FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3872/2006

In the matter between:-

WüRTH SOUTH AFRICA (PTY) LTD	Applicant
and	
SHAWN ANTHONY SCHAUP	1st Respondent
ROSSBURG INDUSTRIAL ENTERPRISES (PTY) LTD t/a/ BEARING MAN	2nd Respondent

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JUDGMENT BY: MOLEMELA, J

DELIVERED ON: 4 FEBRUARY 2010

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[1] This is a review of taxation as contemplated in Rule 48(1) of the Uniform Rules of Court.

[2] The review stems from the orders made by Beckley J. The order made on 26 October 2007 stipulates as follows:

> "1. The matter is removed from the roll.

2. Costs occasioned by the removal to be paid by the first respondent and Carlos Frade the attorney for first respondent *de bonis* jointly and severally, the one paying the other to be absolved.

3. Leave is granted to Mr Frade and first respondent to furnish reasons within ten days as to why prayer 2 above should not be made an order of Court."

The order of 15 November 2007 stipulates as follows:

"1. The order made on 26 October 2007 is made a final order of court.

2. 2nd Respondent to pay costs of today."

[3] The applicant's attorney presented a bill of costs for taxation and it was duly taxed on the 19th March 2008. On 26 June 2008 the 1st respondent filed a Notice of Review of Taxation in terms of Rule 48(1) of the Uniform Rules of Court querying the fees allowed to counsel in respect of item 52 and 68 of the applicant's taxed bill of costs.

[4] The Taxing Master filed a stated case as contemplated in Rule 48(3) of the Uniform Rules of Court. She stated as follows:

"Item 52:

Mr Frade noted an objection against item 52 arguing that it should not be allowed as the case did not proceed on that day. The Taxing Master allowed the item based on the fact that the matter was in fact before Court and the advocate had to prepare and appeared for the applicant. The advocate's fee was not regarded as exorbitant and allowed as a day fee for the council. In other instances where a matter is removed up to three days before the trial date, only two thirds of the day fee would have been allowed but as it was removed by the Judge on the day that the matter was in fact set down for hearing and in light of the order given it was regarded as been removed on the 26th of October 2007. (sic)

Item 68:

Mr Frade also noted an objection against item 68 arguing that the fee is inappropriately exorbitant for the services rendered. Mr Frade had ten days to furnish reasons as to why prayer two of the order given on 26/10/2008 should not have been made an order of Court. No reasons were given and on 15/11/2008 the order was made a final order of court. The taxing master allowed this item on the grounds that it was not exorbitant and that the council indeed prepared and appeared for the applicant. (sic)."

[5] Subsequent to the filing of the Taxing Master's stated case, the applicant filed submissions as contemplated in Rule 48(5)(a) of the Uniform Rules of Court. No such submissions were made on behalf of the respondent. The Taxing Master subsequently advised that she had nothing to add to her stated case. No further submissions were made by either party.

[6] I am satisfied with the reasons advanced by the Taxing Master for allowing counsel's fees. It is settled law that if a matter is removed from the roll on the day of the hearing, counsel is entitled to his/her full fees for the day. The objections in respect of item 52 are therefore unjustified.

[7] It is quite clear from the applicant's submissions that on the 15th November 2007, the day of the second order, the matter was argued as a fully-fledged opposed application.

This would mean that counsel was entitled to his fee for the day. The applicant further submitted that the fee charged by counsel was within the rates allowed by the Free State Bar Council. In this regard the Master stated that she did not regard the fee charged as exorbitant.

[8] It is trite law that a court interferes with a taxing master's decision only if it is clearly wrong or where he/she has not exercised his/her discretion judicially. I can find no grounds whatsoever warranting that I interfere with the taxing master's decision to allow counsel's costs as per the taxed bill of costs. I must accordingly dismiss the application for review of taxation.

[9] I am of the view that the objection made is one of such a frivolous nature that an order of costs ought to be made against the 1st respondent on the grounds that he was the unsuccessful party in the review application.

[10] I therefore make the following order:

10.1 The application for review of taxation is dismissed.

10.2 The first respondent is ordered to pay an amount of R300.00 in respect of the costs of review.

M.B. MOLEMELA, J

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