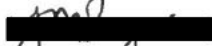


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
10.03.2025	
DATE	SIGNATURE

Case Number: 2021/51100

In the matter between:

STEVE DLWATHI

Applicant

and

THE TAXING MASTER

First Respondent

DAYTONA (PTY) LTD

Second Respondent

SHAREHOLDERS OF THE SECOND RESPONDENT

Third Respondent

In re: the matter between:

STEVE DLWATHI

Applicant

and

HYDE PARK AUTO (PTY) LTD t/a SANDTON AUTO	First Respondent
DAYTONA (PTY) LTD	Second Respondent
SHAREHOLDERS OF THE SECOND RESPONDENT	Third Respondent
ABRINA 3765 (PTY) LTD t/a BMW SANDTON	Fourth Respondent
SHAREHOLDERS OF THE FOURTH RESPONDENT	Fifth Respondent
THE SHERIFF OF THE HIGH COURT	Sixth Respondent

JUDGMENT

JM BERGER AJ:

[1] This is not the first time that Mr Steven Dlwathi, an admitted advocate, has approached this Court, in his personal capacity, on papers that are particularly difficult to understand. Styled as a review, purportedly brought in terms of rule 48 read with section 18(1) of the Superior Courts Act 10 of 2013,¹ the application appears to seek the following four forms of substantive relief.²

- a. First, an order reviewing and setting aside the allocator of the Taxing Master's ruling of 18 September 2023 pertaining to the bill of costs in respect of an interlocutory application that was decided by Strijdom AJ on 28 March 2023, in which Mr Dlwathi and his then attorneys were ordered to pay costs on the scale as between attorney and client;
- b. Second, an order declaring that the Taxing Master's ruling was made prematurely, is inconsistent with – and violates – section 18(1) of the Superior Courts Act, and ought to be set aside or nullified;

¹ Without any explanation, Mr Dlwathi – in his papers, and in both written and oral submissions – continued to refer to “rule 18(1)” of the Superior Courts Act.

² As the notice of motion is so poorly drafted, I have attempted to make sense of what relief is sought.

- c. Third, an order setting aside the punitive costs order granted by Strijdom AJ; and
- d. Fourth, an order declaring that “[t]he operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal ... [is] hereby suspended pending the decision of the application or appeal.”

[2] In order to make sense of this application, it is important to understand what was before Strijdom AJ, what he decided, and what has subsequently transpired.

[3] The application before Strijdom AJ was brought by the second respondent in this case, Daytona (Pty) Ltd. In that matter, Daytona sought – as its primary relief – to have a substantive application brought by Mr Dlwathi set aside as an irregular step in terms of rule 30(1). In the alternative, it sought to have that application struck out and dismissed in terms of rule 30A(10(b)), due to non-compliance with the rules.

[4] The court was also asked to strike out “*defamatory, scandalous, vexatious and irrelevant matter included in the answering affidavit filed in opposition to the Rule 30/30A application.*” Strijdom AJ found these allegations made by Mr Dlwathi to be “*manifestly defamatory, scandalous, irrelevant, and vexatious*”, noting that his attacks on the *bona fides* of Daytona and its legal representatives were unjustified.

[5] In addition to granting the substantive relief sought by Daytona, Strijdom AJ directed that Mr Dlwathi and his attorneys at the time pay Daytona’s costs, on the scale as between attorney and client. It is in respect of that costs order that Daytona sought to have a bill of costs taxed when its attorneys issued a notice of intention to tax. It is common cause that neither Mr Dlwathi nor the attorneys filed a notice of opposition.

[6] Seemingly of the view that the provisions of section 18(1) of the Superior Courts Act would prevent the bill of costs from being taxed, Mr Dlwathi applied for leave to appeal against the whole of the judgment and order of Strijdom J. That matter was heard on 8 June 2023, with a written judgment being handed down on 10 July 2023, in which the application for leave to appeal was dismissed with costs.

[7] This review application was launched on 9 October 2023, some three months later. As the answering affidavit correctly notes, the application was based on the

assumption that Daytona was not entitled to approach the Taxing Master to have the bill of costs taxed because of an alleged pending appeal in the Supreme Court of Appeal. But it appears that at the time this application was launched, and at the time Daytona answered, no such application to the SCA had been made.

[8] In oral argument, Mr Sing – who appeared on behalf of the second and third respondents – indicated that he had been advised by his attorney that an application to the SCA had indeed been made, albeit much later, and served on his clients, on 27 November 2024. When asked why this information had not been brought to the court's attention any earlier, he was unable to provide an answer, being accompanied only by his correspondent attorney. I return to this later when dealing with costs.

[9] In a letter dated 11 October 2023, Daytona's attorneys advised Mr Dlwathi of two things: first, that no application to the SCA for leave to appeal had been delivered; and second, that in any event, *Beinash v Reynolds*³ makes it plain that "*while pending appeal proceedings suspend a judgment creditor's right to execute a costs order, the same does not suspend the right to tax a bill of cost[s].*" Mr Dlwathi was invited to withdraw his review, failing which a punitive costs order would be sought.

[10] In oral argument, Mr Dlwathi – representing himself without the assistance of any co-counsel or attorney – conceded that his case had no merit. In particular, he accepted that he had no basis for bringing the review because –

- a. a review in terms of rule 48 cannot be pursued in circumstances where a notice "*require[ing] the taxing master to state a case for the decision of a judge*" has not been issued; and
- b. only two categories of persons may bring a rule 48 review: a party who objected to any item or part of an item, or a party dissatisfied with the taxing master's *mero motu* disallowance of any item or part of an item.

[11] He also accepted that had he properly applied his mind to Daytona's attorneys' letter of 11 October 2023, which he could not remember ever reading, he would have realised that his real concern – execution of the costs order pending an appeal – had

³ *Beinash t/a Beinash & Co and Another v Reynolds NO and Others* 1999 (1) SA 1094 (W)

actually been addressed. In such circumstances, Mr Dlwathi said that the matter would have been withdrawn.

[12] In an attempt to explain how such a poorly-considered application could be brought, Mr Dlwathi referred to what is set out in his affidavit supporting his application for condonation for the late filing of the review (which was filed timeously), and the late delivery of his heads.⁴ In that affidavit, dated 5 December 2024, which runs to over 20 pages, Mr Dlwathi sought to explain the delay by relying on an "*unfortunate illness*" of "*unknown cause(s)*" that was treated by traditional healers, sangomas, and diviners, over a period of months.

[13] In support of his affidavit, Mr Dlwathi filed an affidavit deposed to on 11 November 2024 by his 91-year-old mother, in which she also identifies herself as the mother-in-law of the second respondent, and the grandmother of a Ms Fezeka Noluthando Dlwathi. As Daytona is the second respondent in this matter, I have no idea to whom reference is made. Nevertheless, from some of the contents of the affidavit, it is clear that it was filed in support of the condonation application.

[14] The affidavit, replete with lengthy footnotes and references to case law and various publications, goes into great detail about the alleged causes of Mr Dlwathi's alleged illness. It also includes long sections dealing with personal family matters that have nothing at all to do with this case. In my view, the choice to include this affidavit in Mr Dlwathi's papers, with little to no evidential value, raises red flags in respect Mr Dlwathi's fitness to practice law.

[15] The difficulty I have with Mr Dlwathi's explanation is that even if it is true, it does not explain why he filed the heads of argument and practice note that he did in December 2024, continuing to pursue an obviously defective application, at a point after he had returned to practice. At that stage, he should have had the opportunity to apply his mind properly to the papers, and – if that had been done – taken a decision to withdraw the matter, and tender costs.

[16] For the sake of completeness, I now deal with the third and fourth forms of substantive relief sought by Mr Dlwathi.

⁴ Mr Sing correctly conceded that condonation ought to be granted.

[17] The declaratory order sought in prayer 3 of the notice of motion, to set aside the punitive costs order granted by Strijdom AJ, cannot be granted in review proceedings such as these. That much is obvious. That costs order is part of the full judgment and order in respect of which the application to the SCA for leave to appeal has been filed. Should the SCA grant leave to appeal, it would have the necessary authority to deal with the issue. Unless and until that happens, the costs order stands.

[18] Although I am empowered by section 21(1)(c) of the Superior Courts Act to grant declaratory orders in appropriate circumstances, no legitimate purpose would be served here by granting an order that does no more than restate part of the law as set out in section 18(1) of the Superior Courts Act. Indeed, it would be misleading to make such a pronouncement without expressly mentioning the caveat: that section 18(1) must be read subject to subsections (2) and (3).

[19] That leaves the issue of costs. In oral argument, Mr Sing submitted that the following three factors would justify the grant of a punitive costs order:

- a. First, Mr Dlwathi's false statements in paragraph 10 of his founding affidavit dated 2 October 2023, in which he alleged that the papers in an application for leave to appeal to the SCA had been served on Daytona's attorneys. As Mr Sing advised in oral argument, that application was only served on his instructing attorneys over 13 months later. Moreover, there is nothing in the evidence to gainsay Daytona's evidence that, at the time the answering affidavit was prepared, no such application had been delivered.
- b. Second, the contents of Daytona's attorneys' letter dated 11 October 2023, in which Mr Dlwathi was warned that should he persist with his clearly unmeritorious application, a punitive costs order would be sought.
- c. Third, the misjoinder of the third respondent, who had nothing to do with the taxing of the bill of costs.

[20] While Mr Dlwathi has indeed acted poorly, I am loathe to exercise my discretion to award another punitive costs order against him, particularly in circumstances where he has clearly not been well. Moreover, Daytona continued to persist in its submission that an application to the SCA had never been served on its attorneys. It was only

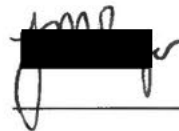
halfway through oral argument when this Court was advised that such an application had been made, albeit long after the affidavits in this matter had been delivered.

[21] Even in his practice note dated 19 February 2025, Mr Sing submitted that there is no pending appeal in the SCA. That practice note was delivered by his instructing attorneys, who had been served with a copy of the pending application some three months earlier. If they had been doing their jobs, they would have noticed the very obvious error, and ensured that it was corrected timeously.

ORDER

[22] In the result, I make the following order:

- a. The application is dismissed.
- b. The applicant is directed to pay the second and third respondents' costs, including the costs of counsel.



JM BERGER
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Dates:

Hearing: 3 March 2025

Judgment: 10 March 2025

Appearances:

For the applicant:

In person

For the second and third respondents:

Mr Z Sing, instructed by Alan
Allschwang & Associates Inc.