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

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

Case number: 924/2018

In the matter between:

KGATO PROJECT MANAGEMENT CC Applicant

and

MANGAUNG METROPOLITAN MUNICIPALITY Respondent

CORAM: OPPERMAN, J

DELIVERED ON: 29 NOVEMBER 2018

REVIEW OF TAXATION

I INTRODUCTION

[1] This is a review in terms of Rule 48 of a taxation by the Taxing Master in the abovementioned matter. On 28 August 2018 the bill was set down for taxation. The applicant was represented by Lovius Block Attorneys and respondent by Phatshoane Henney Attorneys.

[2] The respondent drafted the bill presented at taxation. The bill was drafted as a result of a notice of withdrawal and tender of costs dated the 23rd of April 2018. The Notice of Withdrawal and Tender of Costs stated as follows:

The plaintiff hereby withdraws the action instituted against the defendant and tenders payment of the defendant`s taxed party and party costs.

[3] The review is aimed at alleged error by the Taxing Master in regard to:

Item 28: Counsel`s fees are excessive

Item 31: Attorney and client costs

Item 32: Attorney and client costs

Item 33: Attorney and client costs

II THE DISPUTE

[4] Imperious in this instance is the fact that the parties settled and presented the amounts taxed off to enable the Taxing Master to prepare an allocator for signature. The court is called upon to decide whether a bill settled by the parties can be taken on review. In the alternative; whether the Taxing Master erred.

[5] The applicants' submissions in terms of Rule 48(5)(a) to the stated case by the Taxing Master implores the court for relief. They admit the settlement but:

2. On closer scrutiny of Counsel`s fees being allowed in the amount of R107 100-00, it is apparent that his fees are excessive despite the Plaintiff/Applicant`s having accepted the fee during settlement. The High Court is however requested to reconsider the figure as the fee allowed which now in the circumstances appears to be exorbitant for the work done. It was also unnecessary for the Defendant/Respondent to have briefed a senior advocate from Johannesburg whereas the services of a local senior counsel would suffice.

III THE LAW

[6] Rule 48

(1) 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 allocatur by notice require the taxing master to state a case for the decision of a judge.

(2) The notice referred to in sub-rule (1) must—

(a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;

(b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed *mero motu* by the taxing master;

(c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and

(d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating ground of such challenge, but not argument in support thereof.

[7] In **Daywine Properties (Pty) Ltd v Murphy and Another** 1991(3) SA 216 (D) it was correctly stated that:

I confirm the Taxing Master's decision for the simple reason that these matters were not objected to at the time of the taxation. Rule 48(1) is perfectly clear, in my judgment, commencing as it does with the words:

"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...."

Similarly, Rule 48(2) envisages that only the matters objected to before the Taxing Master may be the subject of review because it entitles the parties to submit contentions 'including grounds of objection not advanced at the taxation in respect of any item or part of an item *which was objected to before the Taxing Master* or disallowed *mero motu* by the Taxing Master".

In *Kruger v Secretary for Inland Revenue* 1972 (1) SA 749 (C) at 750F - G, Van Winsen J made short shrift of a similar matter by saying succinctly:

"I do not deal with the belated objection to item 16 since no objection was made to the Taxing Master's allowance of this at the time of the taxation. It is accordingly not subject to review. (Rule 48(1).)"

[8] Further; as stated by the authors in **Law of Costs**:[1]

The discretion vested in a Taxing Master is to allow (all) costs, charges and expenses as appear to him to have been necessary or proper, not those which may objectively attain such qualities. His opinion must relate to all costs reasonably incurred by the litigant, which imports a value judgment as to what is reasonable. Moreover, the words 'reasonable' and 'in the opinion of the Taxing Master' that occurred in the tariff appended to rule 70 imported a judgment not referable to objectively ascertainable qualities in the items of a bill in question. The discretion to decide what costs have been necessarily or properly incurred is given to the Taxing Master and not to the court.

[1] **AC Cilliers**: Law of Costs 3rd edition 1997 paragraph 13.03 (Issue 28).

[9] The Taxing Master has therefore correctly pointed out that he has a discretion to award such costs ‘as appears (to him) to have been necessary or proper for the attainment of justice or defending the rights of another party’.[2]

[10] Interference on review is justified where a reviewing court finds that the Taxing Master has not exercised his discretion properly, as for example, when he has been actuated by some improper motive, or has not applied his mind to the matter, or has disregarded factors or principles which were proper for him to consider, or considered others which it was improper for him to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable person would have given.[3]

[11] The Taxing Master must be clearly wrong. In **Ocean Commodities Inc & Others v Standard Bank of SA Ltd & Others** 1984 (3) SA 15 (A) at page 18F-G Rabie CJ re-stated the test to be that the Court 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 differs so materially from its own that it should be held to vitiate his ruling.

III FINDING

[12] There is not any substance in the Notice of Review that convinces that it will be prudent to review the matter or in the alternative; to interfere with the decision of the Taxation Master.

IV ORDER

[13] The application is dismissed with costs

M. OPPERMAN, J

[2] **Visser v Gubb** 1981 (3) SA 753 (C) at 754H-755C.
[3] **Preller v Jordaan** 1957 (3) SA 201 (O) 203

On behalf of the applicant:	PD YASBEK Instructed by: LOVIUS BLOCK BLOEMFONTEIN
On behalf of the respondent:	LE COMPANIE. Instructed by: PHATSOANE HENNEY BLOEMFONTEIN