

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case Nr. : 2060/2014

In the matter between:-

MALUTI PLANT HIRE CC

Plaintiff

And

MANGAUNG METROPOLITAN MUNICIPALITY

Defendant

CORAM:

MOLOI, J

DELIVERED ON:

05 FEBRUARY 2015

REVIEW JUDGMENT

K.J MOLOI, J.

- [1] This is a review of taxation of a taxed bill of costs in terms of Rule 48 of the Uniform Rules of the High Courts. The bill was taxed by the Taxing Master on 15 September 2014 pursuant to an order of court awarding the costs to the respondent on a party and party scale. The Taxing Master had refused to allow an amount of R16500-00 claimed by the respondents'

attorney for attendance at court when the matter was heard (day fee) but allowed a fee of R9400-00 instead.

[2] The issues that are common course are that Mr Phalatsi, an attorney for the respondent, is a vastly experienced attorney and had the right to appear in the High Court by virtue of a certificate issued by the registrar in terms of the provisions of section 4(1) of the Right of Appearance in Courts Act No. 62 of 1995, and appeared personally in court without engaging the services of an advocate. The hearing lasted for two hours.

[3] At the taxation the applicant's attorney, Mr Noordman of Matsepes Incorporated, argued that Mr Phalatsi was entitled to claim R235.00 per quarter of an hour as provided for in Rule 70 of the Uniform Rules of Courts, which would amount to R1880.00. The Taxing Master seemed to agree with this stand point and refers to the decision in the Road Accident Fund v Le Roux 2002(1) SA 751 where it was held that an attorney appearing in the High Court was entitled to charge fees on the same basis as an advocate provided it was for work actually done. The Taxing Master, nonetheless, allowed

an amount of R9400 taking into account that the appearance in court must have been preceded by considerable preparation which was not claimed in the bill of costs.

- [4] On proper reading of Rule 70 it becomes clear that the costs scale prescribed therein refer to an attorney who was retained counsel for a matter in the High Court and does, therefore, not conduct the trial himself. Where an attorney appears in the High Court and has the right of such appearance, his/her fees must be the same of those of an advocate as provided for in Rule 69. See Promine Agentskap en Konsultante BK v Du Plessis en 'n Ander [1998] JOL3912T and Stubbs v Johnson Brothers Properties CC and Others 2004(1) SA ZZ(N) where at 27D-E the following was stated with reference to Promine Agentskappe case

"The learned Judge accordingly concluded that the proper approach to the taxation of the fees of an attorney with right of appearance is to assess those fees by reference to what would have been allowed to an advocate under similar circumstances. I am in respectful agreement with the conclusion of the learned Judge."

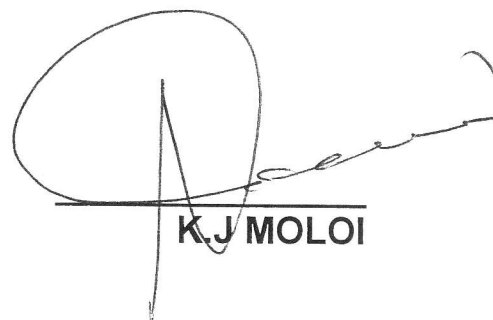
See also Taxation of Legal Costs in South Africa by Rochelle Francis Subbiah_1st ed.(2013).p.66 In Ndzamela v Eastern Cape Development Corporation Ltd and Another 2004(6) SA378 (Tkh) it was said

"The court went as far as to say an attorney (with the right of appearance) may charge separately for work done as an attorney and work done as advocate" provided there is no duplication.

[5] The distinction between what fees an advocate may charge for work done in the High Court and those of an attorney acting personally without engaging an advocate is an absurdity. If an advocate is entitled to the day fee for two hours spent in court so will the attorney acting as an advocate also be entitled. The discrimination will not be justifiable. Often it is argued that an attorney who appears in court for two hours can go to his/her practice and generate more fees on other matters. But so can an advocate. An advocate cannot be said to be working on one case only until it is finalised. He/She can also go back to chambers and deal with the other matters or even do research.

[6] The following order is made:

- (a) The assessment of R9400-00 for appearance in court is reviewed and set aside.
- (b) The applicant is allowed an amount of R16500-00 for appearance in Court.



K.J MOLOI

On behalf of the applicant:

Mr O.A Noordman

MATSEPES INC

BLOEMFONTEIN

On behalf of the second respondent:

Mr N.W Phalatsi

**N.W. PHALATSI &
PARTNERS**

BLOEMFONTEIN