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[Tangled web of Cato Manor](#)

Noseweek Issue #191, 1st September 2015 **By Paul Kirk**



New insights into machinations behind Cato Manor prosecutions.

Hunters have become the hunted, with members of the former Serious and Violent Crimes Unit, of the Durban Organised Crime Unit based at Cato Manor, now demanding that racketeering charges against them be quashed – and asking that disgraced acting national director of public prosecutions, Nomgcobo Jiba, be ordered to pay all their legal costs from her own pocket. She is cited as both first and second respondent in the application launched on 8 July.

Meantime Jiba was to have gone on trial for perjury and fraud after Judge Trevor Gorven found she unlawfully ordered the prosecution of Major General Johan Booysen on murder and racketeering charges, then lied to the court by saying she had evidence to back the charges. The charges against Jiba have, however, been dropped by newly appointed NPA boss Shaun Abrahams, as he believes there is no prospect of it succeeding. Jiba is his deputy, who he has now placed in charge of all prosecutions in the country.

Attorney for the Cato Manor policemen, Carl van der Merwe, said: “The NPA are well out of time to reply to our application to have the racketeering charges against the Cato Manor policemen dropped, but I have given them until 24 August to file answering papers. We have not heard a thing from them yet – and if they don’t reply the application will succeed by default.”

Van der Merwe dismissed rumours that the NPA intended appealing Gorven's judgment which quashed charges against Booyesen. "They are well out of time to appeal that judgment, and even if they did decide to do so they would have to notify us. We have received no such notification."

Van der Merwe's most recent application asks the High Court in Durban to declare Jiba's decision to prosecute 19 members of the Cato Manor unit under Booyesen's ultimate command as racketeers to be irrational, unlawful and unconstitutional. Citing Judge Gorven's judgment quashing the charges against Booyesen, the 19 Cato Manor detectives say the same facts – a complete lack of evidence – make the State's prosecution of them equally unlawful.

As first respondent in the application, Jiba is cited in her personal capacity because the cops contend "that her decisions were irrational, *mala fide*, and offensive to the principle of legality. In the circumstances she ought to be held liable for the costs of this application on the scale as between attorney and client, in her personal capacity". As second respondent Jiba is named in her official capacity – meaning that if the court finds against the second respondent, the taxpayer will be left to foot the bill for Jiba's perjury and fraud.



**Rehabilitated National Director
Prosecutions Nomgcobo Jiba**

The application argues that: "Racketeering came to the fore when General Booyesen was arrested and we suspect that it was introduced as an offence to overcome the fact that there was no evidence demonstrating him to be complicit in any of the predicate offences.

"Racketeering was thus a tool employed to charge General Booyesen in the absence of any evidence against him. In order to do that we had to be dragged into the "racketeering matrix".

In their papers the Cato Manor men point out that it took a team of detectives, their lawyer and a legal expert on racketeering charges many weeks to go through the dockets. Jiba on the other hand gave a sworn affidavit that she had "carefully studied" the memorandum, the contents of the dockets and "information under oath" in just one day before signing the certificate to prosecute Booyesen and his men for racketeering.

The application points out that repeated attempts to have Jiba and the NPA hand over their records of decision-making related to the racketeering case have met with blunt refusals.

In the files relating to Jiba's decision is a copy of the hand-written minutes of a meeting held on 3 March 2012 with members of the Hawks, the Independent Police Investigative Directorate (Ipid), the National Prosecuting Authority (NPA) and then Minister of Police, Nathi Mthethwa. The notes are in the handwriting of Advocate Anthony Mosing.

The minutes record this as the "First meeting with the Minister of Police", suggesting there may have been subsequent meetings. It was at this meeting that it was decided to merge the investigating teams from the Hawks and Ipid. Mosing also records that Mthethwa "wants arrests by the end of the week".

Among the charges against the Cato Manor cops is that they murdered a North Coast ANC Youth League official, Qinisani Gwala. Gwala was a close friend of Mthethwa. Investigations by *Noseweek* have revealed there were at least seven cases where Gwala was arrested for car-hijacking and attempted murder but escaped prosecution.

Gwala was out on bail for attempted hijacking – but was also wanted for another car-hijacking and two counts of murder – when he was shot by Cato Manor cops, who did not know of his close association with Mthethwa, or his criminal history.

Mthethwa reported *Citizen* journalist Paul Kirk to the press ombudsman in June 2012 for supposedly defaming Mthethwa by asking whether there was truth in the allegation that Mthethwa ordered the arrest of

the Cato Manor men.

Evidence that wasn't

When Johan Booyesen said that there was no evidence at all against him, prosecutions boss Nomgcobo Jiba produced a statement which was both unsigned and undated – but attributed to one Ari Danikas. She contended that this statement amounted to evidence against Booyesen.

Judge Trevor Gorven ruled that it did not constitute evidence as it was not signed, was not commissioned and related to incidents outside the period covered in Booyesen's indictment.

Noseweek has discovered that Jiba has repeated the same story to the General Council of the Bar – who in January this year launched an application to have her struck off the Roll of Advocates for lying about evidence she had, or did not have, against Booyesen.

In papers opposing the General Council of the Bar application Jiba says that the only reason it was not signed was that former NPA head Mxolisi Nxasana prevented her prosecution team from having it signed, turning into proper evidence against Booyesen.

In her reply to the General Council of the Bar, Jiba writes: "The Prosecutions team were confident that the statement would ultimately be signed... however it remains unsigned as the prosecutions team, in particular Advocate Maema, was instructed by the current National Director of Public Prosecutions Mr Mxolisi Nxasana to halt the process."



Nxasana was appointed to head the NPA in October 2013. Jiba does not make it clear why she waited until at least October 2013 to get the document signed if she intended to use it as evidence.

Strangely the lead prosecutor in the Booyesen case, Advocate Sello Maema, wrote to a lawyer representing Danikas on 23 January this year to say that the NPA did not believe Danikas's claims and would not use him as a witness.

The letter from Maema to, Danikas's lawyer Julian Knight, makes it clear that Danikas was not going to be a witness in the Cato Manor case and points out that the alleged crimes that Danikas accuses Booyesen and his men of are "not referred to in the indictment – and do not have dockets which relate to them".

In other words Maema and his team simply didn't believe Danikas's gory tales of murder and torture committed by Booyesen and his men.

In his letter, Maema goes on to say: "The real possibility of other offences unrelated to Cato Manor that the witness may be involved in makes it a very risky consideration to expect him to come to South Africa for the purposes of testifying."

Noseweek is reliably informed that, apart from alleged tax evasion and theft, Danikas is the subject of a murder probe, as well as a fraud investigation related to the manner in which he sold his computer business in South Africa, and then stripped his shop of assets and stock, before fleeing the country.

The letter concludes: "We have to date not been able to convince our prosecution authorities that Mr Danikas's evidence will assist the state case in any way."

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