



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable

Case no: 83/2019

In the matter between:

**NT MAKHUBELE ENTERPRISES CC
NATHANIEL TSAKANE MAKHUBELE
HITEKANI FAST FOODS CC
YOLTSA TRADING CC**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT**

and

BUSINESS PARTNERS LIMITED

RESPONDENT

Neutral citation: *NT Makhubele Enterprises CC & Others v Business Partners Limited*
(83/2019) [2025] ZASCA 151 (16 October 2025)

Coram: SMITH JA

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, released to SAFLII. The date and time for hand-down is deemed to be 16 on October 2025 at 11h00.

Summary: Costs – review of taxation – party who fails to attend taxation cannot invoke review procedure under 17(3) of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa.

ORDER

The application is dismissed with costs.

JUDGMENT

Smith JA

[1] This is an application for the review of the taxing master's refusal to state a case for review of taxation in terms of rule 17(3) of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa (the SCA rules). The facts which gave rise to the application are briefly as follows.

[2] On 20 September 2018, the applicants applied to this Court for leave to appeal against four judgments of the Gauteng Division of the High Court, Pretoria (high court) leave to appeal having been refused by that court. That application was refused with costs on 21 November 2018.

[3] On 24 January 2019, the applicants petitioned the President of this Court for reconsideration of the decision refusing leave to appeal in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013. That application was also dismissed with costs on 28 October 2020.

[4] The respondent thereafter presented its bills of costs (the bills) for taxation, having given proper notice thereof to the applicants in terms of the SCA rules. The bills were taxed on 30 July 2025, and the taxing master's *allocatur* was issued on the same day. The applicants were not present, nor represented at the taxation.

[5] On 6 August 2025, the applicants filed a request for the taxing master to state a case in terms of rule 17(3) of the SCA rules. The applicants relied on various grounds,

including that the court orders bore incorrect case numbers; that one of the orders was not properly served on them; alleged defects in the certificate which accompanied the bills; and that reliance was placed on a document which was in a language that the applicants could not understand thereby violating their constitutional rights to dignity, language and culture and, access to the courts. The taxing master, relying on the judgment of this Court in *Macbeth Attorneys Incorporated v South African Forestry Company Soc Limited and Others*,¹ declined to state a case ‘because a party not in attendance and fails to object before the taxing master cannot thereafter invoke review of the taxation procedure in terms of SCA rule 17.’

[6] As a result of the taxing master’s refusal to state a case, on 29 August 2025, the applicants requested the taxing master to place the matter for review before the President or another judge of this Court. That request was based on the principle of legality and the assertion that the taxing master’s decision ‘lacked rationality, reasonableness, procedural fairness and lawfulness.’

[7] SCA rule 17(3) provides as follows:

‘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.’

[8] In *Macbeth Attorneys Incorporated*, Ponnann JA explained that in terms of SCA rule 17(3), ‘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 under the rule is therefore limited to those cases where there was an objection and those where the taxing master disallows an item *mero motu*.² He further stated that (b) provides for a case where the

¹ *Macbeth Attorneys Incorporated v South African Forestry Company SOC Limited and Others* (365/2023) [2025] ZASCA 118 (15 August 2025); 2025 JDR 3566 (SCA).

² *Ibid* para 5.

party presenting the bill for taxation is aggrieved by the taxing master's disallowance of items *mero motu*. A party who failed to attend a taxation cannot therefore invoke the review procedure provided for by SCA rule 17 but 'may apply for the setting aside of the taxation on the same basis on which judgments by default are set aside.'³

[9] As mentioned, the applicants did not attend the taxation and can consequently not request review of 'any item which was objected to.' Not being the party who presented the bills for taxation, the applicants are also precluded from requesting the review of items disallowed *mero motu* by the taxing master. In any event, the applicants do not challenge the exercise of the taxing master's discretion in respect of individual items in the bills but seek a comprehensive review of the taxation and the taxing master's refusal to state a case, based on the principle of legality.

[10] For the foregoing reasons, SCA rule 17(3) does not provide for judicial review of taxation based on the principle of legality or of a taxing master's decision to decline a request to state a case. It follows that the taxing master acted correctly in declining the request to state a case for taxation. The application accordingly falls to be dismissed with costs.

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

J E SMITH
JUDGE OF APPEAL

³ Ibid para 7; *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 applicants: NT Makhubele, Johannesburg
 Matsepes Inc, Bloemfontein

For the respondent: Strydom Britz Mohulatsi Inc, Pretoria
 Symington de Kok Attorneys, Bloemfontein.