



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO OTHER JUDGES: YES/NO
 (3) REVISED
 DATE: 18 FEBRUARY 2026
 SIGNATURE: [REDACTED]

Case No. 58534/2012
 A392/2017

In the matter between:

MASHABA, PETER

APPLICANT

And

SOUTH AFRICAN CIVIL AVIATION AUTHORITY

FIRST RESPONDENT

KHOZA, GUGULETHU BRIGHTNESS

SECOND RESPONDENT

Coram: Millar J

Heard on: Review in Chambers

Delivered: 18 February 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 18 February 2026.

JUDGMENT

MILLAR J

- [1] This is an application brought in terms of rule 48 of the Uniform Rules of court for the review of a taxation. The rule provides that:
- “(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] After the applicant filed a notice of review, the Taxing Master filed a stated case as provided for in rule 48(3). After receiving the stated case, the applicant then filed submissions in terms of rule 48(5)(a). The application for review was then placed before me.
- [3] The review turns on a single legal issue as appears below and for that reason, I decided in terms of rule 48(6)(a)(i) that it is appropriate that this review be decided on the papers submitted.

- [4] This review was brought in respect of the decision of the Taxing Master to allow the recovery of VAT by the successful party in litigation in a bill of cost presented by it in consequence of a costs order in its favour. The costs order has its origin in litigation between the South African Civil Aviation Authority (SCAA) and Mr. Mashaba.
- [5] In the original application, the SCAA was the applicant and Mr. Mashaba the respondent. A costs order was made in favour of the SCAA against Mr. Mashaba and now, he as the applicant in the review wishes to challenge the ruling of the Taxing Master that the costs he is to pay in terms of the court order are to include VAT.
- [6] The grounds upon which the review has been brought are predicated on whether or not sections 11 and 13 of the Public Finance Management Act (PFMA)¹ read together with sections 16 and 23 of the Value Added Tax Act (VAT Act)² properly interpreted prohibit the SCAA from recovering on taxation VAT paid by it to vendors who rendered legal services to it in the litigation between it and Mr. Mashaba.
- [7] The issue for consideration and determination is whether the Taxing Master in allowing VAT in the matter contravened these sections.
- [8] Before dealing with the legal issue, it bears mention that it is not in issue between the parties that the relevant items in the bill of costs relate to professional legal services rendered by the sheriff of the court and legal practitioners, all of whom are registered as vendors in terms of the VAT Act.

¹ 1 of 1999.

² 89 of 1991.

- [9] The claims are divided into two categories. The first is the invoices of the sheriff and the advocates which are self-contained and already include VAT.³ These are reflected in the bill of costs as disbursements made by the SCAA's attorney on its behalf. The second, is in respect of the claim for fees of the SCAA's attorney where these are reflected exclusive of VAT in the bill of costs as individual items where VAT is added to the total of those items that are allowed at the end of the bill of costs. Simply put, each disbursements VAT is reflected in the invoice for it and the VAT on the attorney's fees is calculated as a single item on the total of the fees allowed and added at the end of the bill.⁴
- [10] The crux of the argument advanced on behalf of Mr. Mashaba is that the Taxing Master erred in finding that the SACAA was not out of pocket in respect of VAT. The argument was developed on 6 main points. I intend to deal with each of these in turn.
- [11] Firstly, it was submitted that when SACAA pays VAT-inclusive fees to external vendors (e.g., counsel, who are VAT-registered), the VAT is remitted by the vendor to SARS under section 7(1)(a)⁵ of the VAT Act.
- [12] It is not in issue that the sheriff, the counsel as well as the attorneys briefed by SACAA are all vendors⁶ within the meaning of the VAT Act. It is also not in issue that the ultimate recipient of any VAT paid by vendors, is the National Revenue Fund (NRF) as explicitly provided for in section 7(1)(a).

³ In respect of the disbursements for the sheriff and counsel the relevant affected items are 33, 34, 35, 94, and 95.

⁴ In respect of the attorney's fees the relevant affected items are 1-14, 17, 26, 27, 29-33, 36-41, 49, 51, 52, 54, 55, 61-98.

⁵ Section 7(1)(a) of the VAT Act provides that: "(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added-tax – (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;"

⁶ Having been registered as such in terms of the VAT Act.

- [13] Secondly, SARS must then deposit these taxes into the NRF per section 11(1) of the PFMA. This is explicitly provided for in this section.
- [14] Thirdly, if SACAA recovers VAT in costs, that amount also flows back to the NRF under PFMA section 13.
- [15] It is regarding this third submission that the argument encounters difficulty. The obligation to pay all money received by the National Government into the NRF in terms of the PFMA is not an unqualified one.
- [16] In terms of section 13(1), *"all money received by the national government must be paid into the National Revenue Fund, except money received by"*. There follows in section 13 a number of exceptions. Section 13(1)(b) provides that a *"national public entity" is excluded and section 13(2) provides "The exclusion in subsection 1(b) does not apply to a national public entity which is not listed in Schedule 2 or 3 but which in terms of section 47 is required to be listed."*⁷
- [17] SACAA is listed under part A of Schedule 3. In other words, there is no obligation upon SACAA when receiving any money, even though it may be considered a receipt on behalf of the national government, to make payment of that amount into the NRF. This is expressly provided for in section 13(5) of the PFMA which provides that *"Money received by a national public entity listed in Schedule 2 or 3, the South African Reserve Bank, or the auditor general must be paid into a bank account opened by the institution concerned."* [My underlining].
- [18] Fourthly, that the result is a closed loop: The state pays VAT from the NRF (via SACAA's budget), receives it back via SARS, and any litigation recovery returns to the NRF.

⁷ Section 47 provides for unlisted public entities to take steps to notify national treasury if they are not listed and contains specific exclusions for entities that may not be listed.

- [19] Since the third leg of the argument does not withstand scrutiny and SACAA is not obliged to make payment of monies it receives into the NRF, it cannot be said that there is any closed loop. While SACAA may receive funding from the NRF and be obligated to account for its activities in terms of the PFMA, it is not obligated to make payment of monies that it receives into the NRF. There is no "closed loop."
- [20] Fifthly, there is no net financial detriment to SACAA or the state, rendering VAT recovery an unjust enrichment.
- [21] This is simply not so. While SACAA may receive money from the NRF, since it is a national public entity and one that neither conducts an enterprise nor is required to register as a vendor in terms of the VAT Act, it is not exempted from the obligation to make payment of value-added-tax. Whether or not the vendor, in the present case, the sheriff, counsel or attorneys are registered or not is wholly irrelevant to the price that is actually paid by SACAA for the services that are rendered to it. The price that is paid by SACAA is in its terms inclusive of VAT as provided for in section 64 of the VAT Act.
- [22] The crucial point here is that while there is no obligation upon SACAA to register as a vendor or to submit returns, it as an entity is not exempt from the payment of VAT when it procures goods and services from registered vendors. The payment made by SACAA to the sheriff, counsel and the attorneys, includes VAT. It has paid the VAT and while it has no obligation to collect VAT or to submit returns, it is entitled to recover what it has actually paid out.⁸ The cost to SACAA of the VAT component is a real cost, an out-of-pocket expense and is recoverable, in the present case in the bill of costs to be paid by Mr. Mashaba.

⁸ See *Mark Russel Attieh v The Commissioner for South African Revenue Services* (33784/2019) a judgment in a review handed down in the High Court Pretoria on 7 June 2024. The judgment has not been reported and is not available on SAFLII, but a copy was made available with the application for review.

- [23] Lastly, that this aligns with the PFMA's objective in section 2 to secure sound and sustainable management of public finances, preventing double-dipping from the public purse.
- [24] The last proposition is equally unsustainable. Section 2 of the PFMA provides that *"The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure assets and liabilities of the institutions to which this Act applies."*
- [25] The section concerned makes no mention of an intention to "prevent double dipping from the public purse" and the Act in its terms specifically excludes the obligation upon the part of SACAA in terms of section 13(1)(b) read together with section 13(2) and part A of Schedule 2 to make payment of any of its receipts to the NRF.
- [26] Accordingly, SACAA while subject to the PFMA, is not obliged to deposit any funds that it receives into the NRF but rather is obligated to make payment of those funds into its own bank account. It is neither required to nor is it entitled to register as a vendor for the payment of value-added-tax as provided for in section 23 read together with section 16 of the VAT Act.
- [27] However, it is not exempt from the payment of VAT to vendors,⁹ the VAT component of what it pays being for its purposes an indivisible part of the costs paid by it for the services rendered to it. It is entitled to recover such costs which include VAT.

⁹ See *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA) at 61C/D-F.

[28] Since this review was dealt with on the papers, I do not intend to make any order for the costs.

[29] In the circumstances, it is ordered: -

[29.1] The review is dismissed.

[29.2] There is no order as to costs.


A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

REFERRED ON:

5 FEBRUARY 2026

JUDGMENT DELIVERED ON:

18 FEBRUARY 2026

FOR THE APPLICANT:

CORA VAN DER MERWE ATTORNEYS

REFERENCE:

MS. C VAN DER MERWE

FOR THE RESPONDENT:

MOETI KANYANI ATTORNEYS

MS. P FERNIE