IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION : MTHATHA

CASE NO. 1117/2013

IN THE MATTER BETWEEN:

STANDARD BANK OF SOUTH AFRICA PLAINTIFF

AND

NOKWANDA PRISCILLA GXUMISA DEFENDANT

JUDGMENT

GRIFFITHS, J.:

[1] The plaintiff seeks an order compelling the taxing master of this court to state a case as contemplated in terms of Rule 48(3).

[2] The background to this matter may be stated very shortly. The plaintiff, being dissatisfied with the taxation of a Bill of costs which was taxed on 22 September 2015, duly filed, pursuant to the provisions of Rule 48(1), a notice indicating its intention to review the taxation of the respondent's costs. In that

notice, a number of items were referred to which had been objected to during the course of the taxation and which were either allowed in part or in full by the taxing master. As against each of the items and under a column headed "objection" there appear fairly cryptic descriptions of the basis for the dissatisfaction with that particular item.

[3] In response to the notice, the respondent filed a notice to oppose and gave as the grounds for such opposition, in essence, a failure to comply properly with the provisions of Rule 48(2) (b), (c) and (d). In this regard, it has been argued by Mr. Vutula, who appeared on behalf of the respondent, that because the provisions of these sub rules have not been properly complied with, the taxing master is not obliged to respond thereto as he would in the normal course be required by virtue of the provisions of section 48(3) to do. Indeed, the taxing master has also put up in the papers a response to the rule 40(1) notice in which he joins issue with the applicant on much the same basis.

[4] Mr. Hobbs, who has appeared for the applicant, has argued that the notice is sufficient and complies substantially with the sub rules of rule 48(2) referred to. In the circumstances, he has moved the court for an order compelling the taxing master to proceed in terms of rule 48(3) by providing the stated case referred to therein.

[5] The starting point in an attempt to resolve this impasse must obviously be the provisions of the Rule itself. In this regard, the Rule reads thus:

> "48 Review of taxation
>
> (1) 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 the taxing master to state a case for the decision of a judge.

(2) The notice referred to in subrule (1) must —

(a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;

(b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed *mero motu* by the taxing master;

(c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and

(d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.

(3) The taxing master must —

(a) supply his or her stated case to each of the parties within 20 days after he or she has received a notice referred to in subrule (1); and

(b) set out any finding of fact in the stated case.

(4) Save with the consent of the taxing master, no case shall be stated where the amount, or the 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.

(5) *(a)* The parties to whom a copy of the stated case has been supplied, may within 15 days after receipt thereof make submissions in writing thereon, including grounds of objection not raised at the taxation, in respect of any item or part of any item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.

(b) The taxing master must within 20 days after receipt of the submissions referred to in paragraph *(a)*, supply his or her report to each of the parties.

> (c) The parties may within 10 days after receipt of the report by the taxing master, make further written submissions thereon to the taxing master, who shall forthwith lay the case together with the submissions before a judge."

[6] It seems clear from the Rule that it has been structured in such a manner as to formulate a set of documents which cumulatively will inform the court ultimately tasked with the review of the facts and circumstances relating to the matters in issue. It seems to me that this is a well thought out and necessary procedure in view of the fact that taxations are generally held in a relatively informal atmosphere and that, save where in exceptional circumstances evidence may be led, there is no real record of the taxation hearing other than the notes made on the bill of costs by the taxing master himself. It is the parties to the taxation, or their legal representatives, who generally will keep a form of record of the objections, the findings and the results thereof. *A fortiori*, a procedure had to be developed for the purposes of informing the court of the background to the matter, the objections made to each individual item, their nature, findings of fact, the ruling by the taxing master and the reasons therefor.[1]**.**

[7] In the Brener matter Stegmann J commented that not only does the Rule require that the notice should set out all those items reflected in Rule 28 (2) (a) - (d), but that:

> "These appear to be the minimum requirements for a proper notice in terms of Rule 48 (1) requiring a Taxing Master to state a case. What has to be kept in mind is that, in this Division at least, the Taxing Master deals with scores of bills of costs every week, and that he cannot be expected to carry in his memory the detail which he needs

[1] See in this regard Brener v Sonnenberg, Murphy, Leo Burnett (PTY) Limited 1999 (4) SA 503 at 512

> in order to comply appropriately with his duty to state a case whenever he receives a notice in terms of Rule 48 (1). The notice given by the dissatisfied party must therefore indicate at least what that party expects the state case to contain."

[8] It is also so that the Taxing Master has no obligation to state a case where a dissatisfied party has failed, without good cause, to comply with rule 48 (2) (b) - (d)[2].

[9] The question then which requires to be answered is whether or not the applicant has indeed, in the Rule 48(1) notice, complied with the relevant sub rules. In my view, it has not. One need only look at the very first item to find an example of this. As against item "1.1" the following words are found: *"@250 words per page – allow four pgs/disallow attendance fee, included in perusal fee*." In my view this goes nowhere towards compliance with the sub rules. Bearing in mind the aforementioned, and in particular the fact that the Taxing Master is obliged to deal with a number of taxations, it is necessary for a dissatisfied party to set out in some detail the actual objection and its grounds which were relied upon at the taxation in a manner which will enable the Taxing Master to properly understand the nature of the objection, and to clearly set out any finding of fact which the dissatisfied party intends to challenge together with the reasons for such challenge. There are a number of similar examples peppered throughout the notice and in my view, even though some of these items may be, as argued by Mr. Hobbs, somewhat more understandable, the notice as a whole should be properly amplified so as to comply strictly with the Rule and so as to enable the Taxing Master to be able to prepare therefrom an accurate stated case for the court.

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[2] See Aircraft Completions Centre (PTY) limited v Roussouw and others (2004 (1) 123 (WLD) at paragraph 44

[10] Indeed, in the present matter, the Rule 28 (1) notice put up by the plaintiff appears to be nothing more than a regurgitation of the original notice of opposition to the Bill of costs. This is simply not satisfactory. One would expect in such a notice and as against each and every item that the plaintiff is dissatisfied with, that the plaintiff would have dealt seriatim with each of the necessary requirements under Rule 48(2) so as to make it clear that there is indeed such compliance. Where, for example as argued by Mr. Hobbs, it is not clear as to what finding of fact the Taxing Master might have made, this can perhaps be stated i.e. the statement can be made that it is not clear as to what the finding of fact, if any, was. However, in my view, in most instances it will be fairly clear as to what the relevant finding of fact was from the documents themselves and the Taxing Master's own notes and comments made at the time of taxation. The "minnowing process" as referred to by Mr. Hobbs in argument which is provided for in the Rule by way of the Taxing Master's response to the notice by the dissatisfied party and the subsequent procedure provided for in sub rules 48(3) and (5), would in all probability have the effect of establishing the real facts.

[11] In the circumstances, I am not satisfied that the applicant has made out a case for the relief which it seeks. However, in my view there would be an injustice were the matter to end there. Accordingly, the plaintiff must be given leave to amend its notice in terms of Rule 48(1) so that the matter may proceed to finality.

1. **The interlocutory application to compel the Taxing Master to provide a stated case is dismissed;**

2. **The plaintiff is given leave to amend its Rule 28(1) notice to comply with the provisions of Rule 48(2);**

3. The plaintiff is ordered to pay the costs associated with the hearing to compel the Taxing Master to provide a stated case.

R E GRIFFITHS

JUDGE OF THE HIGH COURT

HEARD ON	**:**	**04 AUGUST 2016**
DELIVERED ON	**:**	**16 AUGUST 2016**

COUNSEL FOR PLAINTIFF	**:**	**Mr Hobbs**
INSTRUCTED BY	**:**	**M/s Bornman & Hayward**
COUNSEL FOR DEFENDANT	**:**	**Mr Vutula**
INSTRUCTED BY	**:**	**S. C. Vutula & Co**