

CARMEL RICKARD: When friends fall out

A recent UK court case sounds like [something out of a movie](#): an [off-book business](#), [money secreted offshore](#), a falling out between business partners, Swiss bank accounts — even the [SA Revenue Service](#) makes an appearance

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A new judgment from the UK's courts will put at rest the minds of two SA businesspeople, by finding that funds in several Swiss bank accounts belong to them and must be accounted for.

The funds were part of **about R200m earned from an "off-book business"**, which ran alongside the legitimate dealings of the **Jumbo group of companies for a decade**. The court decision throws light on what happened to that money and the impact of a falling out between the four major shareholders of Jumbo. It also highlights the role of an "agent" in the UK who was supposed to use part of the funds for the benefit of the two SA businesspeople, but under whose watch the funds might have disappeared.

Anwar Gangat and Surendra Bhawan are both resident in SA. Together with **Edrees Hathurani** and **Dinesh Seetha**, they were the major shareholders in what the UK court described as "that part of the Jumbo group of companies which carried on a legitimate cash and carry business in SA from the mid-1980s until the sale of the business in 1998".

But an off-book cash business was run alongside the legitimate enterprise. The profits of this cash business were not declared to the SA Revenue Service (Sars) **and tax wasn't paid on them**.

This all came to light when the Jumbo group was sold and **Sars, interested in the sale, launched an inquiry into the matter in 2006**.

Secreting money offshore

According to the judgment, witness statements and documentary evidence before the court showed that the **group expatriated** a portion of the cash business profits "in breach of SA exchange control requirements [then] in place" — without permission from Sars, in other words — and put them into **Swiss bank accounts**.

In time, Gangat and Bhawan became concerned about what **London-based entrepreneur Yusuf Jassat** had been doing with the money from the cash business, which they claim is theirs.

Now the court has found that Jassat is indeed accountable to them for the funds, and that he will be personally liable if their portion of the R200m has gone missing.

According to Gangat and Bhawan, the money in the Swiss accounts belonged to them both, as well as to Hathurani and Seetha, in shares they had agreed among themselves: 40% each to Hathurani and Seetha, and 10% each to Gangat and Bhawan.

But Jassat gradually acquired control over much of the money. At first, he had asked for Gangat and Bhawan's consent in spending their money, which he used to buy UK real estate on their behalf. But "over the years they lost oversight of [his] actions with their funds".

Eventually, unable to get any information about their money from Jassat, the two asked the court to order a taking of account and inquiries as to what had become of the Swiss bank

funds under Jassat's control. They also wanted the court to award "equitable compensation for breach of trust and breach of fiduciary duty".

Jassat accepted that he had "some control" of the Swiss accounts, but said Gangat and Bhawan should prove their interest in the funds. He also claimed that he managed the accounts on Hathurani's instruction and that, in his view, the money was Hathurani's to deal with as he thought fit.

Hathurani, meanwhile, also litigated in the UK against Jassat for his handling of the Swiss accounts. Those claims were settled 10 years ago, with Jassat having to pay £8.75m to Hathurani.

But that hasn't stopped Gangat and Bhawan from making their own claims against Jassat — **a position that has taken on particular significance, because Hathurani claimed Jassat had bought a shopping centre for him,** while Gangat and Bhawan contend that they have a 20% interest in it.

All Jassat has conceded in relation to Gangat and Bhawan is a single property bought for them. He claimed it was arranged in 2009 that he should pay the two £653,000 for what was effectively an **interest-free loan for the purchase**. Twelve years later, however, this has not been repaid.

But Gangat and Bhawan say Jassat acquired much more property with their funds than just this one.

The two opposing sides put up a number of documents and gave evidence — but the court was **unimpressed with the testimony of any of the main players.**

Jassat said he'd seen Hathurani try to run Gangat over because he had asked for his share of the expatriated funds

Short on credibility

The judge hearing the matter, Eason Rajah, conducted the trial virtually.

Writing of his approach to the matter, he said the court would ordinarily be helped by contemporaneous documents. While there were some documents available, it was **a "feature of this case"** that Gangat and Bhawan had **initially tried to hide their connection to the expatriated funds from the SA authorities.** Because of this, they had had **an "aversion" to creating or keeping documents that might have been of help to the court.**

Jassat and two other witnesses gave evidence from London; Gangat and Bhawan testified from Joburg and Durban, from the offices of a firm of attorneys, on the basis that legal representatives of both sides would be present in the room as observers.

There was also an agreement that neither Gangat nor Bhawan would listen to the evidence of the other. Nor would either of them read the daily transcripts of the other's testimony until both had finished giving their oral evidence.

In his ruling, Rajah pointed to a number of difficulties with Gangat's testimony. His witness statement was "plainly drafted for him and at times he seemed surprised by what it said", the judge noted.

Then, it had been claimed that all the documentation from the Sars inquiry into the off-book business had been disclosed to the court. But when a particular document was needed that was not among the disclosed papers, Gangat "found" it overnight in a "box of old chequebooks" that had not previously been searched.

It was "not credible" that Gangat and Bhawan had kept "almost no documents at all relating to the Sars inquiry", Rajah said.

He also found that parts of Bhawan's evidence were "unsatisfactory" and lacking in credibility.

But the court's **gravest criticism was reserved for Jassat — "by far the least satisfactory witness"**. Rajah found him "argumentative and evasive", saying he was either lying to the court or had lied in the case involving Hathurani.

Among the facts established by the court was that the 1998 sale of Jumbo led to a falling out between Hathurani, on the one side, and the other three shareholders.

Sars also had concerns about the sale and began an inquiry into the deal, and the way the proceeds had been dealt with by the group, back in 2006.

Hathurani gave Sars an affidavit, in return for immunity from prosecution, in which he made a voluntary disclosure about the off-book cash business that had operated alongside the legitimate operation.

Gangat, Bhawan and Seetha were then told that Hathurani had settled his dispute with Sars, and that he had made full disclosure about the cash business.

This led Seetha to make a statement of his own (confirmed by Gangat, Bhawan and Seetha as true in separate affidavits) **that also disclosed the off-book cash business.**

Rajah referred to the bad feelings and a "severe breakdown in relations" among the four men, and Hathurani's "apparent desire to get his former business partners into trouble with Sars".

Seetha had told Sars that Hathurani "became aggressive and threatening [after the sale], refused to discuss the expatriated funds with them and made them feel that their interest in those funds [was] lost".

Jassat corroborated this, saying he'd seen Hathurani try to run Gangat over because he had asked for his share of the expatriated funds.

Money-go-round

In his ruling, Rajah noted that **Hathurani was the "dominant figure" among the four**, and it was **he who organised for the expatriated funds to be paid into Swiss bank accounts**. This had involved the use of a **number of middlemen in SA** and payment of **commission of between 2% and 5%** on the amounts transferred.

- Once out of SA, the funds were put into Swiss bank accounts with names that would **disguise the true account holders**. Initially the account created to hold Gangat and Bhawan's share was called "Camelot", with an initial deposit of \$4m and Gangat listed as the account holder. There was also an account used to receive the funds on initial expatriation. It changed from time to time, but was initially an account called "B. Kidney".
- Over the years, **many accounts were opened and closed at several banks** to hold the expatriated money.
- Funds were **repeatedly moved** from one account to another, **split between a number of accounts**, put into **accounts that were later closed, put into a family trust** of whose existence Gangat and Bhawan were unaware, **and so on**.

According to Gangat and Bhawan's evidence, as well as the position taken by Hathurani in his own case against Jassat, "over time [Jassat] acquired a position of complete control over the Swiss bank accounts and only he knew what accounts existed and whose money they held".

The judge accepted that evidence.

There was **no dispute** that Jassat had used the funds from the **Swiss bank account** to invest in **UK real estate**.

A report to the UK tax authorities, who were investigating Jassat for serious fraud, said he acquired about 53 commercial and residential properties between 1988 and 2005.

According to that report, Jassat had said he had "no interest" in these properties and they had been acquired primarily for the SA businesspeople.

Rajah concluded that Jassat had control over Gangat and Bhawan's funds and investments. They expected him to administer their assets for their benefit, and he had accepted a power of attorney over their Camelot account, thereby agreeing to be their agent. He also agreed to invest their money on their behalf.

"It is no surprise, therefore, that a court of equity will make [him] account for his dealings with those assets," Rajah said.

Unknown to Gangat and Bhawan — and without their approval — **some of their assets had been transferred into a Jassat family trust.** This was a breach of fiduciary duty by Jassat, and if the assets have been lost, he will be personally liable for the consequences, the court said.

Rajah added that he would order

- **an account of the funds and**
- **all necessary and consequential inquiries,**
- **plus judgment for the sums found due when the account is taken.**