


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 32001A/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
<u>6/6/2014</u> DATE	
 JUDGE: AC BASSON	

6/6/2014

In the matter between:

CORNELIUS VAN NIEKERK

Applicant

vs

**PRESIDENT OF THE SOUTH AFRICAN DEEP SEA
ANGLING ASSOCIATION (SADSAA)**

Respondent

JUDGMENT

BASSON, J:

[1] This is an application in terms of Rule 48(1) of the Uniform Rules of the High Court bringing under review the Taxing Master's decision to tax the costs of the (main) application and not only the wasted costs of the day.

[2] The applicant (Mr Cornelius van Niekerk) brought an urgent application before this Court on 19 June 2013 for an order that the notification of the Annual General Meeting of the South African Deep Sea Angling Association (the Respondent), scheduled for 21 June 2013 be declared null and void and of no legal consequence; that the Respondent instruct its secretary to duly and correctly implement the terms of its Constitution dealing with nominations that are to be voted upon at the AGM which was scheduled for 21 June 2013; and for an order that the resolution of the Respondent's Action Committee taken on the 5th of May 2013 to suspend the Applicant with immediate effect pending the finalization for a disciplinary enquiry to be held on 31 June 2013, be declared null and void and of no legal consequence.

[3] The Respondent duly gave notice of opposition and prepared its opposing affidavit. According to submissions filed on behalf of the Respondent, it had to fly two of the Respondent's office bearers from Durban and East London respectively on an urgent basis in order to consult with the Respondent's attorney and senior counsel.

[4] On the date of the hearing the matter was struck from the roll for lack of urgency with costs.

[5] The Respondent's Bill of Costs was duly taxed by the Taxing Master on 23 October 2013. The Applicant was represented by a costs consultant and the Respondent by a certain Ms Jones. The Taxing Master taxed the entire Bill in the amount of R 130 991.57.

[6] The Applicant is now seeking a review of the taxation on the basis that the costs order was only for the wasted costs of the day - which were tendered - including a Counsel's day fee subject to determination of the Taxing Master.

[7] The Taxing Master, however, ruled that, whereas the matter has not been set down again and a period of 5 months have passed, the costs order should, in his opinion, cover the full costs of the application. In essence the Applicant is objection to the taxation of the costs in respect of the main application because these costs are not, according to the Applicant, covered by the cost order granted by the Court as the merits were never argued, heard or determined by the Presiding Judge. The Respondent, however, contends that the Taxing Master was correct to tax the bill of the entire application particularly in light of the fact that, when the Court struck the matter from the roll (due to the Applicant causing his own urgency) and awarded the Respondent the wasted costs, the remainder of the Applicant's application became academic *inter alia* because of the fact that the Respondent's Action committee held the disciplinary enquiry for the Applicant on 21 June 2013 which the Applicant failed to attend. Consequently, so it is contended, the prayers which the Applicant sought in his Notice of Motion have become moot as the application has been overtaken by events. Furthermore, according to the Respondent, the merits were in fact argued in view of the fact that the Presiding Judge was not able to view urgency in isolation and accordingly had to consider the merits of the application. The Respondent lastly submitted that the Applicant had in any event thereafter failed to enrol the full merits of his application. The Respondent is accordingly in agreement with the Taxing Master's view that the application in terms of Rule 48 of the Uniform rules should be dismissed and submitted that it should be dismissed with a further costs order on the scale of attorney and client.

[8] In the Taxing Master's report it is submitted that it was entitled to rule that the cost order would cover the full costs of the application in light of the fact that the prayers sought by the Applicant in its Notice of Motion can no longer be ordered by this Court. In this regard the Taxing Master refers to the fact that the meeting which the Applicant sought to interdict, took place on 21 June 2013 which the Applicant failed to attend.

[9] The Applicant disputes that the prayers (more in particular prayers 2, 3 and 4) are moot and submits that these prayers can still be ordered. The Applicant also recorded in his submissions that, although the Annual General Meeting did proceed on 21 June 2013 which resulted in the Applicant's membership being cancelled, he had appealed the decision. A special general meeting was called by the Respondent and did in fact take place and the Applicant was present. The dispute was thereafter settled and the Applicant was reinstated in full as an affiliated member with immediate effect. The Applicant also submitted that because the matter was struck from the roll and because the merits have not been dealt with, the application is still alive and can be set down for argument. Finally the Applicant submits that the Taxing Master does not have the discretion to amplify the Court order that was handed down.

[10] I am in agreement with the principle that a Court sitting on review of a ruling by the Taxing Master will generally be reluctant to interfere with the exercise of the Taxing Master's discretion. This principle is succinctly set out as follows in the case

of *Lander v O'Meara and Another*.¹

*"Rule 48 of the Uniform Rules of Court governs the procedure. The principles relating to these reviews are clear and definitive. A court is very reluctant to interfere with the exercise of a taxing master's discretion. The approach is that the court must be satisfied that the taxing master was clearly wrong before it will interfere with a ruling made by him. The court will not interfere with a ruling made by the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate his ruling. If, accordingly, the taxing master did not exercise his or her discretion properly, did not apply his or her mind to the matter, disregarded factors or principles which were proper for him or her to consider, or considered others which it was improper to consider, has acted upon wrong principles or wrongly interpreted rules of law, or has given a ruling which no reasonable person would have given, or is clearly wrong, interference on review is justified. Furthermore, where reasonableness is the criterion for the assessment of a fee, the general reluctance to interfere on review with a determination arrived at by the exercise of a discretion is even more pronounced."*²

See also *Hennie De Beer Game Lodge CC v Waterbok Bosveld Plaas CC and Another*.³

¹ 2011 (1) SA 204 (KZD).

² Quoted from the headnote.

³ 2010 (5) SA 124 (CC).

"[8] The principles guiding the review of a taxation in this court were settled in President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another:

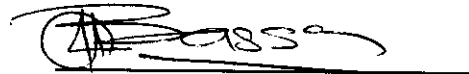
- Costs are awarded to a successful party to indemnify it for the expense to which it has been put through, having been unjustly compelled either to initiate or defend litigation.*
- A moderating balance must be struck which affords the innocent party adequate indemnification, but within reasonable bounds.*
- The taxing master must strike this equitable balance correctly in the light of all the circumstances of the case.*
- An overall balance between the interests of the parties should be maintained.*
- The taxing master should be guided by the general precept that the fees allowed constitute reasonable remuneration for necessary work properly done.*
- And the court will not interfere with a ruling made by the taxing master merely because its view differs from his or hers, but only when it is satisfied that the taxing master's view differs so materially from its own that it should be held to vitiate the ruling."*

[11] Although the matter was struck from the roll and therefore the merits have not been dismissed,⁴ the Applicant compelled the Respondents to file answering affidavits and should therefore, in my view, be held liable for all the Respondent's costs which costs include the wasted costs of 19 June 2013 and the costs for

⁴ See in general: *Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others* 2006 (4) SA 292 (SCA): "[9] Where the application lacks the requisite element or degree of urgency, the Court can, for that reason, decline to exercise its powers under Rule 6(12)(a). The matter is then not properly on the Court's roll, and it declines to hear it. The appropriate order is generally to strike the application from the roll. This enables the applicant to set the matter down again, on proper notice and compliance."

preparing the answering affidavit. I have perused the reasons advanced by the Taxing Master for including the costs of the application and I can find no reason to interfere therewith.⁵ The application therefore falls to be dismissed. Exercising my discretion in terms of Rule 48(7) of the Rules, I am of the view that a special costs order is not warranted. In the event the following order is made:

The application is dismissed with costs.

A handwritten signature in black ink, appearing to read 'AC Basson', is written over a horizontal line.

AC BASSON
JUDGE OF THE HIGH COURT

⁵ For a similar view see: *Selemela v Premier Northern Cape and another*; *Selemela v Premier Northern Cape and another* [2008] 2 All SA 684 (NC) at paragraph [36].