



**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

Application number: A76/2015

In the matter between:

RAZZMATAZZ CIVIL PTY) LTD

Applicant

and

DIHLABENG LOCAL MUNICIPALITY

1ST Respondent

**LELE AND TSHIDI CONSTRUCTION AND
PLANT HIRE CC**

2ND Respondent

JUDGMENT BY: MHLAMBI, AJ

DELIVERED ON: 7 JULY 2016

REVIEW OF TAXATION

INTRODUCTION

- [1] This is a review of taxation as contemplated in Rule 48(1) of the Uniform Rules of Court. Dissatisfied with the taxing master for having disallowed certain fees on their taxed bill of costs, first respondent requested the taxing master to file a stated case in terms of Rule 48(3).
- [2] The taxing master duly filed a stated case and the respondents filed written submissions in terms of Rule 48(5) (a). On 2 June 2016 I caused a letter to be addressed to the taxing master to comply with Rule 48(5) (b) to supply a report as I was of the view that the matter was prematurely referred to the judge in chambers. On 3 June 2016 I received the file with a note on the file cover to the effect that the attorneys have no intention of filing further documents on the review application.
- [3] The items which were objected to on the correspondent attorneys' bill of costs are as follows:

“Item 12	Nalees dokumentasie aangeheg tot correspondent se	
skrywe van	08.10 (97bls)	R 5141.00

Item 48	Betaal Adv van der Walt	R 77,805.00”
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The items which were objected to on the instructing attorneys' bill of costs are as follows:

	Affidavit [09h00-11 h00]	R 3000.00
	To prepare condonation application and	
	Supporting affidavit[13h00-15h00]	R 3000.00
23/10/15:	To prepare first respondent's heads of argument	
	[09h30-13h00, [13h30-14h0 0]	R 6000.00
1/11/15	To peruse court record, to consider applicant's	
	Heads of argument, to consider second respondent's	
	Heads of argument and to prepare for argument	
	[9h00-13h00]; [14h00-18h00];[20h00-22h00]	
		R 15000.00
2/11/15	To argue opposed matter	<u>R 20000.00</u>
		R 68250.00
	14% BTW	<u>R 9555.00</u>
		R 77805.00"

BACKGROUND

- [5] The taxation arose from an order made by the court in a successful review application. The second respondent was ordered to pay the costs of the application inclusive of the costs of the interdict application.

- [6] It was stated in the judgment that the facts of the case were largely common cause. The first respondent, even though it filed a notice of opposition dated 20 May 2015, never opposed the main application for the setting aside of its decision to award a tender to the second respondent. It initially opposed the costs order sought by the applicant against it. Having reached an agreement that no such costs order would be sought as against it, the first respondent filed a notice of withdrawal of its opposition on 10 July 2015. The first respondent's attorneys enquired about the notice of set-down of the application and it was furnished to them on 25 August 2015.
- [7] The second respondent launched a conditional counter application in which it sought an order for costs jointly and severally against the applicant and the first respondent. The conditional counter application was served on the first respondent's Bloemfontein attorneys on 8 September 2015, calling upon the first respondent to provide reasons as required by law within 10 (ten) days after the service of the counter application. Both the applicant and the first respondent opposed the order sought by the second respondent for the payment of the costs in its counter application. On 26 October 2015, the first respondent filed an application for the condonation of the late delivery of its opposing papers, heads of argument and the non-compliance with the time limits provided in section 7(1) of PAJA in regard to the second respondent's counter application. It was granted in the absence of any opposition.

[8] The application was heard on 2 November 2015 and judgment granted on 19 November 2015.

GROUND FOR OBJECTION TO THE COUNSEL'S REDUCED ACCOUNT (Item 48)

- [9]
1. The taxing master did not take into account the nature and complexity of the application;
 2. The taxing master did not properly take into account the counsel's specified account and the items which indicated the time spent on drafting and perusal.
 3. It is not clear how the taxing master computed the composite fees she allowed.

GROUND FOR OBJECTION TO THE ATTORNEYS' TAXED OFF ACCOUNTS (Items 6 and 12)

[10] It was contended that the taxing master erred in allowing the perusal of the documents of both the instructing and correspondent attorneys at half the tariff.

THE MASTER'S STATED CASE

[11] The taxing master stated that, on her request, the attorneys representing the parties provided her with a summary of the facts of the case as follows: "i) the bill of costs is for a counter application

within a main application. ii) Argument of the main application and the counter application took place on the same day. iii) The applicant was represented by the same advocate in both the main application and the counter application. iv) One judgment was handed down but it included two separate orders, one with respect to the main application and one in respect of the counter application (taxation on this day is for the latter). v) The second respondent instituted the counter application.”

[12] As regards items 6 and 12, the taxing master contended that the counter application was concerned with the argument of costs and consequently, no additional information was required for such argument as the attorney was already provided with the necessary information in the main action. In her view, a re-perusal fee was necessary in order to set up a defence to the second respondent’s counter application. A fair and reasonable amount would, in terms of Rule 70, include the receipt, entry, considering and filing per page at a fee of R53.00. The documents complained of should have been received and considered at full tariff in the main application.

[13] To allow a full tariff would be a duplication of work. No folio’s were taxed off and it would therefore be fair to allow half the tariff to compensate for any new documents received. Furthermore, the documents were provided to counsel to determine which should be attached to the first respondent’s affidavit. She stated further that “My view is that to allow a full consideration fee to the attorneys

would be unreasonable where the determination of importance of the document fell on a third person (who also got a fee here fore)". I presume that the last sentence referred to counsel.

- [14] The taxing master stated that she had noted that the counsel determined his fees according to hours spent on the matter. According to her, this method of calculation was not preferred by the courts, but the first day fee method. In terms of the fee system (actual hours system), the counsel's work on the second application alone would amount to 20 hours. She allowed a full day fee in the amount of R20 000.00 (twenty thousand rands), R10 000.00 (ten thousand rands) for preparation considering that the application stemmed from the first application which was heard on the same day. A further R10 000.00 (ten thousand rands) was allowed for drafting and the complexity of the matter.

SUBMISSIONS

- [15] 1. The first respondent contended that the taxing master erred in determining that it had received compensation for the perusal of the documents and that items 6 and 12 could be a duplication of previous items.
2. It contended further that it had transpired during the consultation of 22 September 2015 that the first respondent had documents in

its possession which consisted of correspondence between the applicant and the respondents relating to the matter, tender documents and agreements which were only received by the instructing attorney on 8 October 2015 for onward transmission to its correspondents. The documentation consisted of 97 pages which were necessary for the finalization of the first respondent's opposing affidavit. No other items other than items 6 and 12 were received by the attorneys from the first respondent for perusal.

3. The taxing master erred in allowing a composite fee and did not consider the actual time spent by counsel. The court order, in terms of which the accounts were taxed, included all costs in respect of the main and the counter applications.
4. The account rendered by counsel related to all work in respect of the main and counter applications which were heard on the same day. The taxing master allowed a composite fee of R10 000.00 (ten thousand rands) whereas counsel charged fees for 14 hours in the amount of R21000.00 (twenty-one thousand rands) in respect of the two items on the counsel's tax invoice dated 2 November 2015 relating to the dates of 23/10/2015 and 01/11/2015.
5. The taxing master failed to consider the extent and the nature of the matter as well as the volume of the documents. She should have allowed an additional 4hours and 40 minutes for drafting 24

pages, 2 hours and 45 minutes for the consultation and 6 hours for the perusal of 600 pages of the entire application.

6. The taxing master was of the view that the counsel drafted 12 pages and that he was not entitled to a fee for settling his own drafting. (I could not find an item which indicated that the counsel had settled his own drafting). It was reasonable for the counsel to draft between 4-5 pages per hour and to allow 20-30 pages per hour for perusal. She opined that the amount provided and allowed by herself “was perhaps too much in the given circumstances”.

ISSUES

[16] The issues to be determined are whether the taxing master erred in:

1. restricting the taxation of the bills of costs to the conditional counter application alone and not extending it to the main application;
2. reducing the counsel's fees;
3. allowing the perusal of 97 pages by the attorneys at half the tariff.

ASPECTS THAT ARE COMMON CAUSE

- [17] The parties are agreed as to the method of calculation relating to the drafting and the perusal of documents, the taxing off of the vat and the amount of the appearance in court.

THE APPLICABLE LEGAL PRINCIPLES

- [18] In **City of Cape Town v Arun Property Development (Pty) Ltd and Another** 2009(5) SA 227 (C) at paragraph 25, the court suggested that the taxing master ought to approach the taxation of the bill of costs on the following lines:

- a) The complexity of the issues raised, the nature of the matter, the issues in dispute and the volume of the record;
- b) The work actually done by counsel and the rate at which he charged;
- c) The reasonableness of the counsel's fees;
- d) Consider counsel's fees as to what is being charged for and whether all charges were covered by the costs award made;
- e) Consider the totality of the fee. If the fee is reasonable and the work done qualifies for party and party attendances, then it should be added to the fee for the 'refresher fee' charged. If the taxing master feels that an excessive amount of time was spent on items of preparation, she should disallow a fee for such excessive time.

- [19] The composite first day fee charged by counsel includes preparation for argument presented in court and the drafting of heads of

argument. The counsel gets one fee for perusing, preparing, drawing heads of argument *and appearing in court*; **Ndzamela v Eastern Cape Development Corporation Ltd and Another** 2004 (6) SA 378 (Tkh); **JD van Niekerk en Genote Ing v Administrateur, Transvaal** 1994 (1) SA 595 (A); Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa 2003(3) SA 54 (SCA). In Arun, *supra*, the court held that it was correct to take preparation and a refresher or day fee together for the purpose of assessing the reasonableness of counsel's fee.

- [20] In **Hennie De Beer Game Lodge CC v Waterbok Bosveld Plaas CC and Another** 2010 (5) SA 124 (CC) at paragraph 9, the court stated "...The Supreme Court of Appeal has taken note of the almost invariable practice throughout the country nowadays for legal practitioners to make their charges time-related. The principle flowing from this is that time charged is not decisive. An objective assessment of the features of the case is primary, and time actually spent in preparing an appeal cannot be decisive in determining the reasonableness, between party and party, of a fee for that work. The reason is that time alone would put a premium on slow and inefficient work and would conduce to the charging of fees wholly out of proportion to the value of the services rendered". The taxation should afford reasonable remuneration for work necessarily and properly done for the attainment of justice: **President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another** 2002 (2) SA 64 (CC) at paragraph 45.

APPLICATION OF THE LEGAL PRINCIPLES

[21] The first question that arises is whether the first respondent is correct to maintain that the court order, in terms of which the accounts were taxed, included all costs for work done in both the main and counter applications and entitling it to such taxed costs. On perusal of the bills of costs and the counsel's tax invoice, it is evident that the costs sought to be taxed, refer to the period commencing on 9 September 2015 until 2 November 2015. The said documents refer to the period after 8 September 2015 when the conditional counter application was served on the first respondent. The services rendered or the work done as itemized in the bills of costs, referred to the resistance of the costs order contained in clause 4 of the conditional counter application. I am therefore in agreement with the taxing master that the bills of costs referred to the counter application and not the main application.

I shall first deal with item 48 under the two headings as set out in the first respondent's Rule 48(5)(a) submissions:

1.Consultation, drafting and the perusal of all documents

A perusal of the counsel's tax invoice indicates that 11hours and fifteen minutes were spent on the item "To peruse documents and to prepare first draft opposing affidavit". The amount charged was R13 875.00 (thirteen thousand, eight hundred and seventy-five rands). These hours exclude those spent on 22/09/2015 (45 minutes) for

perusing documents and 21/10/2015 for “To peruse documents and to finalise opposing affidavit”. Consequently, 14 hours were spent to peruse and finalise the opposing affidavit to resist a costs order in the conditional counter application. The fees charged seem expensive: See *JD VAN NIEKERK, supra*.

It is noteworthy that item 7 on the correspondent’s account and item 8 on the instructing attorney’s account, titled “nalees deels voltooië konsep opponerende verklaring deur adv voorberei (12 bls) was fully taxed off by the taxing master. No objection was registered in this regard. One would have expected an objection taking into account first respondent’s argument on the papers. I must hasten to say that the taxing master did allow item 28 and 18 of both attorneys’ accounts in respect of the perusal of the first respondent’s complete affidavit opposing the costs order drafted by the counsel and consisting of 12 pages.

An additional fee of R12000.00 (twelve thousand rands), it is argued, should have been allowed for the perusal of 600 pages received for the entire application. This approach is untenable as the bills of costs refer specifically to the conditional counter application. Moreover, nowhere in the accounts presented was there mention made of 600 pages for perusal.. In paragraph 5.1 of the submissions, it is contended that according to the counsel’s account, he charged 6 hours for the perusal of the documents. I could not detect such an item on the account save those I have already

indicated above. The taxing master was justified in not entertaining such a claim, if ever she did. In paragraph 5.3, it was argued that the counsel was entitled to a fee for having drafted an affidavit consisting of 12 pages in the main application and another 12 pages in the counter application; altogether 24 pages. I agree with the taxing master that only 12 pages and 2 hours and 20 minutes should be allowed for drafting as they are related to the counter application.

2. Preparation, perusing and drafting heads of argument

The first respondent's heads of argument consist of 8 pages and two authorities were cited. The heads are very specific to the costs order raised in the conditional counter application. The rest of the heads are a rehearsal of the issues in the application. The only issue that the first respondent was saddled with at all times was the question of costs. Unlike the second respondent, he did not argue the main application but the resistance of the prayer of costs in the counter application. Counsel was already acquainted with the issues and it is difficult to conceive how a competent professional acquainted with the issues, as counsel would have been in this case, could require more time for his task: **Hennie de Beer**, *supra* at paragraphs 14 and 15. The application in my view, was neither complex nor involved intricate issues of law and fact. The counter application was uncomplicated and the time spent in court for the argument of both applications, according to the record, is four hours. I therefore find that awarding an amount of R21000.00 or 14 hours under this sub-

heading is unwarranted. The twenty hours propounded by the taxing master could be considered reasonable and realistic for the work done. The record itself was not “abnormally voluminous”, as the submission made was that 600 pages were perused. See **Scott and Another v Poupard and Another** 1972 (1) SA 686 (A) at 690 B-D.

Items 6 and 12

The taxing master allowed a re-perusal fee for the 97 pages received as they related to the counter application. She was of the view that no new information could be provided, which was not already presented to the attorneys in the main action. See paragraph 5 of **Hennie de Beer**, *supra*. In its submissions, first respondent referred to the documents as consisting of correspondence between the applicant and the respondents relating to the matter, tender documents and agreements. According to the first respondent’s affidavit in support of its opposition to the costs order by the second respondent, the tender documents and agreements were already part of the review application as early as 19 May 2015. I support her view.

CONCLUSION

[22] In **Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others** 1984 (3) SA 15 (A) ([2002] 4 ALL SA 723) 18 F-G it

was stated that the court should be satisfied that the taxing master was clearly wrong before it would interfere with a ruling made by him. In my view the taxing master applied the correct principles and took the correct factors into account in the taxing of the bill of costs. I am satisfied that the fees in items 6, 12 and 48 should be disallowed and the allocator be upheld.

ORDER

[23] In the result the following order is made:

1. The review application is dismissed;
2. There is no order as to costs.

J.J. MHLAMBI, AJ

On behalf of the applicant: Adv. C. D. Pienaar
Instructed by:
Rossouws Attorneys
BLOEMFONTEIN

On behalf of the respondent: Adv. D. J. van der Walt SC
Instructed by:
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