


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 51086/2017

REPORTABLE: NO OF INTEREST TO OTHER JUDGES: NO REVISED: NO	
23 JUNE 2026	
DATE	SIGNATURE

PJ NIEMANN OBO M MAKHUBELA

Applicant

and

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH OF THE GAUTENG
PROVINCIAL GOVERNMENT**

Respondent

JUDGMENT: TAXATION REVIEW

FRANCIS-SUBBIAH J:

[1] This is an application to review the ruling of the Taxing Master. The review relates to a reservation fee charged by an expert witness for reserving time to attend and give expert evidence at trial.

[2] The matter was set down for trial for a period of three (3) days, commencing on 15 August 2023. The matter was settled on the first day of trial. Therefore, no evidence was led in the matter.

[3] The applicants submit that the Taxing Master erred in her ruling to allow the "bare minimum" for an expert witness who would have prepared, qualified himself and attended court to give evidence.

[4] The court order recording the settlement between the parties provided for the granting of expert witness fees. The order records the following:

"The reasonable preparation, qualification, reservation and attendance fees, if any, of all the plaintiff's experts of whose reports had been"

[5] The expert's invoice includes a charge described as "STANDBY" in the amount of R140 869,57. This charge is understood to be a standby or reservation fee and accordingly falls within the category of "reservation fees" as contemplated in the court order. It does not constitute a fee for the expert's preparation or qualification.

[6] The Taxing Master avers that the applicant failed to provide objective proof (such as diary entries, patient cancellation records, or financial documentation)

demonstrating that the expert suffered loss of income or was out of pocket because of having reserved a trial date. The applicant relied solely on the expert's invoice.

[7] The Taxing Master further states that she found that the invoice, in the absence of a detailed breakdown of preparation hours and/or proof of forfeited income, applied the statutory tariff as provided by the Tariff of Allowances Payable to Witnesses in Civil Cases.¹

[8] The tariff of allowances paid to witnesses read with the Uniform Rules of Court² provide that the party paying the fees, only pays the reasonable and necessary litigation costs and not every full expense the successful party chose to incur.

[9] Uniform Rule 70(3) it states that:

"With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the Taxing Master shall, on every taxation, allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and

¹ GN R 394, GG 30953, 11 April 2008

² Rules Regulating the Conduct of the Proceedings of the Provincial and Local Divisions of the High Court of South Africa, Government Gazette 999, Government Notice R.48, 12 January 1965

expenses to witnesses or to other persons or by other unusual expenses.”

[10] In terms of Rule 70(3), the Taxing Master’s role is to allow only such costs as appear to the Taxing Master to have been necessary or proper for the attainment of justice or for defending the rights of any party. The Taxing Master is further required to disallow costs which appear to have been incurred through over-caution, or which constitute unusual expenses.

[11] This is further confirmed in *Bandara Investments CC and Another v Palmer and Others*³ wherein the court stated that:

“...taxation must allow reasonable remuneration for work necessarily and properly performed, while excluding excess or overreaching.”

[12] In the current case, the Taxing Master deemed the claim of **R140 869. 57** to be excessive and an unusual expense considering that the reservation fee was only for one day. Further, the applicant failed to prove the reasonableness of a reservation fee particularly given that the matter was settled on the first day.

[13] In the absence of proof of forfeited income as contemplated in the applicable tariff, the Taxing Master found that she was bound by the prescribed tariff applicable to witness fees. In these circumstances, the Taxing Master contends that the allowance of **R2,084.00** was the lawful maximum amount that could reasonably be allowed as prescribed.⁴

³ (205/2024; 613/2024) [2026] ZASCA 85 (19 June 2026) at para 4

⁴ GG NO. R 41096, 06 September 2017

[14] In comparable foreign jurisdictions, the Canadian Courts have considered the recoverability of expert standby or cancellation fees. In *Dhillon v. Bowering*,⁵ the presiding officer referred to *Mohr v. Dent*⁶, wherein it was stated at paragraph 55 that:

“For that reason before awarding fees for time lost because of a short cancellation of a trial, the Taxing officer should satisfy himself that there was in fact a loss suffered by the doctor which justifies him in rendering a fee payable by the defendant.”

[15] The court in *Dhillon v. Bowering*⁷ further held:

“I must satisfy myself that, in respect of the amount charged for the cancelled court appearances, the doctors could not have used the time suddenly available to them in remunerative activities (per Mohr v. Dent, supra).”

[16] These authorities illustrate that a claim for a standby, reservation, or cancellation fee is not automatically recoverable. Rather, the claimant bears the burden of demonstrating that the expert suffered an actual loss of income or opportunity as a result of reserving time for the trial and that the time so reserved could not reasonably have been utilised for other remunerative work.

[17] In the South Australian Court in *Lawrence v Sambevski*,⁸ it was held that the assessment of witness fees requires the Court to consider a range of factors in

⁵ 2013 BCSC 1178, at paras 45-46

⁶ [1983] B.C.J. No. 323 (S.C.)

⁷ 2013 BCSC 1178 at para 57

⁸No. DCCIV-96-1427 Judgment No. D3548 [1997] SADC 3; [1997] SADC 3548 (17 January 1997)

determining what constitutes a reasonable fee. These factors include the actual loss incurred by the witness, the scale of charges recommended by the Australian Medical Association, and the tariff of fees prescribed for professional, scientific or other expert witnesses on a daily basis. While the scale of charges provides a maximum daily rate the Court retains a discretion to allow a higher amount where such an award is considered just and reasonable in the circumstances.

[18] In *Bandara Investments CC and Another v Palmer and Others*⁹ it was confirmed that the Taxing Master is vested with significant discretion in deciding whether the costs claimed in a bill of costs are reasonable. The court further asserted that the discretion exercised by a Taxing Master is exercised according to the principle that costs must be reasonable and comply with the applicable tariff, unless there are justified deviations.

[19] In *Aswegen v Lombard*¹⁰, the court confirmed the principle that witness attendance is generally regarded as a civic duty and that a party may not recover excessive witness fees above the statutory tariff unless proper justification exists for such departure.

[20] It is well established that a Taxing Master exercises a discretion to allow costs that are necessarily incurred in litigation. However, a reviewing court is entitled to interfere with the Taxing Master's decision when it is based on a misdirection of law, a misconception of the facts or circumstances of the matter, or an incorrect

⁹ (205/2024; 613/2024) [2026] ZASCA 85 (19 June 2026) at para 4

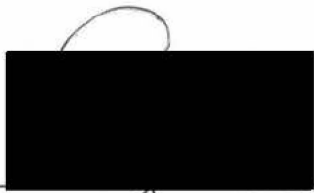
¹⁰ 1965(3) SA 613 (A)

appreciation of court practice.¹¹

[21] It is accepted as set out in *Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others*¹², that a Taxing Master's decision will be interfered with on review only where the court is clearly satisfied that the ruling was clearly wrong. In the present matter I can find no basis upon which to fault the Taxing Master in the exercise of her discretion as being clearly wrong. On every taxation, the Taxing Master is entrusted with the duty of allowing such costs, charges, and expenses as appear necessary or proper for the attainment of justice or the protection of the rights of the parties,¹³ and this has clearly been done.

[22] For the above reasons the following order is made:

The review is dismissed. The decision of the Taxing Master is confirmed and upheld.


R FRANCIS-SUBBIAH
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

¹¹ *Sonny and Another v Premier of the Province of KwaZulu-Natal and Another* (33185/2015) [2016] ZAKZPHC 107 (12 December 2016) at para 10.2 and 11 referring to *Cash Wholesalers, Ltd v Natal Pharmaceutical Society and The Taxing Master* 1937 NPD 418 at 425.)

¹² Rule 70 of the Uniform Rules of Court

¹³ 1984 (3) SA 15 (A)

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This judgment has been delivered by uploading it to the court online digital data base of the Gauteng Division, Pretoria and by e-mail to the attorneys of record of the parties.

The deemed date and time for the delivery is 23 June 2026.