IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Of Interest to other Judges:	**NO**
Circulate to Magistrates:	**NO**

Case number: 4975/2020

In the matter between:

WATERKLOOF HOLDINGS (PTY) LTD — 1st Applicant

DF PRINSLOO — 2nd Applicant

and

DANIEL FRANCOIS VAN TONDER N.O. — 1st Respondent

JOHAN DIEDERICK VAN WYK N.O. — 2nd Respondent

PAULINE VAN TONDER N.O — 3rd Respondent

KALINKA JANSEN VAN VUUREN N.O — 4th Respondent

DANIEL FRANCOIS VAN TONDER — 5th Respondent

JUDGMENT: REVIEW OF TAXATION

JUDGMENT BY: LEKHOABA, AJ

DELIVERED ON: 16 NOVEMBER 2023

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[1] This is a review in terms of Rule 48 (of the Uniform Rules of Court. The taxation of the bill was set down on the 11th of July 2023 at 09:00am.

[2] The applicant is Waterkloop Holdings (Pty) Ltd, [Registration number: 2017/501988/07], a company duly registered in terms of the Company Laws of South Africa with registered address at 33 Loraine Street, Bayswater, Bloemfontein, Free State Province.

APPLICANT

[3] The Applicant seeks the review of the taxing master's decision in respect of the respondent's bill of costs pertaining to Advocate Neil Snellenburg SC's account. The bill of costs followed the applicants' withdrawal of their application for exception that was set down on 12 May 2023 in which the applicants tendered to pay the respondents' wasted costs on a party and party scale until the 19th of April 2023.

[4] The Bill was opposed by the Applicant who was represented by Mr. van Biljon during taxation. The taxing Master reduced 7 hours of perusal and considering the applicants 'exception to 5 on the basis that the matter was not so complicated that it required 7 hours.

[5] The applicants, further, contend that it was not necessary to engage the services of a Senior Counsel as the respondent had throughout the matter made use of a junior Counsel in Advocate Van Aswegen who had thorough knowledge of the matter.

[6] The applicants submit that a further R4800. 00 amounting to 1 hour 30 minutes of perusal should have been deducted from the bill. They submit, further, that had the respondents not used Senior Counsel in the matter, the total amount of Adv. Willem Aswegen would have amounted to R10 000.00 on the day that exception was withdrawn.

RESPONDENTS

[7] The respondents support the decision of the taxing master. They submit that respondents' bill of costs was taxed in terms of the applicants' notice of withdrawal of the exception in terms of which the applicants tendered costs on a party and party scale up until the 19th April 2023.

[8] They contend that Advocate Snellenburg SC was briefed owing to the nature and complexity of the matter. It is on this basis that he requested an involvement of a junior Counsel. Hence the appointment of Advocate van Aswegen. The applicants were informed of Advocate Snellenburg SC's brief in correspondence exchanged between legal representatives before the withdrawal of exception was filed. The applicants did not object to Senior Counsel being on brief, nor did applicants object to Counsel's seniority during taxation.

[9] The notice of withdrawal was filed on 19 April 2023,8 court days before hearing. The applicants tendered the respondents' party and party costs until 19 April 2023. According to "***Taxation of Costs in the High and Lower Courts, A Practical Guide" A Kruger and W Mostert page 76:***

"*As advocates are usually booked well in advance for trials, should the matter be settled or postponed close to the trial date counsel may well be unable to obtain a brief for another trial. He or she could end up idle for the period reserved for the trial and unable to generate fees. Therefore, counsel must be able to claim some compensation. The following guidelines are normally used; if a matter is settled or postponed:*

- *21 to 8 court days before the trial date, counsel may charge a fee equal to half of his or her first-day fee"*
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[10] Mr. Schuurman brought the above ***quotation*** to the attention of the applicants in an email before the withdrawal was filed and confirmed that at that stage their client was liable for 50% of Adv. Snellenburg Senior Counsel's day fee. Counsel

did indeed charge only 50% of his day fee for 12 May 2023. Perusal and preparation were allowed separately as specified on counsel's bill but reduced to 5 hours. This work was actually done by counsel. He received his brief from his instructing attorney on 17 April 2023 consisting of 149 pages. Perusal and preparations are included in party and party cost.

[11] It is the respondents' submission that the taxing master considered both arguments and used her discretion properly before correctly deciding on the amount for counsel, and subsequently the applicants' review should fail.

[12] The taxing master stated that the bill was set on the 11th of July 2023 at 09:00am. Mrs Olivier from Zyl's Legal Costs presented the bill of costs on behalf of Hill Mchardy & Herbst who acted for the Respondents while Mr. Van Biljon from Cloete opposed the bill of costs on instructions of the Applicants.

[13] During the taxation Mr. Van Biljon noted his objection to the fact that the taxing master allowed counsel's day fee plus, perusal and preparation. Mr. Van Biljon argued that what tie the applicant consented to was 50% of counsel's entire account.

[14] Mrs. Olivier in support of the respondents handed in emails exchanged between Mr. van Biljon on behalf of the applicants and Mr. Schuurman on behalf of the respondents. In those emails Mr. Van Biljon tendered to withdraw the application and to pay the Respondents party and party costs up until 19th of April 2023. Mr. Schuurman (for the Respondent) then replied with the question if the tender included 50% of counsel's account up to date as well.

[15] Mr. Van Biljon then said that the Applicants tender one third of the counsel's account. Mr. Schuurman then replied for the second time explaining the rules applied in determining counsel's fees and then indicated that at that stage of proceedings the Applicants would be liable for 50% of counsel's day fee.

[16] Mr. Van Biljon indicated that in order for the Applicants to make a final decision he needs to know what 50% of counsel's fee is. Mr.Schuurman then

replied for the third time that he is unsure as to what 50% of the total of counsel's fee would be but indicated that respondents' counsel charges R32 000 per day plus VAT. .

[17] Mr. Schuurman's last reply is that the Respondents are amenable to consent to a withdrawal of the Applicants exception. That the Applicants are jointly and severally liable to pay the Respondents taxed party and party costs which will include Adv. Snellenburg Senior Counsel's account up to date plus R16 000 in respect of the 50% of his day fee.

[18] There was no objection advanced during taxation to item 21 with regards to the seniority of counsel.

[19] Taxing master proceeded to explain reasonableness of counsel's account as follows:

12.1 Item 1 on counsel's account was taxed of in totality, which amounts R1 840, as these costs forms part of attorney and client costs;

12.2 Item 2 which is the consultation and was sustained;

12.3 Item 3 perusal was reduced to five hours being allowed and amount of R6 400 was taxed off;

12.4 Item 4 is collapse fee / retainer fee and only 50% was charged thus this item was sustained;

12.5 The account was a no VAT allowed account so the total of VAT of R 6120 also came off counsels' account

12.6 In totality R14 120 was taxed off add item 21.

[20] The Taxing master is of the view that the matter was complex in nature, which is further confirmed by the fact that the applicants themselves employed the services of senior counsel in Adv. Jannie Lubbe SC.

ISSUES ON REVIEW

[21] The issue between the parties is whether or not the Senior Counsel was entitled to 50% of day fee or 50 % of the entire bill. It is important to note that the applicants also contend that it was unnecessary to make use of Senior Counsel in the matter since the application for exception is not complex.

[22] Interference on review is justified where a reviewing court finds that the taxing master has not exercised his discretion properly, for example, when he has been actuated by some improper motive or has not applied his mind to the matter or has disregarded factors on principles which were proper for him to consider or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable person would have given. (See **Preller v Jordaan** 1957 (3) SA 201 (O) at 203). See also Ocean **Commodities Inc and Others v Standard Bank of SA Ltd and Others** 1984 (3) SA 15 (A) ([2002] 4 ALL SA 723) 18 F-G it

[23] The purpose of Rule 70 (3) is to ensure that a successful litigant should be reimbursed of his costs while the interests of the winner should also be protected from having to pay an excessive amount of costs. The purpose of taxation was stated in **Mouton v Martine 1968 (4) SA 738 (T) at 742**:

> "In the former it was the function of the court, or one of the judges, to tax the costs of a case. The purpose of the taxation was really two fold; firstly, to fix the costs at a certain amount so that execution could be levied on the judgement and, secondly, to ensure that party who is condemned to pay the costs does not excessive and the successful party does not receive insufficient costs in respect of the litigation which resulted in the order for costs"

[24] The approach to be followed in matters of this kind has been repeatedly stated in various decisions. The approach is summarised in the decision in ***City of Cape Town v Arun Property Development (PTY) LTD and other 2009 SA (CPD) at page 232, paragraph [17]*** as follows:

"The taxing master has discretion to allow, reduce or reject items in the bill of costs. She must exercise this discretion judicially in the sense that she must act reasonably, justly and on the basis of sound principles with due regard to all circumstances of the case. Where the discretion is not exercised, her decision will be subject to review. In addition, even where she has exercised her discretion properly, a court on review will be entitled to interfere where her decision is based on a misrepresentation of the law or on a misconception of the law or on a misconception as to the facts and circumstances, or as to the practice of the court."

[25] In ***Daywine Properties (Pty)Ltd v Murphy & Another 1991 (3) SA 216 (D)*** Broome J strongly expressed his view that a party who is present at taxation and fails to object when the matter is before a taxing master should be denied the opportunity to have the taxing master's decision reviewed in a 'belated attempt to attack items'.

[26] In ***Kruger v Secretary for Inland Revenue 1972 (1) SA 749 (C) at 750 F-G Van*** Winsen J held as follows in a similar matter:

"I do not deal with the belated objection to item 16 since no objection was made to the Taxing Master's allowance of this at the time of the taxation. It is accordingly not subject to review. (Rule 48 (1)"

[27] In ***Kloot v Interplan Inc. and Another 1994 (3) SA 236 (SE),*** the court held that if counsel's fees are reasonable, they should be allowed in full without any deductions. The court held that taxing masters making deductions for the purpose of reducing the fee, such approach was deemed improper in the light of Rule 70 (30) of the Uniform Rules. It was further held that taxing master should strive a successful party full indemnity in respect of costs reasonably incurred.

CONCLUSION

[28] It is apparent from the above that the applicant did not raise the issue with the taxing master. The applicants gave no cogent reasons why the decision of the taxing master must be interfered with. The view expressed by the applicants is not supported by applicable legal principles. I am unable to find that the Taxing

Master did not exercise her discretion properly or that she applied the wrong principles in the taxing of this bill. The grounds for review are without merit and legal substance. Therefore, the review must fail.

[29] In the premises I made the Following order:

ORDER

1. The review of the taxation is dismissed.
2. There is no order in respect of costs.

[redacted]

LEKHOABA, AJ

APPEARANCES:

On behalf of the Applicant:	S.J. VAN BILJON J.G KRIEK & CLOETE ATTORNEYS **BLOEMFONTEIN**
The taxing Master:	FREE STATE HIGH COURT **BLOEMFONTEIN**
On behalf of the Respondent:	M OLIVIER HILL MCHARDY & HERBST ATT **BLOEMFONTEIN**