FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 4131/2009

In the matter between:-

ROSY MACKONIE N.O. on behalf of **CHANEL ROCHWEN ERIKA REID**	First Plaintiff
JOYCE BETTIE SANDERS	Second Plaintiff
and	
THE PREMIER OF THE FREE STATE PROVINCIAL GOVERNMENT	Defendant

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JUDGMENT BY: DAFFUE, J

DELIVERED: 10 MAY 2012

INTRODUCTION

[1] The second plaintiff in this consolidated action filed a notice of review of taxation in accordance with rule 48 of the Uniform Rules of Court on 8 February 2011.

[2] The Taxing Master taxed the second plaintiff's bill of costs on 20 October 2010, but it does not appear from the records provided to me when his *allocatur* was fixed to the bill of costs. I accept for purposes hereof that the notice of review was filed timeously.

[3] It appears from a note in the file that it was forwarded to Kubushi AJ to deal with the review, but that nothing further transpired. Eventually the file was found in the general office without any notes or indication as to whether the review of taxation was considered or not.

[4] On 23 April 2012 the file was handed to me with the instructions to deal with the review of taxation.

<u>THE REQUIREMENTS PERTAINING TO REVIEW OF TAXATION</u>

[5] Rule 48 deals with review of taxation and can be summarised as follows:

(a) Any party dissatisfied with a ruling of the Taxing Master may within 15 days after the *allocatur* by notice require the Taxing Master to state a case for decision of a judge.

(b) The notice must comply with the requirements set out in sub-rule (2).

(c) The Taxing Master <u>must</u> supply his or her <u>stated case</u> to each of the parties within 20 days after receipt of the notice of review of taxation – sub-rule (3).

(d) The parties to whom copies of the <u>stated case</u> have been supplied may within 15 days after receipt thereof, make submissions in writing.

(e) The Taxing Master <u>must</u> within 20 days after receipt of the parties' submissions supply his or her <u>report</u> to each of the parties – sub-rule (5)(b).

(f) The parties may within 10 days after receipt of this report make further submissions to the Taxing Master.

(g) The Taxing Master <u>shall</u> on receipt of the submissions forthwith lay a case before a judge – sub-rule (5)(c).

(h) The judge may

(i) decide the matter upon the merits of the case and submissions so submitted;

(ii) require any further information from the Taxing Master;

iii) if he or she deems it fit, hear the parties or their legal representatives in his or her chambers or

iv) refer the case for rescission to the court. (emphasis added)

<u>NON-COMPLIANCE WITH THE PEREMPTORY REQUIREMENTS OF RULE 48</u>

[6] It is apparent from rule 48 that the Taxing Master was duty

bound to comply with the following peremptory provisions:

(a) He had to supply his stated case to each of the parties.

(b) On receipt of any submissions made by the parties he had to supply his report to each of them.

(c) He had to lay the case together with the submissions of the parties before a judge.

[7] The Taxing Master did not comply with sub-rules 48(3) and (5) and the matter is not ripe for consideration.

LEGAL PRINCIPLES

[8] Courts are reluctant to interfere with the exercise of a Taxing Master's discretion and will not readily do so, except on certain well-known grounds. In **PRELLER v JORDAAN AND ANOTHER** 1957 (3) SA 201 (O) at 203 C – E it was held that such interference will not take place

> "unless it is found that he [the taxing master] has not exercised his discretion properly, as for example, when he has been actuated by some improper motive, or has not applied his mind to the matter, or has disregarded factors or principles which were proper for him to consider, or considered others which it was improper for him to consider, or acted upon wrong principles or wrongly interpreted

> rules of law, or gave a ruling which no reasonable man would have given."

See also **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS v GAUTENG LIONS RUGBY UNION AND ANOTHER** 2002 (2) SA 64 (CC) at 73 C – G and in particular the following *dictum* appearing in par. [14]:

> "To this there is a qualification, however. Not all decisions by the Taxing Master are equally insulated from judicial interference. In some instances, for example, where the dispute relates to the *quantum* of fees allowed by the Taxing Master, the Courts are slow to interfere with the Taxing Master's assessment. But there are other cases
> '. . . where the point in issue is a point on which the Court is able to form as good an opinion as the Taxing Master and perhaps, even a better opinion'."

CONCLUSION

[9] It would be premature to adjudicate the matter without having been informed as to the grounds on which the Taxing Master taxed off the specific items and/or which, if any, findings of fact he might have arrived at. The failure by the Taxing Master to provide a stated case as provided for in sub-rule 48(3)

prevented the parties and respondent (defendant in the main action) in particular to make submissions provided for in sub-rule 48(5). Finally the peremptory report of the Taxing Master which might cast further light on his rulings could be invaluable for a proper adjudication of this matter on review. In the interest of justice this matter should not be finally adjudicated at this stage, but dealt with in the manner set out hereunder.

ORDER

[10] The following orders do issue:

1. The Taxing Master is directed to supply his stated case in compliance with sub-rule 48(3) within 20 days hereof.
2. The Taxing Master shall within 20 days after expiry of the period provided for in sub-rule 48(5)(a), supply his report to each of the parties and shall after expiry of the period referred to in sub-rule 48(5)(c) forthwith lay the case together with the submissions of the parties before a judge of this division.
3. No order as to costs is made.

J.P. DAFFUE, J

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