IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION POLOKWANE

Case No: 423/2015

(1)	REPORTABLE: **NO/YES**
(2)	OF INTEREST TO OTHER JUDGES: **NO/YES**
(3)	REVISED.

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DATE SIGNATURE

In the matter between

STEPHEN RAMONYENYI LEMAO **APPLICANT**

AND

MINISTER OF POLICE **FIRST RESPONDENT**

TAXING MASTER OF THE HIGH COURT

LIMPOPO DIVISION **SECOND RESPONDENT**

REVIEW JUDGMENT-TAXATION

Kganyago J

[1] Three separate actions were instituted against the first respondent by the same firm of attorneys on instructions from its clients. The three matters were consolidated

and allocated a special trial date which was supposed to run for the whole week from 7th May 2018 to 11th May 2018. Due to the unavailability of the first respondent's witnesses, the trial could not proceed as scheduled for the entire week and it was postponed *sine die.* The first respondent was ordered to pay the applicant's wasted costs of 7th May 2018 on party and party scale, and that of 8th to 11th May 2018 on attorney and client scale. The costs included costs of two counsel.

[2] The applicant prepared a bill of costs and submitted it to the Taxing Master for taxation. The first respondent opposed the applicant's taxation. The parties appeared before the Taxing Master on 16th August 2018. During taxation the applicant was represented by a legal costs consultant, whilst the first respondent was represented by a practising attorney. Since the legal costs consultant was not a legal practitioner, could therefore not appear before the Taxing Master to argue the matter. The consultant and attorney for the first respondent settled the disputed items on their own, and thereafter presented a settled bill before the Taxing Master for allocation.

[3] It seems that the applicant's attorney was dissatisfied in the manner in which the legal costs consultant had settled the bill with the first respondent's attorney and that resulted in him bringing the review application. In his stated case the applicant's attorney is dissatisfied with item 9, 31, 33 and 34. In respect to item 9 he has stated that both fee and disbursements were objected to during taxation on the ground that it should have been allowed in full, as the attorney HLM Mamabolo was briefed by the plaintiff to attend a judicial pre-trial conference on 27th November 2017, and after so appearing in court, is thus entitled to a fee as stipulated in item 10 of the tariff.

[4] With regard to item 31, the applicant's attorney has stated that it was objected to during taxation on the ground that paragraph 3 of the court order dated 8th May 2018 clearly stipulates that the defendant is ordered to pay wasted costs of 8th to 11th May 2018 on an attorney and client scale. However, the Taxing Master decided to allow a fee of attendance for only one hour on 8th May 2018, and taxed off the wasted costs of four hours as well as of five hours each on 9th, 10th and 11th May 2018 respectively.

[5] On item 33, the applicant's attorney has stated that both in respect of the fee and disbursements, which was objected to on taxation on the ground that paragraph 3 of the court order dated 8th May 2018 clearly stipulates that the defendant is ordered to pay wasted costs of 8th to 11th May 2018 on attorney and client scale. However, the Taxing Master decided to tax off the counsel's reserved fees of 9th, 10th, and 11th May 2018, insisting that counsel is only entitled to his fees for the work done only.

[6] On item 34, the applicant's attorney has stated that both in respect of the fee and the disbursements, which was also objected to on taxation on the ground that paragraph 3 of the court order dated 8th May 2018 clearly stipulates that the defendant is ordered to pay wasted costs of 8th May 2018 on attorney and client scale. However, the Taxing Master decided to tax off the counsel's reserved fees of 9th, 10th and 11th May 2018, insisting that the counsel is only entitled to his fees for the work done only.

[7] The taxing Master in her stated case has stated that there is no stated case to be done as the matter was settled and not taxed, and further that there were no items that were objected to before her. The first respondent in reply to the Taxing Master's stated case has corroborated the Taxing Master's version. The applicant's attorney did not reply to the Taxing Master's stated case.

[8] It is settled law that when a court reviews a taxation it must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him/her. The court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should be held to vitiate his/her ruling. (See **President of RSA v Gauteng Rugby Union[1]**)

[9] The Taxing Master in her stated case has stated that she did not make any rulings in relation the bill presented before her as the parties have settled the disputed items on their own, and that what was submitted before her was a settled bill. This version was corroborated by the first respondent in its reply to the Taxing Master's stated case. The applicant's legal representative did not reply to the Taxing Master's stated case to refute these allegations. Since the Taxing Master's allegations are corroborated by the first respondent, I will accept that when the bill was presented before the Taxing Master, there were no items that were objected to, but was a settled bill of costs.

[10] On the date of taxation, the applicant was represented by a legal costs consultant. The applicant's attorney in his founding affidavit for condonation for late filing of the review application has stated that he had instructed the legal costs consultant to draft the bill of costs and also to attend taxation. The legal costs consultant whom the applicant's attorney has instructed to attend taxation was not a practising legal practitioner and was therefore not permitted to appear before the

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[1] 2002 (2) SA 64 (CC) at 73C-D

Taxing Master and argue the objected items if any. (See **Bills of Costs (Pty) Ltd v The Registrar, Cape Town, NO**[2]). When attending taxation in his capacity as legal costs consultant who was not permitted to appear before the Taxing Master, his role was limited to negotiating with the first respondent's attorney as to what might be reasonable fees until they reach a settlement. If they were unable to agree, he would not have argued the matter before the Taxing Master as he was not permitted to do so.

[11] The legal costs consultant and the first respondent's attorney after reaching a settlement of the disputed items on their own, presented the Taxing Master with a settled bill of costs. The settled bill of costs submitted to the Taxing Master, in my view, had the same status to a consent judgment. The Taxing Master could only give a consent allocation of a bill of costs if the parties have consented to her doing so. Therefore, the principles that are applicable in setting aside a consent judgment will also be applicable in setting aside a consent allocation of a bill of costs.

[12] In **Moraitis Investment (Pty) Ltd and Others v Montic Diary (Pty) Ltd and Others**[3] it was held that a consent judgment may be rescinded at the instance of the innocent party if it was induced by fraud on the part of the successful litigant, or fraud to whom the successful litigant was a party. The applicant's attorney has not alleged any fraud in his papers and is also not challenging the authority of the legal costs consultant to represent the applicant during taxation. The legal costs consultant had therefore the full mandate from the applicant's attorney to attend taxation up its finality well knowing that he was not permitted to argue any disputed items before the Taxing Master. The applicant's attorney might have felt that he might have achieved better results than his legal costs consultant. However, his review application is based on the wrong facts.

[13] The mere fact that the legal costs consultant did not achieve what the applicant's attorney might have achieved, is not sufficient to set aside the Taxing Master's allocation. There must be sufficient grounds advanced by the applicant which justify the setting aside of the settled allocation. The applicant has failed to advance those grounds and therefore, his review application stands to fail.

[14] In the result I make this order

[2] 1979 (3) SA 923 (A)
[3] ZASCA 54; [2017] 3 All SA 485 (SCA); 2017 (5) SA 508 (SCA) (18 May 2017)

14.1 The applicant’s review application is dismissed.

14.2 There is no order as to costs

MF KGANYAGO

JUDGE OF THE HIGH COURT

SOUTH AFRICA LIMPOPO

DIVISION POLOKWANE

FOR THE APPLICANT : MAKWELA MABOTJA ATTORNEYS

FOR THE FIRST RESPONDENT : OFFICE OF STATE ATTORNEY POLOKWANE

FOR THE SECOND RESPONDENT : THE TAXING MASTER POLOKWANE

DATE JUDGMENT DELIVERED : 7TH JULY 2020