IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 3873/2020P

In the matter between:

THE MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, KWAZULU- NATAL — **APPLICANT**

AND

N[...] Y[...] X[...] — **RESPONDENT**

ORDER

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1. The application is dismissed.

2. No order as to costs.

JUDGMENT

Mngadi J

[1] The applicant seeks an order seeking condonation for non-compliance with the provisions of Uniform Rule 70 (3B)(a) (ii) by filing late notice of opposition to a bill costs, and failing to specify all items in the bill objected to, in addition, seeks an order to be allowed to conduct an inspection of documents and notes relating to items in the bill of costs and to be granted leave to amend notice of opposition. The respondent opposes the application.

[2] The applicant is the MEC for Health, KwaZulu- Natal. The defendant is N[...] Y[...] X[...] an adult female acting in her personal capacity and in her capacity as representative of her minor child.

[3] The respondent sued the applicant for medical negligence. The issue of liability was settled between the parties. The respondent then served on the applicant a notice of taxation of a bill of costs relating thereon 9 May 2023. On 20 June 2023 a notice of opposition to some items in the bill of costs was served. The taxation was set down for 6 December 2023, but it did not proceed.

[4] On 7 December 2023 the applicant requested condonation for the late filing of the notice of objection and leave to supplement the notice of opposition filed. The respondent refused to grant consent.

[5] The applicant stated that its employee that settled the initial notice of opposition, apart from filing late notice of objection, omitted to raise objection to certain items in the bill and failed to furnish reasons for the opposition the items opposed, when consent was sought to supplement the notice of opposition, it was refused.

[6] The applicant stated that if not allowed to supplement it would result in the applicant liable for costs it is otherwise not liable for, and that would result in the waste of public funds. The applicant in the founding affidavit sets out the items in the bill of costs it intends to objected to and the reasons thereof. It states after it has inspected the documents and notes it intends to object to additional items.

[7] The respondent in the answering affidavit sets out the dates of the various stages in the litigation from 23 June 2020 when summons were served to 13 March 2023 when the matter was set down for trial with a mandate to settle given on 10 March 2023, and issues of merits and liability settled on 22 March 2023.

[8] The respondent contends that the applicant has not made out a relief sought, for the notice of opposition was prepared by an admitted attorned. There is no explanation for the applicant to be entitled to another opportunity to oppose the bill of costs and to supplement the notice of opposition. The filed notice of opposition was prepared by attorney who dealt with the matter, and she was familiar with the litigation. It is extensive. There are no other items in the bill that can be objected to. The respondent traversed the items the applicant intended to object to and stated that there was no merit in the intended objection.

[9] The respondent states that it refused to the filing of an amended or supplementary notice of opposition, because of the applicant's prior dilatory conduct, applicant had filed

the notice of opposition and had sufficient time to consider and object to the respondent's bill of costs. It waited just before the taxation of the bill before requesting to refile and supplement which delay is prejudicial to respondent.

[10] Uniform Rule 70(3B) provides: 'Prior to enrolling a matter for taxation, the party who has been awarded an order of costs shall, by notice as near as may be in accordance with form 26 of the First Schedule:

a) 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 or any one or more such days, the opportunity to inspect such documents or notes pertaining to any item in the bill of costs; and
b) Require the party to whom notice is given, to deliver to the party giving notice within twenty (20) days, 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.'

[11] Uniform Rule70(30B) requires that the party liable for costs should be afforded an opportunity to inspect such documents or notes pertaining to any item on the bill of costs prior to be required to deliver the written notice of opposition.

[12] The party liable for the bill must in a time stated and for a period of ten (10) thereafter, be given an opportunity to inspect documents and notes. The notice issued by the respondent did specify the time when the inspection of documents and notes could be carried out but did not specify the date. It also stated that it be within ten (10) days after receipt of the notice, but the Rule says it is within ten (10) days after the date stated in the notice. In addition, the notice issued required the applicant to oppose the taxation within twenty (20) days after the expiry of the period permitted for the inspection. In the Rule there is time frame which is 'twenty (20) days'. Since as stated above, the period of the inspection was unknown, the expiry thereof also remained unknown. The respondent's notice stated that notice of opposition be filed within twenty(10) days. See the notice below. 'Take notice that the plaintiff intends submitting the attached bill of costs to the Taxing Master at the High Court, KwaZulu Natal Division, Pietermaritzburg for taxation.

'You may, by prior arrangement and within ten (10) days after receipt of this notice, inspect the documents or notes (excluding privileged documents or notes) pertaining to any item on the bill at the offices of Vash Pillay & Associates, suite 3 Block C, Bulwer Street, Pietermaritzburg between the hours of 09h00 and 16h00. In order to arrange such inspection kindly contact Vash Pilay at (033) 342 2165.

You may furthermore deliver a notice of intention to oppose the taxation within twenty (10) days after the expiry of the period permitted for the inspection. Such notice of intention to oppose the taxation shall specify the items on the bill to which you object and a brief summary of the reason for each objection. If you give notice of intention to oppose within the specified time you will be given notice of the date and time of the taxation, and you may object to the items specified in your notice of opposition at the taxation. Service by email will be accepted.

Should you fail to deliver your notice of intention to oppose within the specified, the bill of costs will be submitted to the taxing master for taxation without further notice to you.'

[13] The said notice prescribed time limit which are not time limit strictly provided in Rule 70(3A). The respondent has contended that the notice of objection to the bill was filed out of time and it refuses to condone the late filing of the notice of objection. The notice of taxation with a bill was served on 9 May 2023. The notice of opposition was filed on 20 June 2023. The respondent contends that the notice of opposition was required to be filed on within 20 days from 9 March 203. However, the respondent's notice of intention to tax the bill did not have a date on which to inspect documents and notes. As a result, it could not be determined the period within which to file the notice of opposition. Therefore, the applicant when it filed the notice of opposition on 20 June 2023 it was still within time. In addition, the respondent received the notice of opposition on 20 June 2023 without any protest and even after that it never raised the issue of late filing of the notice of opposition. The respondent's objection of the filing of the notice of opposition on 20 June 2023 is rejected, and no condonation is required for a late filing of the notice of opposition.

[14] The applicant mandated Ms Mthembu to deal with the matter including the taxation of the bill of costs. It now claims that Ms Mthembu was incompetent because her approach differed from that of the attorney allocated the matter after Ms Mthembu. It is not known whether on taxation the further objection intended to be raised in the taxation would have been allowed or not. It was only in December 2023 when taxation had to be done that the applicant requested to do inspection of documents and notes and to file a supplementary notice of opposition. It gave no reasons why inspection of documents and notes if needed to be done, not done before the notice of opposition was filed. It did not explain why from June to December it did not ask for the inspection of documents and notes and if necessary, request a file supplementary notice of opposition. Up to the stage the applicant has not obtained any explanation from Ms Mthembu, why she dealt with the matter in the manner she did, and in particular why the additional issues that were supposed to be included in the notice of opposition were not included. In the result, the applicant has failed to give a full explanation why it should be granted a second opportunity to inspect documents and notes and to file a supplementary notice of objection. It gave no acceptable reasonable explanation to the respondent and also failed to do so in its application.

[15] The respondent's continued objection to the filed notice of opposition in that it was filed late which was intended to exclude the applicant in participating in the taxation of a substantial bill od costs was completely unreasonable, because even if it was late, it was late by few days. The applicant waited from June to December 2023 then filed a request to be given time and opportunity to file supplementary notice of opposition. It has not explained why a notice of opposition was file which needed to be supplemented. It has caused a delay without any reasonable acceptable explanation.

[16] The notice of Taxation in terms of Rule 70(3B) must stipulate a date on which is fixed as the first date on which inspection of documents can be done because inspection needs to be allowed for the next ten days after that date, and after the expiry of the tendays allocated for inspection, the other party has twenty(20) within which to file the notice of opposition.

[17] It is ordered as follows:

3. The application is dismissed.

4. No order as to costs.

Mngadi J

APPEARANCES

Case Number:	3873/2020
For the Applicant:	Adv S Takchund
Instructed by	State Attorney, KZN PIETERMARITZBURG
For the Respondent:	Adv. L. Hollander
Instructed by:	Joseph's INC C/O Vash Pillay & Associates PIETERMARITZBURG
Heard:	21 April 2026
Judgment delivered on:	05 May 2026