



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

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

Case no: 6006/2017

In the matter between:

JACOTI CONSTRUCTION CC
(Reg. No. 2005/061770/23)

Plaintiff

and

PHG GROUP CC
(Reg. No. 1993/024229/23)

Defendant

CORAM: MOROBANE, AJ

JUDGMENT BY: MOROBANE, AJ

HEARD ON: IN CHAMBERS

DELIVERED ON: 18 JULY 2019

- [1] This is a review of taxation in terms of Rule 48 of the Uniform Rules of Court. The plaintiff objected to certain rulings made by the taxing master during the taxation of a bill of costs as between party and party scale.

- [2] The facts of the matter are as follows. The defendant excepted to the plaintiff's combined summons and particulars of claim on the basis that they lack averments to sustain a cause of action for the relief claimed therein. The exception was upheld and the plaintiff was ordered to pay the cost of that application. During the taxation, the taxing master made rulings on certain items of the bill of costs to which the plaintiff objected.
- [3] In its notice to review, the plaintiff alleged that items 1 to 15 and 23 to 31 reflect attorney and client fees. It also alleged that item 54 was allowed by the taxing master without investigating the documents. As prompted by the plaintiff's notice, the taxing master filed a stated case in terms of the rules. However, no further written submissions were received from the parties. In terms of Rule 48(6), the stated case together with the plaintiff's notice to review were placed before me for a determination.
- [5] Items 4, 5, 7, 26 and 30 were disallowed in toto and there is no reason why they were included in the review. The taxing master stated that the objections by the plaintiff should be rejected for lack of substance and be dismissed. She allowed items 1, 2, 3, 6, 11, 23 & 28 as they appear to be necessary to enable the defendant to defend the matter and to raise an exception. The amounts of R119.00, R117.50, R117.50, R238.00, R119.00 and R119.00 in respect of items 2, 3, 6, 11, 12, and 23 and were taxed off in order to conform to Rule 70(9). She also allowed items 8, 9, 10, 13, 14, 15, and 27 as party and party costs. The value added tax (VAT) was deducted in respect of items 31 and 54, but the fee was regarded as reasonable.

- [6] Attorneys' fees and disbursements in a party and party bill of costs in the High Court, are taxed in accordance with the provisions of Rule 70(3) of the Uniform Rules which provides that:

'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 incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.'

- [7] It is trite law that on review, a court will not interfere with the taxing master's ruling unless it is satisfied that the taxing master was clearly wrong.¹ The taxing master correctly considered whether fees are necessary for the attainment of justice in light of defending the rights of the party whose costs are being taxed. Her approach in this matter cannot be faulted.

- [8] In ***President of the Republic of South Africa & Others v Gauteng Lions Rugby Union & Another***² the general principle was restated as follows:

¹ *Ocean Commodities Inc & Others v Standard Bank of SA Ltd & Others* 1984 (3) SA 15 (A) at 18F-G

² *President of the Republic of South Africa & Others v Gauteng Lions Rugby Union & Another* 2002 (SA) 64 (CC) at 85C-E para 47

When taxing a party and party bill of costs the object of the exercise is to ascertain how much the other side should contribute to the reasonable fees the winning party has paid or has to pay on her or his side. Or, to put it differently, how much of the client's disbursement in respect of her or his own counsel's fees would it be fair to make recoverable from the other side?'

[15] The reviewing court will not interfere with the decisions of the taxing master, unless it is found that he has not exercised his discretion properly, for example, has not applied his mind to the matter, or disregarded factors or principles which were proper for him to consider, or acted upon wrong principle or wrongly interpreted the rules of law.³ I am satisfied that the taxing master's ruling were justified. The items under review are indeed on a party and party scale. Under the circumstance, the taxing master's discretion cannot be interfered with.

[16] In terms of Rule 48(7) the judge or the court deciding the matter may make such order as to costs of the case as he or it may deem fit. A cost order would not be appropriate on the basis that no written submissions were made by the defendant.

[17] **ORDER:**

1. The review is denied and the application is dismissed.
2. There is no order in respect of costs.

V.M. MOROBANE, AJ

³ *Preller v Jordaan* 1957 (3) SA 201 (O) at 203

On behalf of the plaintiff:

SJ van Biljon

Instructed by:

JG Kriek & Cloete Attorneys

BLOEMFONTEIN

On behalf of the defendant:

HB Steyn

Instructed by:

Neuhoff Attorneys

BLOEMFONTEIN