IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 7941/21

1. Reportable: No
2. Of interest to other judges: No
3. Revised

[redacted]

Wright J

7 February, 2024

In the matter between:

KUMBA IRON ORE **APPLICANT FOR REVIEW**

and

ANSEC 189 **RESPONDENT IN THE REVIEW**

JUDGMENT – REVIEW OF TAXATION - WRIGHT J

WRIGHT J

1. The applicant in the main application, Ansec launched an application against three respondents, Veriset, Rustenburg Platinum and Kumba Iron Ore. Both Rustenburg and Kumba are part of Anglo American.

2. Attorneys Webber Wentzel opposed on behalf of Rustenburg and Kumba. A main opposing affidavit was deposed to by an employee of Rustenburg who said in his affidavit that the legal submissions contained in his affidavit are those of the legal representatives for both Rustenburg and Kumba. He also said that where he deals with matters relating to Kumba, such allegations are confirmed in a short affidavit by a person employed by Kumba. A short confirmatory affidavit by a Kumba employee was delivered as part of the main answering affidavit.
3. Ansec later withdrew its application against Kumba and became obliged to pay Kumba's taxed, party and party costs.
4. A bill of costs was presented by Webber Wentzel for Kumba. It was taxed.
5. The Taxing Mistress disallowed items 25, 26, 27 and 40.
6. Item 25 is "*draft answering affidavit by H Coetzee, [the Rustenburg employee] – R6 888*." This a fee sought by Webber Wentzel.
7. Item 26 is "*sort and arrange counsel's brief and short instructions therewith – R460*." This is a fee sought by Webber Wentzel.
8. Item 27 is "*Consultation with counsel and third respondent – discuss and take instructions – 1 hour – R1 312.*" This is a fee sought by Webber Wentzel.
9. Item 40 is "*peruse account and draw cheque - counsel – R36 000.* " This is a disbursement by Webber Wentzel, paying counsel.
10. In short, the Taxing Mistress took the view that the bulk of the work done in finalising the answering affidavit related to Rustenburg and that because only a short confirmatory affidavit by an employee of Kumba was filed, Kumba could not recover the costs taxed off and relating to the answering affidavit.

The Taxing Mistress found that Kumba had not contributed meaningfully to the answering affidavit.

11. Before me now is a review of taxation under Rule 48, Kumba seeking that the items referred to be allowed. The Taxing Mistress abides my decision but Ansec opposes the review.

12. It may be that the bulk of the allegations in the main answering affidavit relate more directly to Rustenburg than to Kumba but in my view, the common practice of preparing a main affidavit, supported by a confirmatory affidavit is reasonable. It makes the reading of the papers far easier for the other side and for the judge to whom the case is allocated. It means that the case is presented once, rather than twice. Rustenburg and Kumba are in the same stable, have the same attorney and counsel and in these circumstances, life is made easier for all concerned for the answering papers to have been presented as they were. Had separate affidavits been presented, Webber Wentzel may have faced an accusation that they had unnecessarily inflated the papers. It was sensible to have one set of consultations for both Rustenburg and Kumba rather than two.

13. Webber Wentzel confirms in the review papers that Kumba's representatives were at all times involved in the preparation of the answering papers.

14. In my view, the Taxing Mistress misdirected herself in finding that Kumba failed meaningfully to contribute to the main answering affidavit. Kumba's contribution was meaningful although substantially less than that of Rustenburg.

15. In my view, the review succeeds but only to the extent of recovery of 20% of the items disallowed. Given that the answering affidavit was really a joint effort

for Rustenburg and Kumba, it would be fair that the costs be split between these two litigants at the ratio of 20% for Kumba.

16. Kumba did not seek costs in the review. In any event, in my view, Ansec and Kumba should carry their own costs in this review. The partial success of Kumba translates into very few rands.

ORDER

1. The review succeeds in part.
2. The Taxing Mistress is to allow Kumba Iron Ore 20% of items 25, 26, 27 and 40 and to finalize the allocatur accordingly.
3. The parties are to carry their own costs in this review.

[redacted]

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GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

CONSIDERED IN CHAMBERS : 7 February 2024

DELIVERED : 7 February 2024

APPEARANCES : None (On paper)