IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 10977/2013

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.

15..... **July 2019** ....
SIGNATURE

ROAD ACCIDENT FUND **Applicant**

And

THE TAXING MASTER **1st Respondent**

SEHLOHO T D **2nd Respondent**

REVIEW OF TAXATION

Delivered : 15th July 2019

Erasmus AJ

INTRODUCTION

[1] The matter came before me in terms of Rule 48 of the Uniform Rules of Court for the review of the Taxing Master's decision. The taxation pertained to an attorney's bill of costs and disbursements on the scale as between party and party. Certain items regarding the costs were specifically mentioned and listed in the Court Order.

[2] The applicant (the defendant in the action under the aforementioned case number) was dissatisfied with the ruling of the Taxing Master and requested the Taxing Master to state a case for a decision of a judge in chambers in terms of Rule 48 (1). The Taxing Master duly stated a case in terms of Rule 48 (2) in which she justified her decisions.

[3] As a starting point, attorneys' bill of costs in the High Court are taxed in accordance with the provisions of rule 70.

3.1 Uniform Rule 70 (1) provides that: -

"The Taxing Master shall be competent to tax any bill of costs for services actually rendered' by an attorney in his capacity as such in connection with litigious work' and such bill shall be taxed subject to the provisions of subrule (5), in accordance with the provisions of the appended tariff ..."

3.2 Uniform Rule 70 (3) provides as follows:

"With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been or incurred or increased through over-caution, negligence or mistake, by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons by other unusual expenses."

3.3 Rule 70 (5) (a) stipulates that:

"The taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable."

[4] The intention of Rule 70 (3) is to afford the successful litigant indemnity for costs reasonably incurred without burdening the unsuccessful litigant with unreasonable expenses incurred.

[5] The Taxing Master is enjoined with the taxing of bills of costs. He / she has a discretion, to allow, to reduce and to disallow any item in the bill of costs. The Taxing Master must exercise such a discretion judicially, fairly and reasonably having due regard to the complexity of the case, the time spent, and the reasonableness of the costs incurred.

[6] Where the Taxing Master failed to properly exercise the discretion or failed to apply her / his mind properly or at all her / his decision will be subject to review. The court may, however, still interfere with the exercise of the Taxing Master's discretion even when such a discretion was exercised properly where the decision of the Taxing Master is based on a misrepresentation of the law or misconception as to the facts or circumstances or as to the practice of the court. [i]

[7] Rule 48 (1) of the Uniform Rules of Court provides that:

"Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed mero motu by the taxing master, may within 15 days after the allocator by notice require the taxing master to state a case for the decision judge."

[8] According to **Erasmus: Superior Court Practice B1 – 351**, the purpose of this provision is to give the reviewing Judge a brief record of the proceedings in which the issues between the parties are clearly defined and the finding of fact by the taxing master are set out.

[9] The quasi-judicial decision before me on review arose from an opposed taxation, and more specifically a ruling made on the 15th of January 2019, and stamped on the 21st day of January 2019.

COSTS ORDER GRANTED BY THE HONOURABLE DEPUTY JUDGE PRESIDENT LEDWABA ON 13 MARCH 2018

[10] On 13 March 2018 the Honourable Justice Ledwaba, and by agreement between the parties, made the following order pertaining to the costs which is the subject matter of this review (I will only refer to the relevant paragraph in the judgment):

"5.8 The costs for preparation of Plaintiff's bundles of documents for trial purposes, as well as the travelling costs and the time spent to deliver these bundles." [ii]

<u>SPECIFIC GROUNDS RAISED ON SPECIFIC ITEMS IN RESEPCT OF THE BILL OF COSTS</u>

[11] I will now turn to deal with the specific items listed by the Applicant on the bill of costs under discussion. I will deal with the items together as the same principle applies to both the issues raised. The first line of items deals with the costs in relation to the deliver of the bundles to the relevant experts, and the second set of items relates to the costs in relation to the delivery of the bundles to the Defendant's Attorney Offices.

<u>Items 118, 251, 256, 261, 264, 269, 274 and 279</u>

<u>Items 182, 234, 391, 419 and 461</u>

[12] According to the stated case before me, the applicant's submissions at the taxation was that the aforementioned items should not be allowed as they relate to the travelling time and disbursement for delivering of the bundles. The basis for the argument was that these items should not be allowed as

they are attorney and client items and the cost order was on a party and party scale.

[13] The second Respondent (The Plaintiff in the action) submitted that the items were specifically provided for in the draft order and that the defendant was quite aware of the contents of the draft before such was made an order of court. The second Respondent further submitted that the taxing master's discretion is not so wide as to vary the court order and thus the items should be allowed for in the court order.

[14] The Taxing Master indicates that the travelling time and the costs for the delivering of the bundle was provided for in the Court Order that was made an order of Court by the Honourable Mr Justice Ledwaba. The Taxing Master proceeds by submitting that there is a duty on the Taxing Master to adhere to the Court Order, even though she may not agree with the terms of the Court order. The Taxing Master is not empowered to deviate from the Court Order.

[15] Reference was made to the judgment by the Honourable Judge Prinsloo. I had due regard to the contents of the judgment and I whole heartedly agrees with Prinsloo J. I even want to go so far to state that both the counsel who appears before the Judge should point out any possible contentious issue. But in this instance there was an agreement between the parties as to the costs for which the Applicant will be responsible for.

[16] There is nothing before me to suggest that this issue of attorney and client items on the draft order was brought to the attention of the presiding judge. If the Applicant was not happy with the wording of the order, then it should have raised it at trial court. If the Applicant was not happy with the insertion of this costs it either had to be removed or argue whether it should form part of the cost order or not. In the event that the cost order was argue and a ruling was made then the Applicant had to file and application for leave to appeal. On the papers there is not indication that this was done. The only other avenue to have this amended is to bring an application for the amendment of this order. But it should be kept in mind that this order was by agreement and if such an application is brought it is unclear on what grounds such an application will be based.

[17] This Court does not sit as a court of appeal, and this court also is not ceased with an application for the rescission of the order. The applicant should not be allowed to amend a court order and the working of a court order by way of the review of the Taxing Master's decision.

[18] I therefore wholeheartedly agree with the Taxing Master – she should follow the court order, which she did.

CONCLUSION

[19] I am therefore satisfied that in respect of these items the taxing master exercised her discretion properly.

ORDER

[20] I accordingly make the following order:

20.1 The application for review is dismissed.

N Erasmus

[i] ***Cash Wholesalers Ltd v Natal Pharmaceuticals Society and the Taxing Master*** **1937 NPD 418** at **425;** ***City Deep v Johannesburg City Council and Others*** **1973 (2) SA 109 (W)** at **113E**

[ii] See Court Order by The Honourable Mr Justice Ledwaba dated 13 March 2018, page 50 - 53