

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED: YES/NO

5/9/2024

DATE

SIGNATURE

Case No: 82643/2017

In the matter between:

Sindor, O R

Plaintiff

and

The Road Accident Fund

Defendant

JUDGMENT - REVIEW OF TAXATION

FRANCIS-SUBBIAH J:

[1] The plaintiff dissatisfied with the taxing master's rulings, requests a review of taxation in terms of Rule 48 of the Uniform Rules of Court. The unopposed bill of costs was taxed on 29 November 2022. The taxing master reduced amounts claimed as disbursements (expenses) at items 104, 139, 145, 146, 147, 154, 190, 285 and 420 of the bills of costs.

[2] These items relate to the costs of a motor vehicle provided by a shuttle service. The taxing master ruled that the shuttle usage for the plaintiff's travelling costs to attend medical legal examinations is a luxury on a party and party basis. For this reason, she disallowed the full amount claimed for the shuttle service and instead allowed a fee that she considered a reasonable cost of transportation. She ruled that the travelling costs would be allowed at a rate of R3,00 per kilometer in 2018, and R3,50 per kilometer in 2019 to 2021.

[3] The plaintiff contends that the taxing master should have allowed the full shuttle service accounts because of the plaintiff having a reduced mental capacity. It was submitted at taxation that the plaintiff was not able to make use of public transport and personal family transport. The plaintiff's attorneys instructed shuttle services to collect the plaintiff from his residence in Mahikeng and to transport him to and from consultations at their office, medical legal appointments with the experts and to the virtual court hearing at their offices. It was advanced that the use of the shuttle services to transport the plaintiff was both reasonable and necessary under the circumstances and for that reason the

items referred to above where reasonable, proper and necessary and that the taxing master was wrong in her decision to reduce the claimed amount.

[4] The cost award was granted on a party and party basis by the court. Party and party costs have been described by learned authors Herbstein & Van Winsen *The Civil Practice of the Supreme Court of South Africa* 4 ed (1997) at 702, as

“...those costs which have been incurred by a party to legal proceedings and which the other party is ordered to pay him. They do not include all costs which a party to suit may have incurred but only those costs, charges and expenses that appear to the taxing master to have been necessary or proper for the attainment of justice or for defending the rights of any party.” (underlining is my emphasis)

[5] Therefore, a taxing master's function is to ensure that costs are maintained within appropriate limits, preventing the allowance of excessive expenses. It is particularly important that the opposing party is not unfairly burdened with unnecessary costs. This view was elaborated upon in ***Smith and Others v MEC for Health – Mpumalanga*** 2021 (6) SA 532 (ML) at para 32, where the court held that the process of taxation is to ensure that winning parties are not put completely out of pocket. At the same time, the process is to ensure that the losing parties are not ruined by exorbitant legal costs.

[7] The discretion to award such costs as disbursements and make a determination falls within the exclusive purview of the taxing master. The crux of this issue is whether on a party and party basis the full account of the shuttle service should be granted by the taxing master because the plaintiff presented with a reduced mental capacity.

[8] The taxing master's discretion is wide, but not unfettered. In exercising it the taxing master must properly consider and assess all the relevant facts and circumstances relating to the particular item concerned. It must be determined whether the cost incurred under the circumstances are reasonable and proper in determining the reasonableness of the disbursement. Discretion is not properly exercised if such facts or circumstances are ignored or misconstrued.

[9] The taxing master ruled that an attorney is bound to litigate in the least expensive and most expeditious manner. Over caution and fear that the client will not arrive timeously at any expert appointment cannot be recovered on party and party scale. The extent of the reduced mental capacity was not fully explained at the taxation. She stated that there was nothing to indicate or mention in the taxation that the litigant was so incapacitated that it required special intervention. From the submissions it is not made out that the plaintiff was constrained by having to carry any medical equipment that would require specified and preferred transportation.

[10] The taxing master acknowledges that a practice has developed over the years where messengers and drivers employed by law firms attend to the service, filing of documents and transporting of their clients to attend medical legal appointments. Clients are transported from guest houses and hotels to experts and back at no cost to the other side. A law firm transporting its clients to various appointments in a single trip to keep expenses down is considered reasonable and appropriate. Further, time spent by a messenger or driver transporting a litigant cannot be recovered on a party and party scale. Similarly, the cost of a shuttle service is a luxury because its rate comprises various factors, making it expensive. She further stated that the prime duty of an attorney is to his client and must not incur expenditure which can be avoided.

[11] The applicant contends that the use of the shuttle services was neither luxurious nor over cautious but vitally necessary to ensure that the patient attended the medical legal appointments and virtual court hearings in Pretoria. A strict application of the normal transportation principles applicable to an able-bodied individual to the plaintiff is deemed to be inequitable. Plaintiff submits that the full shuttle costs were reasonably incurred and not increased through over-caution, negligence or mistake. The full shuttle costs are not luxurious and extravagant so it would not be an injustice to impose upon the Road Accident Fund.

[12] Rule 36 of the Uniform Rules of Court provide for a plaintiff claiming damages or compensation to submit to a medical examination for the determination of their state of health. The expenses tendered shall be on the scale as if such a person were a witness in a civil suit before the court. The cost shall include such a person's travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him.

[13] At item 146 the plaintiff claims a disbursement of R6 240 on 25 November 2019 to travel from Mafikeng to Pretoria and returned home on the same day. On the very next day repeated the same conveyance back to Pretoria. Travelling some 640 km return on 26 November 2019 and charged a further R 6 240 at item 147. Although, a night accommodation in Pretoria would have been cost effective and reasonable in the circumstances reducing the travel costs by a full return trip. The taxing master, however reduced each of these amounts and I consider she rightly did so.

[14] There is no legal precedence that deals with a client making use of luxury or expensive transport. However, in addressing the issue of travel expenses, Van den Heever J took the view in *Kruger v De Bruyn* 1943 OPD 38 at 45 that, a witness travelling 'elegantly and expensively' when he may do so inexpensively by public conveyance, shall not recover more from the party condemned in costs than the actual fare on such public conveyance, whether used by him or not.

[15] In accepting the provision of Uniform Rule 36 that the travelling expenses for the client/plaintiff shall be on the scale as if such a person were a witness in a civil suit before the court. The observation in Jacobs and Ehlers, *Law of Attorneys' Costs and Taxation Thereof* 1979 Juta p195 is relevant and expressed as follows:

“Whenever a witness makes use of public transport to attend a civil case an allowance equal to the actual cost of such transport for the forward and return journey along the shortest convenient route shall be paid to him: Provided that, if more than one suitable means of public transport is available, an allowance in respect of the less expensive one shall be paid.”

[16] It is further noted that GNR 525 of 21 March 1986: Tariff of allowance payable to witnesses in civil cases provides that the rate is R1.30 per kilometer in the case of a motor vehicle. This tariff has not changed and has been used universally since. When questioned as to how the rates of R3.00 and R3.50 was reached, the taxing master provided the following explanation:

“It was agreed amongst cost consultants, taxing master and RAF dating back prior 2020, we applied a reasonable rate since at that stage we relied on Government Gazette 11 April 2008, on the Tariff of Allowance payable to witnesses in civil cases. The Regulation allowed R1.30 per kilometre and as the years progressed, we increased it and that is how I got to R3.00 and R3.50. We all maintained this method through the year.”

[17] The circumstances under which a court will interfere with the discretion of the taxing master has been studied extensively. In ***City of Cape Town v Arun Property Development (Pty) Ltd and another*** 2009 (5) SA 227 (C) at para 17 the court observed that:

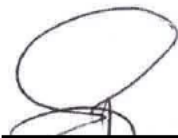
“The taxing master has discretion to allow, reduce or reject items in a bill of costs. She must exercise this discretion judicially in the sense that she must act reasonably, justly and on the basis of sound principles with due regard to all the circumstances of the case. Where the discretion is not so exercised, her decision will be subject to review. In addition, even where she has exercised her discretion properly, a court on review will be entitled to interfere where her decision is based on a misinterpretation of the law or on a misconception as to the facts and circumstances, or as to the practice of the court.”

[18] It is trite that a taxing master's decision will be interfered with only when the court is clearly satisfied that the taxing master's ruling was clearly wrong. This principle had been established by the Appellate Division in ***Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others*** 1984 (3) SA 15 (A) and remains a guiding principle to date. The court will only interfere when it is in the same or better position than the taxing master to determine the issue and its view differs materially from the taxing master's that it should be held to overturn the taxing master's ruling.

[19] The taxing master assessed the disbursement items in accordance with principles, rules and recognized practices regarding taxation and therefore discharged her discretion properly and correctly. The full shuttle accounts do not qualify as a party and party charge even though the plaintiff may have a reduced mental capacity. A reasonable fee for transportation by a motor vehicle was allowed. I therefore find no reason to interfere with the taxing master's discretion.

[20] For these reasons I make the following order:

- a) The review of taxation is dismissed.
- b) The taxing master's allocatur is confirmed.





R FRANCIS-SUBBIAH

JUDGE OF THE HIGH COURT, PRETORIA

The judgment was handed down electronically by circulation to the parties and or parties' representatives by e-mail and by being uploaded to Caselines. The date for the hand down is deemed to be on 05 September 2024.