REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 32001A/2013

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

03·11·2014
DATE

JUDGE: AC BASSON

In the matter between:

CORNELIUS VAN NIEKERK Applicant
(Applicant in the application for leave to appeal)

vs

PRESIDENT OF THE SOUTH AFRICAN DEEP SEA ANGLING ASSOCIATION (SADSAA) Respondent
(Respondent in the application for leave to appeal)

JUDGMENT

BASSON, J:

[1] This is an application for leave to appeal against my judgment and order in terms of Rule 48(1) of the Uniform Rules of the High Court in respect of a review of the Taxing Master's decision to tax all of the costs of the (main) application and not only the wasted costs occasioned by the arguing of the urgent application.

[2] Before I turn to the merits of the application it is necessary to deal with the point raised on behalf of the respondent namely that no appeal lies against the judgment and order of this Court in chambers. In support of this contention the Court was referred to the decision of *Menzies Birse & Chiddy v Hall*[1] where the Court held that, save as specifically provided by statute, there is no appeal from a judgment or order given by a judge sitting in chambers:

> *"Under the rule now in question, the Judge sits purely as a Judge in chambers, and does not purport (whether in time or in vacation) to exercise the functions of the Court, and there is, in my opinion, no appeal from his decision... That is was competent to take away that right of appeal by the new rule is, I think, clear from the fact that there is no inherent right to a litigant to review "the taxation of the Taxing Master – which is in the nature of a ruling by an administrative official – save, naturally, for a gross irregularity or some other reason which makes is per se reviewable. Here, he is given a right of "review", which is in reality a revision, on the merits, of that ruling, and is in no sense a proceeding of the Court. It was consequently competent, by this rule, to make such revision the last work on this subject."*

[1] 1941 CPD 297 at 301.

[3] Mullins, J in *Vaaltyn v Goss & Another*[2] held a contrary view and held that the Supreme Court Act does not preclude a litigant from appealing against a judgment or order of a Judge in chambers. However, in *Weaving v Reck and Others*[3] the Court agreed with the approach in the *Menzies*-case that, in terms of Rule 48, the review is the "*last work on the subject*".[4] The Court in *Weaving* therefore declined to follow the reasoning in *Vaaltyn*. In *Brown & Others v Papadakis & Others*[5] the Court similarly held that it was bound by the *Menzies* decision and consequently also followed the decision in *Weaving*.

[4] The applicant referred to the full bench in *City of Cape Town v Arun Property Development (Pty) Ltd and Another*[6] as authority for the proposition that the decision of this Court is appealable. The Court in *Brown v Papadakis*, however, disagreed as follows:[7]

> *"[13] In any event, I am bound by the decision in* Menzies supra, *since it pronounced on the provisions of rule 48 itself, and it is trite that a single judge is bound by the decision of the full bench of the same division on the same issue. Fourie J also considered himself to be so bound in his judgment handed down on 23 April 2010 in the as yet unreported matter of* Weaving v Reck and 3 Others *(Western Cape High Court Case No: 11579/06).*
>
> *[14] It should however be mentioned that a full bench of this division in the matter of* City of Cape Town v Arun Property Development (Pty) Ltd and Another *2009 (5) SA 227 (CPD) in fact heard an appeal arising from the*

---

[2] 1992 (3) SA 549 (ECD).
[3] (1157/06) [2010] SAWCHC 381 (23 April 2010).
[4] *Supra*.
[5] 13420/2007 (17 February 2011).
[6] 2009 (5) SA 227 (CPD).
[7] *Supra*.

dismissal by a judge in chambers of an application for review of taxation It is clear though from a reading of the judgment that the court was not called upon to consider whether the leave granted by the judge a quo *to appeal her order was competent or not. Accordingly I do not believe that the* City of Cape Town *case can be regarded as authority for the proposition that a review of taxation is appealable."*

[5] I have perused the case law referred to and I am not persuaded that an appeal lies against my judgment and order. The appeal is therefore struck from the roll with costs.

[6] However, even if this Court had the authority to grant leave to appeal in this matter, I would refuse to grant leave to appeal as I am not persuaded that the applicant has reasonable prospects of success on appeal. The scope of review under Rule 48 of the Uniform Rules of Court a Court[8] has to be satisfied that the Taxing Master was *clearly wrong* before interfering with its decision.[9] The Taxing Master ruled that whereas the application had not been set down for a period of 5 months, the costs should cover the full costs of the application. I am not persuaded that the Taxing Master was clearly wrong. The general rule is, as was correctly

---

[8] *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 469B – C: *"But the Court remains the ultimate arbiter and it is a well-established principle of review that the exercise of the Taxing Master's discretion will not be interfered with "unless it is found that he has not exercised his discretion properly, as for example, when he has been actuated by some improper motive, or has not applied his mind to the matter, or has disregarded factors or principles which were proper for him to consider, or considered others which it was improper for him to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given"."*

[9] *Ocean Commodities Inc and Others v Standard Bank of SA Ltd And Others* 1984 (3) SA 15 (A): *"This case indicates, I think, that the Court was of the view that the test as formulated by POTGIETER JA in the Legal and General Assurance Society case supra and the statement that the Court will interfere with a ruling of a Taxing Master only if it is satisfied that he was clearly wrong, are merely two ways of saying the same thing. I think, with respect, that it is better to state the test to be that the Court must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him, since it indicates somewhat more clearly than does the formulation of the test by POTGIETER JA what the test actually involves, viz that 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."*

submitted by the applicant, to "*indemnify him for the expense to which he has been put through having unjustly compelled either to initiate or to defend as the case may be.*"[10]

[7] I have indicated in my judgment that, although the matter was struck from the roll, the matter was never re-enrolled again. Furthermore, the application has been overtaken by subsequent events. It is trite that the Taxing Master should be guided by the general precept that the fees allowed reasonable remuneration for necessary work properly done. The applicant's compelled the respondent to file answering affidavits. In these circumstances, I am not persuaded that there exists any reason to interfere with the Taxing Master's discretion.

Order

[8] In the event the following order is made:

The application for leave to appeal is struck from the roll with costs.

AC BASSON

JUDGE OF THE HIGH COURT

[10] *Texas Co (SA) Ltd v Cape Town Municipality* 1926 (AD) 467 at 488.