

iAfrica Transcriptions (Pty) Ltd

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 20546/2005

& RELATED THERETO CASE NO. 11151/2007

DATE: 2012-09-07

10 In the matter between

VALENTE EVAN ROSSER

Applicant

and

UVALENTE AFRICA (PTY) LIMITED

Respondent

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J U D G M E N T

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WILLIS J:

[1] The applicant has set down an application in terms of which he seeks the following relief:

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1. That the respondent's taxed bill of costs under case number 01/011151 and its allocator be set aside.
  2. That the warrant of execution issued under case number 07/011151 on 7 September 2009 be set aside.
  3. That the respondent be ordered to return the applicant all assets or funds attached by the respondent in terms of the warrant

of execution issued under case number 07/011151 on 7 September 2009.

4. That the costs of the application on a scale as between attorney and clients be paid by the respondent.

[2] The taxation in question took place on 26 August 2009. The notice of this particular application was dated 26 May 2010, although it seems to have been served on 1 June 2010. The applicant has appeared in court in person. I have had an exasperating week attempting to address his  
10 concerns.

[3] I have advised the applicant to ensure that he is represented by counsel. We stood the matter down in order to enable him to have counsel today. That has not happened. In essence, despite protest by the applicant that he is not seeking to review the Taxing Master's bill of costs, that is precisely what is in fact happening, because the first prayer is that his taxed bill of costs be set aside.

[4] The applicant claims that he did not receive notice proper of the  
20 proposed taxation. I shall assume in his favour that, that is correct. What is common cause, and indeed abundantly clear from the papers is that once taxation had taken place he became aware of it, very shortly thereafter. No review was brought within the time periods provided for in terms of Rule 48 of the Rules of the High Court and, furthermore, in terms of the common law. I refer to the cases of *Ormonde v Buirski*, *Herbstein*

*and Jacobson* 1933 CPD 413 and *Visser and du Toit v Union Government* 1943 CPD 297, in which respectively delays of three months and six months were held to be fatal. See, also *Kingsborough Town Council v Thirwell and Another* 1957 (4) SA 533 (N) at 535D, *Greenblatt v Barends* 1960 (4) SA 825 (C) at 826C-H and *Motivation Resources v Momentum Life Assurers Limited* 1977 (2) SA 1030 (T) at 1032G-H.

[5] In this particular case, before me now, it appears clearly that the applicant brought the application for review more than nine months after  
10 he had become aware of that taxation. Furthermore, there is another defect in the application namely that the Taxing Master whose audit it is sought to set aside has not been given proper notice.

[6] My hands are tied, as a matter of law. I have sympathy for the applicant. It seems clear that this whole matter relates to a family dispute. It seems he has been taxed heavily for the costs in the matter, but at the end of the day a Judge can only make a decision according to law and not out of considerations of sympathy for the misfortune that has beset the applicant.

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[7] There was an application lodged simultaneously with the hearing of this matter for that to be security for costs. I do not consider that I need to deal with that matter. Counsel for the respondents had indicated that the application for security for costs in any event falls away once, if I am to dismiss the application.

[8] Accordingly, the following is the order of the court:

The application is dismissed with costs.

[9] Mr Valente, if you wish to bring an application for leave to appeal against my judgment you may do so. I shall ask Mr Seape, as an officer of the court, to let you know the time frames within which you must bring the application.

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Applicant in person.

Counsel for the respondents: *Adv Mmusi Seape*.

Attorneys for the respondents: G B Arieblieebmann Behrmann and Company.

COURT ADJOURNS