IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
SIGNATURE	DATE: 6 May 2025

Case nos. 2024-067120 and
A2024-005340

In the matter between:

R[…] D[…] D[…] Applicant / Appellant

and

V[…] D[…] D[…] Respondent

JUDGMENT

WILSON J (with whom MABESELE J agrees):

1 These two matters, an appeal and a review of decisions of the clerk of the Magistrates' Court on three bills of costs, were set down before us by Mr. Dell, who is the appellant in the appeal and the applicant in the review.

The procedure Mr. Dell adopted

2 No doubt because he appears in person, and has not benefited from the advice of a legal practitioner familiar with the presentation of an appeal or a review before this court, Mr. Dell has not complied with the various rules which govern the presentation of the record on appeal or review of proceedings in the Magistrates' Court. The files in both of these matters are substantial, and they include a great deal of irrelevant matter.

3 In addition, it seems clear to me that the steps prescribed by Rule 35 of the Magistrates' Court Rules have not been followed in this case. Rule 35 stipulates that anyone dissatisfied with the decision of a Magistrates' clerk on the taxation of a bill of costs ought first to apply to a Magistrate to review that decision. If the applicant for review is still dissatisfied, the Magistrate may then lay a stated case before a High Court Judge in chambers. The Judge may then correct or substitute the Magistrate's decision with their own, or refer the matter to a Full Bench consisting of two High Court Judges. A litigant dissatisfied with the decision of a Judge in chambers may also, having obtained leave to do so, appeal to a Full Bench (see the procedure summarised in Jones and Buckle, *The Civil Practice of the Magistrates' Court in South Africa*, volume 1, RS 31, at pages 575 to 578 and volume 2, RS 19, at pages 35-1 to 35-4).

4 There is no sign on the record that a Judge in chambers has dealt with Mr. Dell's complaints by way of a stated case. In light of the elaborate procedure prescribed, Mr. Dell might be forgiven for simply bringing the case before us with an oral summary of his objections to the way his bills were dealt with before the clerk and the Magistrate. The first question we must face, however, is whether the way Mr. Dell has apparently short-circuited the procedure deprives us of the power to deal with his complaint.

5 I do not think it does. We are bound, in the first place, by section 81 of the Magistrates' Court Act 32 of 1944. Section 81 states that "[t]axation by the clerk of the court shall be subject to review free of charge by a judicial officer of the district;

and the decision of such judicial officer may at any time within one month thereafter be brought in review before a judge of the court of appeal in the manner prescribed by the rules". The procedure in section 81 has three stages: taxation by the clerk of the Magistrates' Court; review by a Magistrate; and a further review by a High Court Judge. It seems to me that, if we consider ourselves as constituting the third stage of review, all three of these stages has been followed.

6 Section 81 makes clear that a litigant must move through these three stages "in the manner prescribed by the rules". In this case, Rule 35 applies and regulates the procedure on appeal or review. Mr Dell has not complied with the Rule 35 procedure, but I do not think that non-compliance can deprive us of our inherent power to hear his appeal and his review, in the exercise of our constitutional right to protect and regulate our own process in the interests of justice (see section 173 of the Constitution, 1996). Even were that power not constitutionally entrenched, it has long been recognised that the rules are made for the court, and not the court for the rules (see *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278E-G). We are, in other words, empowered to overlook the fact that this matter was neither referred to us by a Judge in chambers, nor brought before us with that Judge's leave, so long as the substance of section 81 has been observed. In this case, I believe it has. In any event, we are no doubt empowered to condone non-compliance with Rule 35, which we intend to do for the sake of disposing of Mr. Dell's principal complaint.

The substance of Mr. Dell's complaint

7 Mr. Dell's complaint is straightforward. Included in each of the three bills he submitted to the clerk below for taxation was a sizeable disbursement for sums allegedly paid to a close corporation identified as R&R Consulting. This is a firm of cost consultants of which Mr. Dell is a member. The invoices are presented to Mr. Dell by a Mr. van Rooyen, who is the other member of the firm. The line items in the invoices strike me as obscure, but Mr. Dell told us at the hearing that the expenses itemised were chiefly for the preparation of documents in a matrimonial action he is pursuing in person against the respondent, Ms. Dell, in the court below.

8 The clerk below taxed off the full amount of every item in the invoices on the basis that they were not true disbursements. The Magistrate confirmed that decision. Two reasons for this appear from the record. The first is that there was no evidence that the invoices were ever actually paid. The second is that, given that Mr. Dell has an interest in the close corporation presenting the invoice, there was nothing to demonstrate that Mr. Dell was not in effect charging for his own time in the pursuit of his own case. As Mr. Dell accepted before us, litigants appearing in person are not generally entitled to recover a fee for their own time spent in the pursuit of their case. They may recover fees paid to a legal professional, but that is something different.

9 The approach in an appeal against or review of the taxation of a bill of costs is well-settled. The question is not whether the clerk or the Magistrate below were correct. It is whether they exercised their functions reasonably, having taken into account all the relevant facts, and having identified and applied the correct principles of law (see, for example, *Visser v Gubb* 1981 (3) SA 753 (C) at 754–5).

10 Adopting that approach, I cannot see how we could interfere with the disposal of the bills in the Magistrates' Court. In the first place, the clerk was right to conclude that there was no evidence that the three invoices at issue had actually been paid. Mr. Dell sought to persuade us that the electronic stamp of the word "paid" across the invoices was evidence enough of this. In circumstances where Mr. Dell is himself a member of the firm presenting the invoices, that cannot be taken at face value. The clerk was right to demand more – for example evidence that the money actually left Mr. Dell's private account. Mr. Dell could not point to any such evidence.

11 Secondly, there is nothing on the record that gainsays the clerk's conclusion that Mr. Dell has effectively invoiced for his own time. The invoices do not, on their face, evince true disbursements. Many of the line items refer to fees for time spent on a particular task. Mr. Dell could point to nothing on the record that suggests that this was not his own time, which he accepted would not be recoverable.

12 There is accordingly no basis on which we may properly interfere with the exercise of the clerk's discretion. Both the appeal and the review must fail.

Costs

13 Ms. Dell appeared in person before us to defend the appeal and the review. She was understandably innocent of the rules that apply to this area of law, and confined herself to questions about the nature of the hearing and what it meant for her. We helped her with answers where we could fairly do so. It is clear, however, that Ms. Dell was put to some expense to attend the hearing. She flew up from her home in Cape Town, and was assisted by an attorney to defend the appeal and the review before she ran out of money to pay his fees on the eve of the hearing. It seems to me that Ms. Dell is entitled to those costs.

Order

14 For all these reasons –

14.1 The applicant / appellant's non-compliance with Rule 35 of the Magistrates' Court Rules is condoned.

14.2 Both the appeal and the review are dismissed, with costs, limited to the disbursements the respondent reasonably incurred to attend the hearing, and to the respondent's attorney's fees and disbursements reasonably incurred in preparing to oppose the appeal and the review.

S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 6 May 2025.

HEARD ON: 22 April 2025

DECIDED ON: 6 May 2025

For the Applicant / Appellant:	In person
For the Respondent:	In person