IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case Number 3327/2021

In the matter of:

WESSEL JOHANNES JACOBUS HAVENGA	**Applicant**

and

HELEN MARGRET HAVENGA	**First Respondent**
ADRIE VAN WYK	**Second Respondent**
ELSA HENDREHETTA OOSTHUIZEN	**Third Respondent,**
JOHN BOTHA HAVENGA	**Fourth Respondent**
RUBEN CLAASSEN	**Fifth Respondent**
THE MASTER OF THE FREE STATE HIGH COURT BLOEMFONTEIN	**Sixth Respondent**

CORAM: **NAIDOO, J**

DELIVERED ON: **23 OCTOBER 2023**

JUDGMENT - REVIEW OF TAXATION

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[1] This is an application in terms of Uniform Rule 48 for the review of the taxation, in respect of a Bill of Costs that was taxed by the Taxing Mistress of this Division. The first to fourth respondents are the mother and siblings, respectively, of the applicant. The deceased estate implicated in this matter is that of the applicant's father, the late Adrian De Necker Havenga. The dispute in respect of this matter centres around the Smithsdrift Trust (the Trust) which owns immovable property, which property was the subject matter of an urgent application heard by this court on 20 July 2021. It appears that certain settlement negotiations took place pursuant to the enrolment of the urgent applicant, resulting in a Resolution (the Resolution) being taken on 27 July 2021 by the trustees of the Trust, the applicant and his mother, the first respondent, as capital beneficiaries of the Trust, that the property owned by the Trust be sold by public auction. Provision was also made for the payment of certain debts from the proceeds of the sale and for the investment of the balance. Attorneys Hendré Conradie Inc are on record for the applicant, while Attorneys Jac N Coetzer are on record for the respondents.

[2] I mention that the Resolution attached to the Notice of Review of Taxation was signed only by the applicant. The tenor of the papers filed by the parties suggests that there may have been a properly signed Resolution in existence, and the applicant confirmed that the Resolution settled the matter between the parties. It appears that the parties considered themselves bound by the Resolution. A Bill of Costs was enrolled for taxation by Jac N Coetzer Inc. The applicant objected to certain items, and the Taxing Mistress proceeded to tax the Bill, and append her *allocatur* thereto. It is this Bill of Costs that is the subject of the Rule 48 review in this matter.

[3] The Trust owed First National Bank (FNB) money, and it appears that FNB instituted execution steps against the Trust. This prompted the sale of the property in order to repay the debt owed to FNB, as well as other costs and amounts owed by the Trust. The Resolution details which creditors would be paid. There are other entities which ostensibly were sureties and co-principal debtors with the Trust for repayment of the debt to FNB, hence they were involved in the negotiations and interactions between the parties. Those mentioned in the papers are Tevredenheid Investment CC and Leliesvlei Trust. The applicant alleges that Jac N Coetzer Inc, in acting for these latter mentioned entities as well as the Trust, was faced with a conflict of interest but continued nonetheless. The applicant further alleges that this was drawn to the attention of the Taxing Mistress during the taxation, as it is an issue that was always raised throughout the dispute by the applicant.

[4] The grounds for the review in this matter are, essentially, that the Taxing Mistress erred in allowing costs for clients of the attorney, who were not mentioned in the Resolution. The latter settled the matter between the parties, who are the Trust, the applicant and the first respondent, Helen Margaret Havenga. The Trust did not agree to pay the costs of the other entities (which I mentioned earlier), and the Resolution could never be interpreted to mean that the costs of the attorney's other clients were included in the Resolution. Those clients were not beneficiaries of the Trust. In any event such a resolution would have fallen outside the powers of the Trustees and would have been invalid. The applicant lodged a general objection to items 11, 12, 14-16. 22-23, 28, 29, 36, 46, 59, 60, 69-75, 93, 140-142, 158, 177, 187, 188, 190, 193, 196, 200, 202-208, 211, 212 and 227. The applicant also objected to the

Taxing Mistress allowing items 54, 91. 171 and 210, on the basis that these items relate to time spent on preparing for consultation or making notes in respect of documents already received and perused.

[5] The Taxing Mistress dealt with each item that the applicant objected to (as I've listed above) and provided explanations in respect of each. Both the applicant and the respondents were legally represented at the taxation, and it is evident from the stated case, by the Taxing Mistress, in terms of Uniform Rule 48, that file notes, relevant documentation and explanations in respect thereof were furnished to the Taxing Mistress, based on which she exercised the discretion accorded to her by Rule 48, in taxing the Bill of Costs. What is also evident from the stated case is that the Taxing Mistress accepted that the entities known as Tevredenheid Investment CC and Leliesvlei Trust were intrinsically connected to the Trust and that it was not possible to deal with, discuss or settle the matter, without considering information pertaining to these two entities, and also without involving the representatives of the two entities in the various discussions and interactions which were necessary to resolve this matter.

[6] I revert to the Resolution, which contained provisions based on the agreement reached by the relevant parties, whom I mentioned earlier. This much is stated by the applicant. The manner in which the proceeds of the sale of the property were to be utilised are set out, some provisions being in general terms, for example para 2.1 provides for the payment of the loan of the Trust in an amount of R351 406.58, without any further details being furnished. Para 2.3 of the Resolution is at the centre of the dispute in this matter.

I mention that none of the correspondence in respect of the dispute, which the applicant alleges was furnished to the Taxing Mistress, have been made available to the court.

[7] Para 2.3 of the Resolution provides as follows:

"Betaling van die getakseerde regskostes van die prokureurs **Symington & De Kok, Jac N Coetzer Ingelyf** en **Hendre Conradie Ingelyf** op die skaal soos tussen prokureur en kliënt. Hierdie koste sal die getakseerde koste van die Applikant en die Trust onder aansoek 3327/2021 op 'n party en party skaal insluit".

Loosely translated, it reads:

"Payment of the taxed legal costs of attorneys Symington & De Kok, Jac N Coetzer Incorporated and Hendre Conradie Incorporated on the scale as between attorney and client. These costs shall include the taxed costs of the Applicant and the Trust under application 3327/2021 on a party and party scale"

[8] The applicant was a party and signatory to the terms as agreed and reflected in the Resolution, and considered himself bound by the terms of the Resolution. If, as the applicant contends for, clause 2.3 is given its ordinary meaning, then the meaning contended for by the applicant cannot be sustained. It is clear that the legal costs of Symington & De Kok, Jac N Coetzer Inc and Hendre Conradie Inc were to be paid on an attorney and client scale. Such costs would include the applicant's and Trust's costs of this application, but on a party and party scale. There is no detail or background provided to this court as to what the legal costs of Symington & De Kok, Jac N Coetzer and Hendre Conradie, on an attorney and client scale, relate to. What is clear is that the costs of the applicant and the Trust, in respect of this application (which would include the costs of the initial urgent application), were to be taxed on a party and

party scale. Therefore, provision is made for other legal costs to be taxed on an attorney and client scale. The representative of Jac N Coetzer clearly provided the background and history of this matter to the Taxing Mistress in order to contextualise and justify the costs which were to be taxed on an attorney and client scale. This much is evident from the stated case by the Taxing Mistress.

[9] The respondents confirm the Taxing Mistress' views and conclusions as expressed in the stated case and deny that she erred in any way. An important aspect pointed out by the Taxing Mistress is contained in her response to the applicant's objection to item 227. For the sake of completeness, I quote it in full:

"This lengthy consultation was also justified by consultation notes which were more specific and covered important aspects of the deliberations. The discussions were about the settlement negotiations between the parties with the clients. I wish to submit that prior to this bill of costs being taxed, Roussows Attorneys (acting for the applicant) taxed their bill on the same basis and time line which was indicated in their bill of costs for thie (sic) same consultation was from 08am-19:44pm. All of the objected consultations by Roussouw were actually allowed in their bill of costs (that bill of costs was presented to me during this taxation)".

This was confirmed by the respondents in their response to the applicant's Notice of Review in terms of Rule 48. They added that the bill of costs of Hendre Conradie Inc included fees for attending matters not only of the Smithsdrift Trust, but also the Leliesvlei Trust, Tevredenheid Beleggings CC and the Insolvent Estate Late ADN Havenga.

[10] The legal principles relating to a court's power and discretion to deal with a review of taxation have been well established in our law from as early as 1916 to present times and has been succinctly

summarised by the learned author *Erasmus* in his work *Superior Court Practice at RS 21, 2023, D1-654 and DI-655*:

The taxing master has a discretion to allow, reduce or reject items in a bill of costs. This discretion must be exercised judicially in the sense that the taxing master must act reasonably, justly and on the basis of sound principles with due regard to all the circumstances of the case. The court is reluctant to interfere with the decisions of the taxing master upon matters in respect of which he is required to exercise a discretion entrusted to him. The general principles governing interference with the exercise of a taxing master's discretion have been stated as follows:

'The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he has failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue. . . . The court must be of the view that the taxing master was clearly wrong, i e its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.'

[Refer to the numerous authorities cited in *Erasmus*]

[11] In this matter, the applicant was a party to, and signed the Resolution relevant to this matter. He was legally represented and there were clearly extensive and intensive settlement negotiations, resulting in the Resolution being drawn. It appears that it was the applicant's legal representative who, in fact, drafted the Resolution, so this court is constrained to find that the applicant was unaware of the intention of all the parties or that he could have intended something other than what is recorded in the Resolution. The explanations tendered by the Taxing Mistress in the stated case, are indicative of her having considered the inputs, representations of the legal representatives present and the objections raised by the applicant, together with the documentary proof provided to her.

[12] I am unable to find that she misdirected herself or erred in the manner in which she taxed the Bill of Costs in this matter. A perusal

of the Bill of costs bears this out, for example, in items 11 and 12, which were objected to, she considered that such cost be allowed but in a lower amount, so that she taxed off what she deemed to be a fair amount. Similarly, she taxed off all amounts in items 20 to 25. The applicant's objection to items 22 and 23 is therefore misplaced. There are also numerous items, which have been objected to, where the Taxing Mistress taxed off sizeable amounts in respect of such amounts (see for example items 46, 70, 72, 141, 158 and many more). There are numerous items to which the applicant did not object, but where the Taxing Mistress taxed off significant amounts (See, for example items 94 – 98 and 113 – 120).

[13] In view of what I have said, I am satisfied that the Taxing Mistress properly, reasonably and justly considered all the relevant circumstances of the matter. This court is not in the same or better position as the Taxing Mistress to find that she was wrong. In fact, the Taxing Mistress was in a much better position than the court as she was privy to information and documentation which have not been placed before this court, and was in a better position to exercise the discretion accorded to her in terms of Rule 48.

[14] In the circumstances I make the following order:
The application for Review of Taxation in terms of Rule 48 is dismissed with costs

[redacted]

S NAIDOO J

On Behalf of the Applicant:	M Olivier Obo Hendre Conradie Inc 119 Pres Reitz Avenue Westdene Bloemfontein (Ref:HAV20/0001)
On Behalf of the Respondents:	IM Scheepers (MSK) Obo Jac N Coetzer Inc 35 Markgraaff Street Westdene Bloemfontein (email: ester-lana@phinc.co.za))