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 number: 6087/2010

In the matter between:

JC HENDRIKS N.O 1st Plaintiff

BL HENDRIKS N.O 2nd Plaintiff

(IN their capacities as trustees of the Kuilfontein Trust) &

5 Others

and

AE GRANT Defendant

JUDGMENT BY: CHESIWE, AJ

DELIVERED ON: 26 OCTOBER 2017

---

[1] This is a review in terms of Rule 48 of a taxation of bill of costs.

[2] The plaintiffs claim payment of R1 415 000.00 together with interest and cost as a result of damages suffered due to veld fires which started from the defendant's farm and spread to plaintiff's farm.

[3] The parties will be cited as they were in the main action.

[4] On the 14 September 2016 Sibeko AJ granted an order against the defendant, which order indicated that:

(a) The application for postponement is granted;

(b) The Registrar is directed to set down the trial matter on a preferential;

(c) The defendant pay 70 % of the application for postponement;

(d) The defendant pay 70% of the wasted costs of the trial occasioned by the postponement and;

(e) The defendant to pay 70% of the costs of the experts including the travelling costs.

[5] The Plaintiff's filed its bill of cost with the Taxing Master on 30 November 2016. The bill of costs was taxed and finalised on 05 January 2017, and the Taxing Master completed and signed on the same day. The defendant was dissatisfied with the Taxing Master's discretion on a considerable number of items and filed a review in terms of Rule 48 on 25 January 2017, whereupon the plaintiff made submissions in response to both the stated case and defendant's submission on 25 January 2017.

[6] There are in all 7 items in dispute, each of which has been dealt with on the defendant's submission filed in terms of Rule 48(2)(a)

in which defendant identifies item 44 to 47, 50, 80 and 82 of the bill of costs as these items incorrectly allowed by the Taxing Master and sought to be reviewed.

[7] It is well-settled law that in general the discretion of the Taxing Master will not be disturbed unless it is found that she did not exercise a proper discretion, for example disregarding factors which were proper for to consider or by considering matters which it was improper for her to consider, or she has disregarded relevant factors or has regarded improper factors, or by giving a ruling which the court can see no reasonable person would have given (see: **Wellworths Bazaars Ltd v Chandlers Ltd and Others** 1947 (4) SA 453 (T) 457 – 458; **Groenewald v Selford Motors (EDMS) BPK** 1971 (3) SA 677 (C) at 678J – 679H).

[8] The Court recognised the principle that the court may interfere in those classes of cases where the court is able to form a good opinion as the Taxing Master, and perhaps, even a better opinion (see **Wellworths *supra*** 458). However, the court is mindful of the fact that the Taxing Master deals with these matters on a daily basis and is in fact in a better position to use her discretion in taxing matters.

[9] I think it is best to deal with each item in the sequence as they are raised in the defendant's notice of review dated 25 January 2017, as well as the plaintiffs reply to the opposed items and the taxing master's stated case.

[10] **Item 44 to 47**

These items relate to costs for consultation held between the plaintiff's attorneys, witness and counsel.

Defendant's counterclaim is that these consultations should not be considered as wasted costs occasioned by the postponement and were incorrectly allowed by the Taxing Master.

The plaintiff submitted that these items where not opposed by the defendant in the Notice to oppose taxation dated 15 December 2016 nor during the taxation, and was thus allowed by the Taxing Master.

[11] The Taxing Master in her stated case indicated that she allowed these items as the party prepared in full and was ready to proceed with the matter. She submits that none of the parties could predict that the matter would be postponed on the day it was supposed to proceed. Therefore the costs according to her were necessarily incurred. The Taxing Master from items 45 – 47 allowed only one hour (R1052-00) each and taxed off half hour (526-00) on each.

[12] It is further the Taxing Master's submission that the matter cannot be perceived as a straight forward matter as it will take some time to consult with plaintiff and to discuss pertinent facts which affects them as trustees. In the light of that she submitted that what was taxed off was fair and just.

[13] To my mind, it was quite proper for the Taxing Master to allow only one hour on each as it was pertinent that it should take reasonably up to an hour to consult with plaintiff, who are trustees in this matter, with regard to facts which affect them as trustees.

In **<u>Protea Life Co Ltd v Mich Quenet Financial Brokers en Andere</u>** 2001 (2) SA 636 (O) 648 D – E wasted costs were explained as follows:

"Wasted costs are either

(i) costs previously incurred which have become useless in further conduct of the case or

(ii) additional costs which have been incurred as a result of the actions of the party who is to blame."

[14] Accordingly, I am unpersuaded that I should interfere in the Taxing Master's decision.

[15] **Items 50**

This item relates to costs for the perusal of an affidavit prepared by counsel for the plaintiff. The plaintiff submitted that Rule 70 of the Uniform Rules provides for R53.00 per folio for the receipt, entry perusing, considering and filling of documents. The Plaintiff disputes that it is a re-perusal fee and that there are no basis to only allow half the prescribed tariff. The plaintiff submits that the Taxing Master considered and applied Rule 70(9) and a further folio was taxed off. The defendant contents that item 50 should only be allowed at half tariff. The taxing master incorrectly taxed item 50. The taxing master with regard to item 50 referred to defendant to the provisions of Rule 48(4).

[16] Rule 48(4) provides that:

"Save with the consent of the taxing master, no case shall be stated where the amount, or total of the amounts, which the taxing master has disallowed or allowed as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than R100."

[17] The Taxing Master has a discretion to allow, reduce reject claims in a bill of costs. This discretion must be exercised judicially in the sense that the taxing master must act reasonably, justly and on the basis of sound principles with due regard to all the circumstances of the case. (see **City Of Cape Town v Arun Property Development (Pty) Ltd And Another** 2009 (5) SA 227 (C) at 232 G-G.)

[18] The Court is reluctant to interfere with decisions of the Taxing Master upon matters in respect of which she is required to exercise a discretion entitled to her. This reluctance was expressed in several cases; for example: **Gundelfinger v Norwich Union Fire Insurance Society Ltd** 1916; **Majola v union and South West Africa Insurance Co Ltd** 1978(2) SA 154 (SE); **Lander v O'Meara** 2011 (1) SA 204 (KZD) at 209 H.

[19] The general principle governing interference with the exercise have been stated in several cases. **Visser v Gubb** 1981 (3) SA 753 (C) at 754 H – 755 C and Lander *supra*.

[20] In my view I find myself unable to interfere with the Taxing Master's decision. She had already taxed off a further folio on item 50.

[21] **Item 80**

This item relates to counsel's fee. The defendant's objection is that the Taxing Master incorrectly allowed costs for consultations in the amount of R6660.00. That the consultations revolved around material aspect of the trial and did not deal with the postponement and are therefore not wasted costs occasioned by the postponement. The Plaintiff submits that the taxing master exercised her discretion reasonably and justly in considering counsel's fees to be allowed for the consultations.

[22] The Taxing Master in her stated case, submitted that to brief counsel on any matter, costs will definitely be incurred whether the matter proceeds or not. She further submits that counsel briefed in this matter is senior counsel and on perusing his account as to what was charged is far less than what his experience is. According to the Taxing Master the consultations formed part of the preparation of the case. Therefore the taxed off on item 80 is almost half of what counsel charged in such matters.

[23] It does not seem to me to be unreasonable what the taxing master allowed. She says this was actually the lowest and most reasonable fees that she had ever seen. I am accordingly not prepared to interfere with the Taxing Master's decision.

[24] **Item 82**

The item relates to costs for a witness's account Mr Dankwerts. The witness has billed for consultation and preparation in Bloemfontein from 12 – 14 September 2016. The defendant objects to the bill and submit that the consultation with Mr

Dankwerts revolved around material aspect of the trial and did not deal with the postponement. Defendant submits that these costs associated with the 12 September 2016 are therefore not wasted costs occasioned by the postponement and that the Taxing Master incorrectly taxed item 82 and allowed it.

[25] The plaintiff submitted that the Taxing Master exercised her discretion correctly in allowing the experts costs. The plaintiff however takes cognisance of the fact that the taxing master conceded that the VAT in the amount of R4200.00 should be taxed off. The plaintiff objects to the taxing off and stated that the Taxing Master's concession is incorrect. The Taxing Master submits that the court order for wasted costs, included the costs of experts, which must be seventy percent of their actual charge.
However, the taxing master conceded that VAT of R4200.00 should be taxed off.

[26] The taxing master's decision to concede that only an amount of R3400 was taxed off and that it an amount of R4200 should have been taxed off. Accordingly the objection of the defendant is upheld and the taxing master decision is accordingly set aside and that VAT in the amount of R4200 should be taxed off.

[27] **Costs**

The plaintiff prays that the review be dismissed and that a costs order be made against the defendant.

[28] I have in terms of the Rule 9 the discretion to make such an order as to costs as I deem fit, including an order that the unsuccessful party pay to the successful party a fixed sum as to costs. A general practice has developed to award a nominal amount without reference to the costs actually incurred by the successful party (**Madlala v Southern Insurance Association Limited** 1982 (4) SA 280 (D).

[29] Litigants and practitioners have, however been warned that in order to discourage reviews of taxation of costs that clearly have no prospects of success and merely waste the time of the Taxing Master and Judges, the judge may award a realistic amount to cover all the costs of the opposing party. **Madlala *supra***.

[30] It appears from the aforegoing that the plaintiff was successful in items 44 – 47, 50 and 80 being the items against which the objection was lodged, except for item 82 which was conceded by the taxing master. I am of the opinion that the plaintiff should at least be granted a realistic amount to cover the costs of opposing the application.

[31] Having regard to the time I spent on this matter, it means both parties must also have spent quite some time in bringing of the application by the defendant as well as the plaintiff opposing it. The plaintiff ought to be awarded a reasonable amount for preparing to oppose the application it could not have taken more than 4 hours to prepare, as it was not all the items that where objected too, at R200 per hour, plaintiff total costs could amount to R800,00.

[32] In the result I make the following order

1. The review is dismissed in respect of items 44 - 47, 50, 80 and upheld in respect of items 82 the matter is referred back to the Taxing Master to deal with matter in accordance with the decisions set out in the judgment.
2. The defendant is ordered to pay the plaintiff R800 of the costs incurred in respect of opposing this review application.

S CHESIWE, AJ

On behalf of plaintiff: Mr Buchner
Instructed by: Honey Attorneys
Bloemfontein

On behalf of defendant: Lovius Block Attorneys
Instructed by: Ramsay Webber Attorneys
Bloemfontein