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: **3 MARCH 2026**

SIGNATURE: [redacted]

Case No. 134420/2024

In the matter between:

DUNGA, NOLWANDO & 5 OTHERS **APPLICANTS**

And

ROAD ACCIDENT FUND **RESPONDENT**

Coram: Millar J

Heard on: Review in Chambers

Delivered: 3 March 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 14H00 on 3 March 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.[1]

[2] The applicant filed a notice of review on 30 October 2025. The Taxing Master then filed a stated case as provided for in rule 48(3) on 8 December 2025. After receiving the stated case, the applicant then filed submissions in terms of rule 48(5)(a) on 23 January 2026 and the respondent its reply on 9 February 2026. The application for review was then placed before me on 24 February 2026.

[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.

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[1] 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.*"

[4] This review engages the interpretation of Rule 67A(4)(a) read together with Rule 70D(6) of the Uniform Rules of Court in regard to a bill of costs drawn and presented for taxation pursuant to an order of this court on 30 April 2024. The order was made in the Urgent Court and was that the "*Matter is struck from the roll, applicant ordered to pay costs.*"

[5] In other words, the applicants brought the respondents to court as a matter of urgency and on this aspect, they were unsuccessful and ordered to pay the respondents costs.[2] This review is brought with the purpose of reducing the amount of those costs which are to be paid.

[6] The terms of the costs order fall squarely within the provisions of Rule 67A(1)(a). This provides:

> *"(1) Subject to any order of the court awarding costs, the fees and disbursements as between party and party, which may be included in a bill of costs submitted for taxation, shall be –*
>
> *(a) For attorneys in accordance with the tariff in rule 70"*

[7] Rule 67A(4)(a) provides:

> *"(4) A costs order may upon application by any party indicate-*
>
> *(a) Which portions of the proceedings are deemed urgent;"*

[8] The fees referred to in Rule 70 relate to the *"Tariff of Fees of Attorneys"*. Rule 70D(6) provides:

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2 The order is clear and unambiguous. See *Administrator Cape, and Another v Ntshwaqela and Others* 1990 (1) SA 705 (A).

"The fees in sections A, B, C and D shall be increased by 15% in accordance with any costs order made in terms of rule 67A(4)(a) and as allowed at taxation."

[9] When the bill of costs was presented for taxation, the Taxing Master ruled that the provisions of Rule 70D(6) were applicable and that the surcharge ought to be allowed. The applicant asserts that having regard to Rule 67A(4)(a), it does not follow as a matter of course that the surcharge provided for in Rule 70D(6) is applicable.

[10] This assertion is predicated upon the use of the word "*may*" in Rule 67A(4)(a). The use of "may" which is permissive, as opposed to "shall" (in Rule 70D(6)) which is peremptory means that it is only upon "*an application to be made for that specific costs order before it can either be allowed by the court or not.*" Following on from this, so the assertion goes, is that Rule 67A(4)(a) *"gives the court a discretion to allow the surcharge on application by the party who has been awarded costs."*

[11] In furnishing reasons for the ruling made the Taxing Master stated pertinently that "*The matter was one of urgency and thus we relied on rule 70D(6).*" This is in my view the nub of the matter.

[12] In considering this review, the starting point is the nature of the proceedings themselves. The application was brought by way of urgency. This was done at the election of the applicant.

[13] The urgency was self-evidently successfully opposed and hence the order.

[14] The respondents contend that the phrase *"upon application by any party" "does not necessarily demand a separate formal application (in the narrow sense) for the costs order to specify urgency, as per the Applicant's interpretation. It can also refer to a request in the final prayers in the papers and/or in argument (in the broader sense) by the relevant parties."*.

[15] In opposing urgency and seeking the striking of the matter from the roll on that basis alone, the respondent satisfied the requirements of Rule 67A(4)(a). To hold otherwise would have the consequence that every urgent application that is struck from the roll with costs may beget a further application to court for an order in terms of Rule 67A(4)(a) so that Rule 70D(6) would find application. This would be an absurdity.[3]

[16] It is eminently sensible and practical for the interpretation of the provisions of Rule 67A(4)(a) read together with Rule 70D(6) as set out in paragraph [14] above to be preferred.

[17] However, in any event, given that the Applicant was the one who brought the Respondent to court by way of urgency, the Taxing Master was quite entitled to adopt this approach as Rule 70(5)(a) entitles the Taxing Master to *"in his discretion, at any time to depart from the provisions of this tariff in extraordinary and exceptional circumstances where strict adherence to such provisions would be inequitable."*

[18] A failure to apply the surcharge in the present circumstances would subvert the purpose of the costs award if, in circumstances where even if successful, a party would be required to litigate further just to recover reasonably incurred costs that had been awarded by court.

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[3] *Cobb v Levy* 1978 (4) SA 459 (T) at 464H and 465A.

[19] For the reasons set out above I find no reason to interfere with the either the interpretation afforded by the Taxing Master to the application of Rule 67A(4)(a) read together with Rule 70D(6) or the exercise of her discretion in respect thereof.

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

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

[21.1] The review is dismissed.

[21.2] There is no order as to costs.

[redacted]

A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

REFERRED ON:	24 FEBRUARY 2026
JUDGMENT DELIVERED ON:	3 MARCH 2026

FOR THE APPLICANTS:	MDUZULWANA ATTORNEYS INC.
REFERENCE:	MR. V MDUZULWANA

FOR THE RESPONDENT:	MALATJI & CO. ATTORNEYS MS. P FERNIE