



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 496/2023

In the matter between:

THE ROCK FOUNDATION PROPERTIES CC

FIRST APPLICANT

ESTHER NYARWAI NDEGWA

SECOND APPLICANT

and

DOSVELT PROPERTIES (PTY) LIMITED

FIRST RESPONDENT

ELI NATHAN CHAITOWITZ

SECOND RESPONDENT

Neutral citation: *The Rock Foundation Properties CC v Dosvelt Properties (Pty) Limited* (496/2023) [2026] ZASCA 43 (1 April 2026)

Coram: SMITH JA

Heard: 19 March 2026

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 1 April 2026 at 11h00.

Summary: Taxation of Costs – review of taxation – party who fails to attend taxation cannot invoke review procedure under rule 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] Although this application has been described as a review of taxation, its true purpose is to seek a review of the Taxing Master's refusal to state a case for the President of this Court, in accordance with Supreme Court of Appeal (SCA) rule 17(3). The taxation process was initiated following the dismissal of the applicants' application for reconsideration of the refusal of leave to appeal under section 17(2)(f) of the Superior Courts Act 10 of 2013.

[2] On 9 June 2023, this Court ordered that the applicants' application for reconsideration be struck from the roll. Additionally, the Court ordered the applicants to pay the costs incurred by the respondents in opposing the application, jointly and severally, with one paying the other to be absolved.

[3] The respondents prepared their Bills of Costs (the bills) and served them on the applicants, subsequently presenting them to the Taxing Master for taxation. The taxation was initially scheduled for 13 August 2025. On this date, the second applicant appeared both personally and as the sole member of the second applicant, requesting postponement to allow time to retain new legal representatives, as the mandate of their previous attorneys, Pandor Davids Incorporated (Pandor Davids Inc), had been terminated. The Taxing Master granted the postponement, rescheduling the taxation for 20 August 2025. However, neither the second applicant nor any legal representatives attended the rescheduled hearing, resulting in the taxation proceeding in their absence.

[4] On 17 September 2025, the applicants submitted a request to the Taxing Master to state a case for determination by the President of this Court, pursuant to SCA rule 17(3). This request related to the taxation conducted on 20 August 2025. In their notice, the applicants alleged that between 13 August and 19 August 2025, they faced difficulties securing new legal representation. Their former attorneys, Pandor Davids Inc, had not formally withdrawn, which hindered their ability to instruct a new firm in time for the taxation proceedings.

[5] The applicants and the Taxing Master provided conflicting accounts of the events on 20 August 2025. The second applicant stated she arrived at the Taxing Master's office at approximately 9:15 but was effectively ignored until 10:35, at which point the Taxing Master informed her that the taxation had already been finalised in her absence. The second applicant further stated that the Taxing Master indicated that the applicants' former attorneys had advised that she would not attend the taxation and that it should proceed unopposed. The Taxing Master did not specify whether this instruction came from Pandor Davids Inc or her Bloemfontein attorneys, Kgomo Attorneys Incorporated (Kgomo Attorneys).

[6] The applicants had terminated the mandate of Pandor Davids Inc on 23 April 2025, prior to the awarding of costs and scheduling of the taxation. They subsequently also terminated Kgomo Attorneys' mandate on 7 May 2025. Kgomo Attorneys eventually filed their notice of withdrawal as attorneys of record on 19 May 2025. The applicants argued that neither firm consequently had the authority to represent them or communicate with the Taxing Master regarding the taxation process. After receiving the taxed bills, the second applicant notified the Taxing Master of their intention to object to various items allowed during taxation.

[7] The Taxing Master disputed the applicants' account. They asserted that the Taxing Master took significant steps to assist the second applicant. When the bills were presented for taxation on 13 August 2025, the Taxing Master requested the respondents' legal representative to consent to a postponement, which was granted without pursuing

wasted costs. The Taxing Master also provided the second applicant with contact details for costs consultants and thoroughly explained relevant procedures, shared her own contact information, and informed the second applicant that taxation could be conducted virtually to reduce expenses.

[8] On 20 August 2025, prior to commencing taxation, the Taxing Master took steps to ascertain whether the second applicant would be attending the taxation. Since the applicants were unrepresented and the second applicant resided outside Bloemfontein, she deemed it necessary to verify the second applicant's presence at the premises. It was established that she was not present. The Taxing Master thus refuted any implication of bad faith or improper conduct in her management of the proceedings. Nonetheless, these factual disagreements are not material to the review under SCA rule 17(3).

[9] Drawing from the judgments in *Macbeth Attorneys Incorporated v South African Forestry Company Soc Limited and Others (Macbeth Attorneys)*¹ and *NT Makhabele Enterprises CC and Others v Business Partners Limited (Makhabele)*,² the Taxing Master informed the applicants that she was of the view that a party who is not present during taxation and who fails to raise objections before the Taxing Master, is not entitled to seek a review under rule SCA rule 17(3). The Taxing Master accordingly refused to state a case under this rule.

[10] SCA rule 17(3) stipulates:

'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

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

² *NT Makhabele Enterprises CC and Others v Business Partners Limited* (83/2019) [2025] ZASCA 151 (16 October 2025) (*Makhabele*).

objection advanced at the taxation, and shall embody any relevant findings of facts by the taxing master.'

[11] In both *Macbeth Attorneys* and *Makhabele*, this Court clarified that SCA rule 17(3) limits reviewability to items specifically objected to during taxation or disallowed by the Taxing Master *mero motu* (on their own initiative). The review procedure is strictly confined to these circumstances.

[12] Therefore, a party who does not attend the taxation hearing cannot utilise the review procedure under SCA rule 17(3) to challenge the Taxing Master's refusal to state a case. While the applicants' assertions of procedural unfairness in the way in which the taxation was conducted may implicate their right to a fair hearing, they do not justify invoking SCA rule 17(3). Shortcomings in the procedure adopted by the Taxing Master may well in certain circumstances constitute grounds for setting aside the taxation. In instances where a party believes that the Taxing Master's conduct during the taxation process was improper or prejudicial, such concerns may warrant the overturning of the taxation, provided they meet the established common law requirements for the setting aside of default judgments. However, SCA rule 17(3) is not the appropriate remedy in these circumstances.³

[13] In sum, as the applicants did not attend the taxation, they cannot request review of any item that was objected to. The Taxing Master therefore correctly declined the request to state a case under SCA rule 17(3). The application must therefore fail.

[14] In the result, the following order is made:
The application is dismissed with costs.

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).

J E SMITH
JUDGE OF APPEAL

Appearances:

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