



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 No:4691/2017

In the matter between:

RAZZMATAZZ CIVIL (PTY) LTD

Applicant

and

THE INDEPENDENT DEVELOPMENT TRUST

First Respondent

**THE MINISTER: GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA:
DEPARTMENT OF PUBLIC WORKS**

Second Respondent

REDER CONSTRUCTION CC

Third Respondent

CORAM

LOUBSER, J

JUDGMENT BY:

LOUBSER, J

DELIVERED ON:

26 JULY 2018

- [1] This is an application by the Applicant in terms of Rule 48 for a review of the taxation of the Third Respondent's bill of costs, which taxation was held on 27 November 2017. The bill of costs followed upon a costs order made against the Applicant by Jordaan, ADJP, on 12 October 2017 in a Rule 30 application and an application for conditional condonation. The order relating to costs in the two applications reads as follows as far as the Third Respondent is concerned:

"The Applicant is to pay:-

- (a) the costs of the Rule 30 application and the costs of the conditional condonation application in respect of the 3rd Respondent on attorney and client scale".*

- [2] The taxation was held on an opposed basis with the legal representatives for both parties present. When the taxing master made the final taxation, the Applicant filed a Notice of Review in terms of Rule 48(1) on 18 December 2018, requiring the taxing master to provide a stated case in terms of Rule 48(3). A perusal of this Notice makes it clear that the Applicant is only dissatisfied with the taxation of items 86 and 88 of the Bill of Costs, namely

the items in relation to the senior counsel's fees in the Rule 30 application and the provisional condonation application respectively. The fee of senior counsel for his services in relation to the Rule 30 application amounted to a total of **R68 827-50**, and his fee for the conditional condonation application to **R52 440-00**.

- [3] In the Notice it is alleged by the Applicant that the taxing master failed to take into consideration the extent and the complexity of the matters, and that the specified invoice of the counsel for drafting papers, perusal of documents and consultations was not properly considered. Moreover, it is alleged that it was wrongly found that the counsel was entitled to charge "exorbitant" time for considering the legal position and drafting of letters and notices which an attorney could have done. Also, that it was wrong for the taxing master to allow an hourly tariff for counsel of **R2 600-00** out of own accord, while counsel's own invoice showed that he recorded an hourly tariff of **R2 300-00**. Lastly it is alleged that the taxing master was wrong in deviating from the general principle of taxing counsel's fees.

- [4] The taxing master filed a reply hereto on 9 January 2018, pointing out that the two applications concerned did not follow the ordinary

course. Both the applications were heard on 12 October 2017 on an urgent basis, but the Applicant had only filed documents in the conditional condonation application with the Third Respondent at 16h30 on the afternoon prior to the hearings the following morning. As for the fee of **R68 827-50**, the legal representative of Applicant did not dispute the **R2 600-00** per hour fee at the taxation, but only submitted that the Applicant is not liable for an increased fee for working after hours. In this respect the taxing master refers to Taxation of Costs in the Higher and Lower Courts: A Practical Guide p.99 paragraph 19.8, where it is proposed that additional hours and expenses must be considered for performing functions in urgent applications. The taxing master taxed off an amount of **R9 677.50** to this account, on the basis of **R2 600-00** per hour. Counsel charged **R3 450-00** per hour.

- [5] In the second account the taxing master taxed off altogether **R13 440-00** to bring the hourly fee again to **R2 600-00**. In this second account, counsel also charged **R3 450-00** per hour. The taxing master points out that the fee allowed was in accordance with the fees suggested in the Fee Guidelines of the Free State Bar.

- [6] Further submissions made by the parties and the taxing master did not really take the arguments any further.
- [7] On a consideration of the facts of the matter and the submissions advanced by all the respective parties, it appears that it is not preferable that a taxation should be conducted strictly on an hourly fee claimed by counsel, because such an approach can promote slow and ineffective work. The correct approach remains a consideration of what would be a reasonable fee, overall, for the work done in all the circumstances of the case. Since the hourly fee charged in the present case became a serious bone of contention between the parties, I consider it nevertheless appropriate to consider all the submissions made in that regard and to reconsider the basis upon which the amounts were allowed.
- [8] As regards the conditional condonation application, it is indeed correct that counsel claimed a fee of **R3 450-00** per hour, which was taxed off to **R2 600-00** per hour. This amount appears to be in accordance with the fees suggested for senior counsel by the Free State Bar. This amount was also not disputed as being

unreasonable at the taxation, and should therefore be accepted as reasonable in the circumstances of the case.

[9] What I find questionable, though, is that the taxing master decided to break up the day fee for the appearance in court into an hourly fee of 5 hours. The day fee for the appearance was not claimed by counsel in this fashion. In terms of his account, he claimed 50% of the opposed motion fee, namely **R11 500-00**. He followed the same route in the Rule 30 application, which resulted in a day fee of **R23 000-00** for both applications, which day fee I find reasonable for senior counsel in the circumstances. It was not necessary to break up this day fee into hourly fees.

[10] Viewed as such, the taxing master should have calculated the hourly fees on a basis of only 10 hours, and not 15 hours. Therefore, she should have allowed **R26 000-00** for the hours worked, plus the **R11 500-00** for the day fee, to a total of **R37 500-00**. The VAT on this amount is **R5 250-00**. All in all, the taxing master should have allowed **R42 750-00** for counsel's fees in this application. Counsel claimed a total of **R52 440-00**, from which amount the taxing master should therefore have taxed off the amount of **R9 690-00**, and not **R13 440-00**.

[11] Turning now to counsel's account for the Rule 30 application, it appears that he again charged a fee of **R11 55-00** for the appearance in court, which amount the taxing master broke up into an hourly fee for 5 hours. Again, this was not necessary. There were only 17.75 hours that had to be decided, and not 22.75 hours. Of these 17.75 hours, counsel charged **R3 450-00** per hour for the 7 hours he took to draw the heads of argument on an urgent basis. For the remaining 10.75 hours, he charged **R2 300-00** per hour, but the taxing master allowed **R2 600-00** per hour in this respect. This was obviously wrong. For the 7 hours relating to the heads of argument, the taxing master was correct, in my view, to allow only **R2 600-00** per hour. The taxation for this account should therefore have been as follows:

7 hours x 2 600-00	= 18 200
10.75 hours x 2 300-00	= <u>24 725</u>
	42 925

[12] The **R42 925-00** for the hours worked plus the day fee of **R11 500-00** totals an amount of **R54 425-00**. The VAT hereon is **R7 619-50**, resulting in a final figure of **R62 044-50**. Counsel

claimed an amount of **R68 827-50**, which means that the taxing master should have taxed off **R6 783-00**, and not **R9 677.50**.

[13] It follows that in both the applications, specified under items 86 and 88, the taxing master taxed off too much. This was to the prejudice of the Third Respondent. However, the Third Respondent in its papers filed in this review application, supported the taxation as it stood, and did not urge the court to set it aside and to allow for the payment of a higher amount of costs.

[14] In the premises, I am not inclined to make any order that would place the Third Respondent in a better position. The only remaining question is then whether the circumstances surrounding the two urgent applications justified a higher fee structure than is normally allowed. I think that it does. It is clear that counsel had to work after hours due to the urgency of the two matters and the limited time available, and in such circumstances, counsel is certainly entitled to charge a higher fee.

[15] **The following order is therefore made:**

The application for a review in terms of Rule 48 is dismissed with costs.

P J LOUBSER, J