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. 5081/2014
4817/2014

In the matter between:

JDJ KNIPE	1ST APPLICANT
ABJ KNIPE	2ND APPLICANT
JMD VIGNE	3RD APPLICANT
And	
CAROL JESSIE KATHLEEN LOTZ	1ST RESPONDENT
ROBERT PETRUS JANSEN KNIPE	2ND RESPONDENT
THE COMPANY& INTELLECTUAL PROPERTY COMMISSION	3RD RESPONDENT
OA NOORDMAN N.O	4TH RESPONDENT
CBST CLAIR COOPER N.O	5TH RESPONDENT
SM RAMPORORO N.O	6TH RESPONDENT
OA NOORDMAN N.O	7TH RESPONDENT
CB ST CLAIR COOPER N.O	8TH RESPONDENT
SM RAMPORORO N.O	9TH RESPONDENT

JUDGMENT BY: P MOLITSOANE AJ
DELIVERED ON : 9 FEBRUARY 2017

[1] This is a review of taxation in terms of rule 48 of the Uniform rules of this court. The Applicant was dissatisfied with the ruling of the taxing master and requested the taxing master to state a case for a decision of a judge in chambers in terms of rule 48 (1). The taxing Master duly stated a case in terms of rule 48 (2) in which she justified her decision.

[2] As a starting point Uniform rule 70(3) provides as follows:

" With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been or incurred or increased through over-caution, negligence or mistake, by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons by other unusual expenses."

[3] The intention of rule 70 (3) is to afford the successful litigant indemnity for costs reasonably incurred without burdening the unsuccessful litigant with unreasonable expenses incurred.

[4] The taxing master is enjoined with the taxing of bills of costs. He has discretion, to allow, to reduce and to disallow any item in the bill of costs. The taxing master must exercise such a discretion judicially, fairly and reasonably having due regard to the complexity of the case, the time spent, and the reasonableness of the costs incurred.

[5] Where the taxing master failed to properly exercise the discretion or failed to apply her mind properly or at all her decision will be subject to review. The court may, however, still interfere with the exercise of the taxing master's discretion even when such a discretion was exercised properly where the decision of the master is based on a misrepresentation of the law or misconception as to the facts or circumstances or as to the practise of the court. See **Cash**

<u>Wholesalers Ltd v Natal Pharmaceuticals Society and The Taxing Master</u> 1937 NPD 418 at 425 See also <u>City Deep Ltd v Johannesburg City Council and Others</u> 1973 (2) SA 109 (W) at 113 E.

[6] Rule 48(1) of the Uniform rules of this court provides that:

"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 taxing master to state a case for the decision judge."

[7] According to **Erasmus: Superior Court Practice B1-351,** the purpose of this provision is to give the reviewing judge a brief record of the proceedings in which the issues between the parties are clearly defined and the findings of fact by the taxing master are set out.

[8] It is, therefore, incumbent on the person who is dissatisfied with the allowance/disallowance or reduction of an item to indicate in what respect he objects to the item. This would allow the taxing master to exercise her discretion.

<u>Case 5081/2014</u>:

<u>Items 2.10; 2.15 and 3.3; 3.27 to 6.15</u>

[9] These items are objected to, on the basis that the time spent that was allowed of 19 hours for preparation of a 55 page opposing affidavit is not reasonable.

[10] It needs to be mentioned that in respect of item 2.10, two hours was allowed. It appears that this was a first notice of motion and accompanying documents comprised 294 pages.

[11] With the remainder of this item the taxing master indicated that she took into account the number of pages to be traversed in order to prepare the opposing affidavit. Perusal of 238 annexures to the founding affidavit, additional application considered in response including similar application dealing with the shareholding percentages and comparison with this application, fact that more than one counsel was required to settle the affidavit. It is also noteworthy to take into account that in items

like 2.15 and 3.3 the taxing master taxed off 7 hours in total. Contrary to the assertion by the applicant that the time allowed herein was not reasonable, I do not share the same sentiments.
[12] It is my considered view that the taxing master cannot be flawed in her exercise of her discretion in respect of the above mentioned items.

Items 4.1, 4.2,9.7 and 10.18.

[13] The attack on these items is on the basis that counsel had already charged for these items and that the accounts of counsel were unreasonable. I could find no accounts prior to these where counsel had charged for these items. Uniform rule 69(2) restricts the amount recoverable in respect of junior counsel's fees where two counsel are employed to one half of senior counsel' fees. In this case senior counsel charged at a rate of R3000 per hour. Fees of Senior counsel were, however, allowed at R2 600 per hour. Senior counsel's fees were taxed off and allowed at R68 172,00 in total. Senior Counsel's fees being the anchor point , junior Counsels fee should rightly be one half of Senior counsels fee, to wit , R34 086. Junior Counsel, however, claimed an amount almost less by ten thousand rand. I find that in respect of all these items the taxing master excised her discretion judiciously and I cannot find any reason to interfere.

Items 4.9 , 5.13 and 5.17

[14] This relates to the indexing and pagination of the documents . There were 1049 pages comprising of three bundles to be paginated and indexed. R1880 was taxed off which accounted for two hours being taxed off. The documents herein were voluminous and certainly required more time to index and to paginate. One has to note that the first bundle comprised of 400 pages, the second one comprised of 375 pages while the last one comprised of 274 pages. That notwithstanding, two hours were taxed off.

Items 5.18-5.22,11.4 and 11.8

[15] The objection on these items is on the basis that they have not been specified. By way of an illustration items 5.18 and 5.19 refers to the number of letters written and received. It is indeed practise in this

division that same need not be specified. It is within the rights of the applicant to raise an objection to these unspecified items in which case the taxing master may within her discretion **"call for such books, documents ,papers or accounts as in his[her] opinion are necessary to enable him properly to determine any matter arising from such taxation."**-See Uniform rule 70(2) .

I cannot find any merit in this objection

Item 6.1

[16] This was taxed off.

Items 8.8-8.12

[17]These items refer to senior counsel fees and they are opposed on the basis of reasonableness. It needs to be stated that save to say that the expenses are unreasonable there is no indications in what respect they are unreasonable.

[18] In **Price Waterhouse Meyernel v Thouroughbred Breeders ' Association of South Africa** 2003(3) SA 54 (SCA) at 61 E-F the court said:

" A cost order-it is trite to say-is intended to indemnify the winner (subject to the limitations of the party and party costs scale) to the extent that it is out of pocket as a result of pursuing the litigation to a successful conclusion. It follows that the winner has to show –and the taxing master has to be satisfied about-is that the items in the bill are costs in the true sense, that is to say, expenses which actually leave the winner out of pocket."

[19] In order to assess reasonableness or otherwise of the costs, over and above other considerations, the intention to indemnify the successful party as indicated above should be borne in mind in the taxation of the bill of costs in accordance with Uniform rule 70(3).In such a case the taxing master is usually better placed to assess the reasonableness or otherwise of the costs. This court will only interfere only in circumstances where the taxing master failed to exercise her discretion judicially. Of the amount asked, the taxing master taxed off an amount of R130416. These costs were incurred in the preparation of answering affidavits, perusal of over 400 pages of documents, settling of

heads of arguments, preparation for trial, travelling and appearance in court. I cannot find that the amounts allowed are unreasonable.
It is again my considered view that the discretion exercised by the taxing master cannot be flawed herein.

Items 9.11 and drafting of the bill

[20] The taxing master applied the principles correctly and I cannot fault her in any way.

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Items 2.19 to 16.12

[21] The objection to these items lies in the fact that out of the 7000 pages herein, only 357 thereof were annexed to the Court papers and the items should be taxed off. When a court sits in a rule 48 review application, its duty is to sit in review of a decision to allow or a disallow an item(s) in a bill of costs by the taxing master. It is not the function of the court to tax the bill of costs again. It appears that the Applicant also concedes that 357 of the pages were annexed to the court papers. It also appears that a number of items between 2.19 and 16.12 were taxed off by the taxing master. It is difficult to fathom the objection of the applicant in light of the fact that a number of items were taxed off. According to the applicant, all the documents were not necessary for purposes of adjudicating the matter. I cannot find fault on the part of the taxing master in the exercise of her discretion.

Items 17.4,18.1 18.2 23.4.23.5.23.13.24.17 and 26.5

[22] These items relate to counsel's fees. It appears to me that the correct approach in determining the reasonableness or otherwise of counsel's fees during taxation is shortly the complexity of the matter, the volume of the case, the level of counsel's fees, inflation and the fact that counsel must be fairly compensated for preparation and presentation of argument.- See **The City of Cape Town Arun Property Development and Another** 2009 (5) SA 227 par [24].

[23] Fees allowed to counsel are pre-eminently the domain of the taxing master and it is a well-established principle that the court will not interfere with the exercise of the taxing master unless the taxing master

has acted upon a wrong principle or has exercised her discretion wrongly. Uniform rule 69(5) provides ,inter alia,

".....Where the tariff does not apply , he shall allow such fees (not necessarily in excess thereof) ***as he considers reasonable."***

[24] The discretion enjoyed by the taxing master should not be rendered illusory , nor should the court lightly interfere with his assessment.- See **Majola v Union and SWA Insurance Co Ltd** 1978 (2) SA 154 (SE) 158.

[25]I have noted that many of the objections to the taxed bills were items which were already taxed off by the master. Rule 48 procedure is there for a purpose. It is unfortunate that this review was settled with many items which were already totally taxed off by the taxing master yet the items already taxed off again formed the subject of this review. not by the party in whose favour costs were granted but sadly by the party against whom costs were granted.

[26] I am satisfied that in respect of these items the taxing master exercised her discretion properly.

[27] I have further considered the remaining items objected to and I cannot find any merit in the objections raised to warrant this court to interfere and I accordingly find that the taxing master exercised her discretion judicially

[28] I accordingly make the following order:

ORDER

The application for review is dismissed.

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P MOLITSOANE AJ

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