The return of the lion

The Lion sleeps tonight in Africa, where it belongs. It has found and, has returned to, its roots in South Africa. At the same time, Mickey Mouse, Donald Duck and their friends have been released from custody in South Africa where they have been held hostage.

In the late 1930s Solomon Linda, a Zulu tribesman, composed the song MBUBE. He relocated to Johannesburg where he was employed as a sweeper in the storeroom of Gallo Record Company. Gallo recorded and released his song which became a good seller in South Africa.

In the early 1950s the recording of MBUBE found its way to America and came to the attention of Pete Seeger, the folk singer. He liked what he heard and transcribed the music from the record to make his own song which he called WIMOWEH. It was successful in the United States in the 1950s and then was later reworked into another version in the 1960s by the song writers George Weiss, Hugo Peretti and Luigi Creatore as THE LION SLEEPS TONIGHT. In this form the song became a major hit and has remained popular for more than 40 years. It is, indeed, reported to be one of the most successful songs ever written.

In the mid 1990s it was incorporated into the Disney musical THE LION KING, in both the movie and stage versions. The origins of the song in MBUBE and the role played by Solomon Linda did not receive acknowledgment and the song was presented as being of American origin.

At the time when MBUBE relocated to America, Solomon Linda executed an assignment of his worldwide copyright in that song to Gallo Records. That marked the beginning of his journey into oblivion as far as the song was concerned. He died in 1962 as a pauper, leaving a wife and four children.

Under the prevailing South African law of intestate succession his wife, Regina, was his sole heir. In 1983 the American music publishing company, Folkways, which had gained control of WIMOWEH, exacted an assignment of Regina’s rights to the renewal term of WIMOWEH under United States copyright law and threw in at the same time her worldwide rights to the song, such as they may have been.

In 1990, Regina died leaving a will nominating her four children as her heirs. In 1992, when litigation was raging in the United States regarding WIMOWEH and THE LION SLEEPS TONIGHT, Folkways exacted a further assignment of worldwide rights to MBUBE from the four Linda daughters. No stone had been left unturned to ensure that the Linda family had no claim to the copyright in the song MBUBE.

In the late 1990s, author and freelance journalist, Rian Malan, wrote an article exposing all the machinations that had taken place. He made the point that, though the derivatives of that song, and in particular THE LION SLEEPS TONIGHT, made millions of US Dollars, the Linda daughters, one of whom had recently died from AIDS, were living in abject poverty in South Africa and were deriving no material benefit from the fruits of their father’s creative work.

The article, published in Rolling Stone, caused sufficient outcry in South Africa to foster the resolve to take legal steps to stake a claim on the part of the family to proceeds from the song, and especially THE LION SLEEPS TONIGHT version, and to gain due acknowledgment of the role played by Solomon Linda in creating the song, as well as for its South African origin.

In order to establish a cause of action on the part of the Linda heirs, reliance was placed on
Could become too ghastly to contemplate

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Contrary to popular belief (hope?), the Minister of Finance did not take the bold step of abolishing exchange control in the budget. This means that the current uncertainty about the application of exchange control regulations to cross-border transfers of intellectual property will continue.

As things stand, SA residents may not export IP without exchange control (Excon) approval. Generally, Excon (an arm of the SA Reserve Bank) argues that the export of IP may constitute an export of capital which is a contravention of reg.10(1)(c). It relies strongly on the decision court in Couve and Another v Reddot International (Pty) Ltd and others 2004 (6) SA 425