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: 4817/2014

In the matter between:

JDJ KNIPE	1st Applicant
ABJ KNIPE	2nd Applicant
JMJ VIGNE	3rd Applicant
and	
O A NOORDMAN N.O.	1st Respondent
CB ST CLAIR COOPER N.O.	2nd Respondent
SM RAMPOPORO N.O. (in their capacities as provisional liquidators of Kameelhoek (Pty) Ltd (in liquidation)	3rd Respondent
O A NOORDMAN N.O.	4TH Respondent
CB ST CLAIR COOPER N.O.	5TH Respondent
SM RAMPOPORO N.O. (in their capacities as provisional liquidators of Schaapplaatz 978 (Pty) Ltd)	6TH Respondent
C J K LOTZ	7TH Respondent

R P J KNIPE 8TH Respondent

THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION 9TH Respondent

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REVIEW OF TAXATION

JUDGMENT BY: MATHEBULA, AJ

DELIVERED ON: 22 SEPTEMBER 2016

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[1] This is a review of taxation in terms of the provisions of rule 48 of the Uniform Rules of Court. The applicants were dissatisfied that the Taxing Master had allowed certain items on the taxed bills of costs of the 4th, 7th and 8th Respondents. They delivered a notice of review in terms of the rules and requested the Taxing Master to file a state case in terms of rule 48(3) for the decision of a judge on those items.

[2] The items that were objected to are many on the bills of costs of Messrs De Lange and Du Plessis Attorneys and Messrs Masepes Incorporated. I have grouped them into categories for ease of reference as follows:

Kimberley matters

Item 38-39: deals with the receipt perusal and copies of documents relating to application for summary judgment under case number **2020/2010** in the Northern Cape High Court, Kimberley.

Item 40-117: deals with receipt, perusal and copies of documents filed of record under case number **1568/2007** in the Northern Cape High Court, Kimberley.

Item 118-121: deals with receipt of perusal and copies of documents relating to case number **76414/2010** in the Northern Gauteng High Court.

Item 122-123: deals with receipt, perusal and copies of documents dealing with case number **276/2011** in the Northern Cape High Court, Kimberley.

Item 124-127: deals with the receipt, perusal and copies of the last will and testament of HBLJ Knipe and the forensic report.

Item 126-151: deals with the receipt, perusal and documents filed of record under case number **1968/2010** in the Northern Cape High Court, Kimberley.

Item 152-173: deals with the receipt, perusal and documents filed of record on the case number **1132/2008** in the Northern Cape High Court, Kimberley.

Item 174-175: deals with the receipt, perusal and copies of the judgment under case number **304/2011**.

Item 176-179: deals with the receipt, perusal and copies of the judgment under case number **37/2015**.

Item 180-181: deals with the receipt, perusal and copies of the judgment under case number **A252/2011**.

Item 182-189: deals with the receipt, perusal, copies, research etc. of the judgment under case number **1936/2011** and **1937/2011**.

Item 198: These relates to receipt and perusal of the Deeds of Incorporating, Trust Deeds, CM Certificates and memorandum.

Item 199-250: These relates to receipt, perusal and copies of documents filed of record in the application for liquidation of Kameelhoek under case number **1936/2011**.

Item 251-295: Relates to the receipt, perusal and copies of documents filed of record in the application for liquidation of Schaapplaatz 978 (Pty) Ltd under case number **1937/2011**.

Drafting fee

In this matter the objection is that Taxing Master allowed the amount of **R26 561.15** for drafting fee despite more than 20% of the bill of costs being taxed off.

[3] The objections that were lodged against the bill of Messrs Matsepes who are attorneys for the 4th and 7th respondents comprises of a number of items. I have also grouped them into categories for ease of reference as follows:

Fee agreement

Item 37, 325, 371 and part of 545:

These items relate to the fee agreement between the attorney and the client of R1 800.00 per hour. This was allowed by the tax Master instead of R1 052.00 per hour allowed in terms of the Rules of Court.

Kimberley matters

Item 76 to 324: deals with the receipt, perusal and copies of the documents filed of record under various case numbers in the Northern Cape High Court, Kimberley.

Items 512: This relates to consultation with liquidators to draw the replying affidavit and discuss the process in depth. It is alleged that the matter was attended to by a professional assistant and not an attorney.

Item 545: This refers to the time recorded for the hearing.

Taxing fee

The issue in dispute is that the Taxing Master allowed an amount of R30 048.11 despite more than 20% of the total amount being taxed off.

BACKGROUND

[4] The applicants brought an application for business rescue against the respondents. This application was dismissed by Wright AJ which costs on the scale as between attorney and client. The

learned judge further ordered that the costs relating to the 7th respondent shall include costs occasioned by the employment of two counsel. The application for leave to appeal was equally dismissed with costs by the court.

GROUNDS OF OBJECTIONS AND SUBMISSION

[5] The items objected to related to the receipt, perusal and copies made of the so-called Kimberley matters. These documents were not part or attached to the application in this matter. In essence they were not placed before the court nor did they form part of the bundles. The submission is that these documents were not material to the application before the court. In addition, that they did not have any evidentiary and/or probative value in furthering the case of either party.

[6] The documents in question were voluminous numbering 7 000 pages covering about 6 cases in different High Courts. The protagonists in all these matters involved members of the Applicants' family in one capacity or the other. The issues in dispute are more or less the same though different in form.

[7] The thrust of the contention regarding the drafting and taxation fee is that the Taxing Master should not have allowed these items because more than 20% of the total amount of the bills was taxed off. This aspect is conceded, and correctly so, by the Taxing Master in her state case. I shall not deal further with this aspect as it is regarded as settled.

[8] The contention regarding the fee agreement between the attorney and client of R1 800.00 is that the applicants are not bound by it. In essence that the Taxing Master erred by not allowing R1 052.00 per hour in terms of the Uniform Rules of Court. This submission is in relation to item 37, 325, 371 and part of 545.

[9] The applicants contended on item 512 that the Taxing Master allowed the correct tariff but that in this matter the Professional Assistant and not the attorney attended the matter. The respondents correctly pointed out that the fee is calculated at the rate of R1 052.00 per hour. The professional Assistant is a qualified attorney and as such I do not find the merit in the applicant's objection. It was probably an error to include this aspect in the review of taxation.

[10] The last item objected to was numbered 545 which related to the attendance in court from 9H00 to 17H25 at R1 800.00 per hour instead of R1 052.00 in terms of the Uniform Rules of Court. The submission is that the court time is from 10H00 to 16H00 and the appropriate tariff is R1 052.00 per hour.

MASTER'S STATED CASE

[11] The Taxing Master submitted that the court ordered costs against the applicants on a higher scale of attorney and client not party and party. In her view the costs were punitive in nature. She allowed the items relating to the "**Kimberley matters**" because

they were inextricably linked with the applications before the court. The application before the Northern Cape were similar in nature to the one before the court.

[12] The applicants in their papers before the court referred to those applications which were already finalised in the Northern Cape. The contents of their affidavit referred to certain information like the number of shares which aspect was dealt with in those applications. It was only sensible and proper that the respondents peruse the contents of this application to appraise themselves with those applications in order to deal with the application before the court. In order to lessen the burden on the applicants, she allowed the amount for perusal on time basis instead of perusal of the document separately which could have increased the costs tremendously.

[13] On the issue of allowing R1 800.00 instead of R1 052.00 she submitted that the costs were on a punitive scale as ordered by the court. The submission was that the amount of R1 800.00 was fair and reasonable.

[14] The Taxing Master stated that the bills of costs were submitted with the file note with the time period so recorded and she had no reason to be disregarded. However, she conceded that she should have excluded the time for tea and lunch breaks.

LEGAL PRINCIPLES AND APPLICATION OF LEGAL PRINCIPLES

[15] The Taxing Master is enjoined the with the task of taxing bills and in doing so she must exercise her discretion. The exercise of such discretion is an administrative act which is judicial in nature. The primary discretion lies with her to allow or disallow any item. It is trite law that the court can interfere with the decision of the Taxing Master if she was clearly wrong. In essence the Taxing Master must have failed to apply her mind or wrongly applied the principle. See **President of the RSA v Gauteng Lions Rugby Union** 2002 (2) SA 64 at para 13.

[16] In this matter, the parties have been involved in protracted litigation over a period of approximately ten (10) years. It is apparent in a number of cases that were dealt with in the Northern Cape High Court, Kimberley. The applicants in their papers referred to these matters in paragraph 6.7. They raised this issue even though they did not place the documents relating to these matters before the court. The respondents legal representatives had to familiarise themselves with the documents filed in these matters in order to prepare their case. Any prudent legal practitioner will do so in order to ensure that the matter that is currently being pursued has not been dealt with already by another court or whether there are any inconsistences or any other factors that might assist in the current matter before the court. This is also the reasoning of the Taxing Master in allowing these items. I cannot find any fault in her reasoning and I am of

the view that she exercised her discretion in the appropriate manner.

[17] The other objection related to the fee agreement of R1 800.00 per hour payable by the client to the attorney instead of the amount of R1 052.00 allowed in terms of the Uniform Rules of Court. The reason of the Taxing Master was that the court order granted was on an attorney and client scale thus punitive in nature. The essence of that order was that the successful party must not be out of pocket for the fees that were actually paid.

[18] The court that makes such an order demonstrates its displeasure against such a litigant. The order is meant to be punitive but must not be unreasonable and exorbitant. The losing party must not be unnecessarily prejudiced by the Taxing Master by simply allowing everything that is claimed. It is envisaged that the party in whose favour the costs order has been granted must be indemnified for his/her expenses. In matters of this nature, the Taxing Master is better placed to assess objectively whether the expenses claimed where reasonable or not.

[19] The objections raised on item 37, 325, 371, 512 and 545 was the fee agreement of R1 800.00 per hour between the attorney and the client. The existence of such an agreement is not in dispute. What is in dispute is that the applicants are not party to that agreement and as such cannot be bound by it.

[20] In this matter the Taxing Master applied the principles correctly by being more generous in allowing these items so that the successful party is fully indemnified and that the costs order was punitive in nature. It cannot be argued that the amount of R1 800.00 per hour is unreasonable nor exorbitant given the complexity of this matter and the seniority of the legal representatives involved in it. I find no fault in her reasoning. See: **Law Society of the Cape of Good Hope v Windvoel** 1996 (1) SA 1171 (C) at 1180 I-J.

[21] The last item relates to the time that was recorded for the hearing. The court in this division starts at 9H30 and break for tea at 11H00. The proceedings usually resume at 11H30 to 13H00. Then the last session will be from 14H15 to 16H00. The Taxing Master submitted that there was a file note shown to her for the time as per the bill of costs. I have no reason to doubt it. However, she conceded that she should have excluded the charges relating to the tea and lunch breaks. These aspects should then be referred back to her for consideration and retax as indicated above.

CONCLUSION

[22] It is the function of the Taxing Master to tax the bill of costs not the court. The function of the court is to check the reasoning of the Taxting Master. I am satisfied that the decision of the Taxing Master represented a reasonable and realistic discretionary

determination in this matter. There are no grounds existing in the objections raised by the applicants justifying interference.

[23] Accordingly I make the following order:-

1. The taxation is set aside and referred back to the Taxing Master for reconsideration and retaxation on the Drafting fee, taxation fee and item 545.

2. The remainder of the review is dismissed.

MATHEBULA, AJ