IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 80907/2015

Date: 27/3/17

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

…….22.3.2017…..   ……………………

In the matter between:

M. W. **PLAINTIFF**

AND

D. W. **DEFENDANT**

JUDGMENT

<u>TOLMAY, J:</u>

[1] The Plaintiff's (Ms W.) attorneys in her divorce action (A L Maree Attorneys) brought an application in terms of Rule 48(1) of the Uniform Rules of Court (the Rules) as they are dissatisfied with a ruling of the Taxing Master. The Taxing Master ruled that their fees that relates to the Rule 43 application should be limited in terms of Rule 43(7) and (8) of the Rules.

[2] The notice of review only deals with items 46 - 111 and 114, which is items relating to fees of the Rule 43 application and items 62 and 114, which is items relating to disbursements in the Rule 43 application. In the stated case A L Maree Attorneys stated that items 8, 9 and 16 were erroneously omitted from the notice of review, but they do relate to the Rule 43 and should therefore be considered as part of the review. It is also submitted that items 59 - 61, 82 - 85 relates to the amendment of the particulars of claim, but were taken as part of the Rule 43 and should consequently not be taxed as part of that application. These items should also be included in the review submitted as no one will be prejudiced if it is done. Seeing that no objection was raised pertaining to the inclusion of these items they should form part of the review. Although Plaintiff (Ms W.) appointed L le Grange attorneys to represent her in the review, they despite initially indicating that they will oppose the review later indicated in a letter that they abide by the stated case of the Taxing Master.

[3] The Taxing Master in her stated case stated that she disallowed the higher fees on which the parties agreed in terms of the agreement signed by A L Maree attorneys and Ms W., because it exceeded the limitation prescribed by Rule 43(7) and 43(8) of the Uniform Rules of Court. She based her decision on the judgment of **Von Reiche** & **Sasson**[1], where it was decided that the prescribed limitations apply to both party and party as well as attorney and client costs, unless the Court uplifts the limitation, she questioned why the Court did not uplift the limitation.

[4] The Taxing Master was however wrong in this conclusions. The Court order did indeed dispense with the limitations prescribed by Rule 43(7) and 43(8). The Court order in this regards reads as follows:

"Costs of the application shall be costs in the divorce action and the limitations prescribed by Rule 43(7) and 43(8) are dispensed with."

[5] The Taxing Master consequently erred when she found that the applicable limitations were not dispensed with. The Court order clearly relates to both attorney and client and party and party costs.

[6] The Taxing Master also erred when she disallowed the items pertaining to the amended particulars of claim as those do not relate to the Rule 43. She does not have a discretion to disallow disbursements

[1] 1988(1) SA 813(T)

in an attorney and client bill as they have to be paid by the attorney and were not unreasonably incurred[2].

[7] As a result the review should be granted.

[8] I make the following order:

8.1 The determination by the Taxing Master is set aside.

8.2 The matter is referred back to the Taxing Master for redetermination taking into consideration that:

(a) As far as all items relating to the Rule 43 application is concerned the limitations set out in Rule 43(7) and (8) should not be applied;

(b) Items 59 - 61 and 82 - 85 do not form part of the Rule 43 application and should not be taxed as part of that application.

R G TOLMAY
JUDGE OF THE HIGH COURT

[2] The Juice Boys (Pty) Ltd *t/a* The Real Juice Co ao/WH du Preez *t/a* Take 5 (unreported TPD judgement case number: 31103/1999