FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 1273/2012

In the matter between:

TANKER PROJECT SOLUTIONS CC Applicant

and

MATJHABENG LOCAL MUNICIPALITY Respondent

JUDGEMENT: LEKALE, J

DELIVERED ON: 28 AUGUST 2014

INTRODUCTION AND BACKGROUND

[1] The applicant in these proceedings seeks review of taxation of a bill of costs presented by it, as the defendant, to the taxing master of this division on the 20th May 2014.

[2] The taxation emanated from the postponement of the trial involving the parties in which the respondent, as the plaintiff, claims payment of money allegedly owing to it for services rendered. Trial was postponed by agreement between the parties and the respondent was ordered to pay wasted costs.

[3] On the 20th May 2014 the taxing master of this court disallowed two items viz. items 15 and 17, relating to traveling time and

expenses of the applicant's "country-attorney" (Welkom attorney) on the basis that such costs were not necessary and proper for the attainment of justice. The applicant feels aggrieved thereby and, thus, invoked rule 48 of Uniform Rules of Court ("the rules") for review of the relevant taxation. The taxing master duly stated a case for determination by the court and the parties, on their part, presented written submissions in terms of the rules.

STATED CASE

[4] The issue for determination as stated by the taxing master is whether or not the travelling cost involving charges and expenses incurred by the applicant's "country-attorney" when he travelled with the applicant from Welkom to Bloemfontein and back to attend the applicant's consultation with counsel in preparation for trial where necessary and proper.

REASONS FOR DECISION

[5] The taxing master effectively feels that the facts and circumstances of the matter did not render it necessary for the Welkom attorney to attend the relevant consultation regard being had to the fact that the local attorney was familiar with the matter as he had attended the registrar's roll meeting, the rule 37 conference as well as the court on previous occasion. In his view the Bloemfontein attorney was not the Welkom attorney's mere post box but was actively involved in the matter. There exists, in his view, no cause for the court to interfere in the

matter.

CONTENTIONS BY THE PARTIES

[6] Mr Schuurman for the applicant contends that the taxing master did not consider the matter on its own merits to determine whether or not it was necessary and reasonable for the Welkom attorney to attend the relevant consultation and only applied the general rule that "country-attorneys" are not entitled to travel to attend consultations or trial where local attorneys are retained and available. In his opinion the instructing attorney had intimate knowledge of the matter and an active role to fulfil in preparation for trial as he had primary instructions from the applicant. Mr Schuurman painstakingly points out that a sensible solicitor, in the position of the Welkom attorney, would in the circumstances have considered it reasonable to attend a consultation in preparation for trial with his client and counsel. In conclusion he contends that the taxing master did not exercise his discretion properly and, as such, the court is at large to intervene.

[7] The respondent supports the allocatur and effectively points out that same is in accordance with the general rule that a "country-attorney" is not entitled to the relevant costs where the local attorney has intimate knowledge of the matter. In the respondent's view the Bloemfontein attorney was an experienced attorney who was very familiar with the matter and was, further, actively involved in its progress and, as such,

there existed no strong reasons for the Welkom attorney to attend the relevant consultation together with the applicant. The taxing master correctly found, after weighing the relevant circumstances, that the relevant costs were unnecessary and over-cautious according to Mr Jacobs for the respondent. The respondent concludes that the review should be dismissed with costs.

APPLICABLE LEGAL POSITION

[8] The general principle is that the court of review will not interfere with the taxing master's discretion in allowing or disallowing certain items "… **unless the taxing master has acted upon a wrong principle or has not really exercised his discretion at all"**. (See in this regard **Niceffek (Edms) Bpk v East Vaal Motors (Edms) Bpk** 1993 (2) SA 144 (O) at 147F.)

[9] The court will, further, interfere with the exercise of the taxing master's discretion where it is of the opinion that he was clearly wrong but only if it (the court) is in the same or a better position than the taxing master to determine the point in issue. (See **Ocean Commodities Incorporated & Others v Standard Bank of South Africa Ltd and Others** 1984 (3) SA 15 (AD) at 18F).

[10] The parties are correctly and effectively in agreement that, as a general rule, an attorney not practicing at the seat of the court is not ordinarily allowed to charge traveling time and expenses

to attend court in a party and party bill unless there are exceptional circumstances or very strong reasons which compel him to do so. If such an attorney has special and intimate knowledge of the facts and local conditions of the matter which necessitate his attendance at court his costs in that regard are allowable (See **Friedrich Kling v Continental Jewellery Manufacturers** 1993 (3) SA 76 (CPD); **Groenewald v Selford Motors (Edms) Bpk** 1971 (3) SA 677 (C) and **Minister of Water Affairs v Meyburg** 1966 (4) SA 51 (EC).

APPLICATION OF LEGAL PRINCIPLES AND FINDINGS

[11] The question in the instant matter is whether or not there existed exceptional circumstances or very strong reasons in the form of special and intimate knowledge of the facts and local conditions in connection with the matter on the part of the "country-attorney" which necessitated the attendance of the Welkom attorney at the relevant consultation.

[12] In support of the review the applicant relies on the primary instructions it gave to the Welkom attorney and his role in appointing correspondent attorney and briefing counsel. The respondent, on its part, contends that the local attorney had adequate knowledge and experience to attend the relevant consultation. The taxing master effectively points out that he considered, *inter alia*, the nature of the claim involved and the role played by the Bloemfontein attorney on previous occasions in protecting the applicant's interests when he disallowed the

items in question. He further submits that he applied the subjective test when making the impugned decision.

[13] In most, if not all, cases involving “country-attorneys” such attorneys hold primary instructions from their clients and appoint correspondents and counsel on instructions from such clients. The have sound knowledge of the matters in order to give instructions to correspondents and counsel. The general rule, however, requires more than the aforegoing in order to entitle them to party and party costs for attending court or consultations at the seat of the court.

[14] Details of the alleged intimate knowledge which required the attendance of the Welkom attorney at the relevant consultation were not disclosed to the taxing master nor are they apparent *ex facie* the papers serving before me. In my view, without such details it is impossible to judge the intimacy and exceptional nature of the alleged knowledge on the part of the Welkom attorney in order to assess the necessity or reasonableness of his attendance at the consultation.

[15] It is true, as submitted for the applicant, that the attendance of an attorney with intimate knowledge of the matter at the relevant consultation is necessary because evidence and trial strategies get discussed with counsel. If the fact that the “country attorney” holds primary instructions *per se* entitles him to attend trial and consultation at the seat of the court

regardless of the availability of the appointed local attorney then all “country-attorneys’ are entitled to the relevant costs the rule in question serves only to deprive deserving litigants of legitimate and necessary costs. I, however, do not believe that this is the case.

[16] Without strong reasons for the attendance by the Welkom attorney of the consultation in question being disclosed it cannot be said that the taxing master did not exercise his discretion properly or that he applied the wrong principle and, as such, was clearly wrong.

[17] I am, however, satisfied that the applicant had reasonable cause to believe that it had an axe to grind with the allocatur regard being had to the fact that the costs of the relevant consultation were allowed.

ORDER

[18] In the result the application for taxation review is dismissed.

[19] No order as to costs is made.

L. J. LEKALE, J

On behalf of applicant:	Mr. P. Schuurman Instructed by: Hill, McHardy & Herbst BLOEMFONTEIN
On behalf of defendant:	Mr. P. A. C. Jacobs Instructed by: Symington & De Kok BLOEMFONTEIN

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