IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case NO: 000219-2023

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED

[redacted]

21 June 2024 ____________________

WRIGHT J

In the matter between:

THE SOUTH AFRICAN BOARD OF SHERIFFS	Complainant
and	
MN CIBE – THE SHERIFF, SOWETO WEST	Respondent

JUDGMENT

WRIGHT J

1. Ms MN Ciba, a sheriff, faced disciplinary proceedings before the South African Board for Sheriffs. Allegations of trust account wrongdoing by Ms Ciba were made. Proceedings commenced, apparently either in 2020 or 2021. It does not matter precisely when the hearing started. The partly heard case

was at some stage adjourned to 27 September 2021 for the matter to run until 1 October 2021, that is five days of further hearing were contemplated. On 27 September 2021, the hearing was postponed to 14 March 2022 for hearing over five days to 18 March 2022. Both postponements were at the request of the Board and on both occasions the time reserved was not used other than, at most, part of the first day.

2. The Board was ordered to pay the wasted costs on both occasions on the party and party scale. Bills of costs were drawn up and after opposed taxations the Taxing Master signed the allocaturs. The Board now seeks to review certain items awarded under both allocatur.
3. The facts before me are somewhat sparse. The Taxing Master complains that certain information was not placed before him.
4. It must be borne in mind that a considerable time elapsed between the hearing previous to that of 27 September 2021 and that date as well as between the two postponed hearings.
5. There is considerable but not complete overlap between the two bills.
6. It is necessary for me to calculate the extent to which the reviews are successful so that I may see what costs' order to make in the reviews.
7. The amounts to which I refer below exclude Vat.

The wasted costs of 27 September to 1 October 2021

8. Item 1 – attorney's preparation and perusal – 557 pages at R66,50 per page, giving R37 040,50 was claimed and allowed. The Board complains that the word count per page is wrong and that only a portion of the allowed time is

reasonable. In my view, it is imperative that legal practitioners are fully prepared for cases when they start. Lack of preparation hinders the running of a case and may prejudice the client. On the sparse information before me I cannot see any misdirection by the Taxing Master.

9. Item 2 – attorney's preparation and perusal of a further 43 pages at R66.50 per page, giving R2 859,50 was claimed and allowed. I make the same finding here and for the same reason as in Item 1.

10. Item 3 – attorney's preparation fees – attorney's preparation and perusal of 807 pages at R66.50 per page, giving R 53 665.50 was claimed. Half, R26 832,75 was disallowed. I make the same finding for the same reason as in Item 1.

11. Item 5 – attorney's reservation fees – The attorney, in relation to a virtual hearing, reserved 5 days at 8 hours per day at R328 per 15 minutes, giving R52 480, allowed in full. Here, the review must succeed in part. I do not know precisely how much time was spent on the first day on the case. I have no basis for criticizing the Taxing Master for allowing the first day. However, in my view, 4 days' collapse fee in a wasted costs bill is excessive. These 4 days are not wasted, they are akin to a luxury in the circumstances of the matter. There is no evidence that the attorney lost other work for these 4 days because of the postponement. The sum of R52 480 must be reduced by 4 days, that is by 80%, down to R10 496. The degree of success in the review of this Item is R52 480 – R10 496 = R41 984.

12. Item 6 – counsel's fees – Counsel charged R15 000 for 1 day's refresher and preparation. Counsel also charged R15 000 per day for five days, that is the first day of hearing and a 4 day collapse fee. The Taxing Master allowed the 1

day preparation fee but disallowed R37 500, that is 2.5 days, of the collapse fee. It was important that counsel was fully prepared for the hearing. Charging a day to refresh was reasonable and necessary. Charging for the first day was reasonable. However, charging a collapse fee for the 4 subsequent days is not something which can be taxed in a wasted costs' bill on the party and party scale on the information before me. The fees were not wasted. There is no evidence that counsel turned away other work over the four days. Even if there was, it would be overly harsh on the Board to saddle it with such costs. The R90 000 as drawn, reduced by R37 500 by the Taxing Master, must be reduced to R30 000. The degree of success achieved on review of this Item is R90 000 – R37 500 = R52 500 – R30 000 leaves R22 500.

13. The total extent to which the review succeeds is R41 984 + R22 500 = R64 484.

The wasted costs of 14 to 18 March 2022

14. Items 1, 2 and 3 – attorneys preparation fees – The same considerations apply here as to Items 1, 2 and 3 of the review above.
15. Item 4 – attorney's reservation fees – The same considerations apply.
16. Item 5 – counsel's reservation fees – Counsel charged R105 000 at R15 000 per day, for a total of 7 days. 2 days were charged for preparation and then a day for the hearing and a 4 day collapse fee. A globular R37 500 was taxed off. In his stated case, the Taxing Master said that he allowed " *preparation (10 hrs) at R15 000 and appearance reservation for 5 days at half rate R37 500*." This wording is difficult to reconcile with a single amount of R37 500 actually taxed off. It would thus appear that both days' preparation

was allowed. In my view, the preparation by counsel for 2 days can't be challenged. A fee for the first day of the hearing was reasonable, but a collapse fee for 4 days is subject to my findings above relating to counsel's fees. In total, counsel's fees should be allowed for 3 days, being 2 days' preparation and a day of hearing. The R105 000, as drawn, but reduced by R37 500, must be reduced to R45 000. The extent of success on this item is R105 000 – R37 500 = R67 500 – R45 000 = R22 500.

17. The extent to which this review succeeds is R41 984 on Item 4 and R22 500 on Item 5, giving R64 484.

Costs of the review

18. On the wasted costs bills, the Board has achieved success to the extent of R 64 484 and R64 484, giving a total of R128 968. The Board has achieved substantial success and is entitled to party and party costs. As from 12 April 2024, these costs are to be on scale A and accordingly there is no need for me to specify the scale.

ORDER – Regarding the wasted costs of 27 September to 1 October 2021

1. The review is upheld in part.
2. The allocatur is set aside.
3. The Taxing Master is to reduce the R52 480 as drawn in item 5 to R10 496.
4. The Taxing Master is to reduce the R90 000 as drawn in item 6 to R30 000.
5. The Taxing Master is to redo the allocatur accordingly.
6. The respondent is to pay the applicant's costs of the review.

ORDER – Regarding the wasted costs of 14 to 18 March 2022

1. The review is upheld in part.
2. The allocatur is set aside.
3. The Taxing Master is to reduce the R52 480 as drawn in item 4 to R10 496.
4. The Taxing Master is to reduce the R105 000 as drawn in item 5 to R45 000.
5. The Taxing Master is to redo the allocatur accordingly.
6. The respondent is to pay the applicant's costs of the review.

[redacted]

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

RECEIVED : 13 June 2024

DELIVERED : 21 June 2024

APPEARANCES : None – In chambers after considering further written argument from both sides and after the Taxing Master had declined to make further submissions.

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