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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 02014-

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

13/01/2026

DATE

SIGNATURE

In the matter between:

NUTUN BUSINESS SERVICES SOUTH AFRICA

**(PTY) LIMITED (formerly TRANSACTION CAPITAL RECOVERIES (PTY)
LIMITED)**

[Registration Number: 2001/0026112/07]

Applicant

And

TAXING MASTER, HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, MR J MAHLAULE

First Respondent

EMFULENI LOCAL MUNICIPALITY

Second Respondent

JUDGMENT

KHABA AJ:

Introduction:

1. This is an application wherein the applicant seeks a rescission in terms of Rule 31 (2)(b), alternatively, Rule 42 or further alternatively, the setting aside of the first respondent's two bills of costs dated 7 June 2024 and 26 June 2024 respectively in terms of Rule 48(1). The premise of this application is that both bills of costs were taxed without notice to the applicant and in the applicant's absence.
2. The absence of the applicant on both taxations of the bills of costs was caused by an alleged failure of the second respondent's cost consultant to serve the actual notices of taxations and to serve the relevant notices of set down of both taxations on the applicant's attorneys of record. Despite the second respondent's insistence that its cost consultant Mr. Obrey Sibiya (*"Mr Sibiya"*) had sent an email to Ms. Bester, the applicant's attorney, on her personal email address, to which the notice of taxation was allegedly

attached. The applicant's attorney vehemently denies that she had ever received the email and the notices of taxations.

3. It is common cause that the disputed bill of costs were both taxed on an unopposed basis. The second respondent's taxing consultant Mr. Sibiya applied for the taxation dates of both bills which were taxed on 7 June 2024 and 26 June 2024 respectively.

Factual Matrix and the Applicant's version in summary

4. The first costs order that was granted against the applicant, was granted by the Honourable Justice Senyatsi J on 18 February 2020, when the applicant's urgent application was struck from the roll with costs.
5. The first bill of costs was taxed in favour of the second respondent on 7 June 2024 in amount of R 447 213.63 under case number: 02014-2020. The first bill of cost arose from a costs order granted in favour of the second respondent against the applicant in an urgent application.
6. The application was then enrolled in the ordinary opposed motion Court roll. The application was heard by the Honourable Justice Muller AJ (as he was then). The applicant's application was dismissed by the Honourable Justice Muller AJ on 7 August 2020. The applicant was ordered to pay the costs of that application, which costs were to include the costs consequent upon employment of two Counsel. It is for this reason that that there are two separate costs orders in the same matter.
7. The second bill of costs was taxed in favour of the second respondent against the applicant, in the amount of R 288 973.91 on 26 June 2024. The second bill of costs arose from a costs order granted in favour of second respondent against the applicant in the opposed motion proceedings.

8. The applicant was the unsuccessful litigant in both applications it brought against the second respondent. The combined total value of the taxed bills is R 736 189.54.
9. The applicant became aware on 25 June 2025 that the taxation of the bill of costs had occurred, the applicant's attorney received an email from the second respondent's attorneys under cover of which they attached a "*taxed bill of costs*" in the urgent proceedings which had been allowed in the amount of R 447 213.63.
10. The applicant alleges that this was the first time Ms. Bester, the applicant's attorney, had heard of the existence of this bill of costs. The day after having received an email from the second respondent's attorney's, Ms. Bester addressed an email to the applicant's chief Legal and Compliance Officer and to the applicant's cost consultant Mr. Johannes Hendrik Rosslee ("*Rosslee*") advising them of taxed bill of cost. The relevant portions of that email read:

"I have checked and the notice of taxation was never sent on MLB Inc.

I accessed Caselines and obtained a copy of an email that was purportedly sent to me ("m[...]") by the taxing consultant from his Gmail – ("s[...]").

I have searched my inbox and there was no such email from this email address. I also obtained a copy of the Notice of taxation and the application for date – these documents are attached.

It is clear from the Notice of Taxation that they had to serve the Notice on my offices and that there is no provision for service by email. MLB Inc never accepts service by email for the very reason that this happens. The Taxing Master (sic) never checked that there had been service on MLB Inc and proceeded to tax the earlier tjis (sic) monh (sic)"

11. The applicant contends that the second respondent had to serve the notice of taxation at the applicant's offices, as there was no provision for service by email. The second respondent did not comply with the imperative provisions as contained in terms of Rule 70(3)(b).

12. Thereafter, on 27 June 2024, the second respondent's attorneys sent a further email to the applicant attorneys. The relevant portion of the email reads:

"Please note that the Bills of costs herein have been presented for taxation as per the orders dated 18 February 2020 and 07 August 2020.

The bills were taxed totalling an amount of R 736 189.54. The bills are attached hereto for your ease of reference.

You are hereby requested to make payment of the taxed Bills of costs within fourteen days of this letter"

13. The applicant contends that the first respondent did not comply with the provisions of Uniform Rule 70(4)(a) and/ or 70(4)(b) in that there had been no due notice to the applicant's attorneys of the taxation- the taxing master being required to satisfy himself of that service. The applicant did not consent to the taxations taking place in its absence. The applicant was entirely unaware that the taxations were taking place.

14. The applicant contends that since the order that was handed down by the Honourable Justice Senyatsi J on 18 February 2020 and the order that was handed down by Honourable Justice Millar AJ on 7 August 2020 respectively, nothing further was heard by the applicant or the applicant's attorneys until 25 June 2024, almost four years later.

15. The applicant alleges to have no knowledge of date of the taxations of the bill of costs and ascribes its absence from both taxations to an alleged failure

of the second respondent's attorneys and their cost consultant to serve the relevant notices and set downs of taxations.

16. The applicant contends that had it received proper notices of the bills of costs, it would have opposed both bills of costs and the applicant's cost consultant, Mr. Rosslee, on its behalf would have made the appropriate representations to the first respondent.
17. The applicant argues that the Uniform Rule 4A(1)(c) permits service on a party such as the applicant by means of email, only if the email is sent to an address provided by the applicant (or its attorneys) for that purpose in terms of any of the sub-rule described in rule 4A (1). Mr. Sibiya's emails are not proof of the service required by the Uniform Rules and do not comply with the requirements of Uniform Rule 4A(1)(c).
18. Mr. Sibiya purportedly served his notices by email on Ms. Bester's personal address ("m[...]"). The applicant argues that neither Ms. Bester nor MLB Inc have ever provided her personal email address as an address for service as contemplated in Rule 4A(1)(c). The second respondent does not suggest otherwise.
19. The applicant further contends that the answering affidavit deposed to by the Emfuleni municipal manager does not traverse seriatim the detail of the applicant's found affidavit (and for that reason, those factual allegations must be taken to be admitted). The municipal manager nonetheless contends that there was proper service of the notices of taxation on MLB Inc because Mr. Sibiya's two emails "*were indeed sent and delivered*" to Ms. Bester's personal email address.
20. The applicant contends that the higher mark of the second respondent's argument concerning service is the assertion that Mr. Sibiya, being the person who sent both emails, never received "*undelivered and/or*

undeliverable” responses to his emails. According to the applicant that proposition, with respect, does not assist the second respondent. Nor does the suggestion that any uploads onto Caselines constitute any form of legitimate notice or service.

21. The first respondent has not opposed this application, nor has he provided an affidavit explaining the facts on which he relied upon to satisfy himself that there has been proper service of the notices of taxation as contemplated in Rule 70(4)(a) and (b).
22. Finally, the applicant further contends to what is calls a “ striking feature” of the second respondent’s case is; that Mr. Sibiya has not produced nor explained what evidence he provided to the first respondent to satisfy the latter, as required in terms of Rule 70(4)(a) and (b), that there had been proper services and or notice of the taxed bills to the applicant’s attorneys at an email address that the applicant’s attorneys have provided for that purpose. The applicant has consequently launched this application for the setting aside of the two taxations awards in terms of Rule 48(1).
23. The notice of motion dated 23 July 2024, a date that is within the 20 days’ period, from date of become aware of the order or allocator, prescribed by Rule 32(2) of the launching of the rescission application.

The Relief Sought:

24. According to the prayers in the notice of motion the applicant seeks to set aside the taxation awards made by the first respondent on 7 June 2024 and 26 June 2024 in terms of rule 48(1) on the grounds that both bills of costs were taxed without notice to the applicant and in the applicant’s absence.

Second Respondent’s Contentions:

25. The second respondent contends that the first respondent satisfied himself that there had been proper service of the notices of taxation on the applicant's attorneys as is required in terms of Rule 70(4)(a) and (b).
26. It is further the second respondent's case that the first respondent exercised his discretion in awarding the amounts which he did in both bills of costs.
27. The second respondent alleges specifically that the first respondent was presented with the second respondent's bills of costs and exercised his discretion and expertise to allow and disallow the amounts therein to issuing his allocator.
28. The second respondent contends that proper service upon the applicant's attorneys was in accordance with the provisions of Rule 4A(1)(c).
29. Ms. Bester does not deny that the email address belongs to her, she however, claims that it is her personal email address but does not elaborate on the extent of being her personal email address and being inadequate for service.
30. The second respondent's attorneys allege that they were never notified by the applicant's attorneys that they would not accept service of the notices of taxation by email.
31. The second respondent's attorneys allege that the applicant's attorneys do not dispute having received notification of taxations by means of uploading of the notices onto CaseLines.
32. The second respondent contends that there has never been an explicit agreement between the parties for services by email and neither party has objected to service by email.

33. The second respondent alleges that specifically that the applicant has not made out a proper case in terms of either Rule 41(2)(a) or Rule 31(2)(b). The current application is brought in bad faith, is vexatious and a clear abuse of process of court and should be dismissed with costs on a punitive scale.

Issues for determination:

34. Whether there was service of the two bills of taxations on the applicant's attorneys.
35. Whether the second respondent complied with the notice requirements as is prescribed in terms of the Uniform Rules 70(3B) (a)(i).
36. Whether the Taxing Master satisfied himself that there been proper service of the notices of taxation on the Applicant's attorneys as is required in terms of Rule 70(4)(a) and (b).
37. Whether the second respondent properly served the notices of taxations on the applicant's attorneys as contemplated in Rule 4A(1)(c) at an email address "*provided*" for that purpose by the applicant's attorneys
38. Whether the applicant has shown good cause for the setting aside of the two allocators
39. Whether the applicant has made out a proper case for the relief in terms of either Rule 41(2)(a) or Rule 31(2)(b).

The Legal Framework and Analysis:

40. The Uniform Rules of Court establish a strict procedural framework for the taxation of bills of costs, designed to safeguard the rights of the party liable to pay taxation of bills of costs, designed to safeguard the rights of the party

liable to pay (debtor). The cornerstone of this framework is the requirement of proper service.

41. A taxation of costs is not a mere administrative act; it is judicial function that determines a financial liability. The right to be heard before an order is made that affects one's right is a cornerstone of our justice system. The rules governing taxation are therefore strict and designed to protect this right.
42. Uniform Rule 70(3B) (a) (i) is unequivocal. It provides that a party wishing to tax a bill shall give notice to every other party who has an interest in the bill. This notice is a jurisdictional prerequisite for a valid taxation.
43. A taxation and tariff of attorneys' fees is regulated by Rule 70 of the Uniform Rules of Court. Rule 70(4)(a) states that *"The taxing master shall not proceed with the taxation of any bill of costs unless he or she is satisfied that the party liable to pay the costs has received due notice in terms of sub-rule (3B)"*.
44. The Author Erasmus *et al* notes that sub- rule 70 (4)(a) makes provision that the taxing master shall not proceed with the taxation of any bill of costs unless he or she is satisfied that the party liable to pay the cost has received due notice as required by this sub rule. Substantial compliance with the provisions of the sub rule is sufficient. The rule uses the imperative "*shall*". The taxing master duty to satisfy himself of proper service is not a mere formality, it a mandatory, proactive duty that must be discharged before the power to tax arises. Failure to do so renders the subsequent taxation proceedings irregular and liable to be set aside.
45. Rule 4A governs service of documents by electronic mail ("*email*"), critically, Rule 4A(1)(c) states that service be email is only permissible if the person to be served has consented in writing, either expressly or by implication, to service at that email address and in that format. The rule states that where there is no explicit agreement, service by email shall not be permitted.

Application of the Law to the Facts:

46. The purported service by email was fatally defective. The second respondent's case rests on the assertion that service was effected by its cost consultant Mr. Sibiya, by sending emails to Ms. Bester's personal email address at ("m[...]"). This assertion fails at every hurdle of Rule 4A(1)(c).
47. Firstly, there was no agreement for service by email. The second respondent's own submission concedes this point "*there has never been an explicit agreement between the parties for service by email*". This concession is fatal. Rule 4A(1)(c) is clear: without explicit agreement, service by email is not permitted. The argument that "*neither party has objected to service by email*" inverts the legal requirement. The rule requires positive consent, not the absence of an objection.
48. Secondly, the email address was not "*provided*" for service in this matter. The second respondent has provided no evidence that Ms. Bester has ever furnished her personal email address to the second respondent or its attorneys for the purpose of service of documents in this matter. An email address appearing on a letterhead or used for general correspondence does not, without more, constitute an address provided for service as contemplated by the rule. This a distinct and a formal requirement.
49. Thirdly, and conclusively; there is no confirmation of receipt. Rule 4A(1)(c)(ii) requires the sender to obtain to obtain confirmation that the email has been received. The second respondent has tendered no such confirmation. Ms. Bester, in her affidavit, unequivocally denies ever receiving these emails. In the face of direct denial and the absence of proof of receipt, such as read receipt or a reply acknowledging the notice, the purported service is null.
50. The second respondent's attempt to rely on the general use of CaseLines is non -sequitur. The Rules do not permit substituted service through a general litigation platform. The specific peremptory notice procedure in form 26,

served in a manner prescribed by Rule 4, is mandatory. Uploading a notice to digital platform, without proof that it triggered a specific notification to the opposing attorney, does not constitute “*due notice*” as required by Rule 70(3B).

51. Justice Mbongwe was called on in ***Acrow Limited and Another v South Mead (Pty) Ltd and Another (“Acrow Limited”)***¹ to consider the implications of Uniform Rule 4A(1)(c) in the context of proper service of notices of taxation. After a detailed analysis of the relevant rule, applicable legislation and guiding authorities, Justice Mbongwe said:

“[28] The segmentation of two stages completing the sending emails of an email is imperative in interpreting the key import of the provisions of section 23(a) being the practical process of originating/ sending email:

“the entry of an electronically transmitted message into the system of the addressee, which demonstrates that the email fell outside the control of the originator is settled by the automatic generation of a ‘sent report’ in the system that was used to send the email. The report is accessible to the sender and often accessed to ascertain a successful transmission of emailed information and serves as proof in the event of disputed emailing of the information concerned. The requirements of section 23(a) are met at this stage.”

52. In concluding that the respondent in ***Acrow Limited*** had not demonstrated proper service of the notice of taxation, Justice Mbongwe said:

“[33] Turning to the merits of this case, it was incompetent for the respondent to merely seek refuge in the deeming provisions of section 23(b) without first demonstrating the completion of the requirements of section 23(a) as set out

¹***Acrow Limited and Another v South Mead (Pty) Ltd and Another*** 2022 JDR 3188 (GP) The Respondent’s appeal to the full Court in Pretoria was dismissed, but on grounds unrelated to service in terms of Rule 4A(1)(c) – ***Southmead (Pty) Ltd t/a Meister Cold Store v Acrow Limited (A357/2023)*** [2024] ZAG PPHC 1121 (12 November 2024)

above. The application of the deeming provisions of section 23(b) is not triggered by mere allegations of having sent an email, but by the production of the evidence of emailing: - automatically generated 'sent report' following a successful transmission of emailed information. After all the required proof of the sending of the email is accessible only to the respondent and costs consultants from the system that was used to send the email. A failure to provide proof of emailing is a disproof of the respondent's allegation that the notice of set down was emailed to the Applicant's attorneys".

53. Consequently, I find that the second respondent did not provide the applicant with the notice of taxation as is required in terms of the Uniform Rule 70(3B) (a)(i).
54. It is common cause that the first respondent did not file any affidavit in explanation of his conduct in this matter. The second respondent's submission that the "*first respondent satisfied himself that there had been proper service*" is speculative to say the least and carries no weight. Given that my finding that the method of service was invalid *ab initio*, any satisfaction based on that method would have been misplaced. The first respondent allocators, issued and awarded in favour of the second respondent, are awarded without foundation of proper notice, and are thus granted in error. A failure to give proper notice renders the subsequent proceedings a nullity.
55. In order to set aside an allocator granted in absentia, an applicant must show good cause. This entails providing a reasonable explanation for the absence and showing that he has a *bona fide* defence to the bill of costs. The applicant has provided a compelling explanation; it was entirely unaware of the taxation dates because it never received the notices. The explanation is reasonable and is supported by legal defects in the service process outlined above. The ignorance arising from a party's failure to comply with the Rules is a valid explanation.

56. As pointed out ***Grunder v Grunder***², *Conradie J* held that the common law principle applicable to the setting aside of default judgment apply also to the setting aside of Taxing Master allocator. An order as to costs cannot be enforced without the Taxing Master's quantification thereof, and a quantification done in the absence of the one the litigants ought to be open to challenge on the same basis as default judgments. This would ordinarily mean that the applicant would have to satisfy a Court that there three requirements of default judgment are present to justify the order.
57. The applicant must first show good cause, being a reasonable explanation for the default, secondly that the application is brought in good faith and lastly that the *bona fide* defence, *prima facie* holds prospects of success. Notwithstanding compliance with these requirements, a Court retains a discretion to be exercised judicially on consideration of the relevant circumstances. Based on facts, I accept that the applicant has provided a compelling explanation, it was entirely unaware of the taxation dates because it never received the notices. The explanation is reasonable and is supported by legal defects in the service process outlined above. I am also satisfied that that the application is brought in good faith. The applicant has a *prima facie bona fide* defence.

Conclusion:

58. The applicant has raised pertinent queries regarding the propriety of certain costs items in the taxed bills. These allegations are not so devoid of merit as to suggest bad faith. They establish a *prima facie* case for wishing to scrutinise and oppose taxations.
59. The second respond's allegations that this application is vexatious and abuse of process is without foundation. The applicant is merely insisting on its fundamental right to be heard before a substantial monetary order is

² ***Grunder v Grunder*** 1990 (4) SA 680 (C) at 684C and Another.

made against it is not acting in bad faith. The applicant is exercising a core procedural right. This application is a direct consequence of the second respondent's own failure to adhere to the peremptory rules of service.

60. For the reasons given, I am of the view that the applicant has made out a case for the relief sought.

Costs:

61. The general rule that costs follow the outcome of the proceedings. I see no reason to depart therefrom. The applicant has succeeded in proving the irregularity and is consequently entitled to the costs.

Order:

62. Accordingly, resulting from the conclusions in this judgment, the following order is made:

1. The taxation awards made by the first respondent under case number 02014/2020 dated 7 June 2024 and 26 June 2024 in respect of the second respondent's costs and disbursements in the urgent application and the opposed application are set aside.
2. The second respondent is ordered to pay the costs of this application, including the costs of senior Counsel on scale B.

KHABA AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgment was delivered in this matter on 13 January 2026, and digitally delivered by circulation to the parties' representatives by email and by uploading the judgment to the electronic file of this matter on CaseLines. The date of the delivery of this judgment is deemed to be 13 January 2026.

Appearances:

For the Applicant: Adv. ARG Mundell SC

Instructed by Marie- Lou Bester Inc

Email: m[...]

Ref: Ms M L Bester/N6

For the First Respondent: No appearance

For the Second Respondent: Miss. Y Ngwane
(Attorney with right of appearance)

Instructed by: Seleka Attorneys

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Ref: SLK 078/18

Date of Hearing: 27 October 2025

Date of Judgment: 13 January 2026