

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 801/2010

In the matter between:-

SPARTAN TECHNOLOGY RENTALS (PTY) LTD Applicant

and

QUIPSELL TRADING 1041 CC 1st Respondent

ALITORI 1470 CC 2nd Respondent

HENDRIK GIDEON BURGER 3rd Respondent

QINISO KENNEDY KHOZA 4th Respondent

JACOBA JOHANNA PRINS 5th Respondent

RUDOLF FRONEMAN KOTZE 6th Respondent

FRANS JACOBUS LUBBE 7th Respondent

DELIVERED ON: 27 JANUARY 2010

JUDGMENT BY: FISCHER, AJ

[1] This is a review of taxation brought in terms of the provisions of High Court Rule 48. The Bill of Costs was taxed before the Taxing Master on 12 August 2010 and thereafter the *allocatur* was completed on 30 August 2010. The Bill of Costs so taxed and allocated was that of the present applicant (hereinafter referred to as “the judgment creditor”) arising from an application brought by the judgment creditor

against the seven respondents (hereinafter referred to as “the judgment debtors”) in terms of which the judgment creditor sought payment from the judgment debtors of a sum of money. The claim of the judgment creditor was based on a suretyship agreement concluded between the parties in terms whereof it was agreed that the judgment debtors would

“be responsible for all charges and expenses of whatever nature incurred by the Creditor in securing the performance of the obligations of the Debtor or the Surety, or enforcing the rights of the Creditor, including, without limitation, all legal costs, including attorney and own client costs, ...”

(See clause 24)

- [2] It is common cause that the notice of motion together with founding papers and annexures thereto ran to some 161 pages and that payment in full was made by the judgment debtor shortly after the matter was enrolled for hearing on 18 March 2010. Following such payment an agreement was reached between the parties in terms whereof the application was removed from the roll and the respondents ordered to pay the costs of the application on the scale as between

attorney and own client jointly and severally, the one to pay, the others to be absolved. At the taxation the judgment creditor was represented by its own attorney and the judgment debtors by a representative from their own firm of attorneys.

[3] The judgment debtors were dissatisfied with the ruling of the Taxing Master relating to various items and delivered a notice as envisaged in terms of High Court Rule 48(1) calling upon the Taxing Master to state a case for the decision of a judge. High Court Rule 48 is very clear as to the manner in which not only the parties to the intended review, but as importantly the Taxing Master are to respond, but for reasons that appear more fully from what follows hereinafter I find it unnecessary to deal at any length with such procedure.

[4] High Court Rule 48(1) permits a party who is dissatisfied with any ruling of the Taxing Master as to any item or part of such item ***which was objected to or disallowed mera moto*** by the Taxing Master, to require such Taxing Master to state a case for the decision of a judge. What is quite clear from the

aforegoing is that a taxation of review under this rule is as such limited to those cases where there was an objection to the relevant items by or on behalf of the judgment debtors which they now seek to take on review. The items objected to fall within three separate categories and the Taxing Master in his response to aforesaid notice, claims that all the relevant items were as such not objected to on taxation. In this regard the Taxing Master reports that:

“Ms Pittas from Neuhoff Attorneys appeared on behalf of the applicant, and Ms Du Preez from Symington & De Kok Attorneys appeared on behalf of the respondent. The respondent in this matter has brought an application for a review.

First point the Taxing Master wishes to address (sic) is the fact that the applicant’s attorney (sic) (it is accepted for purposes hereof that reference is being made to the respondents’ attorney) **never raised any objections to any of the items he is taking on review on this matter** (sic).” (My emphasis.)

Neither the judgment creditor nor for that matter the judgment debtors saw fit to deal with this claim by the Taxing Master and I, in the circumstances, find that the judgment debtors have not satisfied me that there was as such an

objection raised at the taxation to any of the items in question and that these items are accordingly not subject to review.

See **KRUGER v SECRETARY FOR INLAND REVENUE** 1972 (1) SA 749 (C). See also **MCUNU v SOUTHERN INSURANCE ASSOCIATION LTD** 1977 (2) SA 18 (SECLD) at p. 19 and **DAYWINE PROPERTIES (PTY) LTD v MURPHY AND ANOTHER** 1991 (3) SA 216 (D) and (CLD) at p. 217.

- [5] There is no escaping the clear meaning of the language used in High Court Rule 48(1) and (2) in that where the party opposing the taxation fails to object to any particular item when appearing before the Taxing Master, such party cannot thereafter attempt to invoke the review of taxation procedure provided for by the relevant rule in an apparently belated attempt to question any items which the Taxing Master has allowed. The simple truth is that in the circumstances there was apparently no objection to the relevant items and they are accordingly not subject to review. I however make no order as to costs.

P.U. FISCHER, AJ

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