit is moontlik dat so 'n gesprek aan u plaasgevind het ... (tussenbei)

MEV JOUBERT: Definitief."

She said she would only have told them not to register if she was told "dat hulle 100% administratief is".

Adv Bam then continued as follow:

"KRUISONDERVRAGING DEUR ADV BAM (VERVOLG): Ek wil net beweeg na die registrasie waar ons by gestop het, die registrasievorm en die inligting wat aan u gegee is met betrekking tot die vraag of die ander mense of mense by Kochnel Bantjes moes registreer of nie. Ek sal getuienis aanbied dat daar eintlik twee persoonlike kontakte met u was, die eerste een wat behels die inligting soos ek dit reeds aan u gestel het, was mnr Nel en mnr Koch by u gewees en hulle het toe by u aansoekvorms gekry en die situasie bespreek met betrekking tot die administratiewe personeel en of hulle moet registreer as skuldinvorderaars.

MEV JOUBERT: Dis korrek.

ADV BAM: Die getuienis sal wees dat toe dit met u bespreek is, aan u is verduidelik dat dit administratiewe mense is wat nie skuldinvordering doen nie en dat u op daardie stadium gesê het as hulle nie skuldinvordering doen nie dan hoef hulle nie te registreer nie. Woorde tot die effek, die woorde, die detail van die woorde (onduidelik) maar dit is die ... (tussenbei)

MEV JOUBERT: Dis korrek ja.

ADV BAM: Goed, so u kan nie betwis dat so 'n gesprek plaasgevind het nie?

MEV JOUBERT: Nee ek kan nie, dat die spesifieke gesprek plaasgevind het nie, maar sou die gesprek plaasgevind het sou dit my antwoord gewees het.

ADV BAM: Goed. Dan sal ons getuienis aanbied indien nodig met betrekking tot die tweede geleentheid, toe is die aansoekvorms van Kochnel Bantjes aan u gebring deur mnr Nel en mnr Koch. U het reeds gekyk na daardie dokument E1, E2, dit is die aansoek van mnr Nel. Kan u net weer daarna blaai asseblief?"

He again referred to page 4 of exhibit E3 the educational qualifications of Mr Nel and continued as follow:

"ADV BAM: Die getuienis sal wees dat hierdie kwalifikasies of die studie van mnr Nel met u bespreek is en hy het toe vir u gesê wat moet hy daar invul, hy het hierdie jare het hy gestudeer eers by PU vir CHO vir die Dip.Iuris kwalifikasie in daardie tyd, maar dat hy 'n vak gekort het en dat hy toe by UNISA ingeskryf het in 2001 en steeds besig was met sy studies. Toe het u vir hom gesê hy moet wat hy gedoen het by die universiteit en hoe hy studeer het, moet hy daar invul.

MEV JOUBERT: Nee, weet u die aansoekvorms is nie in my kantoor ingevul nie. Dit word – dit was net ingehandig.

ADV BAM: Dit is by u ingehandig.

MEV JOUBERT: Ja.

ADV BAM: Maar hy het dit met u bespreek.

MEV JOUBERT: Nee, die aansoekvorm is nie met my bespreek nie.

ADV BAM: Dit is wat hy vir – dit is die getuienis wat ons sal aanbied, dat hy dit met u bespreek het, spesifiek hierdie aangeleentheid. En dit het verder gegaan. Hy het van u verstaan dat al hierdie detail wat hy op hierdie vorm gee in ieder geval deur die Raad of 'n beampte van die Raad nagevors sal word om vas te stel of hier nie bedrog gepleeg word nie.

MEV JOUBERT: Nee, nee ek ontken dit. In die vyf jaar wat ek hier werk, dit het nog nooit gebeur so iets nie.

ADV BAM: Hoe bedoel u? Dat die inligting nagevors word?

MEV JOUBERT: Dat ek vir iemand sou sê elke dingetjie of spesifieke gedeeltes van die aansoekvorm word nou eers rond gebel en gekyk of dit waar en juis is.

ADV BAM: Word dit gedoen of nie?

MEV JOUBERT: Nie opvoedkundige kwalifikasies nie, nee."

He repeated:

"ADV BAM: Wel in ieder geval dit sal die getuienis wees."

On a question from the Chairman when this alleged conversation took place adv Bam replied as follow:

"ADV BAM: Dit is op die datum wat die vorm ingehandig is en geteken is. Dit is daardie datum van die – ek dink die datum verskyn daar, 16 Julie 2003. die vorige gesprek was voor dit, ek het nie 'n datum daarvoor nie maar dit was voor ... (tussenbei)

VOORSITTER: U sê dit is die datum, die vorm is ingehandig op die 16de Julie 2003 en dit is die datum wat die gesprek plaasgevind het.

ADV BAM: Wat hierdie laaste gesprek plaasgevind het.

MEV JOUBERT: Die aansoekvorm is onderteken die 16de Julie 2003 en ons het die aansoek ontvang die 11de Augustus 2003. Dit is die datumstempel op die aansoekvorm.

VOORSITTER: So u sê dit was nie 16 Julie by u ingehandig nie, hierdie vorm nie?

MEV JOUBERT: Nee mnr die Voorsitter, die datum regs bo op vorm 1A dui aan die dag wat ons dit aan, wat ons dit

ontvang sit ons 'n datumstempl op.

VOORSITTER: O ja, ek sien dit. So u sê u het die vorm eers op 11 Augustus ontvang?

MEV JOUBERT: Die datum wat op die aansoekvorm aangedui word, ja.

ADV BAM: Kom ek sê vir u en my instruksie is dat hierdie gesprek wel op die 16de Maart ... (tussenbei)

VOORSITTER: 16 Maart ?

ADV BAM: Ekskuus tog, 16 Julie plaasgevind het, die vorms is ingevul maar dit is nie deur u ontvang nie omdat hulle nie die geld gehad het nie en dit is toe later ingestuur met die geld, die tjek.

MEV JOUBERT: Wel, ek kan dit nie – die tjek sou ons ook in elk geval teruggestuur het want ons kan nie tjeks ... (tussenbei)

VOORSITTER: Maar Adv Bam het u nie nou net gesê, aan haar gestel dat die gesprek het plaasgevind op die 16de Julie toe die vorms ingehandig is nie?

ADV BAM: Ek het dit aanvanklik so gestel. Ek moet dit net korrigeer om vir u te sê dit is nie op daardie dag ingehandig nie want die tjek was nie saam nie, die geld was nie by nie.

MEV JOUBERT: Dit kan ook gebeur dat ons die aansoekvorm, dat ek hom sou terughou maar dan sou die datum daarop gewees het.

ADV BAM: En volgens hierdie aanduiding – kom ek vra vir u so, die geld en die aansoekvorm moet gelyktydig ingedien word?

MEV JOUBERT: Moet gelyktydig ja.

ADV BAM: Is hier 'n aanduiding op welke wyse hierdie geld ontvang is, want dit is nou bietjie lank terug, ek is nie seker daarvan nie. Is dit elektronies ontvang of is dit per tjek?

MEV JOUBERT: Nee, 'n tjek soos ek vir u genoem het, kan ons nie aanvaar nie behalwe as dit 'n banktjek is – nie 'n bankgewaarborgde tjek, net 'n banktjek, of elektronies of in die bank met die bewys van betaling dan aan die Raad gestuur.

ADV BAM: Maar u sou in elk geval nie die vorm kan verwerk of die aansoek kan verwerk as daar nie ... (tussenbei)

MEV JOUBERT: As daar nie betaling is nie.

ADV BAM: As daar nie betaling is nie.

MEV JOUBERT: Nee, die Raad sal dit nie goedkeur so nie.

ADV BAM: So die betaling moes eers fisies geskied, hetsy elektronies of per banktjek ... (tussenbei)

MEV JOUBERT: Dis reg.

ADV BAM: Voordat u die aansoek verwerk.

MEV JOUBERT: Ja.”

Doreen van der Walt is an Administrative Manageress in the employ of the Council since 5 March 2005.

She identified E5 as the debt collectors registration certificate of Johan Jansen.

Attached to this document is a note written by hand which read as follow:

Council for Debt Collectors

Membership fees:

J Jansen 1 200.00

7 Ladies 5 600.00

6 800.00

plus VAT 952.00

7 752.00

It is signed "J Jansen" and dated "8 May 2006".

Mr Jansen's application for registration was approved on 22 May 2006. The rest of the exhibit contains the application forms of the 7 ladies which were also approved on 22 May 2006. On the curriculum vitae of Mr Jansen it is indicated that he became an Operation Director of Kochnel, Bantjes and Partners during July 2005.

E6 is the certificate of registration and application form of Natalie Delicia Adams. Her application was approved on 22 May 2006.

Paragraph D of this form which deals with experience reads as follow:

"Experience

State experience if any, relating to the functions of a debt collector."

Under this heading the following is written:

"Kochnel Bantjes Jan 2005 – Present"

Under paragraph 9 "Nature of business" the following is stated:

"Legal collectors"

She also attached a CV and on page 3 under "Permanent positions" the following is stated:

"Jan 2005 – Maart 2006

- Kochnel Bantjes and Partners (Employer Liasons officer)
- Administration work
- Switchboard
- Filing"

Exhibit E7 is the debt collectors certificate for Magdalena Jacomina Maria Naudé whose application for registration was approved on 22 May 2006. Paragraph 7 of this form states the occupation as "Employee Liason Officer" Under paragraph "Nature of business" it is stated "Legal Collectors".

On her CV "Jun 2002 – currently" is stated "Kochnell Bantjes and Partners Employee Liason Officer"

In 2005 she signed 37 of the relevant court documents. This is not disputed. She also signed the letters L5 and L6 to the Sheriff, Nelspruit.

Exhibit E8 is the debt collectors registration certificate and application for registration of Emmarentia Margaretha Raath. Her application form was also approved on 22 May 2006. Under paragraph D of the application form under the heading "Experience" the following is stated:

"State experience if any, relating to the functions of a debt collector:

Safrich – debt collecting (Liason)

Admin Junktion – debt collecting (Liason)

Kochnel, Bantjes and Partners – debt collecting (Liason)

On her CV at page 1 the following appears:

"Kochnel, Bantjes and Partners – March 2002 – recent Liason Debt Collecting.

Exhibit E9 is the debt collectors certificate for Connie Maria Skosana. Her application was also approved on 22 May 2006. Under Occupation (Paragraph 7) she stated "Admin Queries" Under the heading "Experience" (D) she stated 3 years with Kochnel, Bantjes. Under paragraph 9

"Nature of business" it is stated "Legal Collectors".

She signed 37 of the court documents in N2 bundle 3.

Exhibit 10 refers to Glenesta Wilhelmina Botes. Her occupation under paragraph 7 is indicated as "Profile supervisor / Liaison officer". Under "Experience" (D) the following is stated:

"Kochnel Bantjes & Partners – Profile Supervisor / Liaison"

Under "Nature of business" (Paragraph 9) it is indicated "Legal Collectors".

In her CV at page 5 the following appears:

"October 2005 to current, Kochnel Bantjes and Partners (Legal – Assess) Debt Collector / Profile Supervisor / Liaison Officer"

It is indicated in the CV that she reports to Johan Jansen (Director). Her job title is "Profile

Supervisor / Liaison officer / Credit controller. Under Key Performance Areas the following is stated:

"Section 58 (acknowledgement of debt, Request for Judgment, Emolument attachment order (section 65J) Sheriff returns, Invoicing / Batching, Trace Pack"

At page 6 of the CV under "Key Performance Areas the following is inter alia stated:

"a) Section 58 (acknowledgement of Debt)

- Trace debtor
- List document for tracer
- Type documentation
- Send to tracer to get signed
- Receive signed documentation
- Back signed, check signature
- Acknowledge on database
- Copy on file
- Retract, (no trace, deceased, ext.)
- Send to court for Judgment

b) Section 58 Judgment (request for Judgment where defendant has Consented)

- Compile cost layout
- Type 2 copies
- Send to court for stamp & case nr
- (send with Eao & Section 58's)
- Receive back from court 1 copy and
- Acknowledge on database"

Exhibit 11 concerns the debt collectors certificate and control sheet of Samantha Colleen Campbell which was approved on 22 May 2006. Under 9 Nature of Business on page 3 of the application it has been written in "Legal Collectors."

On her CV she indicated "May 03 – currently: Kochnell Bantjes and Partners : Employee Liaison Officer"

She signed 52 of the court documents in bundle N2.

Exhibit E12 are the documents of Cyndy-Jean Steenekamp. On the control sheet it is indicated that the application was approved on 22 May 2006. On form 1A under Occupation (Paragraph 7) the following is stated: "Admin Clerk, Liaison officer, Profile Supervisors."

Under "Experience" (D) the following appears:

"State experience, if any, relating to the functions of a debt collector:

Kochnel Bantjes and Partners 1 May 2003 – till present"

Next to Nature of business (Paragraph 9) the words "Legal Collectors" appears.

On her CV the following appears inter alia on page 1 "Legal documentation" the following is mentioned:

(Section 58 (acknowledgement of debt, request for judgment, Emolument attachment order (section 65J)

Under "Key Performance Area Activities" is reflected:

"1. Legal documentation

a) Section 58 (acknowledgment of Debt)

- Trace debtor

- List document for tracer
 - Type documentation
 - Send to tracer to get signed
 - Receive signed documentation back signed, check signature
 - Acknowledge on database
 - Copy on file
 - Retract, (no trace, death, ext.)
 - Send to court for Judgment
- b) Section 58 Judgment (request for Judgment where defendant has Consented)
- Compile cost layout
 - Type 2 copies
 - Send to court for stamp & case nr (send with Eao & Section 58's)
 - Receive back from court 1 copy and acknowledge on database
 - Copy on file
- c) Emolument Attachment Order (EAO) Section 65J
- Employment confirmation
 - Type 3 copies
 - Signed by designated official
 - Send to court for stamp and case nr
 - Receive back 3 copies, acknowledge on database
 - Copy on file
 - File"

To date she has not received proof of the qualifications of Mr Nel."

On Count 1 which deals with the non-registration of Mr Johan Jansen Respondent 1 pleaded guilty. Respondents 2 (Nel) and 3 (Bantjes) pleaded not guilty.

From the evidence tendered it is clear that Mr Johan Jansen joined Kochnel, Bantjes and Partners during July 2005 as an Operational Director. This appears on his CV. In addition to this there is the evidence of Mr Gous who visited Mr Jansen on 24 April 2006 and said that he told Mr Jansen that he is not registered as a debt collector and that he "getrou aan sy woord dan onmiddellik laat doen het." Doreen van der Walt testified that she received the registration fees of Mr Jansen and 7 ladies according to the note attached to E5 dated 8 May 2006 and signed by Mr Jansen. He and the 7 ladies were duly registered with the Council on 22 May 2006. The note dated 8 May 2006 was written about 14 days after the visit of Mr Gous to Mr Jansen on 24 April 2006.

Respondent 1 is found guilty on count 1. Respondents 3 and 4 are both directors of respondent 1 who is a company and body corporate who can only act through its directors. See in this regard Minister of Water affairs and Forestry v Stilfontein Gold Mining Co 2006 (5) SA 333 WLD at p 350 (C) and at 16.6

"A listed company can only function through its board of directors. The directors of the company are those who, in terms of its articles are to be exercised by the company in general meeting. A company, being an artificial legal entity, can function only through human agencies. At any point in time, that human agency is ultimately the board of the company's directors. At all material times the second to fifth respondents were under a duty to act bona fida in the interests of the first respondent. This is the fundamental duty which qualifies the exercise of any powers which the directors in fact have."

In this regard section 8(1) of the Debt Collectors Act 1998 (No 114 of 1998) provides inter alia as follow:

"As from a date fixed by the Minister in the Gazette, no person, shall act as a debt collector unless he or she is registered as a debt collector in terms of this

Act and, in the case of a company or close corporation carrying on business as a debt collector, unless, in addition to the company or close corporation itself, every director of the company and member of the close corporation, ... is registered as debt collector”

It is obvious from the above that both respondents 3 and 4 had to be registered. Respondent 1 was registered with the Council on 11 August 2003 and the respondents thus very well knew of the requirements of the Act in this regard. The provisions of section 8(1) of the Act are peremptory and respondents 3 and 4 are therefore also found guilty on this charge.

As far as counts 2 to 8 are concerned the plea was not guilty and the respondents plea was –

- i) that the persons concerned were merely administrative personnel alternatively
- ii) that it was believed after discussions with an official of the Council that the persons concerned were not debt collectors.

In this regard it is necessary to consider what debt collecting is.

Du Plessis and Goodey J state in this regard in Practical Guide to Debt collecting the following:

“1.1 What is debt collection?

Debt collection in the narrow sense of the word means the legal proceedings against a debtor by a creditor for the collection of debt due to the creditor. While such legal proceedings may, in theory, be taken by anyone, including the creditor himself, the proceedings prescribed in the Magistrates’ Courts Act, 32 of 1944 and its rules are difficult for a layman to apply for reasons which will appear later.

In a wider sense debt collection means any steps, judicial and extra judicial, legal and illegal, taken for the collection of debt. This definition includes mild steps such as telephone calls or letters of demand, as well as drastic extra judicial and illegal measures like threatening the debtor or his family with harm or using force to repossess goods which have not been paid for.

Debt collection also includes the collection of liquidated as well as unliquidated amounts of money. Collecting money due to an insurance company for damages arising out of collisions involving its insured, is as much debt collection as suing for goods sold and delivered.

We will not discuss any illegal procedures or methods in this book but will deal with debt collection in the wider sense.

The debt collector who is not an attorney as well as the “in house” debt collector is playing an increasing role in the process and discussions will include them.

During the past five years the ways and methods of debt collection have undergone dramatic changes especially relating to the usage of computers and computer software as well as the agreement and relationship between client and attorney. These methods and developments will be discussed extensively.

1.2 The course of the collection process Collection proceedings usually start with a demand in some form addressed to the debtor. For various reasons (speed, building a relationship with the debtor, and cost) it is advisable to demand payment by telephone if this is possible. Telephonic demands are usually followed up by written letters of demand.”

The evidence of Mr Gous is that he had a debate with Mr Jansen regarding the functions the other seven employees were performing and that he told him that he was of the opinion that they should be registered as debt collectors. Mr Jansen, who has vast experience of debt collecting shortly after this discussion applied for the registration of the 7 people concerned and paid the necessary fees to the Council.

Apart from this there are the contents of the CV's of each of the 7 people as in the evidence of Doreen van der Walt and the address of Adv Adams which detailed their functions as reflected on their CV's (see pages 803 to 818 of the record) which clearly indicates that they were in fact busy with collecting debts at Kochnel, Bantjes and Partners.

The above evidence stands uncontradicted as no evidence was tendered by the respondents to contradict any aspect of the evidence. This evidence is accepted together with the detail appearing in the CV's of the persons concerned.

As far as the alternative plea is concerned it was alleged that Ronelle Joubert was the person who told Mr Nel and Mr Kock of Kochnel, Bantjes that it was not necessary to register the 7 persons. She denied this and said that she cannot tell any person whether he or she should register or not. She said she would only have told them not to register if she had been told "dat hulle 100% administratief is".

Adv Bam emphatically stated that "Ek sal getuienis aanbied dat daar eintlik twee persoonlike kontakte met u was, die eerste een wat behels die inligting soos ek dit reeds aan u gestel het, was mnr Nel en mnr Kock by u gewees en hulle het toe by u aansoekvorms gekry en die situasie bespreek met betrekking tot die administratiewe personeel en of hulle moet registreer as skuldinvorderaars".

Later on Adv Bam said:

"Dan sal ons getuienis aanbied indien nodig met betrekking tot die tweede aangeleentheid, toe is die aansoekvorms van Kochnel, Bantjes aan u gebring deur mnr Nel en Kock". He further alleged that it was the witness who told Mr Nel to complete his legal qualifications on his application to register as indicated on the form. She replied that the application form was not completed in her office and that he also did not discuss the application form with her.

He then continued as follow:

Dit is wat hy vir – dit is die getuienis wat ons sal aanbied, dat dit met u bespreek het, spesifiek hierdie aangeleentheid."

On a question from the Chairman when this alleged conversation took place, Adv Bam replied:

"Dit is op die datum wat die vorm ingehandig is en geteken is ... 16 Julie 2003."

Mev Joubert then said that the form was indeed signed on 16 July 2003 but from the date stamp it is clear that the form was received on 11 August 2003.

The evidence which was purported to be tendered by the defendants was never tendered. Adv Bam closed the defendants' case without tendering any evidence on any aspect of the evidence tendered by the Council. The evidence of Ronelle Joubert is also accepted as no evidence was offered to contradict it. If Ronelle Joubert in fact told them what is alleged it is surprising that no mention was made of this when they ultimately came to register the seven people on 8 May 2006.

Mr Gouws was also not informed of this alleged advice from Ronelle Joubert in his discussion with Mr Jansen.

The evidence of the Council on counts 2 to 8 therefore stands uncontradicted. If any of the relevant people were not debt collectors it would have been a simple matter for any of the directors or the persons themselves to tell this committee of inquiry what they were in fact doing. The evidence which was to be tendered by Advocate Bam in regard to the alleged discussion with Ronelle Joubert was not produced. In this regard attention is drawn to the decision in *Olifant v Shield Insurance Co* 1980(1) CPD 903 at 907.

"I turn now to the effect of Ortman's failure to testify. The first effect is of course that Januarie's evidence stands uncontradicted. But in my view the matter goes

further. Whether Ortman was involved in a collision with the plaintiff or not is a matter upon which nobody is better informed than Ortman himself. If he had not been involved, it would have been the easiest thing in the world for him to have said so, and for the defendant to have led his evidence in that regard. He was the person who furnished the defendant with information pursuant to s 20 of Act 56 of 1972. See the reports attached to exh "H". In these circumstances I consider that his failure to give evidence serves to provide some positive support for the plaintiff's case. This does not of course mean that there is any shifting of the onus of proof, which remains on the plaintiff throughout. See, in general, *Marine & Trande Insurance Co Ltd v Van der Schyff* 1972 (1) SA 26 (A) at 39-40, 48-49, *Munster Estates (Pty) Ltd v Killarney Hills (Pty) Ltd* 1979 (1) SA 621 (A) at 624 and the authorities quoted in those cases. See also *Mpapeea v Rondalia Versekeringskorporasie van SA Bpk* 1979 (2) SA 967 (O) where the facts bore some similarity to these in the present case.

The position then is that the evidence on behalf of the plaintiff, weak as it is, does tend to show that the collision was caused by the driver of the insured vehicle. The person who would have been the driver of the car at the time was available to give evidence but was not called. This feature in my view serves to bolster up the plaintiff's case to the point where it establishes a balance of probabilities in his favour."

It is to be noted that this was a civil matter in which the proof required is on a balance of probabilities which is similar to the onus in this inquiry.

The three respondents are found guilty on charges 2 to 8.

In respect of counts 2 to 295 the following is admitted by the respondents:

Die Eerste Respondent erken dat die persone genoem in die betrokke aanklagtes gedurende die tydperke genoem in die betrokke aanklagtes in diens van die Eerste Respondent was en dat hulle nie in daardie tyd as skuldinvorderaars geregistreer is nie.

In paragraph 6.2 of their plea dated 12 March 2007 the following is stated:

"6.2 Te alle relevante tye is alle dokumentasie ter sprake wat tot 'n besoldigingsbeslagleggingsbevel gelei het, reëlmatig en ooreenkomstig die reëls van die hof van die klerk van die sivele hof se kantore te Johannesburg ingehandig vir die nodige prosessering."

Contrary to the above the evidence of all the witnesses called by Adv Adams on behalf of the Council is that the documents were not issued by the Magistrate's Court, Johannesburg.

The evidence of the following witnesses are relevant in this regard:

Mr Lucas Gous testified that "he was contacted by Estelle Venter of the office of the Sheriff in Nelspruit on 21 July 2005. She informed him that she received process for service from Kochnel, Bantjes and Partners. She doubted whether these documents were really issued by the court. She forwarded one copy of this process to him. He faxed this copy to Yvonne Gail Abrahams of the Magistrate, Johannesburg.

On 28 July 2005 he received two affidavits from Johannesburg which were made by Yvonne Abrahams and Lauretta Mabote. The affidavits confirmed that the process was not issued by the Magistrate Johannesburg. On 29 July 2005 he received 21 certified copies of similar process from Estelle Venter. This process showed the same irregularities as the first process.

He identified the documents which were already handed in by Estelle Venter. He identified the 21 certified copies of process from Nelspruit as part of counts 227 to 293. He also identified 20 faxes he received from Nelspruit.

He confirmed that he made copies or had copies made of all the other documents in bundles 2 and 3 at Captain Adele van Staden's office of the South African Police Services. He made these copies and left the originals with the South African Police.

He went to the Magistrate Johannesburg twice. He first went there on 14 November 2005. On this occasion he did not take the 20 documents in counts 135 to 154 along. He arranged in advance with Yvonne Abrahams that he will go there to find cases. He went through all the court files and also compiled a check list. He could not find all the court files in Johannesburg, but in the cases found he could not find any similarity between the process in his possession and the court file, in Johannesburg.

On 15 February 2006 the other 20 documents which appears on the list as "Nelspruit docs counts" came in his possession. He again travelled to Johannesburg to compare these documents with the court files. Once again he could find no correlation between the two lists. He identified bundle J and in particular his final typed list J1.

This list up to page 7 contains the documents correlated on 14 November 2005 and page 8 contains the documents correlated on 15 February 2006. He then explained how he compiled the list. He could not find any documents in Johannesburg which related to the documents he received from the police. In all these matters the plaintiffs were ABSA or UB ABSA. UB ABSA is Unibank ABSA. He could not find in the court files a matter of ABSA against any of the debtors contained in the process he had in his possession."

Clifford Ramohudi a senior administration clerk at the Johannesburg Magistrate's Court who grants section 57 and 58 judgments as well as section 65(j) emolument attachment orders explained the procedure and process for a section 58 judgment. He was referred to various documents. The documents referred to were documents confiscated by the police from Kochnel, Bantjes and they were given to Mr Gous who testified earlier. These documents are not in dispute as they have emanated from Kochnel, Bantjes. Mr Lucas Gous personally made copies of these documents. In Johannesburg it is policy that they also request a copy of the contract. The clerk who grants the request, keeps all the original documents. He signs both the copies where it says judgment noted and "then we stamp them and sent them back to the person that requests."

The copy of the section 58 which is given back "will also have franking machine stamps on". He also referred to other detail in his evidence regarding the documents. He said he paged through all the documents of charges 9 to 295 as contained in files N1 and N2. He does not recognize the S or L which appears as a signature on the documents of charges 9 to 295 where the clerk has to sign on the bottom left hand. He has never seen that signature.

He stated the emolument attachment order must be signed by the plaintiff or his attorney. If it is not signed it will be queried.

In the example viewed by him which is similar to counts 9 to 295 the judgment is noted without any costs being awarded. He said in 99.9 of cases that come to court the plaintiff would normally asks for costs. He said that the costs must be requested on the section 58 in the column on top and must also appear at the bottom as part of the judgment. He said the signatures which look like an S or an L or an M repeats itself in many of the documents contained in N1 and N2 which is files N2 and N3. These files contains the process for counts 9 to 295. these signatures are the only signatures on behalf of the clerk of the court on the section 58's where they are available and on all the section 65's. On charge 81 (file 3) and many others which are similar the emolument attachment order (section 65) has an electronic number on top

but no year. He does not recognize this stamp. As far as he is aware there is no stamp at Johannesburg Magistrate's court since 2004 "which get stamped on an emolument attachment order looking like that. The year must always be indicated as part of the number of the emolument attachment order. This stamp appears on many of the section 58's and section 65's which are contained in files 2 and 3.

In all the charges 9 to 295 ABSA or UB ABSA is indicated as the plaintiff. He did check all the relevant dates and he did not grant any of the judgments or emolument attachment orders. He in fact did not see any of the files.

He never came across a tracer called Vusi Mabundla. He also does not know Hein Engelbrecht, A Mazibuo or A Viljoen. His office number is 1040. Lauretta Mabota's officer number is 1034.

A record is kept by Mrs Abrahams the Supervisor of the times when the machine is not in operation.

"In cross-examination he was also referred to document 82 which had the original stamp of the clerk of the court on it. The documents referred were handed in as R1, R2 and R3. He said document 22 is fine "except that he is claiming costs that he didn't ask for you know."

"If the documents pile up it can happen that several clerks assist in processing the documents: If he is sick Lauretta Mabote distributes the documents.

When the clerks grant judgment they open file covers for the documents. The file covers are received from the Government printer and is already numbered. Every year it starts from number 1 on 2 January. The file number must correspond with the case number. The original documents are kept in this file cover.

It is the duty of the clerk granting the judgment to enter it in the register.

In re-examination by Adv Adams he was again referred to document 22 where there is a date apart from the stamp of the clerk of the court, Johannesburg. This date also appear on all the other documents. His reply was that he has never seen such a number. He said he has never seen such a stamp. The clerks don't have such a number stamp. The clerks enter the number with a pen. They don't have a number stamp.

The plaintiff on the file is indicated, as in most of the other cases, as ABSA c/o care of Kochnel Bantjes and Partners and there is no signature on many of them. Many of them also have no signature at all on behalf of ABSA. He confirmed that the Act requires a signature – on a request for judgment. Further on in the bundle the plaintiff is UB Micro Loans, a division of ABSA. Many of these documents also have no signature.

He is also referred to 82, the emolument attachment order and the section 58 request for judgment. That is the matter of MKE. He stated that if the franking machine is out of order they use the alternative method by putting the clerks' stamp on the document and writing the case number by hand and also put a signature on it. In the pile of documents there are many section 58's which has no clerk of the court stamp on the top right hand corner at all. If the number is handwritten there will be two stamps on the document one at the number and one at the bottom of the page.

When the franking machine is not in operation the clerk will for example write in a number 51/07 sign the document and put a stamp on.

He drew attention to the fact that there is no provision for judgment costs in the court order."

Lauretta Mabote testified that she is a clerk at the Johannesburg, Magistrate's Court. She is involved with the granting of section 58 consent to judgment orders and section 65(j) emolument attachment orders. She explained the procedure which is involved with the granting of these orders. The documents are brought to office 1063 at the franking machine where a case number would be allocated.

Her office number is 1034A. She is about 10 meters away from the franking machine. She did not have a franking machine in her office during the period July 2004 to 23 September 2005. On 27 July 2004, 29 October 2004, 6 May 2005 and 23 September 2005 she did not handle any UB ABSA or ABSA Plaintiff or Kochnel, Bantjes cases, section 58 and section 65 matters. She would not allow any tracer, agent or person to approach her directly with documents for processing by her through the franking machine. She does not know a person by the name of Vusi Mabundla. Neither does she know Hein Engelbrecht (F8), Adriaan Viljoen, Adam Gert Matthysen (F9) or Simon Peter Mazibuke (F12). She looked at count 9 in file 2 NI the specific section 58 consent to judgment order and said there is no revenue stamp on this document and therefore she would have queried it. Secondly there is no signature of a plaintiff. Thirdly there is no costs indicated on the document. She said the stamped number 00091908 on charge 9 was not produced by the franking machine in Johannesburg. She said they use red ink for their stamps on the first document. She also looked at M1 to M3 and N2 where ADI is written on top. This is an emolument attachment order. She stated she has a problem with this document and continued as follow:

"MS MABOTE: Yes I will have a problem with it.

ADV ADAMS: Tell us which problems you would have?

MS MABOTE: Firstly the case number should be having the handwritten, the year must be handwritten.

ADV ADAMS: Only the year?

MS MABOTE: No not only the year.

ADV ADAMS: Sorry will you just stop there a moment, the case number indicated on the Section 65(j) is a printed electronic number saying 03157, do you know of any electronic stamp like that used by the clerk of the court in 2004 and 2005?

MS MABOTE: No.

ADV ADAMS: Are there any other stamps that come on top of the Section 65 emolument attachment order according to you, on top now?

INTERPRETER: Can you come again?

ADV ADAMS: Sorry, are there any stamps according to your experience which are stamped by the clerk of the court on top of an emolument attachment order?

MS MABOTE: No.

ADV ADAMS: And who would sign on behalf of the plaintiff on an EMO? According to your experience, who is supposed to sign on behalf of the plaintiff on an EMO?

MS MABOTE: I must sign?

ADV ADAMS: No sorry I am talking on behalf of the plaintiff, you sign as clerk?

MS MABOTE: Yes the representatives.

ADV ADAMS: What do you mean by representatives?

MS MABOTE: Their lawyers.

ADV ADAMS: Do you know whether Kochnel, Bantjes and Partners were lawyers or not?

MS MABOTE: I do not know.

ADV ADAMS: So would you have necessarily queried the signature on this particular document I am referring you to, Charge 81 the emolument attachment order, as far as the signature at the bottom signed and then underneath it says Kochnel, Bantjes and Partners?

MS MABOTE: Yes I would have queried it.

ADV ADAMS: Why would you have queried it?

MS MABOTE: When I look at it looks like it is Skosana, not one of the partners. She explained she had three different signatures on Q1 and Q2 and why she was cross with Urzula Nothnagel. Urzula told her on an occasion she (Urzula) was the cause of all the trouble and she is cross because now all of them have to testify. She said Urzula used her signature on several occasions.

She identified the various documents she received from Nelspruit by their numbers. She checked on all these counts whether the case numbers mentioned existed at the Johannesburg Magistrate's Court. They did not have files for these cases. She only found empty covers with nothing written on the outside. She also could not find any files where the plaintiff was ABSA or UB ABSA, UB Micro loans a division of ABSA.

She does not know a person by the name of Skosana from Kochnell, Bantjes. Neither does she know a person by the surname of Rowe, or a Campbell or a Naude.

She referred to document 81 in file 3 and said that they should have written on form RM38 from which date the interest will be calculated. On RM58 the recons for judgment and the costs are not written and also on the last paragraph which starts with: "judgment noted on" the date is not written. The same problems are experienced with the other documents.

In cross-examination by Adv Bam she said she gained the impression that somebody was blaming her for having processed all the documents from 9 to 295. Urzula was warned by the Supervisor. When the documents were received she just took them to the Supervisor and showed her that this is not her signature. This happened in the case of various documents and not only the Nelspruit documents. She referred to the documents where the M and L appears. The Supervisor is Mrs Abrahams. She referred to exhibit Q1 and explained her various signatures. She said the L which appears on page 21 of the second bundle is not her signature.

She was then referred to document 227 in the third bundle. This document was referred to her from Nelspruit. That is not her signature or an imitation of her signature. The same applies to 229, 232, 239, 243, 250, 260, 264, 266, 269, 273, 280 and 291. She continued to identify various other documents which is an imitation of her signature. She said the signature she complained about is the one that looks like an L.

She explained the occasion when Urzula was abusing her signature. She reported this to the Supervisor and asked her to handle it. She just told the Supervisor that somebody is imitating her signature. Urzula was warned by the Supervisor. Her Supervisor was Mrs Abrahams. This happened in 2003.

Yvonne Abrahams getuig dat sy die Afdelingshoof in die Landdroeskantoor Johannesburg is. Die artikel 58 en 65 versoeke word deur haar afdeling toegestaan. Sy oefen beheer daaroor uit. Sy het bundels 1 en 2 wat as bewysstukke ingedien is deur geblaai. Sy is voorsien van spesifieke datums in

2004 en 2005. Gedurende die tydperke het die volgende klerke artikel 58's gedoen.

Lauretta Mabote, Clifford Mahodi, Tessa Baloyi, Queenie Abrahams, Gugu Mapalala en PG Mapalala.

Die volgende persone het op die datums met artikel 65(j) (emolument attachment orders) gewerk:

Lauretta Mabote, Clifford Ramohudi, Tessa Baloyi, Gugu Mapalala, Queenie Abrahams en Carina Madubu.

Op die relevante datums het Andre Hanekom en Carel Olivier met die "franking machines" en "bar coded sticker" masjien gewerk. Carel Olivier het met ingang van November 2006 bedank. Die sogenoemde "bar coded sticker"-sisteem was van Julie 2004 tot Augustus 2005 in werking. Voor dit was die gewone "franking machine". Sy het voorbeelde in M1 tot 3 en M4 in bundel 1 voorsien. Die "bar coded sticker" is op M1. Die gewone franking machine se afdruk is vervat in M2 en M3. Die bar coded gedeelte op M1 is iets wat per hand ingeplak was maar die ander gedeelte is afkomstig van die frankeer masjien.

M4 is 'n fotostaat van 'n onverwante siviele aangeleentheid wat wys hoe 'n artikel 58 en 65 na haar oordeel moet werk. Die vierde dokument by M4 is 'n "final demand for payment". Sy het op versoek die betrokke lêers in klagtes 9 tot 295 fisies deur klerke laat trek. Sy het dit laat tik en daarna een vir een geverifieer. J2 in bundel 1 is 'n skrywe wat sy aan Adv Adams op 24 Januarie 2007 gerig het wat die klagtes per klagtenommer per saaknommer en sogenaamde "plaintiff en judgment debtor" aandui. Sy het ook afskrifte van al die siviele sake op J2 wat sy kon kry asook die leë lêerhouers laat maak en voorsien. Die fotostatiese afdrucke is gemerk klerk 1 tot 4 wat nou in bundels in haar kantoor vervat is. Die oorspronklikes van die sake gelys op J2 is beskikbaar. Sy het self die lêers vergelyk en kon geen siviele leer met die saaknommers wat aan haar verstrekkend is kry nie en ook wat die "plaintiff UB Microloans of ABSA" was kry nie. Daar was niks tussen die lêers wat sy gekry het wat ooreengestem het nie."

Sy verduidelik voorts die oopmaak van lêers in besonderhede:

"As die "bar coded franking"- masjien nie gewerk het nie, is die ou "franking machine" gebruik. Wanneer albei stukkend is dan word saaknommers per hand oopgemaak. Die klerk van die hof wat saaknommers uitreik weet wat was die laaste nommer wat hy toegeken het dan skryf hy dit per hand in en hy teken daarby sit 'n datumstempel met presies dieselfde prosedure as op die "franking machine".

Die klerk van die hof moet in so 'n geval ook die inkomsteseël kanselleer. Hy plaas ook sy datumstempel daarop nadat hy dit geteken het. Hy kanselleer die inkomsteseël met die datumstempel. Sy het die relevante datums wat aan haar gegee is nagegaan en het die volgende gevind:

Op 13 Junie 2005 is saaknommers per hand uitgereik vanaf nommer 69297 tot 69572.

Op 14 Junie 2005 is saaknommer 69573 tot 70239 toegeken.

Op 23 September 2005 is saaknommers 113816 tot 114420 toegeken.

Die masjien was nie op 27 Junie 2004, 29 Oktober 2004, 6 Mei 2005, 9 Mei 2005, 10 Mei 2005 stukkend nie. Op 13 Junie tot 23 September 2005 moes Andre Hanekom en Carel per hand teken en stempel. Urzula Nothnagel het nooit met die "franking machine" gewerk nie. Sy het slegs by geleentheid gehelp met die opstel van statistieke vir die SA Buro. Sy het nooit artikel 58's en 65's uitgereik in daardie periode nie. Sy het vonnisse by verstek toegestaan. Urzula is as gevolg van 'n motorongeluk nie tans by die werk nie. Haar bekkenbeen is

gebreek en het nog nie aangegroei nie. Albei haar knieë is ook gebreek. Sy was bedlêend as gevolg van 'n bloedklont en somtyds is sy in 'n rystoel. Sy beskryf haar as 'n persoon wat nie geluister het nie in die sin dat sy mense agter die toonbank toegelaat het. Sy het ander klerke se werk na haar laat bring.”

Sy bevestig ook dat Urzula Nothnagel by twee geleenthede skriftelik gewaarsku is. Sy bevestig ook dat Lauretta Mabote by haar kom kla het en dat sy by geleentheid haar handtekening verander het om nabootsing te voorkom.

Sy kan nie die handtekeninge wat lyk soos M, L of S identifiseer nie.

Yvonne Abrahams het weer deur die dokumente in bundels 2 en 3, N1 en N2 geblaai en volgens haar was nie enige van die dokumente deur die “franking machine of barcoded” stelsel nie. Sy ken ook nie die handtekeninge M, L of S nie.

Queenie Abrahams het getuig sy het nie met die hofstukke in klagtes 9 tot 295 gewerk. Die handtekening M, L en S is nie haar handtekening nie.

Tessa Baloyi also testified that she never worked with any of these documents. She also confirmed that the relevant documents did not go through the franking machine.

Precious Maphalala testified that none of the documents crossed her table.

The signatures M, S and L are not her signature. She also does not recognize it.

Adv Wilkin on behalf of the Respondents put the following to her in cross-examination.

“CROSS-EXAMINATION BY ADV WILKINS: Ms Maphalala the respondent’s case throughout is this, that the documents referred to in files 2 and 3 or N1 and 2 were legitimately submitted by the, or at the Clerk of the Court in Joburg’s offices. Can you respond to that allegation?

MS MAPHALALA: Can I please – (pause).

ADV WILKINS: Okay.

MS MAPHALALA: Okay.

ADV WILKINS: We say all those documents were submitted there.

MS MAPHALALA: Yes, they do have the Johannesburg stamp, court, but this couldn’t be our case numbers because it’s written by hand I think, I am not sure. It couldn’t be our cases.

ADV WILKINS: And you base that on the case numbers?

MS MAPHALALA: Yes, they are issued through the machine, they are not written and stamped like this and they don’t have the signature of the person who issues the summons.”

Carine Hlamalani Modube testified that she is a Senior Justice Administration Clerk at the Johannesburg Magistrate’s Court. She is also involved with the section 57, 58 consent to judgment orders and 65 emolument attachment orders since 2001. She has paged through files 2 and 3 which is N1 and N2 and she has not worked with those documents. She do not recognize the signatures which looks like an M, S and L. The cross-examination by Adv Wilkins was as follow:

“ADV WILKINS: Modubu. The respondent’s case is that all those documents in files 2 and 3 or N1 and 2 were submitted by them at the Clerk of the Court in Joburg. Can you comment on that?

MS MODUBU: We do machine printing of the case numbers, not manually like they are appearing on N1 and N2 (pause). And on section 65J, that is handwritten.

ADV WILKINS: And do you know if the franking machine was ever faulty?

MS MODUBU: No, even if it could be faulty, they do it in writing, they do not have a stamp like this one.”

Mnr Johan Louis le Grange is die “Business Risk Officer” van ABSA Bank sedert Augustus 2004. Hy het insae gehad in die aanvanklike kontrak tussen Unifer Holdings Ltd wat deel is van die ABSA groep Kochnel, Bantjes and Partners (Pty) Ltd gedateer 4 Maart 2003. Dit is bewysstuk G in bundel 1. UB Microloans was ook ’n filiaal van ABSA. Die kontrak het op 1 Julie 2002 in werking getree.

Hy verwys na paragrawe 4.1, 4.3, 4.6, 4.12 en 12 van die ooreenkoms. Laasgenoemde bepaal dat Kochnel, Bantjes slegs met vooraf goedkeuring van Kochnel, Bantjes subagente en prokureurs kan aanstel en slegs op die voorwaardes wat Unifer in skrif goedkeur mag aanstel. Hy het ook na die “Service Level Agreement” wat by die kontrak aangeheg is verwys. Hy het ook na verskeie bepalinge in die “Service Level Agreement” wat by die kontrak aangeheg is, verwys.

Die kontrakte bevat geen magtiging dat Kochnel, Bantjes hofdokumente en ander dokumente namens ABSA of UB ABSA kan onderteken nie.

Andries Hattingh getuig dat hy in diens is van Maravedi Credit Solutions as Besturende Direkteur seder 1 April 2007. Hy getuig dat ABSA, Unifer in 2002 oorgeneem het. Bewysstuk G4 is ’n addendum agreement. G5 is ’n sessie deur ABSA met die spesifieke kontrak met Kochnel, Bantjes. Hy getuig dat die kontrak tussen Maravedi en Kochnel, Bantjes bepaal dat enige aanstelling van ’n agent of subagent moet geskied onder die skriftelike toestemming van Maravedi Credit Solutions. Hy dra geen kennis daarvan dat sessie deur Maravedi verleen is aan Kochnel, Bantjes sodat hulle namens die eiser of die gesedeerde eise of hofdokumente kan teken nie. Hy was ook nie bewus daarvan dat Kochnel, Bantjes besig was om hofdokumente namens die eiser of die eiser se prokureur te teken nie. Hy verwys na verskeie paragrawe in bewysstuk K1 gedateer 13 Maart 2006 wat afkomstig is van Maravedi en gerig is aan Kochnel, Bantjes. Hy lig dan paragrawe 2, 4, 5 en 6 van die skrywe uit – dit verskyn volledig in die rekord van die getuienis. Bewysstuk K2 is ’n skrywe van Kochnel, Bantjes gedateer 31 Maart 2006 gerig aan Maravedi. Die skrywe bevat onder andere die volgende:

“Other cases from our portfolio proved to also contain different cases on the court file to what our documentation indicated.

The Johannesburg Magistrate’s Court stamps used on our documents, are acknowledged by court staff to be genuine, but they say anyone from that section can obtain access to these stamps.

The two signatures that appear on all our documents processed through the Johannesburg Magistrate’s Court over the past two years were made by the same person(s) according to a handwriting expert. Ms Abrahams of the Johannesburg Magistrate’s Court however claims that these

signatures are fraudulent, but our investigation at this stage indicate otherwise. From these findings we would therefore agree with Maravedi's contention that proper judgments in respect of Johannesburg Magistrate's Court cases appear not to have been duly processed by the said court."

In paragraaf 2 van die skrywe verskyn die volgende:

"We have come to the conclusion that all section 58's submitted to the Johannesburg Magistrate's Court appear to have been processed deficiently. This covers the period from July 2004 to November 2005.

This letter was signed by Hennie Nel on behalf of Kochnel, Bantjes.

Margaret Ballakistan het getuig dat sy in beheer van die siviele afdeling van die Landdroskantoor in Pretoria is. Sy getuig dat Estelle Venter in 2003 geskakel het en verneem het hoekom emolument attachment orders in Pretoria uitgereik is wat vir lewering in Nelspruit is. Sy het die stukke vir haar gefaks en by ondersoek is gevind dat die handtekeninge op die stukke nie die van een van die klerke in Pretoria is nie. Die skuldinvorderaars wat betrokke was is Kochnel Bantjes. Sy het hulle geskakel en hulle het die stukke kom haal.

Toe sy in 2003 deur die Balju geskakel is het sy na die lêers gaan soek, maar kon nie een van die lêers vind nie. Onder kruisverhoor het sy toegegee dat die Balju, Nelspruit net 'n jurisdiksie probleem met die stukke gehad het.

Adv Bam closed the respondents cases without calling any of the Respondents or any witnesses and this notwithstanding the fact that he put it to various witnesses that evidence will be lead to the contrary.

As far as counts 9 to 295 is concerned he referred to paragraph 6.1 on page 3 of exhibit C where the respondents stated that it is specifically denied " dat daar op enige relevante tydperk valse en/of bedrieglike en/of vervalste dokumente deur enige van die respondente saamgestel is of laat saamstel" and further "te alle relevante tye is alle dokumentasie ter sprake wat tot 'n besoldigingsbeslagleggingsbevel gelei het, reëlmstig en ooreenkomstig die reëls van die hof by die klerk van die siviele hof se kantore te Johannesburg ingehandig vir die nodige prosessering."

Contrary to this statement there is the letter from Kochnel, Bantjes dated 31 March 2006 to Maravedi which contains inter alia the following:

"We drew Mr JM Tabane's file and visited the Johannesburg Magistrate's Court on Friday 17 March 2006, where we found the following:

- T was confirmed that case number 95462/2005 contained the matter of Standard Bank of South Africa vs Sports Retail Concepts cc and Mr HLJ Williams.
- Other case numbers from our portfolio proved also to contain different cases on the court file to what our documentation indicated.
- The Johannesburg Magistrate's Court stamps used on our documents, are acknowledged by court staff to be genuine, but they say that anyone from that section can obtain access to these stamps.
- The two signatures that appear on all our documents processed through the Johannesburg Magistrate's Court over the past two years were made by the same person(s) according to a handwriting expert. Ms Abrahams of the Johannesburg Magistrate's Court however claims that these signatures are fraudulent, but our investigations at this stage indicate otherwise.
- According to staff of the Johannesburg Magistrate's Court they only write case numbers on EAOs by hand, except where cases were referred from other courts (CCJ), in which case they use a numbering stamp similar to those stamped on some of our documents.
- We received no complaints from any of the clients affected, which does indicate that they had in fact signed the sec 58s - the cause of the problem

therefore seems to be either with the contractor handling the EAOs or the court staff.

From these findings we would therefore agree with Maravedi's contention that proper judgments in respect of Johannesburg Magistrate's Court cases appear not to have been duly processed by the said court."

"We have come to the conclusion that all sec 58s submitted to the Johannesburg Magistrate's Court appear to have been processed deficiently. This covers the period from July 2004 to November 2005. Over this period we submitted 1849 (11.3% of KNB book) sec 58s (CAR 17.9m) to the Johannesburg Magistrate's Court, of which 43 have been paid up and 127 (CAR R1.3m) belong to clients under administration. NCRs account for 81 more cases, leaving us with 1598 EAOs (CAR R15.8m) that are either active or are supposed to be active. A full analysis of these accounts is reflected on ANNEXURE A attached."

Adv Bam also referred to page 5 paragraph 9.1 and 9.2 of the exhibit C in which it is admitted:

"9.1 Die Respondente erken dat alle dokumentasie wat betrekking het op en vereis was vir die prosessering en uitreiking van 'n besoldigingsbeslagleggingsbevel in ieder van die gevalle, aanklagtes 9 tot 295, deur die Eerste Respondent opgestel en saamgestel is na aanleiding van inligting verskaf deur en in opdrag van die betrokke skuldeiser.

9.2 Die Respondente erken verder dat die betrokke besoldigingsbeslagleggingsbevele in ieder en elk van die gevalle genoem in die betrokke aanklagtes deur die kantoor van die Eerste Respondent aan die betrokke Balju's vir betekening versend is."

He then referred to the charge sheet in which it is alleged that the respondents did not at all times behave in a just and/or fair and/or honest manner and deliberately lied about and/or misrepresented fact and/or truths ... and/or utilized communications to simulate legal or juridicial processes".

He said the allegation is that the respondents committed fraud. He said there is no onus on the respondents to prove that they did not commit these crimes. The evidence considered objectively should prove what is alleged in the charges. He said if there is "proof on a balance of probabilities, that these documents were in fact behind the counter of the clerk of the court in Johannesburg, our submission is then it is all over and out."

It was then said by Mr Johnson one of the committee members:

"But the evidence given by the various clerks of the court was that there was no record of these documents ever going across the counter."

Adv Bam then replied:

"But what is important now is the evidence of Ursula Nothnagel."

Mr Johnson then said that she has not been called and that notwithstanding the fact that he has indicated that he will call her.

In his cross-examination of Captain van Staden he said the following in this regard:

"Adv Bam: Ja maar die probleem wat ons gehad het, ons kon nie by haar uitkom nie. Ons het allerhande pogings aangewend. Hoe dit ook sy, dit is 'n getuie wat ons wil roep, so ons sal op hierdie stadium self 'n afskrif van die verklaring aan u beskikbaar stel.

The Chairman remarked:

"Maar die verstandhouding is dan nou die getuie moet getuig. Goed."

Notwithstanding these undertakings by Adv Bam he now argued that this was a disciplinary enquiry and that it was the duty of Adv Adams to have called this witness.

From page 472 of the record it will be seen that Adv Bam whilst cross-examining Lauretta Mabote asked that she stand down "sodat ons eers kan konsulteer met Urzula om die nodige inligting te kry wat betrekking het op die res van die getuienis van hierdie getuie."

This request was acceded to. When Mabote was recalled Adv Bam put no further questions to her. It is rather peculiar that he now after having consulted with this witness expect Adv Adams to call her.

It needs to be mentioned that in the cross-examination of Captain van Staden he gave another similar undertaking stating in respect of a certain Dawid Viljoen:

"U sien kaptein, ek wil dit op rekord plaas dat ons die getuienis van Dawid Viljoen gaan aanbied wat sal getuig dat hy prosesstukke in daardie tyd van Kochnel, Bantjes aan Lauretta Mabote oorhandig het en dat hy dit daar weer by haar gaan afhaal het.

Surprisingly this witness who is only known to the respondents was also not called and these allegations were also never put to Lauretta Mabote when she testified.

When it was put to him by the Chairperson that he said he will call Ursula Nothnagel he said he decided "against it because there is no onus on the respondents."

He then argued that the witness should have been called by the tribunal. He argued that the evidence of Lauretta Mabote that they had problems with Ursula Nothnagel abusing her signature is relevant in this regard. He also wanted to know why Adv Adams did not call Hein Viljoen as she is now blaming the respondents for not calling Hein Viljoen. He said that this is a misdirection as this is putting the onus on the respondents that they did not commit the crimes alleged. He was apparently referring to Dawid Viljoen the person who he said he intended to call when cross-examining Captain van Staden. From the later it appeared that Dawid Viljoen was one of his witnesses and would have been unacceptable for Adv Adams to consult with this witness. He at one stage referred to the statement of this witness. Adv Adams then said the contents of this statement is not admitted. It is therefore only reasonable to expect from him to call the witness.

He repeated that the evidence is inconclusive.

It is admitted by the respondents in their admissions contained in exhibit C that they handed all the relevant documents to the Clerk of the Court, Johannesburg for processing. It is however not stated who handed these documents to the Clerk of the Civil Court and to which Clerk the documents were handed.

It is also admitted that it is the respondents who collected the documents from Johannesburg and dispatched them to Nelspruit.

It is clear from the evidence of all the clerks at Johannesburg that these documents were not processed in Johannesburg. The signatures S, L and M which appears on the documents does not belong to any of the clerks and is also not recognized by any of the clerks. There are specific processes which are followed by the clerks if the documents are regularly issued which are absent from all these documents. There is the absence of the barcoded machine and the irregular numbering of the documents. Furthermore there is a total absence of the various clerks signatures on these documents. The number which appears on the documents is also unrelated to the numbers used by the clerks at the relevant files. From the evidence of Kees Gous, Ms Abrahams and Captain van Staden it is clear that the files with these documents' relevant numbers are totally unrelated to the documents. Lauretta Mabote stated emphatically that the relevant emolument orders were not issued by her. Her evidence in this regard is confirmed by Mrs Abrahams.

No files under these numbers could be found in the relevant group which related to ABSA or UB ABSA who were the plaintiffs in the documents in counts 9 to 295.

The evidence of all the clerks stand uncontradicted and is accepted. Lauretta Mabote specifically denied that she issued any of the documents. Yvonne Abrahams was also emphatic that none of the relevant documents were issued by "the franking machine" or "bar coded system".

From the above it is obvious that the documents were not regularly issued by the Johannesburg Magistrate's court. The documents must therefore, if they were issued by the Johannesburg Magistrate's Court at all, have been fraudulently issued. Maravedi in their letter dated 13 March 2006 (K1) come to a similar conclusion when they stated the following in paragraphs 4 and 5:

"4. Upon investigation at the Johannesburg Magistrate's Court, we found that the true parties reflected under the aforesaid case number differ. The plaintiff was reflected as The Standard Bank of South Africa Limited, and the defendants were reflected as Sports Retail Concepts CC and Mr HLJ Williams. We have information in our possession indicating that this is but one of a number of such instances, the exact extent of which we have not yet been able to determine.

5. Should the foregoing allegations prove to be correct, it would seem that any number of criminal offences might have been committed, including the offence of fraud. Our preliminary investigations implicate employees and/or sub-agents employed by Kochnel Bantjes (as opposed to the company itself), but we nevertheless view this incident in an extremely serious light, and reserve all our rights."

This is to an extent confirmed by the letter dated 31 March 2006 from Kochnel, Bantjes to Maravedi which stated inter alia in paragraph 2:

"We have come to the conclusion that all sect 58's submitted to the Johannesburg Magistrate's Court appear to have been processed deficiently. This covers the period from July 2004 to November 2005"

In paragraphs 6.1 and 6.2 of the respondents plea (Exhibit C) the following is stated:

"6.1 Dit word spesifiek ontken dat daar op enige relevante tydperk valse en/of bedrieglike en/of vervalste dokumente deur enige van die Respondente saamgestel is of laat saamstel is.

6.2 Te alle tye is alle dokumentasie ter sprake wat tot 'n besoldigingsbeslagleggingsbevel gelei het, reëlmatig en ooreenkomstig die Reëls van die hof by die Klerk van die

Siviele Hof se kantore te Johannesburg ingehandig vir die nodige prosessering.” This last paragraph need further consideration especially in respect of the statement that “alle dokumente ... reëlmatig en ooreenkomstig die reëls van die Hof by die Klerk van die Siviele Hof se kantore te Johannesburg ingehandig vir die nodige prosessering.”

If the documents contained in bundles 1 and 2, N1 and N2 are scrutinized the following appears from them:

1. All the documents were prepared for “the Magistrate’s Court for the District of Johannesburg held at Johannesburg. From the evidence it is clear this is the wrong jurisdiction. This is also admitted by the respondents in their letter dated 31 March 2006 (exhibit K2) where they state:

“We have come to the conclusion that all sec 58s submitted to the Johannesburg Magistrate’s Court appear to have been processed deficiently.”

This is also confirmed in K5 a letter from Kochnel, Bantjes and Partners dated 21 April 2006 to Maravedi where the following is stated:

“Rectification of irregularities.

As mentioned above, the cause for the irregularities has not yet been clearly pinpointed. The fact however remains that the EAOs need to be ratified – whether this be by the Johannesburg Magistrate’s Court (should they need to accept the blame), or by obtaining new EAOs from scratch. Based on our initial assumption it was however decided to follow the latter route, i.e. to obtain new EAOs – this time in the Court that has jurisdiction over the region in which the client works.”

The following provisions of section 65 of the Magistrate’s Courts Act, 1944 (Act 32 of 1944) is in this regard of importance.

Section 65J(3) states:

“Any emoluments attachment order shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be served on the garnishee by the sheriff in the manner prescribed by the rules for the service of process.”

Section 65J(1) in turn states the following:

“Section 65J(1) – words following upon para. (e) the judgment creditor may, subject to the provisions of subsection (2), issue an order (hereinafter called an emoluments attachment order) from the court of the district in which the employer of the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is employed by the State, in which he is employed.”

It is very clear that these documents were not “reëlmatig en ooreenkomstig die reëls” prepared. It is admitted by the respondents that they prepared these documents and yet there is no explanation anywhere to be found for these two glaring irregularities to wit –

1. That the documents were prepared for a magistrate’s court which had no jurisdiction in the matter. In this regard it is to be noted that these documents appeared to have been prepared in mass

2. for Johannesburg as the documents clearly indicate that the jurisdiction was not typed in but all the forms appear to have been printed with the wrong jurisdiction.

3. The documents were not signed by the judgment creditor or his attorney as required by section 65(J)(3).

From the word "shall" it is obvious that this provision is peremptory.

The respondents nowhere gives any explanation for these irregularities which came with the documents from their office. A pertinent question is why were these documents what appears to be intentionally prepared for the wrong jurisdiction.

The fact that these documents were prepared for the wrong jurisdiction and sent to a court which did not have jurisdiction is one of the root causes of the problem which ultimately emerged.

The fact that these documents were issued from a Magistrate's Court which did not have a jurisdiction cannot be as a result of a mere mistake. In this regard the evidence of Margaret Ballikastan is relevant where she testified that in 2003 the same irregularity regarding jurisdiction happened in respect of Kochnel Bantjes documents. They were then called in and told to rectify the matter. That was also a case where the documents which were sent to the Sheriff, Nelspruit had no relations to the files in the Pretoria Magistrate's Court.

A matter which is of concern to the Committee is the fact that Adv Bam in cross-examination put it to various witnesses that evidence will be called to contradict their evidence in certain material respects. At the end of the Councils' case no such witnesses were called. Such unsubstantiated allegations would on the face of it appear not to be appropriate.

In this regard the decision in LV Kubeka 1982(1) SA 534 (W) is relevant where the following was said by Homowitz AJ:

"I feel, however, that I should say that, while it is perfectly permissible cross-examination to test a witness' version of events by ascertaining the details thereof and then by interrogating him about them, one ought not in cross-examination so to couch one's questions that they appear as C statements of fact to which others will depose when in truth the 'facts' in question are not part of one's case and no evidence is intended to be led thereon. Questions put in this way are apt to mislead the witness."

Apart from the said witnesses which were not called there are also other material aspects of the respondent's case which were raised but lacked particulars.

It is stated that the documents were delivered to the Johannesburg Magistrate's Court and also collected from the Court.

No evidence was tendered by whom and to whom the documents were delivered. Adv Bam put the following to Captain Adele van Staden during cross-examination:

"U sien kaptein, ek wil dit oprekord plaas dat ons getuienis van Dawid Viljoen gaan aanbied wat sal getuig dat hy prosesstukke in daardie tyd van Kochnel Bantjes aan Lauretta Mabote oorhandig het en dat hy dit weer by haar kantoor gaan afhaal het"

This person was contrary to the undertaking never called. He was clearly in the service of Kochnel, Bantjes. There were also references to Vusi Mabunda, a tracer, and the statements T and U by Heinrich Engelbrecht and Dawid Viljoen the contents of which were not admitted by Adv Adams.

Notwithstanding the objection to the admission of the contents of these statements the witnesses were not called.

The same applies to the contents of the statement of Urzula Nothnagel.

Mr Hattingh also testified regarding exhibit K1 dated 13 March 2006 which Maravedi wrote to Kochnel, Bantjes in

respect of alleged irregularities which were in breach of the agreement they had with them. The allegations contained in this letter clearly calls for an explanation from Kochnel, Bantjes. In exhibit K2 which is a letter dated 31 March 2006 from Kochnel, Bantjes and Partners to Maravedi the following is stated:

"The two signatures that appear on all our documents processed through the Johannesburg Magistrate's Court over the past two years were made by the same person(s) according to a handwriting expert. Ms Abrahams of the Johannesburg Magistrate's Court however claims that these signatures are fraudulent, but our investigations at the this stage indicate otherwise."

The evidence of this handwriting expert who could have been of assistance to this committee in reaching a conclusion and who was responsible for the irregular signatures was however not produced not even in writing only.

In this statement mention is also made of Kochnel, Bantjes's own investigations which "at this stage indicate otherwise". The result of this investigation was also never produced to this Committee.

The allegations in these charges are to the say the least very serious and on all the evidence tendered called for an explanation from the directors of Kochnel, Bantjes as to who was responsible for the preparation of the documents, why all the documents were prepared for a magistrate court, who did not have jurisdiction, by whom were the documents delivered to who and from whom were the documents were collected.

The Council for Debt Collectors is in terms of the Act a regulatory authority. The Council can hold disciplinary enquiries against debt collectors who allegedly transgressed provisions of the Act and the Code of Conduct. These enquiries are not criminal cases or a court of law but an administrative function by a regulatory authority. These administrative functions must be exercised subject to the provisions of the Administrative Justice Act (PAJA), Act 3 of 2000. The decision of the Constitutional Court of South Africa on 7 December 2007 in the matter of Islamic Unity Convention versus The Minister Telecommunications and others is in this regard very important.

As regards the failure of the respondents to tender evidence regarding the matters referred to the following decisions are in my view relevant in considering the matter.

R v Bezuidenhout 1954 (3) AD at p 210 where the following was said by Van den Heever AJ:

"Where a witness who can throw light on the issues is available and is not called, failure to produce him may justifiably be ground for an inference against either party, dependent upon the circumstances (Webranchek v. L.K. Jacobs and Co. Ltd., 1948 (4) SA 671, 682 (AD)). There was evidence against the appellant which, coupled with his own admissions, was prima facie seriously incriminating. If James and Edwin accompanied appellant on the 21st, the keystone of the Crown case would be exceedingly brittle. Petersen was available and could have been called. Appellant did not call him. It is a reasonable inference in the circumstances that appellant did not call Petersen as his witness as he could not risk what Petersen might say. If appellant's story was true it was unlikely that he would have shown any hesitation on this score."

Also relevant are the decisions in:

- i) Olifant v Shield Insurance Co 1980 (1) CPD 903 referred to above.
- ii) S v Theron 1968 (4) TPD at p 63 where the following is said by Trollip and Trengove, JJ:

"Generally, in regard to an accused's failure to testify, a useful, practical distinction can be drawn between situations in which the State's case is (i) the direct testimony of a witness or witnesses, and (ii) circumstantial evidence. In (i), if the testimony is wholly credible or non-credible, no problem arises, for in the former case the accused's failure to contradict the credible evidence must inevitably result in the prima facie becoming conclusive proof, and, in the latter case, it would be irrelevant: there would then be no prima facie proof and the accused's silence could not make or restore the State's case. It is only when the State's evidence, although amounting to prima facie proof, creates some doubt about its credibility that the accused's silence becomes important, and may be

decisive, for his failure to contradict the State's evidence may then resolve the doubt about its credibility in the State's favour."

iii) In *Strut Ahead Natal (Pty) Ltd v Vurns Durban and Coast Local Division* 2007 (4) 601 at 608 the following is said by Swain J:

"In a case such as the present, the plaintiff does not, however have any means to place evidence before a court as to the operations of the company to enable a court to place the hypothetical reasonable businessman in the shoes of the directors of the company, or to carry out an investigation of the affairs of the company as envisaged in the above cited authorities. Simply put, the facts needed to properly investigate these issues lie within the exclusive knowledge of the defendant. The defendant, however, has chosen not to reveal any of these facts and in my view it is reasonable to infer, he has deliberately concealed them with the objective of frustrating the plaintiff's claim against him personally. How else can the complete absence of any books of account of the company be explained, when the defendant on the evidence was in exclusive control of the operations of the company, with intimate knowledge of its financial affairs?

In such event less evidence will suffice to establish a prima facie case and where facts are within the exclusive knowledge of one party, his failure to give an explanation of evidence may weigh very heavily against him. (See *The South African Law of Evidence Zeffert et al* at 130.)"

iv) In *Humphrys v Laser Transport Holdings Ltd and Another* 1994 (4) SA 388 at 400 the following is stated:

"Thirdly, the Court a quo drew an adverse inference against appellant from his failure to testify. Mr Hodes submitted that the Court erred in doing so. According to Mr Hodes, appellant's answer to the allegations by Kaye was already a matter of record in his opposing affidavit and it was thus not necessary for him to repeat his answer by way of oral evidence.

We do not agree with this argument. At the end of respondents' case there was at least a strong prima facie case in their favour. On appellant's version in his opposing affidavit, respondents had no case for rectification whatsoever. One of the very reasons for referring the matter for the hearing of oral evidence was the factual dispute regarding this aspect. In these circumstances, we believe, it could justifiably be expected of appellant, if he had any confidence in his own version, to reiterate that version in oral evidence and to submit this version to be tested by cross-examination."

v) In *Boesak* 2000 (1) SACR 633 (SCA) the following is said at p472:

"Of course, a prima facie inference does not necessarily mean that if no rebuttal is forthcoming, the onus will have been satisfied. But one of the main and acknowledged instances where it can be said that a prima facie case becomes conclusive

in the absence of rebuttal, is where it lies exclusively within the power of the other party to show what the true facts were and he or she fails to give an acceptable explanation. In the present case the only person who could have come forward to deny the prima facie evidence that he had authorized, written or signed the letter, is the appellant. His failure to do so can legitimately be taken into account.

In our view, in the circumstances, it was not incumbent upon the State to have produced evidence that no one else authorized, wrote or signed the letter. We have already referred to the judgment of this Court in *S v Ntsele* [1998 (2) SACR 178 (SCA)]. The State is not required to plug every loophole, counter every speculative argument and parry every defence which can be conceived by imaginative counsel without a scrap of evidence to substantiate it. In the present case there is the physical evidence of the letter itself; there is at least 'on the face of it' the signature of the appellant. There is no evidence to suggest that the letter was not authorized, written or signed by the appellant.

Should the State have called a handwriting expert to prove the appellant's signature on the letter; in our view such a suggestion is untenable in the context of the present case. It must be remembered that in the course of the trial a number of documents, bearing 'on the face of it' the signature of the appellant, were handed in as exhibits. Although initially challenged as hearsay, the trial proceeded on the basis that the appellant's signature would be accepted 'on the face of it'. It was put to King that the appellant would testify in his own defence. The authenticity of the letter now under discussion was never explicitly or implicitly challenged, even though it was the subject of discussion in the course of cross-examination. In the absence of a clear denial of the authenticity of the letter it could not have been expected, in all fairness, from the State to produce the evidence of a handwriting expert. 646c-647b" The failure of the respondents to tender any evidence in respect of material aspects of the inquiry of which the facts were exclusively within their knowledge "must weigh very heavily against them" as was said in the *Strut Ahead-Natal* case quoted above.

As was pointed out in the *Boesak* case "a prima facie case becomes conclusive in the absence of rebuttal, is where it lies exclusively within the power of the other party to show what the true facts were and he or she fails to give an acceptable explanation"

As is clear from the evidence adduced on behalf of the Council such an explanation of what were the facts according to the defendants, should it differ from the evidence which is on record is clearly called for. During cross-examination there was earlier in the case the vague allegation that the documents were handed to Laretta Mabote. When this aspect of the matter was refuted by Laretta in her evidence under oath this version was not even put to her in cross-examination. Thereafter this aspect was not further canvassed.

When Advocate Wilken cross-examined Precious Maphala and Carine Modube he merely put it to them "The respondents case is that all those documents in files 2 and 3, or N1 and 2 were submitted by them at the Clerk of the Court in Joburg".

Suddenly there is no mention of the name of a particular clerk.

All in all there is no credible evidence that these documents were ever submitted to the Clerk of the court, Johannesburg. What is obvious from the evidence the documents were, if they were issued at all, not regularly issued. The documents were fraudulently issued.

The Council proofed its case on the main counts on a balance of probabilities.

The respondents are found guilty on counts 9 to 295.

The respondents are also found guilty on counts 1 to 8.

The first and third respondents pleaded guilty to count 297. The fourth respondent pleaded not guilty. For the reasons set out under count 1 all the respondents are also found guilty on this charge.

The Committee is unanimous in these findings.

Judgment delivered on 31 January 2008.