

Theme music

**youtube video Adam Catzavelos:** "Let me give you a weather forecast here. Blue skies lovely weather and not a single \*beep\* in sight. Fucking heaven on earth. You cannot beat this"

Theme music

**Narration:** Being accused of racist behaviour carries very serious consequences. Adam Catzavelo's unprovoked and clearly racist selfie video rant, filmed on an island holiday, racist video rant cost his family their businesses. In the video, Catzavelo's refers to black people using the k-word. But another well publicised case, a thirteen year nightmare for a whistleblower, began with a false allegation that a Johannesburg businessman had used the k-word on the scene of an accident. That case involved a South African Judge, who despite his conviction, managed to hang on to his pension. This podcast was brought to you by Spudcaster for [baobulb.org](http://baobulb.org) and I'm your host, Candice Nolan....

Theme music

**Sound effects:** car reversing

**narration:** It was early in the early hours of a Saturday morning on January 6th 2007. The Judge had taken a wrong turn. Finding himself in a cul de sac, he climbed the pavement backwards in an attempt to make a three point turn. **sound effects:** crash sound

**narration:** He had crashed into a wall, with his rear wheels digging up the soft sand inside the property. The noise woke a tenant, Lucky Melk who went out to investigate. After taking away the man's car key's, he phoned the police. About 30 minutes later, Melk phoned the owner of the property Richard Baird...

**Richard:** Judge motata was not telling the truth. He wasn't telling the the truth in provocation, I didn't provoke him. I didn't antagonise him, if we can use that as another word for provocation. There was no altercation. He was saying things and all the things I said was on audio so that I could protect myself. He said I took the keys, actually I didn't. I wasn't even on the scene at the time that lucky melk took the keys. And umm he lucky melk in his SAPS statement said he went outside because the car was revving trying to get away. He saw judge motata get out the car have a look at the back got into the car. At that stage melk had spoken to motata and motata then tried to drive away again. So, that's hit and run and, for the life of me, I think that's an impeachable offence in itself.

**narration:** Motata started being aggressive with racist rants directed at the only white person on the scene - Richard Baird. Feeling increasingly uncomfortable Baird woke his attorney who advised him to make audio recordings....

**audio recordings:** ja, I know the law. Let me go to the law. I don't care about him. Ja he mustn't look at me as a black man. Let me go for the law that how much I owe him for the wall which I broke down.

**Richard:** and throughout the whole scene that's exactly what happens. And he's calling for his car keys and he wants to leave. And because he didn't want to get processed as drunk. And every time the drunkenness or the breathalyser or anything was mentioned, he of course flared up to try and divert and misdirect around that.

**Audio recordings:** judge motata speaking in Sotho

**Richard:** and that's exactly what came out in the audio where he says to lucky melk in sotho I mustn't be ...they mustn't think they caught me with anything. He shows his intent he knows his drunk and his trying not to get processed

**Audio recordings:** judge motata - Fuck him! Melk - but then its not good to insult him. judge motata - fuck him fuck him he must not insult me. I say fuck him!

**Narration:** The judge used foul language on the scene directed at Baird

**Audio recordings:** judge motata - anybody who insults me I say fuck you. baird- who's insulting you? Judge motata- listen baird - but you have to answer you making an accusation you have to answer the question. judge motata - hey I say listen. baird - you have to answer the question if you making an accusation. judge motata - hey fuck you please. baird - you are being disrespectful to me. judge motata - I do not care about you. baird - I am the owner I have come to see what damage you have done and you judge motata - yes if you have any damage to your house do not insult me baird - Lucky, have I insulted this gentleman? melk - no, that is what I was trying to... judge motata - I say do not insult me. baird - I think its a one way street here judge motata - I say if I have done any wrong to you you have a claim to me, I respect that I have got to pay. But I do not want anybody if I have a claim against him to insults me. I do not want I do not want... baird - I do not think you have a basis to say this. judge motata - no no I would not... baird - but you do not have a basis to say that it is an academic talk now. Nobody has insulted you. Judge motata - I say if I have wronged you, you have a claim against me. You do not have a right to insult me! baird - I do not think anybody insulted you. judge motata - no, but what did you say when I got out of my car? Do not think I am a fool! Do not think I am a fool! Baird - what did I say? judge motata - I do not say do not ask him... I say you you spoke to me baird - well maybe what did I say? Judge motata - you say this drunken person baird - its my opinion that you are drunk because you smell of alcohol you went through my wall judge motata - don't talk nonsense

**Narration:** According to the anonymous author of the JSC majority decision, Judge Nikola John Motata was supposed to be a man of impeccable credentials. He served on the Truth and Reconciliation Commission after the abolition of apartheid. He was appointed to the High Court in Pretoria by then President Thabo Mbeki. But he served only six years in active service after being placed on special leave in the wake of the accident. With all the legal wrangling, the judge was on retirement by the time the Judicial Service Commission or JSC took its final decision on his fate....

**Richard:** supporting the majority decision I remember reading a comment that because he's now retired and there can't be this risk of him bringing the judiciary into disrepute, around his adjudicating the matter, he should be given his pension because at this point in time all that would be happening is that you would be taking his pension away. Well the matter of the fact was that his conduct was at a point in time before he was retired So its at that point in time that the adjudication should take place and its because he was a sitting judge that this complaint arose and its not now subsequent to that. So, it's irrational of the jsc to consider that a reason to not impeach him.

**narration:** But the JSC was split on what to do about Judge Motata in the wake of the drunk driving conviction. Judge Motata repeated the false racism allegation before the Conduct Tribunal....

**Judge Motata:** I said look I've done damage to your wall I will pay for it but we cannot go beyond that lets talk about the wall and not talking about the drunken word my recollection is one of the state witnesses repeated that that arrest this drunken \*beep\* he must land in jail speaker: I can recollect that was denied and it was subsequently withdrawn

**narration:** That false allegation was made during the criminal trial by the metro police woman who was on the scene of the accident.

**Richard:** the way I heard about it is my attorney, then my attorney, happened to be in the Joburg Magistrates Court on that day, he was involved with something else. He ended up going and he was sitting in the public gallery at the time and he sent me a message and he said "Crickey! You know, you better prepare yourself", because it was literally twenty minutes time he said "the top of the hour 702 its going to be about baird being a racist its going to be on the front page of the afternoon papers" and its exactly what happened!

**narration:** The metro policewoman never mentioned this in her evidence previously and was ultimately discredited by the court. Richard Baird said the metro policewoman manufactured evidence...

**Richard:** and at the beginning of the reexamination the metro cop came out to say she just wants to say this was a voluntary umm voluntary thing that she's now going to introduce new evidence you can't introduce new evidence in re examination for a start. It's for the state to clarify anything that came out and was confusing in the cross examination. The cross examination is in order to obviously question anything in the evidence-in-chief. Her evidence-in-chief to start with. So, having not said anything through those periods and having not put anything into statements in the intervening period between the accident and then having not arrested me on the scene, having not said anything to her vehicle partner or anybody else or absolutely not said anything for about two odd years, she now comes up and she says... after this, in her re examination, after this tea break, I think it was... saying that she heard me say to my tenant, Lucky Melk that the judge was a drunken k. She then corrects herself and she says no, actually she heard me saying it to the judge. Motata. She then re-corrects herself for the second time and says no she heard me saying it to Lucky Melk. Now, if she doesn't know who I said it to and if it hasn't come up and I hadn't said it, its quite clear that she's trying to introduce false evidence and she's trying to defame me in order to concoct some defence of sorts for some sort of provocation. The court didn't give any weight to that evidence at all.

**narration:** But despite the fact that this evidence was later thrown out by the court, the allegation continues to haunt Baird and tarnish his good name....

**Richard:** The effect of that is that as soon as somebody gets mud on them, so to speak, with the racism allegation, people stand away because they don't want the mud to rub of on them by association. So I was doing consulting work, as a management consultant while I was on my farm. And, you know, you can't watch paint dry, same way you can't watch fish grow. And try and keep some cash flows going in the business. It was making some losses. I even had the state vet who'd read something in the news in the newspapers making comments to me. It was a lady of colour from Uganda, wasn't even a local person, and there was no association and she automatically assumed - I'm assuming this - if it was in the papers and it said it was in court and it was said by a metro cop. You know, metro cops should be telling the truth it must be the truth and therefore I must be that per-

son. During my winter season when we needed temporary staff to come on to the farm to help us with volumes of checking and processing and what have you. Umm we would typically go and get temporary staff from the labour centre town. And we'd had people in the years before, no problem. And suddenly, after this report that had come out in the papers, we uh my senior guy had actually gone to town to go and get people. And he came back with not one person on the vehicle. And he told me that people were very keen, they needed work, they came to him and then somebody had said that that's the racist at the fish farm and nobody wanted to go and work for the racist at the fish farm

**Narration:** Motata's drunk driving conviction was upheld on appeal. That alone was insufficient to find him guilty of gross misconduct. But it was Judge Motata's behaviour and utterances on the scene and his consistent denials about his drunkenness at the trial, that landed him in hot water with the JSC conduct Tribunal. After hearing evidence including from Judge Motata - who testified for the first time - the Tribunal recommended impeachment...

**Richard:** so if nine judges, post the criminal trial - two on appeal - this is now nine judges reviewing all the evidence - and then five in the jsc conduct committee and then a further two in the conduct tribunal, being the formal process, properly defended by judge motata with two counsel cross examination taking place and there was no challenge to that tribunal. So if nine judges have said he needs to go surely he needs to go! And here's the JSC saying he's not going to go they're going to protect him as it were. They have given him some sort of slap on the wrist. So, in other words, you can be racist, you can be dishonest as a judge. You could do all these things. What, in other words, what is gross misconduct? How bad does it have to get for you to have committed gross misconduct? what is gross misconduct in the jsc's eyes?

**narration:** But the Judicial Service Commission or JSC went against its own Tribunal's recommendation....

**Richard:** In the majority they they fall over themselves backwards to excuse Judge Motata and not hold him accountable

**narration:** It's unclear as to the split of that decision, we also don't know who penned either the minority decision calling for impeachment or the majority decision. The majority also level criticism at Baird himself, arguing that he had recourse in the civil courts. But Baird says he was impoverished by the whole scandal....

**Richard:** I couldn't get pro bono I couldn't get help from Wits... UJ... Legal Aid agh you name it even trying to find friends of friends and whatever. I couldn't get proper help at all. So, I was on my own. And I had now been impoverished because of the defamation of the crimen injuria of the false racism allegation by the metro cop set up by the motata team Defence team

**Narration:** That was Richard baird. Please leave a review. This spudcaster podcast was brought to you by [baobulb.org](http://baobulb.org) and I'm your host Candice Nolan.