

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 39556/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
22 May 2025	

In the matters between:-

THABAZIMBI AIR COMPRESSORS (PTY) LTD

Applicant

and

ACDC WINDING (PTY) LTD

Respondent

JUDGMENT

H F JACOBS AJ:

[1] The applicant issued this application on 22 February 2021, claiming the following relief:

- "1. The Respondent's refusal, of 10th February 2021, to provide documentation so requested by the Applicant is unlawful and is hereby set aside;
2. The Respondent is hereby ordered to provide the Applicant with the documentation so requested within ten (10) business days from the date of this order;
3. The Respondent is hereby held liable for the legal costs of the Applicant herein;
4. The purported taxed bill of costs is set aside as an irregular process and declared null and void; and
5. Further or alternative relief the Honourable Court deems fit."

[2] The relief sought follows the taxation of the bill of costs and the allocatur issued by the Taxing Master. The allocatur reads as follows:

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Subtotal	<u>R54 897.48</u>
LESS: Disbursements Allowed	<u>R -</u>
Subtotal	<u>R54 897.48</u>
ADD: VAT	<u>R 6676.44</u>
TOTAL	<u>R 61 573.92</u>
Amount and allowed by me in the sum of	<u>R 61 573.92</u>

2020-12-01

IN THE PRESENCE OF

RECEIVED BY THE TAXING MASTER

MA

001-42

[3] The allocatur was issued on December 1, 2020, and contains the taxed costs due to the respondent's attorney on a scale between attorney and client. There must have been a *causa* for the taxation by the Taxing Master.

[4] The existence of allocatur is evident from the founding affidavit. There is no answering affidavit on behalf of the respondents because Kekana AJ struck out the affidavit filed on 8 August 2024 at the applicant's request. More about that shortly. First, the factual background drawn from the founding papers warrants mention.

[5] The applicant owed the respondent money for services rendered and goods sold and delivered in the sum of R57,952.26. The applicant demanded R65,085.00, and the applicant assumed that the balance of R7,132.74 was for legal costs incurred by the respondent for the collection of the debt. The applicant then paid the sums of R25,000.00 and R40,085.14 (totalling R65,085.14) in August 2020, after the date stated in the letter of demand.

[6] On 20 August 2020, the applicant's attorney received a further letter of demand for R15,000.00 from the respondent, allegedly for legal costs incurred in drafting and issuing a liquidation application for the winding up of the applicant.

[7] On 14 January 2021, the applicant received a letter of demand for payment of legal costs in the sum of R61,573.92, as taxed by the Taxing Master, in accordance with the allocatur quoted in [2] above. This application was brought by the applicant under the Promotion of Access to Information Act, 2 of 2000, following demands made to the respondent for information regarding how the bill was taxed, the amounts included therein, and consequently, the allocatur issued by the Taxing Master.

[8] There is no answering affidavit before me. The reason for that is this. On 7 February 2022, the matter was set down before Mbongwe J. On that day, there was no answering affidavit. The respondent sought a postponement, which was granted.

The respondent was ordered to file its heads of argument within 20 days. The respondent did file its heads of argument, but one day late. On the following day, 9 March 2022, it filed its answering affidavit and an application for condoning its lateness. In response to the late filing of the respondents' heads of argument, the condonation application and the answering affidavit, the applicant applied in terms of Rule 30 for the answering affidavit to be struck out. Kekana AJ heard the application on 30 April 2024, and he granted the order striking out the respondent's answering affidavit on 8 August 2024. Kekana AJ held the application for condonation to be "*not before*" him and was therefore not considered. I therefore confine myself to the evidence before me gleaned from the applicants' founding papers.

[9] It is important to note what is recorded in paragraphs 7, 8, and 9 of the judgment of Kekana AJ. In those paragraphs, it is stated that an extension of time (to accommodate the late filing of the answering affidavit) was sought, and the defence raised on behalf of the respondent that the application before me is fatally defective was addressed before Kekana AJ. The judgment indicates that the applicant was made aware of the alleged defect prior to the application being heard in April 2024. The answering affidavit was struck out despite the respondent's offer to cover the wasted costs caused by the lateness and the condonation application.

[10] This application was not served on the Taxing Master; the Taxing Master was not called upon to provide reasons, and no process envisaged by Rule 48 of the Uniform Rules of Court or Rule 53 has been followed by the applicant. Before a court can interfere with the decision of a Taxing Master (as claimed by the applicant in prayer

4 of its notice of motion), the court must be satisfied that the Taxing Master's ruling was "clearly wrong".¹

[11] There is a difference of opinion regarding whether a party, like the applicant who was absent during the taxation, may challenge the taxation on review under Rule 48, or if the provisions of Rule 53 should be applied in such a challenge. In my view, there is no need to delve into this difference of opinion in this matter, as the Taxing Master was not given the chance by the applicant to provide reasons for the taxation and the allocatur issued by him or her on 1 December 2020. I believe the applicant's application is, in this respect, fatally flawed for the purpose of a judicial challenge to set aside the taxed bill of costs, as claimed in the notice of motion.

[12] Section 7(1) of the Promotion of Access to Information Act, 2 of 2000 states that the act does not apply in cases where the production of or access to records is provided for by any other law after the commencement of civil proceedings and for the purposes of civil proceedings. In my view, Rules 48 and 53 (and, to a certain extent, Rule 6) of the Uniform Rules of Court provide for the supply of the information the applicant seeks. The request under these rules, along with the joinder and citation of the Taxing Master, would have enabled and perhaps still allows the applicant access to the information required to challenge the respondents' demand for payment of the taxed bill. Under these circumstances, the application must fail.

[13] The irony is that in prayers 1 and 2 of the notice of motion, the applicants seek relief in the form of the supply of information and/or access to information. When the respondent eventually filed an answering affidavit, the applicant applied for the

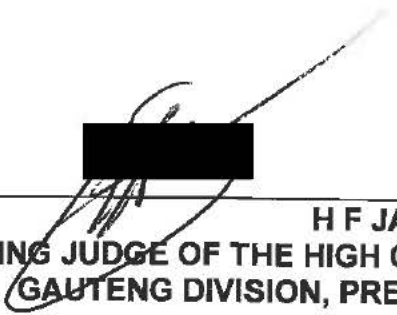
¹ See *Legal and General Assurance Society Ltd v Lieberum N O and Another* 1968 (1) SA 473 (A) at 478 G; *Brener N O v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd* (formally *D'Arcy Mysins Bentonn & Bowless SA (Pty) Ltd*) 1999 (4) SA 503 (W) at 527

affidavit to be struck out. This, in my view, constitutes an abuse of process and places an undue burden on judicial resources.

[14] It is not clear why the merits of the application (the main application) was not set down and heard by Kekana AJ last year. This application has been afoot for four years. Merits of this application could have been accommodated at that hearing and the presiding judge could have been informed of the merits, the provisions of the legislation applicable and the judgment of the Constitutional Court in this connection.

[15] Under the circumstances I make the following order:

1. The application is dismissed with costs including the costs of counsel taxable on scale B.


H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Heard on: 16 May 2025

For the applicant: Mr T Ramabokela
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For the respondent: Adv Lotter
Instructed by: Coombe Commercial Attorneys
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Date of Judgment: 22 May 2025