



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

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

Case number: **4053/2018**

In the Matter between:

STHETHO HENDRICK DAKA

Applicant

and

THE GOVERNMENT OF THE REPUBLIC OF SA

1ST Respondent

**THE MINISTER OF AGRICULTURE FORESTRY
& FISHERIES**

2nd Respondent

THE MINISTER OF PUBLIC WORKS
Respondent

3RD

CORAM:

POHL, AJ

DELIVERED ON:

29 AUGUST 2019

- [1] This is an application for the review by the third respondent of the taxation of two bills of costs by the taxing master. For the sake of clarity I shall refer to the parties as in the main application.

BACKGROUND:

- [2] In the main application, the applicant, in essence, moved for an order that the respondents be ordered to furnish the applicant with a summary of rentals he had already paid in respect of a farm that he leased from the first respondent. He then further moved that the farm be transferred to him upon payment of R466 600.00, less the total amount of such rentals he had already paid.
- [3] The farm in question is situated in the Xariep District in the vicinity of the town of Petrusburg. The applicant consulted and instructed his attorney, Mr. Van Der Berg of the firm **Hugo Van Der Berg Attorneys** from Petrusburg to bring the application. Since Mr Van Der Berg does not practice at the seat of this Court, he instructed his correspondent in Bloemfontein, Messrs. **Phatshoane Henney Inc.** to do the necessary, which *inter alia* included instructing counsel in Bloemfontein to draw the relevant application.
- [4] It appears from the papers that served before me that an employee of the second respondent, a Mr Kotze, who acted as a mentor and agricultural advisor of the applicant, handed over a whole file containing documentation in respect of this farm to the

applicant's attorney Mr Van Der Berg of Petrusburg. This file is referred to in the relevant bills of costs as "The Blue File". It is also important to have regard to the fact that the applicant himself is apparently illiterate.

- [5] Mr Van Der Berg then made a copy of the contents of this file for his own records and furnished the blue file to his correspondent, **Phatshoane Henney Inc.** in Bloemfontein, who in turn also provided Counsel with a copy of same together with his abovementioned instructions.
- [6] On 15 November 2018, Mathebula J ordered, by agreement, that the matter be removed from the roll and that the third respondent must pay the applicant's costs on a party and party scale.
- [7] Two bills of costs were then presented for taxation on behalf of the applicant. The one in respect of the fees and disbursements due to **Phatshoane Henney Inc.** and the other in respect of the fees and disbursements due to **Hugo Van Der Berg Attorneys.**
- [8] After taxation, the third respondent filed a notice of review. This initial notice of review in terms of Rule 48 by the third respondent was later amended. The third respondent now prays that the review be upheld with costs and that items 2 and 4 of the bill of **Hugo Van Der Berg Attorneys** be referred back to the taxing

master for reconsideration and that item 5 of that bill and items 1, 3 and 4 of the bill of **Phatshoane Henney Inc.** be taxed off.

- [9] Item 2 of the bill of **Hugo Van Der Berg Attorneys** reads as follows: “Receive and peruse relevant correspondence and instruction documents pertaining to the merits of the matter (101p – 80f) R4 760.00.” R595.00 was taxed off this amount at the taxation. Item 4 of the bill reads as follows: “Receive and peruse blue file with documents obtained from the department of Agriculture during proceedings (674p – 550f recovered) R32 725.00.” R5950.00 was taxed off at taxation. Item 5 of the bill reads as follows: “1 x copy to keep R2 696.00.” It apparently relates to the blue file and nothing was taxed off this amount at taxation.

- [10] Item 1 of the bill of **Phatshoane Henney Inc.** reads as follows: “Receive and peruse relevant correspondence and instructing documents from correspondent pertaining to merits of the matter. (101p – 80f) R4 760.00.” R595.00 was taxed off this amount at taxation. Item 3 reads as follows: “Receive and peruse blue file with documents obtained from the Department of Agriculture during proceedings. (674p – 550f recovered). R32 725.00.” R 5950.00 was taxed off at taxation. Item 5 of the bill reads as follows: “ 1 x Copy made for brief. (674p) R2696.00” It apparently

relates to the blue file and nothing was taxed off this amount at taxation

THIRD RESPONDENT'S SUBMISSIONS:

- [11] It is submitted on behalf of the third respondent that the taxing master failed to exercise her discretion properly and that in respect of items 2 and 4 of **Hugo Van Der Berg's** bill, "a mere glance" at most of the documents, would suffice to establish that same will not take the issue between the parties any further and the allowance of a full perusal fee thus had an unreasonable result. In respect of item 5, the submission is that the instructing attorney should have only supplied the relevant portions of the documentation to the Bloemfontein correspondent and not everything. By not doing so, it led to unnecessary duplication and the unreasonable escalation of the costs of litigation. Alternatively, it was the duty of the instructing attorney only to peruse the documentation and not both sets of attorneys. With regards to items 1 and 3 of **Phatshoane Henney's** bill, the submission is that it amounts to unnecessary duplication of work which, at best, should have been done by the instructing attorney alone and not both sets of attorneys. In respect of item 4, the submission is that a copy of all the documents need not have been in counsel's brief and should thus have been disallowed.

GENERAL PRINCIPLES APPLICABLE TO TAXATION REVIEWS:

[12] A Court reviewing a taxation will only interfere with the ruling of the taxing master if it is satisfied that the taxing master was clearly wrong. It will not interfere with a ruling made by the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differ so materially from its own that it should be held to vitiate his/her ruling. See **Ocean Commodities Inc. & Others v Standard Bank of SA & Others** 1984 (3) SA 15 at 18F – G.

[13] If a litigant does not reside at the seat of the Court where the litigation is being conducted, he will be entitled to enlist the services of one attorney where he resides and another at the seat of the Court. If he is successful and is awarded the costs of the litigation, he will be entitled to recover from the unsuccessful party the reasonable costs of both attorneys.

THE ISSUES BEFORE THIS COURT:

[14] Although not really in dispute, it must be accepted that the applicant, who resides near Petrusburg, was entitled to instruct an attorney in Petrusburg, namely **Hugo Van Der Berg** and also an attorney in Bloemfontein at the seat of the Court, namely **Phatshoane Henney Inc.** He was also entitled to utilise the services of counsel. In view of the order as to costs which was in his favour, he would thus be entitled all reasonable costs in respect of both sets of attorneys.

[15] The argument raised on behalf of the third respondent that “a mere glance” at the documentation would have revealed that not all the documents would take the issue further, holds no water in my view. Firstly, the bulk of the documentation consisted of the so-called blue file. The source of that file was an employee of the second respondent. The latter clearly considered all the documentation important enough to hand over to the applicant. The second respondent did not deem it necessary to sift through these documents. It thus begs the question: Why should the applicants attorneys have done so? Secondly, the applicant is illiterate and consequently his attorney had to read the documentation so as to establish its relevance and importance. I align myself with the decision of **East London Municipality v South African Railways and Harbours** 1953 (1) SA 433 (E) at page 437F-G the following dicta appears:

“It seems to me that the attorneys of the plaintiff did have the right to discovery and to peruse them, and to charge for that perusal....

In the same way the assurance that they were irrelevant cannot prevent the other party from perusing them, A document may not advantage the contention of one party or be relevant to facts to be proved by that party, but may advantage facts the other party seeks to prove, and so be very relevant as regards that party”

And at page 438A:

“It seems to me that every document relates to the matters in question in the action which, it is reasonable to suppose, contains information which may – not must – either directly enable the party requiring the affidavit either to advance his own case or damage the case of his adversary.”

- [16] Mr Van Der Berg, the applicant’s Petrusburg attorney had the professional duty to properly read, as opposed to “merely glance” at all the documentation provided to him. It was clearly all along the intention of Mr Van Der Berg to utilise his correspondent in Bloemfontein and counsel to draw the necessary papers. To that end, he had to provide all the documentation to his correspondent, **Phatshoane Henney Inc.** in Bloemfontein. If, during the drafting of the papers he was required to take instructions from his client in Petrusburg, he, at the very least, had to have all the documents available to do so. He was therefore entitled to make a copy of all the documents for his file.

[17] **Phatshoane Henney Inc.** being the attorneys at the seat of the Court and who were the attorneys in Bloemfontein, who physically briefed counsel to draw the necessary papers, not only had a duty to make a copy of all documentation for counsel, but had a duty to appraise themselves of the contents of all the documentation, so as to properly provide counsel with the correct and a comprehensive set of instructions. They were not just a so-called “post box” for the Petrusburg attorney. It must further be remembered that when a draughtsman, such as counsel in this case, draws papers, it is a process by which all the available facts must first be assimilated. Thereafter, he must then extrapolate the relevant facts, which may *inter alia*, be contained in the said documentation. Those facts must then be included in the pleading or affidavit that he is drawing, so that it ultimately supports the relief claimed within the legal framework. It is impossible to do so unless both counsel and the attorneys are in possession of all documentation and are fully aware of the contents thereof. If not, some important fact may be overlooked to the detriment of their client.

[18] In the premises, I am of the view that none of the objections raised by the third respondent referred to in paragraphs [8], [9] and [10], *supra* should be upheld. Having regard to the test and legal principles that I should apply in reviews of taxation such as the present, I find that the taxing master cannot be faulted in the way she exercised her discretion *in casu*. In the result, I make the following order:

ORDER:

“The review of the third respondent against the bills of costs of **Hugo Van Der Berg Attorneys** and **Phatshoane Henney Inc**, is dismissed.”

L. LE R. POHL, AJ

On behalf of applicant : **J P OTTO**
PHATSHOANE HENNEY INC.
BLOEMFONTEIN

On behalf of the third respondent: **C CAWOOD**
STATE ATTORNEY
BLOEMFONTEIN