FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 6188/2009
290/2010

In the matter between:-

Ex parte:
THE WORKFORCE GROUP (PTY) LTD Applicant

In re:
THE WORKFORCE GROUP (PTY) LTD Applicant

and

H J FUTTER 1st Respondent

CAPITAL OUTSOURCING GROUP (PTY) LTD 2nd Respondent

HEARD ON: 23 MAY 2011

DELIVERED ON: 1 SEPTEMBER 2011

JUDGMENT

K.J. MOLOI, J

[1] This is a review of taxation as contemplated in Rule 48 of the Uniform Rules of Court (the Rules). The applicant withdrew the application it had filed in the following terms:

"KINDLY TAKE NOTICE that the Applicant withdraws its

> Application against the Respondents and hereby tenders the Respondents' duly taxed costs on a party and party scale."

[2] The taxation was subsequently set down for 8 September 2010 before the taxing mistress of this Court, Ms Ngobeni. Before the taxing mistress appeared Ms J. Taylor of Webbers Attorneys for the respondents. Ms Taylor was at the time a candidate attorney. Ms Alet Lubbe, a Costs Consultant appeared on behalf of Hunt's Attorneys as represented locally by Messrs McIntyre Van der Post, for the applicant in the application.

[3] The applicant for review, (the respondents in the main application), sought a review of the items disallowed by the taxing mistress *viz* items 5 and 6 (relating to the perusal and copying of certain (important) documents; item 51 (perusal); items 65, 66 and 104 (perusal and copying); items 114, 118 and 120 (perusal); item 137 (disbursement) and item 26 (reduction of consultation hours) which was taxed down from 6 to 3 hours. No objection was raised by the applicant during taxation.

[4] In her stated case the taxing mistress raised two points *in*

limine on the grounds of which she opposed the review. Firstly, she alleged that the review should not be allowed to take place because the applicant sent a candidate attorney to attend the taxation and not an attorney duly admitted. Secondly, she contended that when the application for review was made, she as the taxing mistress, had not affixed the *allocatur* to the bill of costs. She thereafter dealt with some of the items complained of in some detail.

[5] As regards the first point made, I cannot find any support for her contention. The rule refers to a "party" being dissatisfied and the party may be represented by any legal representative including a candidate attorney. After all a candidate attorney appears for and on behalf of her/his principal who will always be a duly admitted attorney. It is also noteworthy that the taxing mistress did not question the competency of Ms Taylor to attend the taxation process.

[6] The second point raised requires more in depth consideration. The affixing of the *allocatur* signifies the finality of the taxation process. Before that is done to the bill of costs, the taxing mistress had not made up her mind: See

<u>SELLMAN v BOORN</u> (1841) 8 M and W 552; 151 ER 1158 referred to with approval in **<u>PRETORIUS AND ANOTHER v COHEN</u>** 1953 (3) SA 639 (O) at 639H – 640. The following was stated at 639H:

> "The master has not finally decided as to the costs until he has made his *allocatur*. Until he has done so, it is still open to him to alter his mind, and he is not bound by any declaration he may have made as to what costs he intends to allow"

> and at 640H the following:

> "For these reasons the Court concluded that the absence of an *allocatur* in the instant case sufficed to justify the dismissal of the application as premature."

In the discussion of Rule 48 in Erasmus, **Superior Court Practice**, p. B1-350 the authors define "After the *allocatur*" mentioned in Rule 48(1). The following is stated:

> "No bill of costs, or any item thereof, can be reviewed unless the taxing master has affixed his *allocatur* to the bill"

and cite **<u>PRETORIUS v COHEN</u>**, *supra* and **<u>GEORGIAN HOUSE ANTIQUES (PTY) LTD v HENRI LIDCHI & CO LTD</u>**

1970 (2) SA 488 (D) at 491, *inter alia*.

[7] Whereas the applicant made further submissions after the taxing mistress submitted her stated case, it addressed only the first point *in limine* raised and not the second one. I am of the view that had the applicant paid attention to the second point raised, the review application would have been withdrawn until after the affixing of the *allocatur*. The applicant, however, persisted with the application despite this fatal defect. The original of the bill of costs in the court file also shows no *allocatur* affixed to it.

[8] In the light of the above the court is bound to refuse to review the said taxation and makes the following order:

The application for review of taxation is DISMISSED with costs.

K.J. MOLOI, J

On behalf of applicant: Hunt's Attorneys
c/o McIntyre & Van der Post
Ref: Mr. C. Gerdener
BLOEMFONTEIN

On behalf of second respondent: MacGregor - Erasmus
Ref:J. Schabort/ke02/C009-0008
c/o Webbers Attorneys
Ref: AC Conradie
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