

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 22733/2012

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

IRVIN PERUMAL

First Applicant

SHIRLEY PERUMAL

Second Applicant

KERSHIA PERUMAL

Third Applicant

And

DUNNEWELS BODY CORPORATE

First Respondent

GERRIT GENIS

Second Respondent

LAILA SARANG

Third Respondent

SANNETTE ERASMUS

Fourth Respondent

JANINE TARGETT

Fifth Respondent

OLIETE PERESTRELO

Sixth Respondent

VHUMBANAI PROPERTY SOLUTIONS

Seventh Respondent

J U D G M E N T
REVIEW OF TAXATION AND RULE 30(1) APPLICATION

MAKUME, J:

[1] On the 28th June 2012 my brother Spilg J sitting in the Urgent Court made an order to the effect that the applicant in that matter pay the taxed costs of the first, fourth, fifth, sixth and seventh respondents.

[2] Pursuant to that order the Taxing Master taxed and allowed costs in favour of the above named respondents on the 30th October 2012 in the amount of R23 812,37.

[3] On the 24th April 2013 the first applicant launched this application in which application he seeks the following order:

3.1 Condoning the late filing of the application for review.

3.2 That the Bill of Costs which was taxed and allowed on the 30th October 2012 by the Taxing Master be reviewed and set aside.

3.3 Ordering that the first, fourth, fifth, sixth and seventh respondents pay the costs of this application in the event that they oppose same.

[4] On receipt of the application the respondents delivered a notice in terms of Rule 30(1) on the 18th June 2013. In the notice the respondents informed the applicant that his notice of motion is defective in that it does not comply with the requirements set out in Rule 48 of the Rules. The applicant was afforded a period of ten days within which to remove the cause of complaint.

[5] Having failed to remove the cause of complaint as required by Rule 30(1) the respondents delivered the application in terms of Rule 30(2) on the 23rd July 2013 in which application they seek an order setting aside the applicant's notice of motion to review taxation

[6] The applicant filed an answering affidavit in opposition to the Rule 30(1) notice on the 14th August 2013. The answering affidavit spans some 34 pages whilst the founding affidavit is two pages long divided into 9 paragraphs. The crux of the founding affidavit is paragraph 4 wherein the respondents say the following:

“As a result of the fact that the applicants intended to review and set aside the bill of costs taxed under the above case number on the 30th October 2012 as is evident from Annexure ‘LM1’, the applicants were required to comply with the requirements of Rule 48 of the Rules of the above Honourable Court which they have failed to do so.”

[7] In his answering affidavit the applicant (now the respondent in the Rule 30(1) application) went on a tangent tracing the history of a conglomerate of

actions and disputes between him, his family and the Body Corporate Dunnewels as well as its trustees. He does not deal with his failure to remove the cause of the complaint which is simply that his application to review or set aside the Bill of Costs does not comply with the requirements of Rule 48.

[8] At ad paragraph 4 on page 136 of the paginated papers which paragraph is presumed to deal with the respondent's averment of irregularity he says the following:

"As stated in para 3, there was only one applicant in my application. Therefore the averment that 'applicants' served a notice of motion becomes an absurdity and a deliberate attempt to unnecessarily join other people in these proceedings, and can only be inferred to be malicious, for reasons stated hereinafter."

And at ad paragraph 5 he continues as follows:

"It is denied that the respondents served a notice in terms of Rule 30 on me on the 18th June 2013. As stated hereinabove, I received this notice on the 14th June 2013. As stated hereinabove, the notice of service is defective as it was not signed by the deponent. This Honourable Court is especially referred to Annexure 'LM3', where it is evident that the deponent has failed to append her signature on the affidavit."

[9] The appellant says nothing about his non-compliance with the provisions of Rule 48. Somewhere in his longwinded and cumbersome affidavit he says that the respondent have failed to indicate any prejudice in thier founding affidavit in order to justify the Rule 30(1) application then at some stage he says that the Rule 30(1) application itself is defective and

irregular because it was served out of time, then he places reliance on a judgment of Ranchod J dated the 12th June 2013 which he says set aside the order that led to the taxing of the Bill of Costs.

[10] There is nowhere where he deals with Rule 48. He relies on vague technicalities which have no bearing on the application. The affidavit does not demonstrate any real or substantial challenge to the affidavit deposed to by Mr Luke Mouyis for the respondent. He fails to deal with the evidence placed before him instead he chose to deal with a version completely far from Rule 48.

[11] Rule 48 of the Uniform Rules of Court deals specifically with Review of Taxation and reads as follows:

- (i) 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 *mero motu* by the Taxing Master may within 15 days after the allocatur by notice requiring the Taxing Master to state a case for the decision of a judge.
- (ii) The notice referred to in subrule (1) must –
 - (a) Identify each item or part of an item in respect of which the decision of the Taxing Master is sought to be reviewed.

- (b) Contain the allegations that each such item or part thereof was objected to at the taxation by the dissatisfied party or that it was disallowed *mero motu* by the Taxing Master.
- (c) Contain the grounds of objection relied upon by the dissatisfied party at the taxation but not argument in support thereof.
- (d) Contain any finding of fact which the dissatisfied party contends the Taxing Master has made and which the dissatisfied party intends to challenge stating the ground of such challenge but not argument in support thereof.

[12] I have waded through the 23 pages of the founding affidavit by the applicant in which he seeks to set aside the Bill of Costs. I could only find the reason for his application in two paragraphs namely paragraphs 23 and 24 on pages 21 and 22. The rest of the 32 paragraphs which span over 23 pages have nothing to do with the application. Once more like in this application the applicant has gone on to restate the history of his dispute with the respondent as it unfolded since he and his family took up residence at the Dunnewels Units. I am still trying to find out why the applicant thought it was necessary for him to tell the court that all of them in his family have driver's licences and that each one of them has his or her own motor vehicle. He went on to

describe how he was violently assaulted by the third respondent which aspects have got nothing to do with the taxation itself.

[13] What seems to be relevant in that application is what he says at paragraph 23 page 21 wherein he says the following:

“Not being an attorney I approached a friend who is an attorney in order that I may familiarise myself with the proceedings at the taxation. I enquired about various costs and sought information pertaining to the unopposed costs and opposed costs.

I also enquired as to who had the right to costs, whether it was the corresponding attorney or the consulting attorney. I was further informed that a Rule 70 certificate ought to accompany the notice of taxation together with the order of court and that this was a specific prerequisite for the taxation process.”

[14] At paragraph 14 the applicant continues to say that he attended the taxation on the 30th October 2012 and filed notice of objection to the Bill of Costs. He says that the respondents’ attorneys namely S Bhyat refused to answer any question that he put at the taxation including his question as to why there was no Rule 70 certificate. He says that S Bhyat enjoyed an extremely cordial relationship with the Taxing Master and that despite his protestation the Taxing Master proceeded to tax the Bill of Costs.

[15] In paragraph 24 he says that the Taxing Master taxed and allowed items in respect of respondents who were not entitled to fees in terms of the judgment of Spilg J.

[16] Reference to Rule 70 certificate was made without elaboration. The applicant does not say in terms of what subsection a litigant is required to submit a certificate and what the contents of such a certificate should be. He does not say whether it is compulsory to file such a certificate or whether the Taxing Master does have a discretion to condone failure to submit such a certificate.

[17] In Erasmus – *Superior Court Practice* the learned writer in dealing with the powers of the Taxing Master in terms of Rule 70 writes as follows at page B1-429:

“The function of the taxing master is therefore to decide whether the services have been performed, whether the charges are reasonable or according to tariff, and whether disbursements properly allowed as between party and party have been made, his function is to determine the amount of liability, assuming that the liability exists, and the fact that he requires to be satisfied that liability exists before he will tax does not show that there is any liability. The question of liability is one for the court.”

[18] The applicant tells the court that he received legal advice prior to attending the taxation as to the objection that he should raise. If It is correct as he says that he indeed raised the objection and was overruled then he should likewise have gone back to his attorney friend to seek advice about the next step. This it appears he did not do for I do not think that he would have proceeded with this application instead of using the mechanism prescribed in Rule 48 to seek redress about a dissatisfaction concerning a Bill of Costs.

[19] Rule 48 is a simplified and detailed step by step direction to be utilised by any litigant who is dissatisfied with a taxed Bill of Costs. Subsection 2(c) of Rule 48 reads as follows:

“(2c) The notice referred to in subrule (1) must contain the grounds of objection relied upon by the dissatisfied party at the taxation but not argument in support thereof.”

[20] In the matter of *Century Trading Co (Pty) Ltd v The Taxing Master and Another* 1958(1) SA 78 (W) at 84C-E William J said the following:

“The bringing of a bill of costs which has been taxed before a court in terms of that Rule for ‘revision’ is not strictly a review in the sense of the court only interfering with the exercise of an improper discretion. In my view the revision of a bill which an aggrieved party to a bill of costs is entitled to claim does not confine the court only to interfering when the exercise of the discretion was improper. I think that at least the position must be that the court can interfere when in its view the taxing master has been clearly wrong in regard to some item.”

[21] In the current application the notice of review was never brought to the attention of the Taxing Master to enable him to supply a stated case to each of the parties and eventually to a judge as stipulated in Rule 48(3). The applicant proceeded to this Court to achieve a result in an irregular manner.

[22] The applicant was afforded an opportunity to rectify the irregular proceedings. He did not avail himself of the opportunity and instead proceeded to file lengthy affidavits which contained nothing relating to the Rule 30 notice.

[23] The applicant's argument in support of his contention are so far-fetched and legally untenable that they require no further consideration. It is for these reasons that I have come to the conclusion that his application was misconceived right from the outset and is doomed to failure.

[24] In the result I have come to the conclusion that the application is an irregular proceeding as contemplated in Rule 30(1) of the Rules I accordingly order as follows:

24.1 The application in terms of Rule 30(1) is granted.

24.2 The applicant's application to review the respondents' taxed Bill of Costs dated 30th October 2012 is set aside.

24.3 The applicant is ordered to pay the respondents' costs on an attorney and client scale.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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DATE OF HEARING: 3RD MARCH 2014

DATE OF JUDGMENT: 25TH MARCH 2014