



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 2318/2023

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

30 May 2025
DATE


SIGNATURE

In the application between:

MINISTER OF POLICE

APPLICANT

and

WAYNE MZWANDILE DLADLA

FIRST RESPONDENT

SIVRIANO VLADEMIRO MALANDZELE

SECOND RESPONDENT

SIPHAMANDLA MTHEMBU

THIRD RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 11:30 on 30 May 2025.

JUDGMENT

Moleleki AJ

[1] The Applicant applies for the rescission and setting aside of the Taxing Master's allocator dated 7 December 2022 in respect of case numbers: 4902/2021; 4903/2021; and 4904/2021.

[2] The Respondents in opposing the application, seek the dismissal of the application with a punitive cost order.

[3] The Respondents had instituted claims for damages for the unlawful arrest and detention against the Applicant. Although the cause of action arose from the same facts, the Respondents had instituted separate actions under different case numbers. The matters were settled out of court.

[4] Pursuant thereto, the Respondents' attorneys prepared bills of costs under different case numbers and presented them to the Taxing Master for taxation on the same day. The Applicant did not oppose the taxation.

[5] The Applicant alleges that it later transpired that the Respondents' attorneys had duplicated some of the items in the bill of costs. For instance, the attorneys had claimed to have travelled three times for over 70 kilometres to attend to filing of certain documents for each one of the matters under different case numbers. The Applicant's contention is that the Taxing Master erroneously allowed the items as he was not aware that these were duplicated.

[6] The Applicant initially sought a rescission of the Taxing Master's allocator in terms of Rule 42(1)(a) of the Uniform Rules of Court. However, this was abandoned. The Applicant now pleads rescission in terms of common law, on the basis that there is misrepresentation involved that induced the Taxing Master to allow the impugned

items. The Applicant submitted further that the Respondents have failed to deny these allegations in their answering affidavit.

[7] The Respondents challenge the allegations made by the Applicants. It is contended that, subsequent to the settlement of the matters, they proceeded to prepare the bills of costs and served the notices of taxation on the Applicant's attorneys, the State Attorney. The Applicant's attorneys did not file any opposing papers in respect of the taxation, and did not appear before the Taxing Master to oppose the taxation.

[8] On 8 December 2022, the Respondents' attorneys served the Applicant's attorneys with the taxed bills of costs. It was only when payments were supposed to be made that the Applicant's attorneys raised an objection to the bills of costs. The Applicant refused to effect payments alleging that the Respondents' attorneys misrepresented the facts before the Taxing Master. It is further contended that the Applicant should have cited the Taxing Master to these proceedings and served him with this application.

Is the allocator rescindable or not?

[9] The rescission of an allocator is dealt with on the same principles as applicable to the rescission of orders or judgments granted on default of one party. The common law principles applicable to the setting aside of default judgments also apply to the setting aside of a Taxing Master's allocatur.¹

Rescission

[10] The court in *Government of the Republic of Zimbabwe v Fick and Others*,² when dealing with the requirements for rescission, stated as follows:

“[T]he requirements for rescission of a default judgment are twofold. First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must

¹ *Grunder v Grunder and Another* 1990 (4) SA 680 (CC). See also *Turnerland Manufacturing (Pty) Ltd v Taxing Master, Westerns Cape High Court and Another* [2023] ZAWCHC 164.

² *Government of the Republic of Zimbabwe v Fick and Others* [2013] ZACC 22; 2013 (5) SA 325 (CC) para 85.

show that on the merits it has a *bona fide* defence which *prima facie* carries some prospect of success. Proof of these requirements is taken as showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in refusal of the request to rescind.”

The existing common law test requires that both requirements must be met.

[11] Uniform Rule 70(4)(a) provides that the Taxing Master shall not proceed with the taxation of any bill of costs unless he/she is satisfied that the party liable to pay the costs has received due notice.

[12] Although the Taxing Master was not cited and is not party to the proceedings, it is not in dispute that the Applicant’s attorneys were notified of the taxation. In its founding affidavit, the Applicant stated that it is unknown why the attorney that dealt with the matters did not object to any items on the bills of costs, nor attend the taxation. It is further stated by the Applicant that it is suspected that the attorney did not anticipate that the Respondents’ attorneys would duplicate the charges and that the fraud would be detected at payment stage by the Head of Office of the State Attorney Mbombela, Mr Gibson Oupa Ngobeni.

[13] The Respondents challenge the allegations made by the Applicant on several grounds. Among them is that the Applicant has failed to provide any reasonable explanation for the Applicant’s default. The Respondents’ contention is that this Court cannot rely on assumptions when in fact, the attorney who dealt with the matter, Mr Masete is still in the employ of the State Attorney, albeit at another branch. The Respondents further stated that, since the Applicant’s affidavit is based on assumptions, it found it unnecessary to respond thereto. The Respondents further challenge the Applicant on the basis that Mr Masete was sent the bills of costs, and he signed them off for payment, which was an indication that he was satisfied thereof.

[14] After the bills of costs were taxed, an email was transmitted to the Applicant’s attorneys on 8 December 2022 attaching the taxed bills of costs. The Head of Office of the State Attorney was copied in the email. During April 2023, the Respondents’

attorney transmitted a letter reminding the Applicant of non-payment. There was no response. There is no dispute regarding receipt of this correspondence.

[15] I am persuaded that the Applicant's attorney was duly notified of the taxation on 1 August 2022. The Applicant took an informed decision not to object to the taxation or to challenge the items in the bills of costs which are in dispute. The Applicant has failed to furnish a plausible or acceptable explanation for its default, save to speculate why its attorney of record may have decided not to attend the taxation.

[16] As stated above, an application for setting aside or a rescission of the taxation under common law would be applicable where notice of taxation was given, yet a party had not attended the taxation, resulting in the taxation being conducted in such party's absence. However, the Applicant's application consists of a challenge to the items allowed by the Taxing Master which, according to the Applicant, should not have been allowed. In essence, the Applicant contends that the Taxing Master allowed amounts more than what should have been allowed. This, the Respondents refuted by referring to the taxed bill which indicated that some items had been taxed off. On the same breadth, the Applicant's application consists of the contention that the Taxing Master did not exercise his discretion judiciously.

Remedies Available

[17] There are different remedies available to a party aggrieved by an aspect of a taxation. A party seeking to review a taxation should do so in terms of the provisions of Rule 48. There are three further possible remedies, namely, Rule 30 (Irregular Step); an application for setting aside or rescission of the taxation at common law and through a Rule 53 review.³

[18] The Applicant's application, though presented as an application for a rescission or setting aside, seems to have conflated all these remedies. However, each of these remedies cater for specific instances, and the facts of a particular case should guide a party in employing one and not the other, or where suitable in the alternative.⁴

³ *Ebundu (Pty) Ltd v Blake and Others* [2024] ZAMPMBHC 11 para 31-36.

⁴ *Ibid* para 32.

[19] In the matter before me, the Applicant was given sufficient notice of taxation. That notwithstanding, the Applicant chose not to object to the items in the bill of costs and not to attend the taxation. Clearly, the Applicant was in wilful default. Having received notice and not opposing and/or objecting, nor attending, by implication amounts to consent to a taxation in absentia.⁵ An unsatisfactory and unacceptable explanation remains so, whatever the prospects of success on the merits. On this basis alone, this application must fail.

[20] Taxation requires the exercise of discretion. The court in *Kloot v Interplan Inc and Another*,⁶ stated the following regarding the Taxing Master's discretion:

“The Taxing Master has a discretion to be judicially exercised in allowing or disallowing or reducing the various items of a bill of costs. That discretion must be exercised reasonably and justly on sound principles and with due regard to all the circumstances of the case. In exercising his discretion he should ensure that the unsuccessful litigant is not oppressed by having to pay an excessive amount of costs and accordingly, although the court does not have a free hand to interfere with a Taxing Master's discretion on review, where he has failed to exercise his discretion judicially or properly or failed to bring his mind to bear upon the question, intervention is demanded.”

[21] As referenced by the Respondents in the bills of costs, there are amounts that were taxed off. This is an indication that the Taxing Master had considered the items in the bills. The files were presented on the same day before the Taxing Master. It has not been shown otherwise that the Taxing Master was not aware that the matters emanated from the same cause of action. The inescapable inference is that the bills of costs were duly taxed.

[22] It was submitted by the Respondents' legal representative that the delay in bringing this application to court was inordinate. The taxed bill was sent to the Applicant on 8 December 2022. On 6 April 2023, a reminder for outstanding payment was emailed. The founding affidavit in this application was deposed to on 24 May

⁵ *Joseph Sipho Dos Santos v Liason Ntini and Others* [2023] SZSC 46.

⁶ *Kloot v Interplan Inc and Another* 1994 (3) SA 236 (SE) at 238 H-I.

2023. The Applicant only acted after the Respondents had re-issued the writ of execution. In the Respondents' view, the Applicant is not *bona fide* but rather is intent on frustrating the Respondents from recovering their costs. The Applicant once again falls short of demonstrating that the application is *bona fide*.

[23] The applicant must abide by its election not to participate as it has relinquished its entitlement to do so. As firmly stated by Khampepe J, "[l]ike all things in life, like the best of times and the worst of times, litigation must, at some point, come to an end".⁷

Costs

[24] The Respondent submitted that a punitive cost order be granted against the Applicant on the basis that their conduct was *mala fide*. In the exercise of my discretion, I find it unnecessary to award an adverse cost order against the Applicant. There is no basis to deviate from the ordinary principle applicable to costs.

[25] In the result, the following order is made:

1. The application is dismissed.
2. The Applicant is to pay the costs of the application on a party and party scale.



M R MOLELEKI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

⁷ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28 para 1.

Appearances

For the Applicant: Mr T S Ngwenya
Office of the State Attorney
Mbombela

For the Defendant: Mr I S Thobela
Thobela I S Attorneys
Nkomazi

Matter heard on: 8 May 2025
Judgment delivered on: 30 May 2025