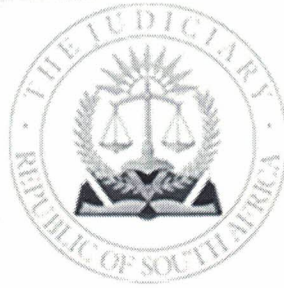
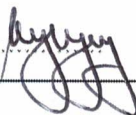


REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 968/12

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE: 12/4/18	
SIGNATURE: 	

In the matter between:

BETTY KGOMOTLOKOA MAJA

PLAINTIFF

AND

ABSA BANK LIMITED

FIRST DEFENDANT

NTJATJA APHANE

SECOND DEFENDANT

KGANYAGO J

[1] The defendants are dissatisfied with the rulings of the Taxing Master relating to the items taxed off on their bill of costs. The defendants have made their submissions to the Taxing Master in terms of Rule 48(1) of the Uniform Rules of Court ("the Rules"). The Taxing Master has made his stated case in terms of Rule 48(5)(a) and the plaintiff has also made her submissions in terms of Rule 48(5)(a).

[2] The matter has now been laid before me for a decision. Rule 48 (6) (a) read as follows:

"The Judge may:

- (i) Decide the matter upon the merits of the case and submission so submitted;*
- (ii) Require any further information from the Taxing Master;*
- (iii) If he or she deems it fit, hear the parties or their advocates, or attorneys in his or her chambers;*
or
- (iv) Refer the case for decision to the court."*

[3] The Taxing Master in his stated case has conceded that the costs of the counsel were not supposed to be taxed off as on the 4th of February 2016 it was ordered that the plaintiff's case is dismissed with costs. With this concession I don't find any need to require further information from the Taxing Master, or to hear the parties or their counsels/attorneys in my chambers. I also don't find any need to refer the case for decision to the Court. I will therefore proceed to act in terms of Rule 48 (6)(a)(i) as I am having sufficient information at my disposal to finalize the matter.

[4] Both the plaintiff and the defendants' are in agreement that items in the defendants' bill of costs except for counsel's fees, travelling and accommodation expenses were settled by the parties on the date of taxation. The issue that I am called upon to determine is whether the Taxing Master has exercised his discretion properly in disallowing the counsel's fees, travelling and accommodation expenses.

[5] The general rule is that costs follow the suit. A costs order is intended to indemnify the winner to the extent that he/she is out of pocket as a result of pursuing the litigation to a successful conclusion.

The Taxing Master has to be satisfied that indeed the expenses claimed will leave the winner out of pocket.

[6] In President of RSA v Gauteng Lions Rugby Union 2002 (2) SA 64 (CC) at 73 C-D Kriegler J said:

“It is settled law that when a court reviews a taxation it is vested with the power to exercise the wider degree of supervision identified in the time-honoured classification of Innes CJ in the JC1 case. This means:

‘... that the court must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him... viz 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.’

[7] The Taxing Master must allow fees and disbursements that are reasonable and necessary to pursue a successful litigation. The defendants’ witnesses travelled from Cape Town and Pretoria respectively to Polokwane for the purposes of the trial, and their evidence was necessary to attain justice. The defendants’ counsel and attorney had to travel from Pretoria to Polokwane in order to

represent the defendants' in this matter. Both defendants' witnesses and legal representatives had to be accommodated in Polokwane overnight. In my view, it was necessary for the witnesses, the defendants' counsel and attorney to travel from their respective places and be accommodated overnight in Polokwane which is nearer to Court. Therefore, in my view the travelling and accommodation costs or expenses for defendants' witnesses and legal representatives were necessary costs or expenses incurred in attaining a successful litigation. It will be up to the Taxing Master to determine whether the costs or expenses incurred are reasonable or not.

[8] The Taxing Master has already conceded in his stated case that the costs of the counsel for the 4th February 2016 were not supposed to have been taxed off.

[9] In my view there are sufficient reasons to interfere with the Taxing Master's decision as he had fundamentally erred in disallowing the defendants' legal representatives' appearance fee, travelling and accommodation costs and/or expenses.

[10] Under the circumstances the review application stands to succeed on the points raised by the defendants. However, on the items which the parties have settled, their agreement stands.

[11] In the result I make the following order

11.1 The Taxing Master's allocatur is set aside and the matter is remitted back for taxation afresh before another Taxing Master in the light of this judgment and also in the light of such information and argument as the parties may present on that occasion.

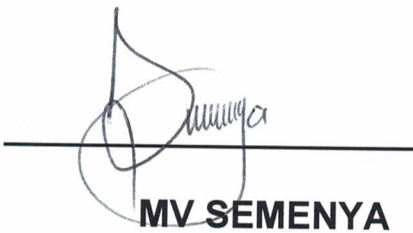
11.2 The items which the parties have settled upon remain settled.

11.3) No order as to the costs.


MF KGANYAGO

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

I agree



MV SEMENYA

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES

- | | |
|-----------------------|-----------------------------|
| 1. For the Plaintiff | : P E Mashola & Company Inc |
| 2. For the Defendants | : Tim du Toit Inc |
| 3. Date of Judgment | : 19/04/18 |