<u>IN THE HIGH COURT OF SOUTH AFRICA</u>
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 1973/2006

In the case between:

<u>JOHANNES CORNELIUS MAARTENS</u>

and

<u>KOBUS VAN ZYL BOERDERY BK</u>

<u>JUDGMENT:</u> MOLEMELA, J

<u>DELIVERED ON:</u> 11 DECEMBER 2008

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[1] This is a review of taxation as contemplated in rule 48 of the Uniform Rules of Court. Pursuant to the taxing master's filing of a stated case in terms of rule 48(1), both parties made written submissions. I accordingly decide this matter as contemplated in rule 48(6)(a)(i) of the Uniform Rules.

[2] The review stems from the taxation of a bill of costs pursuant to the following order that was made by Justice C J Musi:

"1. Die eksepsie slaag met koste.

2. Die eiser se besonderhede van vordering word deurgehaal en eiser word verlof gegee om, indien so geadviseer, gewysigde besonderhede van vordering te liasseer binne een maand van datum van hierdie uitspraak."

[3] Despite objections from the defendant's representatives, the taxing master taxed off part of the defendant's advocate's fees. The total fees charged by the defendant's advocate was an amount of R31 122.00, which was broken down as follows:-

"Datum/Date	Beskrywing/Description	Bedrag/Amount
6/1/2007	Deurgaan, oorweeg en hoofpunte van betoog	R 5 200,00
1/2/2007	Deurgaan & voorbereiding	R 9 100,00
2/2/2007	Eksepsie	R13 000,00
	Sub Totaal/Total	R27 300,00
	VAT/BTW	R 3 822,00
	TOTAAL/TOTAAL	R31 122,00

[4] Of the total amount of R31 122.00, an amount of R14 022,00 was disallowed by the taxing master as she had

issues with items 1 & 2 of the bill. She advanced the following reasons in her stated case:-

> "(1) Item 1 – deurgaan, oorweeg en hoofpunte van betoog. Die hoofpunte van betoog kan nie apart van die verhoorfooi gevra word nie omdat dit geag word as deel van voorbereiding. Die fooi vir hoofde moet daarom ingesluit word by die 1ste dag verhoorfooi wat beide voorbereiding en verskyning insluit. Dit is onder andere ook die rede waarom 'n Advokaat se 1ste dag verhoorfooi hoër is, as die 2de en 3de verhoordae. Sou 'n advokaat in sy faktuur die twee, hoofde en voorbereiding van mekaar skei maar die koste van beide val steeds binne die riglyne, sal dit so toegelaat word. Indien nie, moet die verskil afgetakseer word.
>
> (2) As die hof saamstem dat die hoofde deel is van die verhoorfooi is die volgende aspek waarmee gehandel word in items 1 & 2, deurgaan en oorweeg asook deurgaan en voorbereiding. Beide hierdie items handel met deurgaan van stukke wat 'n duplisering daarstel. Dit beteken dat redelike en billike koste oorweeg moet word vir deurgaan van stukke. Aspekte om in gedagte te hou is die ingewikkeldheid van die saak en ook die aantal bladsye van die stukke.

Redelikheidshalwe moet die woord “voorbereiding” in item 2 ignoreer word, aangesien dit reeds by die verhoorfooi ingesluit is en kan die Advokaat nie ‘n tweede keer daarvoor penaliseer word nie.

Die fooi vir deurgaan en oorweeg, van die stukke, soos gevra is in totaal ‘n bedrag van R14 300, wat myns insiens buitensporig hoog is. Die stukke voor die hof geplaas is volgens die inhoudsopgawe 30 bladsye uitgesluit die hoofde, wat onderskeidelik bestaan uit 15 en 5 bladsye, ‘n totaal van 50 bladsye. Dit is ook die takseermeester se mening dat die aangeleentheid nie so ingewikkeld kon wees soos die Prokureurs wil voorgee nie, aangesien slegs die eksepsie voor die hof geplaas was en dit nie nodig was om oor feite van die hoofaksie te argumenteer nie. Die takseermeester se opinie is dat ‘n Advokaat van hierdie senioriteit en gehalte verseker nie langer as 2 ure gaan neem vir die deurlees van die stukke nie. Die tyd toegelaat in verhouding met die aantal bladsye, vir deurlees, is in ooreenstemming met wat Prokureurs op ‘n tydsbasis kry.

‘n Bedrag van R1 344.00 per uur is toegelaat, min of meer dieselfde wat ander Advokate van die selfde senioriteit vra. Dit was egter nie moontlik om ‘n presiese bedrag per uur vas te stel nie aangesien die betrokke advokaat geen tyd uiteengesit het op enige van sy fakture. Sou mens die hoër bedrag van R9 100 op die faktuur neem en met 8 ure deel kom dit op R1 138 per uur neer, wat minder is as wat wel vir die advokaat per uur toegelaat is.

Die takseermeester het die fooie toegelaat, as volg bereken:-

	ITEM	**FOOI**	**BTW**	**TOTAAL**
2.	**Deurgaan & oorweeg**	**R2 688.00**	**R242.00**	**R 2 930.00**
1.	**Voobereiding & verhoor**	**R13 000.00**	**R1 170.00**	**R14 170.00**
	TOTAAL			**R17 100.00**

Aangeheg sien ‘n afskrif van die riglyne ten opsigte van verhoorfooie vir Advokate, wat deur die takseermeesters van hierdie afdeling gebruik word.

Dit is die takseermeestr se gestelde saak en onderwerp ek my aan die beslissing van die hof.”

[5] In compliance with the provisions of rule 48(5)(a), the defendant made written submissions in which it *inter alia* proposed as follows:

> "Dit is algemene gebruik by die Vrystaat Balie dat advokate hul rekeninge lewer deur nie 'n enkele fooi vir 'n dag se werk te vra nie, maar dat hulle hul fooi opbreek en 'n uiteensetting gee van die dienste gelewer. In die verlede is 'n enkele fooi gemerk deur die advokaat, maar is die jongste neiging dat hul fooie individueel gespesifiseer word, welke gebruik al vir 'n geruime tydperk aanvaar word."

[6] The defendant's submission seems to miss an important point made by the taxing master, viz that whether the specific items (drawing of heads and preparation) have been split up or set out as one global figure, if the total falls within the guidelines, then the amount will be allowed and will not be taxed off. The submissions do not specifically deal with the principle, i.e. that the fees for the heads of argument and preparation, should whether set out together as one item or separated, fall within the stipulated guidelines. The submission also fails to deal with the correctness or otherwise, of the guidelines attached to the

taxing master's stated case. I will therefore accept that those guidelines are in fact correct.

[7] It is apt to refer to rule 69(5) of the Uniform Rules, which provides as follows:

> "The taxation of advocate's fees as between party and party shall be effected by the taxing master in accordance with this rule and, where applicable, the tariff. Where the tariff does not apply, he shall allow such fees (not necessarily in excess thereof) as he considers reasonable."

Also see rule 70(3).

[8] It is also apt to refer to the case of **VISSER v GUBB** 1981 (3) SA 753 (C) at 754 H – 755 C, where there principle governing interference with the exercise of the taxing master's discretion was enunciated as follows:-

> "The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example by disregarding factors which he properly should have considered, or considering matters which it was improper for him to have considered, or he has failed to bring his mind to bear on the question in issue; or he has acted on a wrong

> principle … The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal."

[9] I have considered the stated case as well as all the submissions. I agree with the rationale for the decision of the taxing master as set out in her stated case. The principle she is relying on is a long-established one supported by authorities and there is no reason for me to depart therefrom. In **J D VAN NIEKERK EN GENOTE ING v ADMINISTRATEUR, TRANSVAAL** 1994 (1) SA 595 (A) the matter served before the Appellate Division (as it was then known). The court at p. 601G stated that an hourly fee for a service such as the drafting of heads of argument is inappropriate as it is a method of calculation which places a premium on slow and inefficient work and may result in a fee being charged which is totally out of proportion to the value of the services actually rendered. In coming to this conclusion the court had cited with approval the case of **OCEAN COMMODITIES INC AND OTHERS v STANDARD BANK OF SA LTD AND OTHERS** 1984 (3)

SA 15 (A) at 19 C – D and 20 E where the following was stated:

> "Heads of argument, admittedly documents of great importance, have always been required by the Rules of this Court, but this fact has never been considered to be a sufficient reason for allowing a separate fee for the drawing thereof, and there is nothing in the present case which persuades me that such a fee should have been allowed by the Taxing Master."

Although the above was stated in relation to heads of argument prepared in an appeal, my view is that this principle is applicable to any application in respect of which the filing of heads of argument is a requirement.

[10] On the basis of the aforegoing authorities, I agree with the taxing master that the perusal and consideration of the heads of argument should have been part of counsel's preparation. This would have been the case even if counsel had to consider the heads after a lapse of time. See **J D VAN NIEKER EN GENOTE ING v ADMINISTRATEUR, TRANSVAAL** *(supra)* at 601F. A

separate charge for items 1 & 2 thereof constitutes a duplication. The approach of the taxing master as set out in paragraph 2 of her stated case is therefore correct. There is nothing before me to show that the taxing master has erred in disallowing the fee in question. It therefore follows that this review cannot succeed.

[11] I have considered the issue of costs, resulting from this review application. It is indeed so that costs are infrequently granted in reviews of this nature. I am of the view that the most appropriate order would be one in terms of which each party is to bear its own costs in the review.

[12] I therefore make the following order:

12.1 The application for review of taxation is dismissed.

12.2 No order is made as to costs.

M. B. MOLEMELA, J

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