### Shelter From Storm

An ice-cream vendor takes shelter on his cart as it rains in New Delhi this week. India's monsoon rains were 64% above average in the week to September 10, the weather office said on Thursday, the heaviest rainfall so far seen in this year's patchy season. The northern city of Srinagar was hard-hit and hundreds of people had to be airlifted to safety by the air force



### SA men take part in Harry's games

**MARVIN MEINTJIES** 

AMONG the 400 wounded soldiers taking part in Prince Harry's Invictus Games in London this week were two South African-born soldiers, one of whom has developed a bond with the prince.

Major Bruce Ekman, 34, and Private Jaco van Gass, 28, were wounded in Afghanistan. Ekman, a 400m runner, was

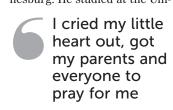
serving with 42 Commando when his vehicle was hit by a road-side bomb. Both his feet were shattered.

Van Gass, a cyclist, lost his left arm below the elbow when a rocket hit his unit.

He befriended Harry during a Walking with the Wounded charity trek to the South Pole in 2013 and said he was proud of the prince's support for wound-

"He really just wants to support the services, [honour] the sacrifices individuals have made and raise the profile of wounded soldiers — and hopefully create opportunities and jobs for other men and women." His parents, who now live in Pretoria, "are very proud and supportive". But he lets them know only after he's attempted to summit Mount Everest, or trekked to the South Pole.

He moved to the UK in 2006 and joined the British army. Ekman was born in Port Elizabeth and grew up in Johannesburg. He studied at the Uni-



versity of KwaZulu-Natal and moved to the UK about 10 years ago "to join the military' He spoke of the blast that shattered his feet and heels in 2011 and the tough road back to

being able to walk. "They flew me back to England to get my foot amputated. I remember, it was a very big thing. "One day I was fit and strong, running 18km a day or they're telling me I'm not going to ever run again and they have

to amputate my foot. "I cried my little heart out,

prayed a lot, got my parents and everyone to pray for me. "I went for surgery and woke up with a [prosthetic] foot," he said. What followed was a long

recovery. The Invictus Games highlight the sacrifices of soldiers and the

charities that support them. Ekman said: "Help for Heroes is a charity that gives great support to injured servicemen and women. I have a new thing called an off-loading brace — a lot of guys with injuries like mine, shattered feet, can't put weight through the ankle and heel. The brace straps on under my knee and allows me to offload weight from my body into an insole, like a running blade,

and I can now run again. Running at the Invictus Games was the culmination of a three-year journey made with the support of his wife, Candice. They have two children: Tatum,

# Wheels come off for Wesbank over 'strong-arm' repo tactics

MATTHEW SAVIDES, SUTHENTIRA GOVENDER, TASCHICA PILLAY and **BONGANI MTHETHWA** 

WESBANK is facing embarrassing claims of dodgy car-repossession practices, with the company's commission-paid agents accused of:

• Following and pulling over defaulting customers on public • Accessing CCTV cameras

in shopping malls to track down defaulters: • Using strong-arm tactics to

intimidate drivers; Secretly fitting tracking devices to customers' cars; and Repossessing cars without

the presence of a sheriff of the court, a legal requirement. The lender has denied all allegations. However, it admitted to installing a tracking device in

a car without consent. Spokesman Rudolf Mahonev has conceded this was "a mistake". He said the company always acted "ethically and professionally within the law" and

its agents were never armed. Documents seen by the Sun day Times show that the head of Wesbank's specialised collections unit, Willie Schoeman, marvelled at the record numbers of repossessions achieved by the lender's contracted

agents. Using controversial automated number-plate recognition cameras fitted on tracking cars, the bank's agents in some cases pulled up defaulting drivers on public roads. This is illegal. Only law-enforcement agencies may

One of the company's agents, Devan Naicker, had misgivings about the tactics. He wrote to his superiors questioning whether the company was

putting its employees at risk. In his e-mail, Naicker gave an account of a repossession gone wrong at the Gateway shopping centre in Durban, where a defaulter refused to return the

Naicker wrote: "Given that

Lender faces accusations of intimidating defaulting customers

spoke about getting violent, this could lead to him laying charges of harassment against the agent or he could physically assault

the field agents According to Naicker, the customer was approached at the centre's parking lot and at first agreed to hand over the car but changed his mind when he realised Naicker was not a sheriff of the court.

By that time the two were already driving out of the centre in the car with the defaulter due to hand the vehicle over outside the parking lot.

Naicker telephoned Schoeman, who told him not to leave the vehicle and to block the defaulter from driving away. "Due to the situation getting out of control, I asked the customer to take me back to Gateway," he said.

Naicker wrote that he was shaken by the incident.

"Are we not putting the bank at risk as the [National Credit Act] is very clear that there [are] two ways to cancel an agreement, via voluntary sur-

render or court order? "In some instances we are instructed by the office to tow the vehicle. This is in contravention of the law. The experience could have led to disaster for the field agents as the customer became irate and refused to let the agent out of his vehicle." he wrote.

Wesbank is a vehicle finance division of FirstRand Bank, also the parent company of First National Bank. In another case, in March last

year, a tracking device was fitted to the vehicle of former public prosecutor Kurt van Duvn after he had legally challenged Wesbank when its agents towed away his car from the parking lot of the Cape Gate shopping centre in December 2012 in Cape Town without a sheriff present or him being presented with a court order.

Van Duyn took the matter to the Western Cape Magistrate's Court in January 2013, arguing that processes had not been

The experience could have led to disaster as the customer became irate

properly followed. He won his case and, in March, his car was returned. Last week, however, he discovered that it had been fitted with a tracking device without

his knowledge. Documents seen by the Sunday Times showed that on

1 in 3 cars on the road is financed by WesBank

was further compounded by not disclosing this to the client," said Mahoney. He said the tracker was never March 4 last year, Wesbank recovery unit manager, Sunette activated Stewart, ordered the tracker to

be installed. "Under no circum-

stances can the customer know

that we have fitted a tracking

Last week, Van Duyn called

Cartrack in Bellville, Cape

Town, and was given an invoice

that confirmed that the device

The invoice listed the owner

as WJ Legal and Collection, a

repossession agent. WJ Legal

owner Jan Sieberhagen referred

Van Duvn said he had been in

Wesbank's Mahoney admit-

ted that Van Duvn's car had

been "improperly repossessed".

"Out of desperation, a second

error was made with the in-

arrears with his car payments

device," wrote Stewart.

questions to Wesbank.

by "a few months".

had been fitted.

"It must be stressed that this is a singular incident and is not bank policy, not is it an endorsed practice. No other client's vehicle has ever been fitted with a tracking device,' said Mahoney.

He denied most of the claims made against Wesbank, saying agents asked defaulting clients to hand over cars "voluntarily" Mahoney said the Road Traffic Management Corporation endorsed the use of number-plate

recognition cameras. savidesm@sundaytimes.co.za govendersu@sundaytimes.co.za oillayt@sundavtimes.co za mthethwab@sundaytimes.co.za

Comment on this: write to tellus@sundaytimes.co.za or SMS us at 33971



Picture: THULI DLAMINI

## Even defaulters have rights — so don't give in to bullying

**SUTHENTIRA GOVENDER** 

BANK collection agents who repossess vehicles from defaulting clients are operating

The South African Board for Sheriffs said this week that only sheriffs or their deputies. in possession of a valid court order, were allowed to remove a vehicle from a client who had defaulted on the repayments for his car

However, if the client voluntarily handed over the vehicle, the sheriff did not have to be present.
"Members of the public have

the right to refuse handing over their motor vehicles, goods or personal assets to the debt collectors, tracers, representa-tives or agents of the financial institutions," the board said. Debt counsellor Darren Manikam said the agents "manipulated" section 127 of the National Credit Act, which states that the surrender of a vehicle must be attested to in writing, and that the person

10 days. Lawyer and debt expert Neil Roets said banks used agents instead of the courts because it

was cheaper. "It costs a lot of money to go that route and takes a lot of time to instruct the sheriff. So they appoint their agents or tracers to go the consumer.

"These guys work on commission, so often we see that they bully the consumer ... Consumers hand over the vehicle fearing that they will be arrested," he said.

Roets said the repossession process was governed by section 129 of the National Credit

Act. The act stipulates that: • The bank must inform a defaulter that it intends issuing summons:

• The consumer is allowed to see a debt counsellor within 10 days of receiving the letter; • If the consumer does not respond to the letter of demand, the summons is served by the

• Finally, if the defaulter does not contest the summons, the bank will have to secure a judg-

ment in court. The bank will then get an attachment order, and will have to instruct the sheriff of the court to repossess the vehicle

The Board for Sheriffs said that even if the financial institution or its agents had a court order, they could not repossess the vehicle.

Only a sheriff or his deputy may execute a court order. However, according to Roets, banks often do not stick to the letter of the law.

'Where the problem comes in is whether the agent explains to the consumer that he has a choice [and does not have] to



hand over vehicles afraid that they'll be arrested if they don't

surrender the vehicle. "These guys work on commission, so often we see that they bully the consumer into thinking they have no choice. Consumers hand over the vehicle fearing they will be

arrested," said Roets. Debt Collectors' Association of South Africa chairman Paul Slot said that many collection agents used "strong-arm tactics" to convince people that they should hand over the vehicles to avoid having to pursue the legal route.

"Some credit providers have assumed the powers of the sheriff, which they don't have," he said.

Jacqueline Boucher, legal adviser in the National Credit Regulator's complaints department, said it was "improper for a debt collector to collect or execute on a court order without the sheriff or a deputy sheriff being present".

She added that section 15 of the Debt Collectors' Act governed the behaviour of debt collectors

One of its stipulations is that debt collectors are "not allowed to, among other things, use force, threats or intimidation against a debtor"

# Only sheriffs have power to grab cars

THE National Consumer Commission has urged people who believe their cars have been illegally repossessed to complain

The commission said consumers who "are aggrieved by this method of collection may lodge complaints with the commission to investigate if the practice is in contravention of the Consumer Protection Act. The commission said it would

sions are effected with respect to unconscionable conduct as outlined in the act and not necessarily the use of technology to identify the vehicles. Meanwhile, Wesbank's use of licence-plate recognition cam-

eras in seizing customers'

vehicles has been slammed by

look into "how these reposses-

Business Against Crime South The organisation, which leads the automatic number-plate recognition initiative that helps the police identify stolen ve-

hicles, has distanced itself from

the bank's methods Bacsa head Simi Pillay-Van Graan said information from the organisation's cameras was supplied to "the South African Police Service only" and that the organisation had no link "whatsoever" to Wesbank's recovery

Pillay-Van Graan said Bacsa would help banks repossess vehicles by providing informa-tion from its database to sheriffs of the court.

"We are prepared to help the banks seize their vehicles using a proper legal process [but] we will not give the information to the banks," Pillay-Van Graan

"The information will be given to the sheriffs who have warrants because they are the ones who are entitled to that infor-Police spokesman Solomon

The information will be given to sheriffs of the court, not to banks

Makgale said it was illegal for anyone other than law enforcement personnel to stop a vehicle

on a public road. "However, where criminal offences are being committed, such as impersonating a police officer which is in contravention of the South African Police Service Act, or the use of blue lights by a private person...the SAPS has interest and any complaint in this regard will be investigated as a criminal offence," he said. — Suthentira Govender, Bongani Mthethwa and Matthew Savides

### **CASE STUDY 1**

THEMBA Qumza will never forget the day he was accused of driving a stolen car after being pulled over by people he believed were the police. It turned out that he had been flagged down by

Gugulethu, said he and his fiancée were on their wav home in November 2011 after shopping in Cape Town when they were sandwiched between two Golf 5s, with sirens blaring and blue lights flashing. He was driving his brother's Corsa 1.4 bakkie.

> said. He was detained at Gugulethu Police Station. While we were there, someone who said he was car was being repossessed because of a default in payments," said Qumza. He said the bank him any documentation, giving only his telephone

to call him about the repossession of the car". Qumza's is one of several cases identified by the Sunday Times in which Wesbank — or one of its agents - accosted clients who had defaulted on car repayments. In many of

these cases, it appears the repossessions were illegal.

CASE STUDY 2

GWM CLO, had been

Wesbank agents. repossessed in April. He This week Qumza, from admitted that he owed R6 000 on the car. that they were collecting the

WHEELS BANK: A Wesbank billboard outside Durban boasts that the lender finances one in three cars on South Africa's roads

"We were told the car we were driving was stolen," he from Wesbank told us that the "representative" did not show number "just in case I wanted

A 30-YEAR-OLD defaulter from Durban, who asked not to be named, said his car, a

"I was stopped at South Beach by two men in Polo Vivo cars with cameras on the sides. The two men told me

car because I had defaulted on my payments. I explained to Wesbank that I was waiting for my pension fund and as soon as I got I would settle the debt

Pulled over in a 'stolen car'; stopped by men with cameras

in full," he said. The car was taken despite his protestations. He said he ended up paying R14 000, including storage

**CASE STUDY 3** A JOHANNESBURG woman, who did not want to be

named, had her VW Polo 1.4



BULLY-BOY TACTICS: Car owners speak of feeling intimidated

Trendline towed from the Northgate shopping centre in

June after she defaulted on her payments to Wesbank. "I had fallen behind a few times but always made large payments to rectify. By the end of February I had brought it up to date with a payment of

R79 000.

She said the total value of the car was "approximately R256 000" and the balance owing was R51 000. The woman was told by

Wesbank that legal action against her had been dropped. However, she defaulted on three months of payments. Wesbank sent a tracing agent

and a sheriff to collect the car She claimed the repossession document was outdated but that one of three men present men prevented her from getting into the car. She refused to hand over the car and insisted that the men follow her to the nearest

The bank representatives then called a tow truck to take the car away. The car was seized on June 25 and on July 15 she was told that she would have pay her

arrears of R24 414.91 in full by

police station to verify the

documents.

July 18.

Last week the bank told the woman that her car had been auctioned and that she owed it about R21 000.

### **CASE STUDY 4**

A DURBAN businessman admitted that he was in arrears by a few months on his Audi A4, which he bought in 2006. He was approached at the Gateway shopping centre by Wesbank agent Devan Naicker, who got into the car

the car. After dropping Naicker off, he was pulled over on the N3 between Pietermaritzburg and

with him and refused to move.

He drove off with Naicker in

"A black Golf came up behind me. It was very similar to cars used by the police. It had blue lights on the grille. The driver signalled me to pull over. I did and got out the car. I was surrounded by four men

"I was not threatened but the experience was intimidating. While we were talking one guy jumped into the car and asked me to go with them," he said. They took his car to a dealership in Pietermaritzburg, which he

was told was a storage facility. "I asked to see the court order and documents. A guy showed me his phone and said 'Here's the court order'. I asked him to give my car back because what he was doing was illegal. I asked for a business card: he scribbled a name on a piece of paper." -Staff Reporter

#### **Breaking all** records with technology

WESBANK specialised recovery unit head Willie Schoeman praised field agents for regularly breaking repossession records. He said the company's use of tracking technology minimised its losses.

Referring to figures from May, Schoeman wrote to staff in his department: "WOW what an outcome! A new recovery record has been set. A total of 292 vehicles sighted and finalised. The total accounting balance amounted to R50 323 672.23. Well done team! The technology applied plays a very effective and important role in the recovery of our assets, thus minimising our

losses.' In September last year he complimented staff: "Well done on achieving 226 units on ANPR fautomated number-plate recognition]. We are shifting the thinking on how things should

be done. Figures also showed that 151 vehicles were repossessed in May, 83 in June and 146 in July

last vear. Asked if the repossessions made using ANPR were done in the presence of a sheriff of the court or their representative. Weshank spokesman Rudolf Mahoney said this was not necessary because the defaulting customers involved had "voluntarily" handed over their cars.

— Staff Reporter