

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2020-39555**

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

25 February 2026

DATE

A handwritten signature in black ink, which appears to be "H. H. H.", is written over a black rectangular redaction box.

SIGNATURE

In the matter between:

**ASTFIN GAUTENG
(PTY) LTD t/a ASSETFIN**

Applicant

and

**MAMODUPI MOHLALA INCORPORATED
t/a MOHLALA ATTORNEYS**

Respondent

JUDGMENT

MODIBA, J

- [1] The applicants seek an order reviewing and setting aside the decision by the Taxing Master on 17 September 2024 and 20 November 2024 under this case number.¹ The respondents oppose the application.
- [2] The background facts are largely common cause. The respondent (the plaintiff in the action) instituted an action against the applicants (the defendants in the action). The applicants filed a counterclaim. The action was set down for trial on 6 November 2023. On the first day of trial, the applicants sought a postponement which the respondents opposed. The Court granted the postponement but ordered the applicants to pay the respondent's wasted costs occasioned by the postponement.
- [3] Subsequently, the respondents prepared a bill of costs and served the notice of intention to tax bill of costs (the taxation notice) on the applicants' attorneys by email on 30 January 2024. The taxation notice afforded the applicants a period of ten days to inspect documents or notes pertaining to any item on the bill of costs (supporting documents). It also required the applicants, having inspected the supporting documents, to deliver a notice of opposition within ten days after expiry of the period of inspection, specifying the items on the bill of costs objected to, and setting out a summary of the reason for such objection. On 6 February 2024, the applicants served their notice of intention to oppose on the respondent. However, they did not upload it on Caselines. Further, the notice of intention to oppose was not accompanied by a marked bill of costs specifying the items on the bill of costs objected to, and a summary of the reason for the objection. On 25 March 2024, the respondent served the notice of set down of the taxation on the applicants. The taxation was set down for 4 September 2024 at 14:00. It did not proceed on that day for reasons that are irrelevant to this application. It was rescheduled for 17 September 2024. On 4 September 2024, the applicants

¹ Caselines, 24 - 33.

uploaded their notice of intention to oppose the taxation on Caselines. On 6 September 2024, they sent their marked bill of costs to the respondent's attorney.

- [4] The parties attended the taxation on 17 September 2024. The Taxing Master informed the applicant that the taxation was unopposed, and they should seek condonation for the late delivery of their opposition papers for the taxation to proceed on an opposed basis. They never did. There were many interactions between the parties and the Taxing Master which the respondents set out in their answering affidavit to set out the context to the taxation. Save for a letter the applicants wrote to the Deputy Judge President (the DJP) complaining about the incorrect citation of the parties which I deal with below, I do not deem it necessary to outline the details in this judgment because the issues between the parties are very crisp.
- [5] The respondent set the taxation down for 20 November 2024. However, it did not serve the notice of set down on the applicants. The Taxing Master taxed the bill of costs on an unopposed basis on 20 November 2024.
- [6] The applicants contend that they were not afforded the opportunity to participate in the taxation as the notice of set down for 20 November 2024 was not served on them. Had the notice of set down been served on them, so the applicants contend, they would have participated in the taxation and raised the following grounds for objection: (a) the parties are incorrectly cited on the bill of costs and (b) the items objected to in their marked bill of costs have not been taken into account.
- [7] The respondents have raised a point in limine regarding the non-joinder of the Taxing Master. They contend that the Taxing Master should have been joined as a necessary party to the application, she has not waived her right to be joined,

and the application cannot proceed until this has been rectified. The rule for joinder is trite. A party should be joined to legal proceedings if she has a direct and substantial interest in any order the Court might make, or if such an order cannot be sustained or carried into effect without prejudicing her, unless the Court is satisfied that he has waived his right to be joined.² The fact that the Taxing Master made the decisions which the applicants seek to review does not, without more, render her a party with a direct and substantial interest in these proceedings. More so because, as I find below, the applicants did not bring the review in terms of Uniform Rule 48 which regulates the review of taxation. Therefore, this point in limine falls to be dismissed.

- [8] The applicants did not follow the procedure in Uniform Rule 48. This rule sets out the procedure to be adopted when reviewing a taxation.³ It also sets out the jurisdictional grounds that must be present for a Judge to be called upon to review a ruling of the Taxing Master. In any event, the remedy in Uniform Rule 48 is not available to the applicants for two reasons: (a) they are not dissatisfied with a ruling of the Master that they had objected to or in relation to an item the Master disallowed *mero motu*; (b) a notice calling on the Taxing Master to state a case for the decision of a Judge has not been issued.⁴

- [9] The other remedies available to the applicants are a rescission in terms of Uniform Rule 30 or under the common law and a Rule 53 review. The applicants have not sought a rescission of the taxation in terms of Rule 31 or the common law and for reasons set out below, no case is made out for the Taxation to be reviewed in terms of Rule 53.

² ***Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 737 (A) at 659***

³ Uniform rule 48 (1) 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 *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.”

⁴ *Dlwathi v Taxing Master and Others 2025 JDR 1043 (GJ) at para [10]*

[10] There is no merit to the applicants' grounds of review. They failed to deliver opposing papers in the taxation timeously. Although they served their notice of intention to oppose on the respondent timeously, they failed to upload the notice on Caselines. Therefore, it was not delivered as required by Rule 70(3B)(a), read with the definition of "delivery" in Rule 1.⁵ They also failed to deliver their marked bill of costs and summary of objections at all as they did not serve the documents timeously on the respondents and upload it on Caselines. The Taxing Master correctly took the view that the taxation was unopposed and postponed the taxation on 17 September 2024 to give the applicants an opportunity to seek condonation from the Court for their failure to file their opposing papers timeously. Since they never availed themselves of this opportunity, the Taxing

⁵ Uniform Rule 70(3B) provides as follows:

"[a] Prior to enrolling a matter for taxation, the party who has been awarded an order for costs shall, by notice as near as may be in accordance with Form 26 of the First Schedule -

- (i) afford the party liable to pay costs at the time therein stated, and for a period of ten (10) days thereafter, by prior arrangement, during normal business hours and on any one or more such days, the opportunity to inspect such documents or notes pertaining to any item on the bill of costs; and*
- (ii) require the party to whom notice is given, to deliver to the party giving the notice within ten (10) days after the expiry of the period in subparagraph (i), a written notice of opposition, specifying the items on the bill of costs objected to, and a brief summary of the reason for such objection."*

Rule 1 defines "deliver" as follows: 'deliver' means to serve copies on all parties and file the original with the registrar.

Master's approach to the matter cannot be faulted as she has no power to condone the late filing of a notice of intention to oppose the taxation.⁶

[11] Therefore, the taxation of the bill of costs was correctly finalized on an unopposed basis on 20 November 2024. In terms of Rule 70(4)(b)(ii)⁷, the respondent was not required to give the applicants notice of the taxation as they had failed to comply with Rule 70(3B). The applicants also failed to follow the direction given by the DJP. They had addressed a letter to him without notice to the respondent to complain about their incorrect citation in the bill of taxation. The DJP replied without calling for the respondent's version. In any event, he did not resolve the applicants' complaint. He simply stated that the issue will have to be resolved by a Court amending the order and directed the applicants to "proceed in terms of Rule 42 to vary the order". They never did. They also do not seek any variation relief in these proceedings. Their reliance on the DJP's letter in these proceedings is therefore misplaced.

[12] For all the above reasons, the application is dismissed with costs. The respondent seeks costs on Scale C in terms of Rule 67A read with rule 69. When considering the scale of costs in terms of Rule 69, Rule 67A(3)(b) requires the court to consider the following factors: (i) the complexity of the matter; and (ii) the value of the claim or importance of the relief sought. There is no complexity of a factual or legal nature in this matter, the value of the claim is not substantial, and

⁶ ***Brivik Bros (Pty) Ltd v Balmoral Sales Corporation (Pty) Ltd 1978 (4) SA 716 (W); Olgar v Minister of Safety and Security 2012 (4) SA 127 (ECG)***

⁷ Rule 70(4)(b)(ii) provides as follows:

"(4) The taxing master shall not proceed with the taxation of any bill of costs unless the taxing master is satisfied that the party liable to pay the costs has received —

(a) due notice in terms of subrule (3B); and

(b) not less than 10 days' notice of the date, time and place of such taxation and that the party liable to pay the costs is entitled to be present thereat: Provided that such notice shall not be necessary —

(i) if the party liable to pay the costs has consented in writing to taxation in such party's absence;

(ii) if the party liable to pay the costs failed to give notice of intention to oppose in terms of subrule (3B);"

no case is made out regarding the importance of the relief sought to justify the cost order that the respondents seek.

[13] I therefore make the following order.

Order

The application is dismissed with costs.



L.T. MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant: Adv Grundingh
Instructed by: Van Der Westhuizen Incorporated

For the Respondent: Adv Mamabolo
Instructed by: Mohlala Attorneys

Date of hearing: 16 February 2026

Date of judgment: 25 February 2026

This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Caselines and SAFLII. The date for the handing down is deemed 10am