IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review Case No. : 2100/2006

In the matter between:-

VRYSTAAT MIELIES (PTY) LTD Applicant

and

C A DA SILVA & 34 OTHERS Respondent

JUDGMENT BY: RAMPAI J

DELIVERED ON: 13 SEPTEMBER 2007

---

[1] These proceedings are about a review of the decision of the taxing master made on 26 April 2007. In the main application my brother Kruger J gave judgment in favour of the respondents under case no. 4455/2005. The applicant was ordered to pay the costs of the application including such costs as were occasioned by the employment of two counsels. The judgment was delivered on 24 November 2005.

[2] Pursuant to such judgment the respondents drew up their bill of costs. The bill was presented to the taxing master for taxation on 26 April 2006. It consisted of two parts. The one part originated from their attorneys at Bethlehem, Messrs Hattingh Marais. The other part emanated from their attorneys here in Bloemfontein, Messrs Naudes.

[3] The applicant objected to certain items on the respondents' bill. As regards the costs claimed by Messrs Hattingh Marais, 20 items came under attack and as regards Messrs Naudes 17 items. Notwithstanding such objections the taxing master taxed and allowed the bill in the total sum of R151 280,33. The disputed items were largely allowed. The respondents were represented by Mr. Pienaar and Mr. Lubbe during the taxation. The applicant was represented by Mr. Bronkhorst and Mr. Fuls, a taxing consultant.

[4] The applicant applied in terms of Rule 48 for the review of the decisions of the taxing master. Six grounds of review were relied upon. I shall deal with them seriatim in accordance with the applicant's notice of review filed on 19 May 2006. The respondents filed no statement of response in terms of Rule 48(5)(a). However, they informed the registrar that they would abide by the decision of the court. This was conveyed by way of a letter dated 31 July 2006 by Messrs Naudes.

[5] The taxing master filed a stated case in terms of Rule 48(3). The stated case was undated. If, however, the respondents' response letter dated 12 January 2007 coupled with the applicant's reply to the stated case dated 7 February 2007 as well as the note by Malherbe JP dated 13 December 2006 are used as assistive guidelines, one can safely take an

informed guess that the taxing master's stated case was signed and served between 13 December 2006 and 12 January 2007.

[6] After service of the taxing master's stated case upon them, the respondents again indicated by way of a letter from Messrs Naudes to the registrar that they would abide. The applicant filed its reply on 7 February 2007. Thereafter the taxing master supplemented his stated case in terms of Rule 48(1). He served it on the parties. The supplement was also undated. Its date of service does not appear *ex facie* the document. However, it was filed on 22 June 2007. On 26 June 2007 the matter was allocated to me in my absence while I was recuperating at home following an orthopaedic operation of my decompressed right shoulder.

[7] The first objection was against the taxing master's decision to allow the following items:

7.1 As regards the bill of Messrs Hattingh Marais, please see notice of review page 1.

"1.1 Hattingh Marais - Items 16, 18, 19, 20, 26, 28, 31, 33, 34, 35, 38, 40, 42, 43, 55, 56, 58, 59, 60 & 67"

7.2 As regards the bill of Messrs Naudes, *vide* notice of review page 1.

> "1.2 Naudes - Items 25, 27, 28, 34, 37, 38, 43, 48, 50, 52, 59, 60, 65, 76, 83, 85 & 94"

In general, the majority of these items concerns drawing up of documents or perusing of documents. The fee for the unit drawing of a document is R50,00; for the unit attendance R25,00 and for the unit perusing also R25,00. The basic unit for charging a fee in respect of any necessary drawing, attending or perusing is a page.

[8] The objection against the above items was that the existing practice in this division whereby a page was regarded as a page irrespective of the number of words for the purposes of the drawing up of a document or the perusing thereof, leads to the allowing of higher fees than the tariff prescribes. The taxing master considered the objection, took into account the provisions of Rule 70(9) together with those of Rule 70(5) and dismissed the objection. He found that strict application of Rule 70(9) could produce absolutely absurd results. He applied what is termed the "well-drafted principle" and found that Rule 70(5)(a) gave him discretion to depart from the strict provisions of Rule 70(9) on which the applicant relied in support of the objection.

[9] The objection revolves around the interpretation of Rule 70(9). The Rule reads as follows:

> "Save for the forms set out in the first schedule to these rules, a page shall contain at least 250 words and four figures shall be

counted as a word."

[10] The legislature has made no attempt to define the word "page". According to "The New Shorter Oxford English Dictionary" the word "page" means

> "Either side of a leaf of a book, manuscript, letter etc. Also, a complete leaf of a book etc."

This ordinary meaning of the word "page" differs from the special meaning of the word as contained in the above rule. However, the rule does not purport to define the word strictly in a legal sense. It does no more than to say a page is one side of a leaf of a document with a minimum of 250 words. Ordinarily speaking a leaf of a document or a single sheet is a page irrespective of the number of words written or printed thereon. Rule 70(9) primarily regulates the counting of pages where a multi-leaf or multi-sheet document has to be considered for taxation purposes. I understand the rule to require the counting of words and not the sheets from the second sheet in order to determine the number of pages it has.

[11] I found a particularly helpful exposition of the above rule in the matter of **R. SCHELLAUFF v W.E. WILDHABER NO & OTHERS** an unreported decision of the TPD delivered on 25 March 1998. I quote what Botha J instructively had to say on page 7 – 8 about the word "page" as used in the rule:

"Any document by definition has to have at least one page in the literal sense.

Where remuneration in relation to the handling of a document is to be assessed per page, it seems to be inevitable that the first page must be considered even if it contains less than 250 words. Rule 70(9) comes into play when a document contains more than one page in the literal sense. Then the words are counted to determine how many pages it contains for the purposes of the tariff.

Such an interpretation **is harmonious and it leads to no absurdity**.

At worst it can lead to a situation where in a multipage document the last words falling short of 250, will go unremunerated.

It must be stressed that Rule 70(9) contains no definition of 'page'. It merely provides a yardstick for the counting of the number of the pages when there is more than one page.

To make it clear: if a document contains less than 250 words, it counts as one page, no matter over how many physical pages it is spread. If it contains 999 words, it counts as three pages, no matter over how many physical pages it is spread."

I am in respectful agreement.

[12] In the stated case the taxing master remarked as follows about the said rule:

"Dit is my respekvolle opinie dat die streng navolging van Hofreël 70(9) *supra* op absolute absurditeit neerkom.

Dit het die gevolg dat 'n dokument wat minder as 250 woorde bevat, nie as 'n bladsy gereken word nie. Om hierdie rede kan 'n prokureur dus nie vergoeding kry vir die opstel en deurlees van so 'n dokument nie."

Here I am in respectful disagreement with the taxing master. The strict interpretation of the rule does not mean that an attorney presenting a bill of successful party cannot be appropriately remunerated for the drawing or perusing of a multiple page document. Where, for instance, page one of such a document has 250 words, page two 200 words, page three 150 words, page four 100 words, page five 50 words, page six 249 words, page seven 248 words, page eight 247 words, page nine 230 words and page ten 220 words, the rule does not restrict the attorney's remuneration for perusing to R25,00 x one page because the ten page long document contains only one page, namely page one, with 250 words - and secondly, the rule does not then ignore the remaining nine pages because each of them has less than 250 words. To allow a minimum fee for only one page in such a situation would certainly be absolutely absurd. But that is certainly not what the rule lays down.

[13] It is in such situation that the rule requires that the words on each sheet must be counted to determine whether such a sheet qualifies as a page or not. The formula is a simple one. A group of four figures counts as one word. Let us revisit the example I made in the preceding paragraph. Now adding up the number of words embodied in the nine individual sheets with less than 250 words gives us a gross total of 1694 words. Dividing 1694 words by 250 words equals 6,776 pages. Mathematically this may be rounded off to 7,0 pages. The strict interpretation of all this means that from the second to the tenth sheet of the document we have seven and not nine pages. The document has one plus

seven which equals eight pages. Therefore the attorneys remuneration for perusing the multi-leaf document, must be eight pages multiplied by the unit charge of R25,00.

[14] The aforegoing exposition is the strict but equitable remuneration formula the rule prescribes. This taxation method of remuneration is, in my view, more accurate and equitable than the taxation method called the "well-drafted principle" which the taxing master employed in this matter. In the stated case the taxing master, Mr. G. Thompson, explains what the latter method entails as follows:

> "Hierdie afdeling se Takseermeesters pas die <u>**'well-drafted'-**</u> beginsel toe. Dit behels kortliks dat daar gelet word op die uiteensetting, spasiëring, die grootte van woorde en asook die die essensie van die inhoud van elke dokument. Met ander woorde of die dokument <u>redelikerwys opgestel is.</u>"

[15] The greatest problem I have about the method in question is this: It virtually eliminates the words counting process from the equation. And because it does it drastically offends the spirit and object of Rule 70(9). It seems to me this method may easily lead to divergent interpretation by different taxing masters as whether the essence of a particular sheet of print qualifies as a page or not.

[16] The taxing master clearly did not apply Rule 70(9) properly. He reckoned it was too harsh to the winner's attorney. He

sought to explain and to justify his rather misguided approach by invoking Rule 70(5)(a) which stipulates:

> "The taxing master shall depart from any of the provisions of this tariff. The subrule explicitly confers a discretion on the taxing master to depart from any provisions of the tariff where strict adherence to such provisions would be inequitable."

I have already demonstrated that there is fundamentally nothing inequitable about the provisions of Rule 70(9) if properly interpreted. Moreover, the taxing master's reliance on Rule 70(5)(a) appears to me to be misguided since there is nothing extraordinary or exceptional about this case. The applicant contended that the taxing master's approach was wrong. The respondents made no effort to defend the taxing master's ruling in respect of the first objection. I would therefore set the ruling aside.

[17] It is not sufficient for the attorney drafting a bill for taxation to merely specify the number of pages a multi-leaf document has. It is imperative for such a draftsman or draftswoman also to specify the number of words there are from the second to the last leaf of a document concerned. Then and only then may the tariff appropriately, be applied. Unless this is done, and I appreciate how cumbersome such word counting process can at times be, the rule will certainly be misapplied. The mere sheet counting process distorts the number of actual pages. The exaggeration of pages leads to

the charging or claiming by an attorney and allowing by the taxing master of a higher fee than the tariff actually prescribes.

[18] The applicant contends in its reply before me that it went through the tedious word counting process of the disputed items and tabled the results before the taxing master, but that the taxing master did not take note. Although he was referred to the decision in **NDZAMELA v EASTERN CAPE DEVELOPMENT CORPORATION LTD AND ANOTHER** 2004 (6) SA 378 (TkH), he felt that in this division it was not the taxing master's duty to count words on taxation. That may well be so, but he was obliged to recognise and to consider the available results of the physical counting done by the applicant. Since the respondents had apparently not taken the trouble of counting the words as the applicant had done, the contention of the applicant should have prevailed and the bill of the respondents should have been taxed off or marked down accordingly. The taxing master's failure to do so constituted a reviewable irregularity.

[19] The effect of the method used by the taxing master led to the excessive remuneration of the respondents' Bethlehem attorneys, Hattingh Marais, as the following tabular demonstration shows:

Item 18	4	pages	instead of 2	pages allowed
Item 19	2	pages	instead of 1	page allowed
Item 20	221	pages	instead of 162	pages allowed

Item 26	9	pages	instead of 7	pages allowed
Item 33	2	pages	instead of 1	page allowed
Item 34	2	pages	instead of 1	page allowed
Item 35	2	pages	instead of 1	page allowed
Item 38	2	pages	instead of 1	page allowed
Item 40	317	pages	instead of 195	pages allowed
Item 42	25	pages	instead of 20	pages allowed
Item 43	23	pages	instead of 16	pages allowed
Item 55	2	pages	instead of 1	page allowed
Item 56	11	pages	instead of 5	pages allowed
Item 58	81	pages	instead of 60	pages allowed
Item 59	39	pages	instead of 31	pages allowed
Item 60	2	pages	instead of 1	page allowed
Item 69	2	pages	instead of 1	page allowed
	746 pages		instead of **506** pages	allowed

[20] The same can be said about the bill of the respondents' Bloemfontein attorneys, Naudes. The disputed items were:

Item 27	2	pages	instead of 1	page allowed
Item 28	221	pages	instead of 161	pages allowed
Item 34	2	pages	instead of 1	page allowed
Item 37	3	pages	instead of 2	pages allowed
Item 38	2	pages	instead of 1	page allowed
Item 43	2	pages	instead of 1	page allowed
Item 48	2	pages	instead of 1	page allowed
Item 50	2	pages	instead of 1	page allowed
Item 52	317	pages	instead of 195	pages allowed
Item 59	25	pages	instead of 20	pages allowed
Item 60	23	pages	instead of 16	pages allowed
Item 65	2	pages	instead of 1	pages allowed
Item 76	11	pages	instead of 5	pages allowed
Item 83	81	pages	instead of 60	pages allowed

Item 85	34	pages	instead of 31	pages allowed
Item 94	2	pages	instead of 1	page allowed
	731 pages		instead of **498** pages	allowed

[21] I would therefore set aside the ruling of the taxing master in respect of each of the items specified above and substitute the incorrect number of pages with the correct number as shown above. This disposes of the first ground of objection.

[22] I turn now to the second ground of the objection. It concerns the perusal of documents in **THORNYCROFT CARTAGE CO v BEIER & CO (PTY) LTD AND ANOTHER** 1962 (3) SA 26 (N) the word perusal was said to mean:

> "The application of a trained legal mind to the contents of the document in question."

[23] Item 16 Hattingh Marais bill contained perusal of 3259 pages. The application which gave rise to this bill was launched in order to determine whether the parties had concluded an arbitration agreement or not and if the answer was affirmative, then to determine whether such an arbitration agreement was still operative.

[24] On behalf of the applicant it was contended that the bulk of the documents referred to in item 16 had a bearing on the merits of the arbitration and that they had no bearing on the application before Kruger J. The documents had already been in the respondents' attorney for quite some time in order to be used in connection with the anticipated arbitration

proceedings. As regards arbitration hearing consultations had already been held as between the parties. In other words, before the application was launched, the attorneys for the respondents were already *au fait* with the contents of the documents now in dispute. So went the contention of the applicant. Where a document had already been perused for one main purpose or dispute, a full perusal fee in connection with its use for an ancillary side-show, cannot be allowed. **GOLDSCHMIDT AND ANOTHER v FOLB AND ANOTHER** 1974 (3) SA 778 (T).

[25] Of the total 3259 pages of documents alleged to have been perused, only 800 pages were annexed to the application. A staggering figure of 2459 of the total pages perused was discarded. The fact that more than 75% of the pages perused was not annexed can only mean that such discarded pages were considered irrelevant for the purposes of the application by the respondents themselves. If that was the case, I find it difficult to understand why the applicants should be held responsible for the payment of the full perusal fee for the documents which were not necessarily perused and annexed to the founding affidavit in the main application.

[26] It must therefore be accepted for the purposes of a fair, just and equitable taxation that the 800 pages that were annexed to the application were the only documents that could have been perused. That, however, is not where it all ends. Of the 800 pages that were actually annexed, 28 were blank sheets, 27 were repetition of some annexures to the standard contract between the applicants and each of the respondents and 103 pages were re-perusing of the documents previously exchanged between the parties by way of correspondence. When these 158 pages are taken into account, there remain only 642 pages of the original 3259 pages. The three errors, especially the error pertaining to

the blank sheets, cast a shadow of doubt as to whether the pages in the item were indeed actually perused.

[27] A litigant who dumps every single scrap of paper on the desk of his attorney, however irrelevant, and expects his attorney to find a needle in a haystack, does so at his peril. Whereas the attorney is bound to peruse every scrap of such document, he is not entitled to recover or claim the full fee for perusing the irrelevant documents from the losing opponent. Of course the attorneys is entitled to claim such fees on the scale as between attorney and client and not on the scale as between party and party.

[28] Although the respondents argued on taxation for the full perusal fee in respect of this item, on review they did not mount any challenge to the applicant's contention. They chose to abide. In the light of all this I am inclined to uphold the contention of the applicant. The full perusal fee should not have been allowed by the taxing master. Therefore I would reverse the taxing master's ruling by disallowing a perusal fee in respect of 2617 pages (3259 – 642). This disposes of the second ground of the objection.

[29] The third ground of the objection concerns items 58 and 59 of Hattingh Marais' bill. The two items relate to perusing of the heads of argument. The taxing master in the stated case remarked that there existed differences of opinion as regards the perusing of heads of argument. He preferred the view

that it was necessary and proper as between party and party for an attorney to peruse heads of argument. He accordingly allowed a perusal fee of R2 025,00 and R975,00 for items 58 and 59 respectively.

[30] The contention of the applicant was that the taxing master erred in allowing such items because perusing heads of argument was an attorney client fee and as such should have been disallowed on taxation. I am in respectful agreement. **MAGWILL CARRIERS (PTY) LTD v NATIONAL TRANSPORT COMMISSION AND ANOTHER** 1982 (1) SA 166 (T) at 170 G. I would therefore set the taxing master's ruling aside. In my view, the two items should not have been allowed. These two items represent pure attorney and client fee. The respondents were not awarded costs on the more lucrative albeit punitive attorney and client scale of fees. The heading of the bill also shows that the lower party and party tariff applied.

[31] The fourth leg of the objection concerns item 25 of Naudes bill. The item relates to the attendance on receipt of documents by a local attorney of documents emanating from an instructing attorney. The item was divided into two classes of documents. The first class consists of 1902 pages described by the respondents as statements and schedules (state en skedule). The second class consists of 1357 pages described by the respondents as contracts,

correspondence, etc. (kontrakte, korrespondensie ens.).

[32] I am not certain as to why the documents were characterised in that fashion. The full fee for the necessary attendance to the first class of documents, 1902 pages, ordinarily should have been R47 550,00. However, the respondents chose to claim half of the fee due to them, which was R23 775,00. As regards the second class of documents, 1357 pages, the respondents claimed a full fee of R33 925,00. Here there was no halving of the fee. Therefore, the total fee claimed under this item for the necessary attendance was R57 700,00.

[33] The respondents claim was resisted by the applicant. The crux of the objection was that it was unnecessary for the local attorney to attend to such documents because right from the outset the instructing attorney had been in complete control of the case. The grounds of the objection is fully set out in paragraph 4 of the applicants' reply filed on 7 February 2007. It reads as follows:

"4.

NAUDES ITEM 25:

4.1 Die opdraggewende prokureur was vanaf die staanspoor in beheer van die saak. Hy het saam met die korrespondent die Advokaat gaan sien en die met instruksies verskaf vir die opstel van die aansoek sowel as die repliserende eedsverklaring en laastens was hy teenwoordig tydens die argumentering van die saak in die hof.

4.2 Die rol wat die korrespondent moes vervul was om bevestigende eedsverklarings te laat onderteken en die dokumente te laat liasseer. Daarom hoef die korrespondent nie al die dokumente na te gaan nie.

4.3 Die doel van die deurlees van die dokumente is om die stukke op te stel. Dit is reeds deur die opdraggewende prokureur gedoen, sowel as die advokaat wat die stukke opgestel het. Indien die korrespondent iets kon gelees het sou dit slegs die finale Kennisgewing van Mosie gewees het soos dit opgestel is deur die Advokaat en nie die 3259 bladsye waarna verwys word nie. Sien '**Grobbelaar v Sentrale Raad vir Koöperatiewe Assuransie BPK 1973 (1) SA 310 (T) BY 313 F – H'.**

4.4 Die Takseermeester het sy diskresie verkeerdelik toegepas om die helfte van die item toe te laat."

[34] On taxation the taxing master took the total sum of R57 700,00 divided further by two and allowed a fee of R28 850,00. He motivated his mathematical calculation as follows:

"Die applikant se argument is dat dit nie nodig was vir plaaslike opdragnemende prokureurs om hierdie dokumentasie deur te lees nie, eerstens dat die opdragewende prokureurs dit wel deurgelees het en tweedens dat die advocate die stukke opgestel en die aanhangsels nagegaan en aangeheg het. Dit is verder die argument was dat Naudes slegs die korrespondent was en dus nie nodig gehad om die dokumente te lees nie.

My beslissing was om slegs die helfte (50%) van die totale fooi, soos gehef, toe te laat. Dit wil sê R23 775-00 + R33 925-00 = R57 700-00 ÷ 2 = R28 850-00 Die applikant se argument, dat Naudes slegs die korrespondent was, dra volgens my oordeel, geen gewig om nie 'n deurlees fooi toe te laat nie. Die respondente kwalifiseer vir die aanstelling van twee stele prokureurs en kan nie sien waarom die plaaslike prokureurs, wat suksesvol die geding namens hul kliënte gevoer het, gepenaliseer word."

The approach was wrong. The taxing master overlooked the fact that a component of the sum he halved R23 775,00 was already half of the full fee of R 47 550,00 which the respondents on their own had halved prior to the presentation of the bill. The practical effect of the approach is that in respect of the first class of documents the taxing master allowed a quarter of the full fee which equals R11 887,00 and in respect of the second class half of the full fee which equals R16 963,00. The two add up to the sum of R28 850,00.

[35] I appreciate the good intentions of the taxing master in the above approach. However, it will be readily appreciated that, despite such good intentions, the approach was unmethodical and unprincipled. The arbitrary nature thereof produced inequitable results. In **R. SCHELLAUFF v W.E. WILDHABER NO & OTHERS**, *supra* on page 6 Botha J observed that there was no provision in the tariff for allowing a portion of the prescribed basic unit of remuneration. The fractionalisation of the tariff is therefore impermissible.

[36] I have previously found that the respondents did not count the words to verify the number of pages in order to justify the fee they claimed for perusing documents. The same can be said about this item. There is no basis for relying on their bare claim that the local attorney received from the instructing attorney and attended to 3259 pages. Earlier on I found that the applicants' contention that only 642 were perused was reasonable and acceptable. That figure is also equally representative of the fairly accurate and equitable number of the pages of documents received and necessarily perused under this item.

[37] Under various items, for instance, item 2, 3, 4, 9, 10, 31, 32 and so on, fees specifically pertaining to letters written and received were claimed and allowed. That was, of course, correspondence. What ... “korrespondensie ...” as referred to in item 25 means is rather obscured and vague. To make matters worse the word “korrespondensie” is followed by the vague word “ensovoorts”. Perhaps the word correspondence in this item referred to letters exchanged between the applicant and its individual members, the respondents. I can only guess. It must be borne in mind that the respondents did not reply to the stated case by the taxing master to clarify this item or any other disputed item for that matter.

[38] The taxing master’s stated case and the applicants’ reply thereof shows that the real nature of the fees claimed under this item was misunderstood. The taxing master talks of “... deurlees fooi” whereas the applicants used expressions such as “... die deurlees van dokumente ...” and “... die korrespondent iets kon gelees het ...”. The item does not concern perusing of documents, but rather the local attorney’s necessary attendance to the documents when they were received. This kind of fee relates to a series of important little steps taken before the documents are actually perused. For instance, the fetching of the letter plus annexed documents concerned from the post office, the opening thereof in an attorney’s office, the drawing of the relevant file from the filing cabinet, the placing of the letter therein and the placing of the file before the respondents’ attorney for perusal.

[39] Indeed the meaningful role of the local attorney was drastically reduced by the deep involvement of the instructing attorney, for instance, he gave direct instructions to counsel,

accompanied by the local attorney, he attended consultation with counsel and also attended court the day the application was argued before Kruger J on 17 November 2005. His active, dominant and participative role greatly minimised the role of the local attorney. But there was nothing wrong with that sort of involvement. Primarily his clients looked upon him to protect their interests as best he could. But the obvious arbitrariness entailed in the approach used, effaces the reliability thereof as well as the taxing master's discretion, however well intended, it was exercised.

[40] I am of the view that the taxing master misdirected himself by adopting the approach as he did and by misconstruing the true nature of the fees as itemised in this fourth leg of the objection. I would, therefore, set the ruling whereby a fraction of the fees claimed was allowed for perusing 3259 pages and substitute, therefore, a fee for the necessary attendance on receipt of 642 pages.

[41] I proceed now to consider the fifth ground of the objection. It is about item 28 Naudes bill. It reads as follows:

> "Naudes – Item 28
>
> Dieselfde argument soos per Paragraaf 4 hierbo.
>
> Die Takseermeester beslis dat dit nodig was om te lees."

The grounds of objection were formulated as follows:

> "5,
>
> **NAUDES ITEM 28:**
>
> 5.1 Die Advokaat stel die stukke op en stuur dit terug an (sic) die opdraggewende prokureurs wat dit nagaan vir korrektheid. Hoekom moet die korrespondent dieselfde

taak vermag as wat die opdraggewende prokureur al reeds gedoen het? Dit dui op duplisering.

5.2 Reël 70(3) is van toepassing '**no cost shall be allowed which appeared to the Taxing Master to have been incurred or / increased through over caution**'.

5.3 Die Takseermeester het dus verkeerdelik sy diskresie uitgevoer deur die deurlees fooi toe te laat."

[42] The taxing master's ruling is set out on page 4 of the stated case and reads:

"<u>Naudes – Items 28, 83 en 85</u>

Hierdie items handel ook oor die toelaatbaarheid van 'n deurleesfooi. Dit is weereens die applikant se betoog dat, aangesien Naudes slegs die korrespondent in hierdie aangeleentheid was, hulle daarom nie geregtig sou wees om die betrokke dokumente deur te lees nie.

In die oorweging van die toelaatbaarheid van hierdie items, steun die takseermeester grootliks op die bepaling van Reël 70(3):

'*With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonable incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.'*

Derhalwe was die gemelde items toegelaat.

Die partye word versoek om die bepalings van Hofreël 48(5)(a) na te kom."

[43] The essence of the objection was that what the local attorney did was an unnecessary duplication of what the instructing attorney had already done. Here the number of the pages is not an issue. The local attorney's attendances to the founding affidavit plus annexures thereto, as well as the replying affidavit plus annexures all in support of the application can never be regarded as duplication of work already done by the instructing attorney. Similarly the perusing thereof by the local attorney does not amount to unnecessary duplication, in my view.

[44] The bill shows as per item 29 that only one set of each sworn statement was received by the local attorney from the instructing attorney. The local attorney necessarily had to peruse such statements and annexures received from the instructing attorney to ensure that they were complete in every important respect before copies were made for service and filing. Item 30 demonstrates the importance of such perusing of documents from an instructing attorney by a local attorney. How else could the local attorney in this case have known that a revenue stamp had to be affixed to the notice of motion unless he physically perused such a document drawn by counsel and forwarded to the local attorney via the instructing attorney? How can a local attorney ascertain that the copies for service and filing were complete unless he had

taken the trouble to peruse each statement and each annexure referred to therein? It must be kept in mind that the ultimate responsibility to the court seized with the matter rests with the local attorney and not the instructing attorney. It is the former's name and not the latter's that is officially on record as the respondents' legal representative. The local attorney cannot seek refugé behind the instructing attorney should a litigant's founding or replying papers be found wanting on the day of the hearing or argument.

[45] In allowing the fee in this item the taxing master relied on the provisions of Rule 70(3). I am of the opinion that he was quite correct in doing so. The respondents were legitimately entitled to a full indemnity for such costs which, it appears to me, were reasonably incurred in pursuit of the relief they sought. There was no over-caution here. It seems to me that the objection in this regard had no substance and that the taxing master exercised his discretion properly and reasonably. In the circumstances I am inclined to uphold his ruling. The applicant has failed to show that the taxing master has committed reviewable misdirection or irregularity.

[46] Naudes items 83 and 85 – this is the sixth and the final leg of the objection. The two items concerned attending to the service of the respondent's heads of argument and the perusing thereof. The nature of the professional services rendered and the grounds of objections are the same as

those raised in connection with the third leg of the objection.

I found that the taxing master's ruling whereby he allowed the fees as recoverable party and party was incorrect. The same considerations I articulated in connection with items 58 and 59 of Hattingh Marais apply with equal force here. Therefore, I would set aside the ruling in respect of both items.

[47] In the results the following order is made:

47.1 The objection is upheld as regards the first, second, third, fourth and sixth grounds thereof.

47.2 The rulings of the taxing master in respect of the affected items as specified in the notice of review, are set aside.

47.3 The affected items are taxed off and the bills are adjusted in accordance with this judgment.

47.4 The objection is dismissed as regards the fifth ground.

47.5 The rulings of the taxing master in respect of the items attacked in terms of the fifth ground, are upheld.

47.6 The items referred to in paragraph 47.5 *supra* are allowed to stand.

47.7 There is no order made as to costs.

M.H. RAMPAI, J

On behalf of the applicant: Messrs Horn & Van Rensburg
BLOEMFONTEIN
and
Messrs Gerrit Coetzee Inc.
POTCHEFSTROOM

On behalf of the respondent: Messrs Naudes
BLOEMFONTEIN
and
Messrs Hattingh Marais
BETHLEHEM

/sp