**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**Case number: 63535/2013**

**Date:**

10/3/2017

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

10/03/2017 ............ Mdalana ............
DATE SIGNATURE

In the matter between:

**MS TLHOLE** **APPLICANT**

**And**

**ROAD ACCIDENT FUND** **RESPONDENT**

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**JUDGMENT: REVIEW OF TAXATION**

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*MDALANA-MAYISELA AJ.*

(1) The background to this taxation is that on 4 November 2015, this court

ordered the respondent to pay the applicant's costs of the action on the attorney and client scale.

(2) The applicant seeks a review in terms of rule 48(1) of the Uniform Rules of Court, of the taxing master's decision. The review of taxation is addressed against only two items and I shall discuss that under the relevant heading.

ITEM 164:

(3) This item in the account of Adams and Adams Attorneys reads as follows:

| Date | No | Particulars | Fees |
|---|---|---|---|
| 15/11/04 | 164 | Court attendance when consulted with counsel, matter called, matter allocated to Judge Ranchod, matter argued, draft order made on order of court (08h30 – 13h00) (Shani van der Bergh) | 10 182.15 |

(4) Of this amount R4 922.15 was taxed off and the taxing master made a note "2hrs 30 min, R2 104.00 x 2.5". This annotation is explained in the taxing master's stated case by saying that the respondent objected to the hours claimed in this item, and brought its counsel who was

doing the matter on 4 November 2015 to confirm that the parties were in court for only one hour on that particular day, and not four hours thirty minutes as claimed by the applicant.

(5) The ruling by the taxing master was that he was not in a position to dispute the allegation that the applicant's attorney was in court from 08h30 to 13h00, but that did not mean the respondent should pay the entire time spent by applicant's attorney in the court building not knowing what she was doing. It was for this reason that the taxing master allowed two hours 30 minutes instead of one hour stated by the respondent. The taxing master allowed more time because the applicant was awarded costs on the attorney and client scale.

(6) The applicant contends that the taxing master erred in allowing two hours 30 minutes instead of four hours 30 minutes. According to the applicant, Ms van der Bergh and Mr Scheepers were consulting with the applicant's counsel from 08h30 to 09h30 in preparation for trial. The matter was not yet settled at the time of the consultation and there was no indication that the trial will not proceed. The applicant further contends that Ms van der Bergh and Mr Scheepers were in court from 09h30 to 11h55 when the draft order was made an order of court. The applicant added an extra hour on the actual time spent in court to allow travelling time of 30 minutes to court and 30 minutes from court to the office.

(7) In my view the taxing master erred in disallowing a fee for consultation time. The matter on the 4th of November 2015 was allocated to Ranchod J for trial. The quantum of the action was settled after the matter had been allocated to the Judge. Therefore the taxing master should have allowed a fee for one hour consultation. The taxing master should have allowed the travelling time of one hour as the applicant had been awarded costs on an attorney and own client scale. The roll call started at 9h30. The respondent's counsel conceded to the taxing master that the matter was finalized at 11h55. The taxing master should have allowed the two hours 30 minutes as actual time spent in court. Therefore, the taxing master should have allowed four hours 30 minutes as the time spent by the applicant's attorney Ms van der Bergh on the matter on the 4th of November 2015.

(8) The applicant also seeks a review of the taxing master's decision to reduce the hourly rate of the applicant's attorney, Shani van der Bergh. Ms van der Bergh claimed R2 262.70 per hour for services rendered in 2015 in terms of the fee agreement between the applicant and the attorney. The taxing master found that the amount of R2 262.70 per hour was overreaching as it was more than 100% compared to normal party and party tariffs and therefore allowed the amount of R2 104.00 per hour.

(9) The applicant contends that since attorney and client scale were allowed, it was entitled to recover more than it would be entitled to recover on a party and party basis to ensure that it was not out of pocket and an attorney and client costs being punitive in nature. In Aircraft Completions Centre (Pty) Ltd v Rossouw[1] STEGMANN J held as a matter of law, there is no distinction between an order to pay costs as between attorney and client and costs taxed as between attorney and own client. At page 5 paragraph 39 the court held as follows:

> "It allows a cost creditor who has an order for payment by his opponent of costs taxed as between attorney and client, to recover from the costs debtor what may, depending upon the circumstances of the particular case, amount to a substantial fuller indemnity than he could recover on a party and party taxation. Within the bound of reasonableness in the circumstances of the case, the taxing master is expected to tax such a bill generously. He should allow rates that may reasonably exceed the tariff if the work was of some complexity and was made unduly burdensome by whatever conduct on the part of the costs debtor caused the court to make an order for attorney and client costs. On the same basis, the taxing master should allow periods/time for consulting and for work ordinarily charged on a time basis that may reasonably exceed the time that he would allow if taxing strictly as between party and party.

[1] 2004(1) SA 123 (W)

Indeed, the taxing master should remain aware that it is the intention of the court that has ordered a taxation as between attorney and client that the costs creditor should have a full indemnity for the costs to which the litigation has put him, except for luxurious, extravagant, unnecessary and other types of unreasonable expense that it would be an injustice to impose upon the costs debtor."

(10) Attorney and client costs whether the client himself pays them, or whether they are to be paid by the losing party to the successful party means all costs incurred except where unreasonable. Agreed items or amounts are presumed to be reasonable. (See Ben MacDonald and Another v Rudolph and Another 1997(4) SA 252)

(11) In my view, the taxing master erred in reducing an hourly rate agreed between the applicant and Ms van der Bergh. I do not think that the hourly rate charged by the associate, Ms van der Bergh constitutes an unjustifiable inflation or is overreaching. The taxing master should have allowed the agreed hourly rate of R2 262.70 for Ms van der Bergh.

ITEM 165:

(12) Item 165 reads as follows:

| Date | No | Particulars | Fees |
|---|---|---|---|
| 15/11/04 | 165 | Court attendance when consulted with counsel, matter called, matter allocated to Judge Ranchod, matter argued, draft order made an order of court (08h30 – 13h00) (David Scheepers) | 17 968.50 |

(13) Mr Scheepers is a partner at the applicant's attorneys Adams and Adams. On 4 November 2015 he attended the consultation with the applicant's counsel and appeared in court in his professional capacity. He was going to testify in this matter about the agreement reached between the applicant and the respondent on 21 October 2015. The court declared him a necessary witness. The court order made provision for the costs of the action on an attorney and client scale, such costs to include the professional fees of Mr Scheepers.

(14) The applicant contends that the taxing master erred by reducing the hourly rate of Mr Scheepers to R1 052.00 per hour and allowing two hours 30 minutes as the time spent on the matter on 4 November 2015. Mr Scheepers as a result of attending consultation and appearing in court on 4 November 2015, had to reschedule various consultations scheduled for the day and forfeited the income. The taxing master ruled that Mr Scheepers is an attorney by profession and

his professional fee is guided by the attorneys' tariff which is R1 052.00 per hour and also allowed two hours thirty minutes like in the case of Ms van der Bergh.

(15) The hourly rate of R1 052.00 refers to Rule 70 party and party tariff rate. In the matter of Coetzee v The Taxing Master South Gauteng High Court[2] SUTHERLAND J remarked that the tariff in Rule 70 is designed for and intended for the taxation of party and party costs. The tariff is not binding on any taxation other than party and party costs. Mr Scheepers' hourly rate was R3 993.00 in 2015. The court had awarded costs including his professional fees on an attorney and own client scale. The taxing master erred in applying a tariff of R1 052.00 per hour. There is no prescribed tariff in respect of attorney and own client fees. In the circumstances his full fees should be allowed.

(16) Mr Scheepers attended consultation with counsel and Ms van der Bergh from 8h30 to 9h30 on 4 November 2015. The court order provides for the consultation fees. His fees in respect of consultation with counsel should have been allowed. Similarly, the two hours 30 minutes he spent in court and the one hour he spent travelling should have been allowed by the taxing master. The taxing master erred by disallowing the four hours 30 minutes spent by Mr Scheepers on the matter.

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[2] 2013(1) SA 74

(17) In the result, I make the following order:

1. The taxing master's taxation of items 164 and 165 in the bill of costs or Adams and Adams Attorneys is set aside.
2. Item 164 is allowed in the amount of R10 182.15.
3. Item 165 is allowed in the amount of R17 986.50.
4. The taxing master is ordered to amend the allocator in the light of the above.

Acting Judge MP Mdalana-Mayisela