



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case no: 365/2023

In the matter between:

MACBETH ATTORNEYS INCORPORATED

APPLICANT

and

SOUTH AFRICAN FORESTRY COMPANY

SOC LIMITED

FIRST RESPONDENT

KOMATILAND FORESTS SOC LIMITED

SECOND RESPONDENT

TSEPO MONAHENG

THIRD RESPONDENT

SIYABONGA MPONTSHANA

FOURTH RESPONDENT

THE TAXING MASTER

FIFTH RESPONDENT

Neutral citation: *Macbeth Attorneys Incorporated v South African Forestry Company Soc Limited and Others* (365/2023) [2025] ZASCA 118
(15 August 2025)

Coram: PONNAN JA

Delivered: 15 August 2025

Summary: Costs – review of taxation – party not in attendance and fails to object before the taxing master – cannot thereafter invoke review of taxation procedure in terms of SCA rule 17.

ORDER

The application is dismissed with costs

JUDGMENT

Ponnan JA

[1] This application, ostensibly a review of taxation in terms of rule 17 of the rules of this Court (SCA rules), has been referred to me for decision in terms of subrule (6).

[2] On 24 April 2023, the applicant applied to this Court for leave to appeal against a judgment of the Gauteng Division of the High Court, Pretoria. The application, which was opposed by the respondents, was dismissed with costs on 14 June 2023. Thereupon, the respondents prepared the necessary Bills of Costs (the bills). On 28 February 2024, a Notice of Taxation was served on the applicant's correspondent attorneys in Bloemfontein, informing them that the matter had been set down on 20 March 2024 before the Taxing Master (taxing master) for taxation. There being no appearance on behalf of the applicant, the bills were taxed by the taxing master on an unopposed basis on 20 March 2024 and on that date the allocatur was completed. On 23 September 2024, the applicant set the review procedure envisaged in SCA rule 17 in motion.

[3] The taxing master initially declined to state a case for the decision of a judge because the application had been filed well outside the 20 days contemplated in SCA rule 17(3). The applicant was then compelled to bring an application for condonation. The condonation sought, which was opposed by the respondents, succeeded on 28 May 2025. In the meanwhile, the taxing master resigned without having stated a case for the decision of a judge. On 8 July 2025, the Chief Registrar (herself newly appointed), having familiarised herself with the matter and solicited the views of other

chief registrars with whom she had consulted, expressed the following view in a memorandum to the President of the Court:

‘[t]he general feeling when a taxing master resigns after having taxed a bill of costs, but before delivering a stated case is that the bills have to be taxed *de novo*, because other Taxing Masters will have difficulty in providing a stated case because they will not have the benefit of submissions made on taxation. Further the Taxing Master has the statutory conferred discretion which another Taxing Master cannot interfere with.’

As interesting a debate as that may be, it need hardly detain us, because, as I perceive it, rule 17 does not, in the circumstances of this case, avail the applicant.

[4] SCA rule 17(3) provides:

‘Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed by the taxing master of own accord, may within 20 days of the amount taxed and allowed require the taxing master to state a case for the decision of the President, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation, and shall embody any relevant findings of facts by the taxing master.’

[5] As SCA rule 17 makes clear, a ruling by the taxing master may only be brought under review if: (a) the item was objected to or (b) the taxing master disallowed it. A review of taxation under the rule is thus limited to those cases where there was an objection and those where the taxing master disallows an item *mero motu*.¹

[6] As to (b):

What (b) caters for is the case where the party presenting the bill is aggrieved; in other words, a case at the instance of the party presenting the bill, aggrieved by the taxing master’s disallowance *mero motu* of items included in the bill.² In the circumstances, there logically can hardly be an objection from the party presenting the bill, before the allocatur is signed by the taxing master and the rule obviously does not contemplate an objection in those circumstances. We are not here concerned with an item disallowed *mero motu* by the taxing master. The relief sought pertains to matters that were allowed. Accordingly, (b) finds no application. That leaves (a).

¹ *Mcunu v Southern Insurance Association Ltd* 1977 (2) SA 18 (SE) at 19A.

² *Daywine Properties (Pty) Ltd v Murphy and Another* 1991 (3) SA 216 (D) at 218C-D.

[7] As to (a):

SCA rule 17(3) quite clearly contemplates that only the matters objected to before the taxing master may be the subject of review. It does not cater for the case where a party fails to attend a taxation that is otherwise formally in order.³ Such a party may apply for the setting aside of the taxation on the same basis on which judgments by default are set aside.⁴ To borrow from the headnote in *Gründer v Gründer*:

'The Taxing Master's *allocatur* is a quasi-judicial administrative act: he must hear parties or their legal representatives (and if need be also evidence) and exercise a judicial discretion. Inasmuch as proceedings before the Taxing Master constitute an action in miniature, common law principles applicable to the setting aside of default judgments apply also to the setting aside of the Taxing Master's *allocatur*. An order as to costs cannot be enforced without the Taxing Master's quantification thereof, and a quantification done in the absence of one of the litigants ought to be open to challenge on the same basis as are default judgments.'⁵

[8] Not having attended the taxation, less still objected to any of the items in question, the applicant cannot invoke the review procedure provided by SCA rule 17 in a belated attempt to attack items that the taxing master allowed. It follows that the application must fail.

[9] In the result, the application is dismissed with costs.

V M PONNAN
JUDGE OF APPEAL

³ *Gran-Or (Edms) Bpk v Bevan* 1969 (2) SA 87 (T).

⁴ D Harms *Civil Procedure in the Superior Courts* Service Issue 46 at B48.1.

⁵ *Gründer v Gründer and others* 1990 (4) SA 680 (C) headnote at 680J–681B. See also *Barnard v Taxing Master of the High Court of SA (TPD) and Others* [2005] 2 All SA 485 (T).

Appearances

For the appellant:

Macbeth Inc., Mbombela

Motaung Attorneys, Bloemfontein

For the respondents:

Werksmans Inc., Johannesburg

Phatshoane Henney Inc., Bloemfontein