



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**Reportable
CASE NO: D9305/2012**

In the matter between:

LALITA SINGH

PLAINTIFF

and

HARESH OUDERAJH

DEFENDANT

ORDER

The following order shall issue:

1. The review is dismissed.
 2. The defendant is directed to pay the costs of review on scale A, excluding costs of preparation and heads of argument.
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JUDGMENT

NOTYESI AJ

Background facts

[1] This is a review by the defendant, Mr Haresh Ouderajh, of a decision by the taxing mistress to allow an item of storage fees, as disbursements, in the plaintiff's bill of costs taxed on 5 March 2020. The defendant disputed the liability to pay such storage costs on the basis that he had settled the judgment debt on 4 March 2019. According to the defendant, only storage costs incurred before 4 March 2019 should have been allowed. The application is brought in terms of Uniform rule 48.¹

[2] Before this Court, the defendant had contended that he is not liable for payment of storage costs once payment of the judgment debt plus taxed costs had been settled. According to the defendant, the post judgment sheriff's storage costs should not be allowed in taxation for the reason that the plaintiff was obliged to instruct the sheriff to release the attached goods upon full payment of the judgment debt. Consequently, the defendant had contended that the taxing mistress had improperly and wrongly applied her discretion when allowing an item relating to the storage costs incurred post the settlement of the judgment debt.

[3] The plaintiff is opposing the review. In opposing the review, the plaintiff contended otherwise. The contention on behalf of the plaintiff is that the disputed post judgment costs are recoverable for as long as it can be shown that these were necessary and proper expenses of execution and that they were incurred solely as a result of the defendant's failure to satisfy the judgment debt. The plaintiff contended that the taxing mistress had correctly allowed the storage costs, and in doing so, she had properly exercised the discretion bestowed on her by rule 70(3)².

¹ Rule 48 provides, '(1) 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 *mero motu* by the taxing master, may within 15 days after the *allocatur* by notice require the taxing master to state a case for the decision of a judge. (2) The notice referred to in subrule (1) must – (a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed; (b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed *mero motu* by the taxing master; (c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and (d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.'

² Rule 70(3) provides, 'With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a

The parties

[4] The record of the original proceedings refers to the parties as plaintiff and defendant. For the sake of convenience, I shall continue to refer to the parties as 'plaintiff' and 'defendant'.

Issue for determination

[5] The issue for determination is whether:

- (a) The taxing mistress was correct in allowing storage costs incurred post judgment from 4 March 2019.

Material facts

[6] On 12 February 2013, the plaintiff obtained a judgment against the defendant in the following terms:

- '1. Payment of an amount of R2 000 000,00 [Two Million Rand] plus;
2. Payment of the amount of R23 500,00 [Twenty-Three Thousand Five Hundred Rand] per month calculated from the 9th January 2011 to date of full and final payment of the further amount of R2 000 000.00 as set out above; and
3. Costs on a scale as between attorney and client.'

[7] Following the judgment, execution processes were invoked by the plaintiff. A warrant of execution was obtained against the defendant. On 31 August 2016, a motor vehicle, was attached and removed by the plaintiff. It was, from that date, kept in sheriff's storage. An interpleader claim in respect of the motor vehicle had been instituted by Harry O Investments CC prior to removal. The interpleader proceeding was dismissed. Two further interpleader proceedings were instituted. These were, again, dismissed.

[8] The defendant had also launched an application before this court seeking for the rescission of the judgment of 12 February 2013. The application was dismissed. The defendant applied for leave to appeal, which was dismissed. A petition to the Supreme Court of Appeal was also dismissed. Throughout this unending litigation, the motor vehicle remained in the sheriff's storage.

special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.'

[9] On 4 March 2019, the defendant made some payments to the plaintiff's attorneys. As a result of such payment, the defendant anticipated that the plaintiff would direct the sheriff to release the attached motor vehicle. The motor vehicle was still not released.

[10] On 29 August 2019, the plaintiff served the defendant with the notice of taxation relating to the storage costs. According to the defendant, the storage costs in the bill were claimed from 31 August 2016. The defendant disputed the obligation to pay the storage costs. He filed an objection to the storage costs item in the bill. The bill was taxed by the taxing mistress on 5 March 2020. The taxing mistress ruled in favour of the plaintiff and allowed the storage costs. The taxing mistress reduced the amount from R500 to an amount of R250 calculated daily.

[11] The defendant was unsatisfied with the ruling of the taxing mistress. He instituted a review application relating to the storage costs. The review application was dismissed by Radebe J on 12 April 2023.³ Following the dismissal of the review, the defendant adopted an attitude that he is only liable for costs of storage up to 4 March 2019. Throughout these legal skirmishes between the plaintiff and the defendant, the vehicle had remained in the sheriff's storage.

[12] Following the judgment, a second bill of costs for taxation of the storage costs was delivered by the plaintiff. The defendant disputed the obligation to pay any costs after 4 March 2019. The taxing mistress ruled that the defendant was liable for the costs after 4 March 2019.

The defendant's objection against the storage costs

[13] The objection of the defendant is crisp. He denied liability for storage costs following payment of the debt. In this regard, he is relying on the authority of *Swart v Anderson*,⁴ where the court had declared that the costs award does not extend to any costs relating to matters arising after the judgment. The objection of the defendant is against the portion of storage costs calculating from 4 March 2019. The objection is

³ *Lalita Singh v Hareesh Ouderajh* Case No: 9305/2012.

⁴ *Swart v Anderson* 1963 (4) SA 628 (E).

premised on the basis that it was the duty of the plaintiff to authorise for the release of the vehicle and they failed to do so.

The plaintiff's response

[14] The plaintiff, in her reply, had stated that the taxing mistress' function is to give effect to the order for costs. According to the plaintiff, the storage costs form part of the disbursements that were reasonably incurred in the execution of the judgment. The plaintiff contended that the prolonged storage of the vehicle was caused by the defendant's conduct of repeatedly challenging for the release of the vehicle whilst the judgment had been unsatisfied. The plaintiff maintained that the defendant's written submission, read together with the list of objections, constitute issues which cannot be dealt with by the taxing mistress.

Submissions of the parties before this Court

[15] In the written submissions, the defendant had contended that the costs incurred subsequent to the settlement of the judgment debt on 4 March 2019, could not reasonably be characterized as necessary costs in advancing the litigation between the parties. The contention on behalf of the defendant was that once the judgment debt had been settled, no further costs stood to be incurred and no further costs could reasonably be described as necessary costs concerning the litigation between the parties.

[16] It was further contended on behalf of the defendant that it was the duty of the plaintiff to instruct the sheriff to release the vehicle once the judgment debt has been settled. In doing so, the plaintiff would avoid any further storage costs. Accordingly, the defendant contended that there was no contractual *nexus* between the judgment debtor and the sheriff. In essence, the submission on behalf of the defendant was that once payment has been made, the plaintiff should release the vehicle. According to the plaintiff, the retention of the vehicle by the sheriff after payment, would be unlawful. He relied on the authority of *Deputy-Sheriff of Pretoria v Silverthorne & Brown*,⁵ where it was held:

'... it is clear that the Sheriff was not employed by the defendants; he was employed by... the plaintiff in the original action. The procedure is clear. By Rule of Court No. 67(a), a plaintiff at

⁵ *Deputy-Sheriff of Pretoria v Silverthorne & Brown* 1904 AD 491 at 493-494.

his own risk sues out a writ from the office of the registrar. He entrusts it to the deputy-sheriff, who at his request and on his behalf executes it. Now the deputy-sheriff is an important officer of the Court, but he is not salaried; he is paid by fees for the work which he does, and those fees must be defrayed by the person who employs him – in this case the plaintiff. Bosman [the deputy-sheriff] candidly admitted that that was the view he took. He said that as a rule he looked to the plaintiff...'

[17] Regarding the unlawfulness of the retention of the vehicle after payment, the defendant had relied on the authority of *Minister of Police v Sheriff of the High Court, Mthatha and Another*.⁶ In this case, the sheriff, armed with a writ of execution, had attached and removed a police vehicle pursuant to a judgment against the Minister of Police. The judgment debt was paid by the Minister, where upon, the attorneys for the Minister, addressed a letter to the sheriff advising him of the payment and demanding for the release of the motor vehicle. Despite the settlement of the judgment debt and the demand for the release of the vehicle, the sheriff refused insisting for payment of his invoice in respect of storage and other costs. The Minister approached the court for a declaratory order that the detention of the vehicle was unlawful. Mbenenge JP, in that matter, found in favour of the Minister after concluding as follows:⁷

'...The sheriff is not entitled to retain the motor vehicle indefinitely or to retain the motor vehicle and allow storage charges to accrue thereon. He is under an obligation, within a reasonable period, to either sell the property attached and removed by public auction or release it to the state. To the extent that the sheriff must recover the amount of the judgment debt from the proceeds of the sale of the motor vehicle, he is obliged to sell the motor vehicle and not retain same for the accumulation of the exorbitant fees, which is, in any event, precluded by the writ. These shortcomings render the continued retention of the motor vehicle unlawful and liable to be set aside.' (Footnotes omitted.)

[18] The court, in *Minister of Police*, was concerned with the lawfulness of the retention of the vehicle after the settlement of the debt. At the outset, I do point out that the issue did not relate to the exercise of a discretion by the taxing master in allowing items in a bill of taxation.

[19] On the other hand, the plaintiff had submitted that the disputed post judgment

⁶ *Minister of Police v Sheriff, Mthatha and Another* 2022 (1) SA 229 (ECM).

⁷ *Ibid* para 48.

costs are recoverable in law as necessary and proper expenses of execution. The plaintiff had submitted that the disputed costs were incurred because of the defendant's persistent and protracted refusal to satisfy the judgment debt. It was further contended on behalf of the plaintiff that the costs in question were essential to give effect to the judgment and would not have been incurred but for the defendant's litigation conduct. It was also submitted that the obligation to secure the release of the attached property lays entirely with the defendant who must make full settlement of the debt plus costs, including execution costs.

[20] The plaintiff had contended that the expenses incurred in the preservation, storage, and insurance of attached goods constitute execution costs recoverable from the judgment debtor. The plaintiff had also submitted that expenses flowing directly from the obstructive conduct of a debtor should be recoverable from the debtor. In these submissions, the plaintiff had relied on the authorities of *Texas Co. (S.A.) Ltd v Cape Town Municipality*⁸ and *Sentrachem Ltd v Prinsloo*.⁹

[21] In *Texas Co.*, it was held:

'Now costs are awarded to a successful party in order to indemnify him for the expense to which he has been put through having been unjustly compelled either to initiate or to defend litigation as the case may be. Owing to the necessary operation of taxation, such an award is seldom a complete indemnity; but that does not affect the principle on which it is based. Speaking generally, only amounts which the suitor has paid, or becomes liable to pay, in connection with the due presentment of his case are recoverable as costs.'

[22] It was further submitted, on behalf of the plaintiff, that in this case, the defendant is liable for storage costs resulting from his own litigation conduct. In essence, the plaintiff's contention is that the conduct of the defendant, objectively viewed and the facts of the case, renders it necessary for the plaintiff to protect the attached vehicle by way of storage until satisfaction of the judgment. Based on those facts, the plaintiff had submitted that the taxing mistress had properly exercised her discretion in allowing the storage costs beyond 4 March 2019.

⁸ *Texas Co. (S.A.) Ltd v Cape Town Municipality* 1926 AD 467 at 488.

⁹ *Sentrachem Ltd v Prinsloo* 1997 (2) SA 1 (A) at 16G-17B.

[23] The plaintiff had submitted that the case of *Minister of Police v Sheriff, Mthatha and Another*,¹⁰ was distinguishable from the facts of this case. The contention was that the case merely dealt with the lawfulness of retention of the attached vehicle. The sheriff's invoice, in that case, had not been submitted for taxation as a disbursement, unlike in the present case. The plaintiff urged this Court to distinguish the case.

The taxing mistress' stated case

[24] In her stated case, the taxing mistress had said:

'The decision to allow the storage costs in this matter was made by the taxing master after considering the provisions of Rule 68 and also the provisions of rule 70(3) where full indemnity for all costs incurred, include disbursements, and in this case, it refers to full Sheriff' storage costs.'

[25] In her concluding remarks, the taxing mistress had stated the following:

'The Defendant cannot indefinitely expect the Plaintiff to instruct the Sheriff to release the motor vehicle and avoid storage costs, the law allows a party to approach the court and obtain appropriate relief in situations where (sic) the other party fails to comply with their duty. Therefore, full indemnity requires payment of all costs incurred.'

[26] The taxing mistress relied, in her decision, on the authority of *Mouton and Another v Martine*,¹¹ where it was stated:

'In former times it was the function of the court, or one of the judges, to tax the costs of a case. The purpose of the taxation was really twofold; firstly, to fix the costs at a certain amount so that execution could be levied on the judgment and, secondly, to ensure that the party who is condemned to pay the costs does not pay excessive, and the successful party does not receive insufficient, costs in respect of the litigation which resulted in the order for costs.'

The taxing mistress also justified her decision of allowing the storage costs of the vehicle on the provisions of rule 70(3) read with rule 68.

Legal Framework

[27] The taxing mistress is vested with a discretion to allow all such costs, charges and expenses as appeared to her to have been necessary or proper for the attainment

¹⁰ *Minister of Police v Sheriff, Mthatha and Another* fn 6 above.

¹¹ *Mouton and Another v Martine* 1968 (4) SA 738 (T) at 742A-B.

of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing mistress to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.¹²

[28] The discretion given to the taxing mistress requires of her to bring an objective mind upon the task of taxation. It requires the taxing mistress to properly consider and assess all the relevant facts and circumstances relating to the particular item concerned, and the circumstances of the case as a whole at the time the disputed item was considered. In *City of Cape Town v Arun Property Development (Pty) Ltd and Another*,¹³ it was held:

‘[17] The taxing master has discretion to allow, reduce or reject items in a bill of costs. She must exercise this discretion judicially in the sense that she must act reasonably, justly and on the basis of sound principles with due regard to all the circumstances of the case. Where the discretion is not so exercised, her decision will be subject to review. In addition, even where she has exercised her discretion properly, a court on review will be entitled to interfere where her decision is based on a misinterpretation of the law or on a misconception as to the facts and circumstances, or as to the practice of the court.’

[29] In *Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others*,¹⁴ it was stated that:

‘...the court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master’s view of the matter differs so materially from its own that it should be held to vitiate his ruling.’

[30] The court is not allowed to slightly interfere with the exercise of the taxing mistress’ discretion. It will not readily interfere with the exercise of the discretion, except on certain well-known but limited grounds. Where by rule of court the costs to be allowed on the taxation are left to the discretion of the taxing master, the court will not interfere with his discretion in allowing or disallowing certain items even if the court

¹² Rule 70(3).

¹³ *City of Cape Town v Arun Property Development (Pty) Ltd and Another* 2009 (5) SA 227 (C).

¹⁴ *Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others* 1984 (3) SA 15 (A) at 18F-G.

exercising an original discretion would have disallowed or allowed them, unless the taxing master has acted upon a wrong principle or has not really exercised his discretion at all.

[31] In *Preller v Jordaan and Another*,¹⁵ it was held that such interference will not take place:

'...unless it is found that he (sc the taxing master) has not exercised his discretion properly, as for example, when he has been actuated by some improper motive, or has not applied his mind to the matter, or has disregarded factors or principles which were proper for him to consider, or considered others which it was improper for him to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.'

Discussion

[32] In terms of the court order dated 12 February 2013, the costs were awarded on an attorney and client scale. From the outset, it must be accepted that the bill was taxed on an attorney and client scale. The tariff which is applicable in the place of party and party taxation is not binding upon an attorney who claims fees under attorney and client bill. It is trite, though, that the party and party tariff would be taken as a guide where there is no express or implied agreement to authorize higher charges.¹⁶ The issue here is very crisp. Did the taxing mistress exercise her discretion properly in allowing storage costs incurred beyond 4 March 2019.

[33] The contentions about the legality of the retention of the vehicle by the sheriff was not an issue for determination by the taxing mistress. I agree with the plaintiff's contentions that in the present case, the sheriff's possession of the vehicle, was not the subject of taxation. Self-evidently, the cases of *Minister of Police v Sheriff, Mthatha and Another* and *The Deputy-Sheriff of Pretoria v Silverthorne & Brown*, are irrelevant. What shall be considered is whether the storage costs post 4 March 2019 were

¹⁵ *Preller v Jordaan and Another* 1957 (3) SA 201 (O) at 203C-E. In this case it was held that the taxing master could not have exercised his discretion properly when he was guided in doing so by the wrong tariff, and that the court had to correct the matter (at 205C-D). See also *Stewien v Santam Insurance Co Ltd* 1965 (2) SA 213 (E); *Duvos (Pty) Ltd v Newcastle Town Council and Others* 1965 (4) SA 553 (N) at 558A-B; *General Leasing Corporation Ltd v Louw* 1974 (4) SA 455 (C) at 461H – *in fine* (improper exercise of taxing master's discretion; wrong principle applied by taxing master).

¹⁶ *Oshry and Lazar v Taxing Master and Another* 1947 (1) SA 657 (T) at 660; *Udwin v Cross* 1962 (2) SA 291 (T) at 293A-B; *Mandela v Mandela and Others* [2025] ZAECHMHC 29 para 37; 10 Lwasa 3 ed para 370.

reasonably allowed by the taxing mistress.

[34] Insofar as the discretion of the taxing mistress to allow the storage costs beyond 4 March 2019, it is significant to refer to her stated case, where she said:

'The decision to allow the storage costs in this matter was made by the taxing master after considering the provisions of Rule 68 and also the provisions of rule 70(3) where full indemnity for all costs incurred, include disbursements, and in this case, it refers to full Sheriff' storage costs.

The defendant cannot indefinitely expect the plaintiff to instruct the Sheriff to release the motor vehicle and avoid storage costs, the law allows a party to approach the court and obtain appropriate relief in situation where the other party fails to comply with their duty. Therefore, full indemnity requires payment of all costs incurred.'

[35] It should be borne in mind that following the judgment on 12 February 2013, a prolonged litigation ensued involving the parties. The vehicle was attached on 14 April 2014, but it was not removed. That resulted in an interpleader claim by Harry O Investments CC. The interpleader was dismissed on 15 July 2016. The vehicle was removed on 31 August 2016. Two further interpleader claims were unsuccessfully instituted. Following those interpleader claims, an application was launched by the applicant for the release of the vehicle. The application was dismissed. There was leave to appeal and a petition, both dismissed. The plaintiff only sought to make payment on 4 March 2019. The bill was only taxed on 5 March 2020. There was a review of that taxation by the applicant. I have no doubt that the taxing master had considered all these factors, and the delays. On these facts, it is apparent that the defendant had contributed to the prolonged storage of the vehicle. The vehicle could not have been released before all these skirmishes were concluded.

[36] More significantly, the taxing mistress relies on rule 68 which provides:

'(3)(a) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.
(b) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed has been rendered.'

[37] It is apparent from the above provisions, that the taxing mistress is entitled to

determine the validity of any fees or charges for as long as work has been done and necessary expenditure had been incurred, as is the case here. The vehicle had been in storage from 31 August 2016. The applicant had been challenging the removal of the vehicle in every twist and turn. The taxing mistress had to take into account all those facts.

[38] In my view, the taxing mistress had correctly applied the provisions of rules 68 and 70(3). She was aware of the extent, scope and the source of her discretionary power. It cannot be correctly said that she did not apply her mind. Whilst the plaintiff had claimed a daily amount of R500 in respect of storage fees, the taxing mistress reduced the amount substantially to an amount of R250 per day. That is consistent with the exercise of a discretion by the taxing mistress.

[39] The taxing mistress had relied on the authority of *Mouton and Another v Martine*,¹⁷ which set out the purpose for taxation which is to fix the costs at a certain amount so that execution could be levied on the judgment debt and to ensure that the party who is condemned to pay the costs, does not pay excessively and the successful party does not receive insufficient costs in respect of the litigation which resulted in the order for costs.

[40] This proposition finds support in *Texas Co. (S.A.) Ltd v Cape Town Municipality*¹⁸ which confirmed that a successful party is entitled to be indemnified for the expense to which he has been put through having been unjustly compelled either to initiate or to defend litigation. In this case, the plaintiff was compelled to protect the assets that it had attached and removed. It was the defendant who had prolonged litigation which conduct resulted in the escalation of storage costs. The storage was part of execution of the judgment, and it was inextricably linked to the achievement of justice for the plaintiff. Furthermore, in *Fripp v Gibbon & Co*,¹⁹ it was held:

‘It is common cause that while, as a rule, there is no room for the discretion of a magistrate or a judge on the merits of a case, as he is bound to decide the issues between the parties in accordance with their rights as established at the trial, on the matter of costs the law allows him a discretion, which, of course, is a judicial discretion. Questions of costs are always

¹⁷ *Mouton and Another v Martine* fn 11 above.

¹⁸ *Texas Co. (S.A.) Ltd v Cape Town Municipality* fn 8 above.

¹⁹ *Fripp v Gibbon & Co* 1913 AD 354 at 363.

important and sometimes complex and difficult to determine, and in leaving the magistrate a discretion the law contemplates that he should take into consideration the circumstances of each case, carefully weighing the various issues in the case, the conduct of the parties and any other circumstance which may have a bearing upon the question of costs, and then make such order as to costs as would be fair and just between the parties. And if he does this, and brings his unbiassed judgment to bear upon the matter and does not act capriciously or upon any wrong principle, I know of no right on the part of a court of appeal to interfere with the honest exercise of his discretion.'

[41] I have no doubt that the plaintiff is entitled to expenses incurred in the preservation, storage, and insurance of attached goods. In this case, the taxing mistress was tasked to consider the items in the bill. She had a discretion to decide which items to allow and disallow. That discretion was exercised by the taxing mistress after consideration of all relevant facts and the conduct of the parties. There are no allegations that the taxing mistress was biased or that she acted capriciously in awarding the costs.

[42] It is settled that expenses flowing directly from the obstructive conduct of a debtor are properly recoverable from the judgment debtor. The taxing mistress had stated her reason of allowing the storage costs to be associated with the conduct of the defendant.

[43] There are no proper grounds upon which the taxing mistress is being attacked in the exercise of her discretion under rule 70(3). The defendant had merely concerned himself with the contention that the retention of the vehicle beyond 4 March 2019, was unlawful. There are no allegations that the lawfulness of the retention of the vehicle was a subject matter for determination by the taxing mistress. Clearly, that contention was a legal issue of which the taxing mistress had no jurisdiction.

[44] The taxing mistress was not reviewing the retention of the vehicle. I have already found that the reliance on the cases such as *Minister of Police v Sheriff, Mthatha and Another* and *The Deputy-Sheriff of Pretoria v Silverthorne & Brown* are misplaced on the facts of this case.

[45] The defendant had criticized the taxing mistress based on his own conclusions

and without any factual foundations. I sum up those conclusions as follows: That the taxing mistress has failed to consider the case of *Minister of Police v The Sheriff, Mthatha and Another*, had failed to consider the fact that the vehicle had been allegedly destroyed; had failed to consider public policy; had failed to consider that costs were settled and that the plaintiff had failed to issue an instruction for the release of the vehicle. I reject all these contentions for lack of merit.

[46] I have come to the conclusion that the defendant has failed to show that the taxing mistress has not exercised her discretion properly, or that in exercising her discretion, she was actuated by some improper motive, or has not applied her mind to the matter, or has disregarded factors or principles which were proper for her to consider, or considered others which it was improper for her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.²⁰

[47] I cannot fault the determination by the taxing mistress. There are no proper grounds upon which this Court can interfere with the discretion of the taxing mistress. In my view, the taxing mistress has exercised her discretion carefully and upon consideration of all relevant facts. It is self-evident, from the taxing mistress' stated case, that she had applied her mind objectively and exercised her discretion correctly.

Conclusion

[48] In view of what has been stated above, this Court is satisfied that the taxing mistress had properly, reasonably and justly considered all the relevant circumstances of the case. Therefore, this Court is not in the same or better position as the taxing mistress to find that she was wrong.

[49] The defendant has failed to show any ground upon which the taxing mistress' decision could be interfered with. Accordingly, the ruling by the taxing mistress should stand. I make the finding that contrary to what the defendant had contended in these proceedings, the taxing mistress had applied her mind to the submissions of the parties made to her. I have no basis to find, either, that she was clearly wrong.

²⁰ *City of Cape Town v Arun Property Development (Pty) Ltd and Another* fn 13 above and *Preller v Jordaan and Another* fn 15 above.

Costs

[50] I cannot think of any reason, and none has been suggested, as to why the costs should not, as a general rule, follow the result. The costs of this review must be borne by the defendant to a limited extent. I do point out that the storage costs should be limited to the date of taxation by the taxing mistress. The issue presented was fairly complicated and raised important issue of liability for costs of storage post judgment in circumstances, where a taxed bill had not been presented in respect of costs prior to such taxation. This Court had considered the conduct of the defendant throughout the litigation history between the parties and hence, it came to the conclusion that the taxing mistress had properly exercised her discretion regarding storage costs.

Plaintiff not entitled to all costs

[51] One issue that needs to be remarked upon is the plaintiff's heads of argument. The plaintiff's heads of argument had been slovenly drawn. There is an apparent carelessness in the preparation of the heads. References to cases are wrong. The plaintiff has made references to and quotations from incorrect and unhelpful authorities. In my view, the plaintiff's counsel had simply conducted no research. By way of example, in the heads of argument, reference has been repeatedly made to *Texas Co. (S.A.) Ltd v Cape Town Municipality* 1960 (3) SA 597 (A) at 615A-C. This reference is misleading and not just incorrect. It turns out that in 1960 (3) SA at 597, is the case of *Poort Sugar Planters v Umfolozi Sugar Planters* and not *Texas Co.* The case is not even relevant to the review of taxation. The correct citation is *Texas Co. (S.A.) Ltd v Cape Town Municipality* 1926 AD 467. The counsel in the heads of argument had simply misled the court.

[52] Again, reference has been made to *Lipschitz v Watrus* NO²¹ and more importantly, a quotation at page 673F-H. The quotation is totally irrelevant to the review of taxation. For the sake of completeness, I must quote from the page as referred in the heads of argument:

'The judgment of Eloff J as to prayer (2) deals with the relief claimed as follows:

"I wish to say a word or two specifically in regard to applicant's second prayer. I think that apart from the considerations set out above, it would be inadvisable for the Court

²¹ *Lipschitz v Watrus* NO 1980 (1) SA 662 (T).

to exercise its discretion in favour of the grant of such a generalized prayer. It is altogether too vague and generalized, and it is not the sort of order that can be enforced.”

In the heads of argument, the counsel had made this contention, I quote from the heads of argument:

‘the Appellate Division confirmed that reasonable enforcement measures form part of the costs of suit. Similarly, in *Lipschitz v Watrus* NO 1980 (1) A 662 (t) at 673F-H, it was held that expenses incurred in the preservation, storage, and insurance of attached goods constitute execution costs recoverable from the judgment debtor.’

[53] The plaintiff’s heads of argument were lacking in substance and inelegantly presented. All citations were wrong. The pages referred to turned to be totally different cases. Regrettably, this Court did not derive any benefits from the plaintiff’s heads of argument and case law. The submissions were mostly unhelpful. The court expects more from legal practitioners. The plaintiff’s counsel in this matter has failed this Court. He is not entitled to any fee, even from the plaintiff. I can only hope that the counsel would learn from this experience and do better. It was bewildering and excruciating to read the plaintiff’s heads of argument with such inaccuracies and misleading citations. What is dumbfounding is the citation of a case and reference to a quotation from pages in which different cases appear.

[54] The remarks made in *S v Ntuli* 2003 (4) SA 258 (W) at para 16²² are relevant: ‘Unless counsel properly represents his or her client, the right to a fair trial and the right to a fair appeal may be negated. At issue is simply the basic proposition that the minimum required of counsel is to prepare and present a proper argument on behalf of his or her client. Heads of argument serve a critical purpose. They ought to articulate the best argument available to the appellant. They ought to engage fairly with the evidence and to advance submissions in relation thereto. They ought to deal with the case law. Where this is not done and the work is left to the Judges, justice cannot be seen to be done. Accordingly, it is essential that those who have the privilege of appearing in the Superior Courts do their duty scrupulously in this regard. In *S v Steyn* 2001 (1) SA 1146 (CC) para [24] at 1160C-1161A (2001 (1) SACR 25 at 38e – 39c; 2001 (1) BCLR 52) at the Constitutional Court stressed the importance of oral argument in the context of criminal appeals. The same holds true for written argument.’

²² *S v Ntuli* 2003 (4) SA 258 (W) at para 16

[55] It is trite law and rule of practice that counsel may not misrepresent the facts or the law. At a minimum, counsel is required to uphold the interests of his or her client without fear of the consequences. That duty would only be achieved where counsel properly represents the case according to the best of his knowledge and ability. In this case, the plaintiff's counsel has dismally failed to fulfil the obligation required of a legal representative, leaving this Court with much disappointment.

Order

[56] In the result the following order shall issue:

1. The review is dismissed.
2. The defendant is directed to pay the costs of review on scale A, excluding costs of preparation and heads of argument.

NOTYESI AJ

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Date Heard:

21 August 2025

Date Delivered:

22 September 2025