IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 14519/2024

In the matter between:

NATIONAL BIOPRODUCTS INSTITUTE (NPC) **APPLICANT**

and

THOKOZANI P CEBEKULU **RESPONDENT**

ORDER

In the premises, I make the following order:

1. The ruling of the taxing master on item 33 taxing off R15 000 is reviewed and set aside.
2. It is declared that the hearing of 30 January 2025 was an unopposed application and an appearance fee of R4 500 for one hour is allowed, and a sum of R40 500 is taxed off on item 33.
3. Applicant to pay costs of the review

JUDGMENT

Ntlokwana, AJ

[1] This is a review of taxation brought in terms of uniform rule 48. The respondent is taking issue with only one item of the taxed bill. The item pertains to the fees charged by the applicant's attorney who appeared as counsel to take an order by consent, as the parties had reached an agreement on the proposed order to be taken by consent. The consent order obtained on 30 January 2025 specifically states that the application is adjourned to 31 March 2025 to allow the respondent to comply with the previous order obtained on 3 December 2024. Further, the said consent order directed the respondent to pay the wasted costs of the application on a scale as between party and party on scale C. The applicant's urgent application was for contempt of the order obtained on 3 December 2024. It was lodged on 22 January 2025 scheduled to be heard on 30 January 2025.

[2] On 29 January 2025, the respondent filed his notice to oppose the urgent application, together with a rule 7 notice and a notice in terms of rule 35(12), requesting the applicant to make available certain documents referred to in the founding affidavit in the contempt application. The respondent requested this information to prepare his answering affidavit to the contempt application.

[3] Following the filing of the notices referred to above, the parties agreed that the matter would be adjourned to 31 March 2025.

[4] After obtaining the wasted costs court order on party and party scale with scale C in terms of rule 69, the applicant presented a bill of costs for taxation with an item for a day's fee for counsel of R45 000 for the appearance on 30 January 2025, being item 33 of the bill of costs.

[5] Item 30 of the bill of costs reads as follows:

'Attended court for the hearing of the application where the draft order was taken (Attorney) - 1 hour'

A fee of R1 668 was raised and allowed by the taxing master. The respondent does not take issue with this item, save that he contends that Mr. Klingbiel, an attorney

who appeared as counsel to move the application, is not entitled to charge counsel's fees for a full day fee, alternatively, is not entitled to raise fees at all as he is an attorney and not an advocate, as there was an attorney in attendance who raised attendance fee on item 30 of the bill. The respondent's contention is seemingly misplaced as it is not in line with the rules governing attorneys appearing as counsel in the High Court, specifically rule 69.[1]

[6] Item 33 reads as follows:

'Attended court as counsel (Mr. Klingbiel), where the draft order was taken (appearance fee reduced to R45,000 to fall in line with scale C)'

A full day fee of R45 000 was claimed, the taxing master reduced the amount to R30 000, thereby taxing off R15 000. In a handwritten note on the taxed bill, the taxing master explained that she allowed the R30 000 as a day fee.

[7] In his notice to review, the respondent stated that the applicant was not entitled to a day fee as the attendance in court was to take a consent order. The matter was number one on the court roll, there was little time spent, and therefore, the fee charged should reflect the actual time spent, which was 30 minutes in court. The taxing master, according to the respondent, made an error in accepting that the application was opposed, as claimed by the applicant, and rejecting the respondent's submission that the application was not opposed or the matter was not attended as an opposed matter when it was called, as the order was obtained by consent. The respondent submitted that the taxing master failed to apply her mind to the matter and did not consider the relevant legal points to the matter. If the court were to disagree with the respondent's contestation, holding that the taxing master was correct in allowing the day fee against the respondent, such a fee should be calculated on the actual time spent by the applicant's attorney appearing as counsel.

[8] The applicant, in response, claimed that urgent applications are deemed opposed as the opponent can appear on the day and argue the matter, therefore, counsel must be prepared as though it is an opposed application. Further, the respondent submitted that a consent order is not just there to be rubber-stamped by

[1] *Ramuhovhi and Others v President of the Republic of South Africa and Others* [2017] ZACC 41; 2018 (2) SA 1 (CC) para 68

the court, the applicant has the onus to demonstrate to the court why the matter is urgent and to make submissions where necessary in relation to the consent order. On this basis, argued the applicant, the taxing master applied her discretion in concluding that the matter was opposed.

[9] The taxing master in her stated case stated that after considering factors submitted before her, she allowed a reasonable fee of R30 000 in terms of rule 69. She stated that she based her decision on the provisions of rule 69(8)4, which provides that in the event that the trial or opposed application is settled, withdrawn, or postponed on the day of set down or two days before that, a full first-day fee will be allowed.

[10] The issue that needs to be answered is whether the urgent application brought by the applicant was heard as an opposed matter for it to attract the provision of rule 69(8)4 as per the taxing master's ruling. Alternatively, what constitutes an opposed matter for counsel to claim the full day fee as provided in rule 69(8)4. The taxing master placed reliance on rule 69(8)1*(b)*(i), which provides that the tariff of fees to be allowed for work by legal practitioners shall be:

'1*(b)* Appearances in court for opposed applications:

> (i) for the first day, a day fee inclusive of preparation, consultation and appearance on the same day ...'

[11] An urgent application is brought as a request to bypass timeframes prescribed by the Uniform Rules of Court, on the basis that the matter cannot wait for the normal course of exchanging affidavits.[2] Depending on the conduct of the respondent, it is not necessarily an opposed application. An urgent application is essentially unopposed if the respondent either chooses not to file an answering affidavit, abides by the decision of the court, or agrees to the draft order sought by the applicant.[3] Under these circumstances, a matter would be placed on the urgent motion roll and be dealt with swiftly. In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers*),[4] Coetzee J remarked:

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[2] Rule 6(12)
[3] Rule 6(5)(d)(i)(ii)
[4] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 136H.

'… Urgency involves mainly the abridgement of times prescribed by the Rules and, secondarily, the departure from established filing and sitting times of the Court.'

[12] In terms of the uniform rules[5] an urgent application becomes an opposed application the moment the respondent files a notice of the intention to oppose and thereafter submits an answering affidavit detailing his defence to the allegations contained in the founding affidavit. The applicant may then file a replying affidavit in response to the respondent's answering affidavit. At this stage, the urgent application becomes a fully disputed case, where both sides will present arguments in an opposed motion hearing.

[13] The matter under review was initially brought as an urgent application to be heard on 30 January 2025. On 29 January 2025, the respondent filed a notice of intention to oppose without filing an answering affidavit. On the same day, the parties agreed on a draft order to be taken by consent, the terms of which were as follows:

(a) The application was adjourned to 31 March 2025.
(b) The respondent would, to the best of his abilities, comply with the provisions of the order of 3 December 2024 by no later than 6 February 2025.
(c) In the event that the respondent failed to comply with paragraph (b) above, the applicant was given leave to supplement its papers insofar as may be necessary for the hearing and determination of the relief sought in terms of the notice of motion.
(d) The respondent tendered to pay the wasted costs of the application to date of hearing on a scale between party and party on scale C.

[14] The consent court order clearly illustrates that on 30 January 2025, the matter was simply called, and an order by consent that was agreed by the parties was granted. There was no answering affidavit filed, and there were no arguments presented, as would be the case in an unopposed motion hearing. The taxing master erroneously accepted the applicant's view that the matter was an opposed matter and was dealt with as such when it was in court on 30 January 2025. As a result,

[5] Rule 6(5)(d)(i)(ii)

the taxing master applied the provisions of rule 69(8)1*(b)*(i) and rule 69(8)4*(a),* and allowed the day fee for a legal practitioner appearing as counsel in the sum of R30 000 reduced from R45 000.

[15] The taxing master misconstrued the case before her as though it were an opposed hearing, whereas it was an unopposed hearing, where the order was obtained by consent. There is no substance in the applicant's argument that urgent applications are deemed opposed and that counsel prepares to argue the matter before a Judge where an opponent can appear on the day and argue, wherein, in those circumstances, counsel must be prepared as though it is an opposed application.

[16] This proposition is not supported by the events that took effect, leading to the conclusion of a consent draft order on 29 January 2025. On 29 January 2025, the applicant’s attorneys forwarded an email to the Registrar of the court advising that the parties had reached an agreement on a draft order to be taken by consent.

[17] The taxing master should have accepted that the matter was an unopposed application and then proceed to apply the provisions of rule 69(8)2, where it is stated that for appearance in court in an unopposed application, counsel is entitled to charge a fee per quarter of an hour or part thereof, subject to a minimum of one hour being allowed. Counsel would be entitled to a fee of R1125 per 15 minutes as prescribed in rule 69(7). There is already evidence that the applicant claimed and was allowed one hour of attendance by an attorney on item 30 of the bill of costs.

[18] It is my view that the applicable tariff is in terms of rule 69(8)2, a tariff designed to attend to fees for appearance as counsel on an unopposed application. I am also of the view that an hour was spent attending court, and that a fee of R4 500 should have been allowed by the taxing master, and that the fee of R40 500 should be disallowed or taxed off.

[19] A taxing master ought to familiarise herself with the applicable taxation principles when faced with a litigant opposing an item in a bill of costs, and should guard against overcharging or overreaching when it comes to taxation of costs,

especially, as is the case in this matter, where the matter was unopposed, and the respondent tendered wasted costs on a party and party scale. A taxing master is enjoined to see to it that costs are kept within a proper limit and that an opportunity is not taken to make the other side pay for the unnecessary costs.[6]

[20] In *Visser v Gubb*,[7] the general principles governing interference with the exercise of the taxing master's discretion were stated as follows:

'The Court will not interfere with the exercise of such discretion, unless it appears that the Taxing Master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he has failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The Court will also interfere where it is of opinion that the Taxing Master was clearly wrong, but will only do so if it is in the same position as, or a better position than, the Taxing Master to determine the point in issue … The Court must be of the view that the Taxing Master was clearly wrong, ie its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.'

[21] A court must therefore be satisfied that the taxing master's ruling was clearly wrong before it interferes with the decision of the taxing master. I am satisfied that the taxing master is clearly wrong in her decision to allow the item as though the matter were an opposed application. I am also of the view that a taxing master should *mero motu* be able to raise the issue of whether attending and drawing fees should be allowed when the amount taxed off is more than 20% as provided in rule 70 tariff item E.3*(b)*.[8] This rule provides that a taxing master may disallow drawing and attending taxation fees where more than 20% of the total amount of the bill of costs, including expenses, is taxed off. More than 20% of the applicant's total amount of the bill of costs has been taxed off, however I make no determination on this issue as it is not before me.

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[6] *Liquidator Benghiat, Ltd v Liquidators of Sterling Trading Co.* 1922 WLD 177 at 181.
[7] *Visser v Gubb* 1981 (3) SA 753 (C) 754H – 755B.
[8] *Smith v MEC for Health, Mpumalanga* 2021 (6) SA 532 (ML) para 23.

[22] The respondent has been substantially successful in this review. There is no reason why he should not be entitled to costs of review. In my view he is entitled to costs.

Order

[23] In the premises, I make the following order:

1. The ruling of the taxing master in respect of item 33, whereby R15 000 is reviewed and set aside.
2. It is declared that the hearing of 30 January 2025 was an unopposed application and an appearance fee of R4 500 for one hour is allowed, and a sum of R40 500 is taxed off on item 33.
3. Applicant to pay the costs of review.

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Ntlokwana AJ

Case Information:

Date of Judgment: 25 May 2026

Appearances

For the applicant: MacGregor Erasmus Attorneys Inc.
1st Floor, Bond Square
12 Browns Road, The Point
Durban
Ref: NAT12/0039
Email: Justin@meattorneys.co.za

For the respondent: Ngcamu Incorporated
Email: info@ngcamulaw.co.za
C/O Mnguni & Associates
11 Linden Road
Essenwood
Durban
Email: info@mlsattorneys.co.za