



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO. 5784/16P

In the matter between:

A NAIDOO

APPLICANT

and

MEC FOR HEALTH, KWAZULU-NATAL

RESPONDENT

CASE NO. 5785/16P

In the matter between:

A NAIDOO

APPLICANT

and

MEC FOR HEALTH, KWAZULU-NATAL

RESPONDENT

CASE NO. 5786/16P

In the matter between:

HP PHEWA

APPLICANT

and

MEC FOR HEALTH, KWAZULU-NATAL

RESPONDENT

CASE NO. 5787/16P

In the matter between:

K GOVENDER**APPLICANT**

and

MEC FOR HEALTH, KWAZULU-NATAL**RESPONDENT**

CASE NO. 5788/16P

In the matter between:

SM NTHOMBELA**APPLICANT**

and

MEC FOR HEALTH, KWAZULU-NATAL**RESPONDENT**

J U D G M E N T

STEYN et POYO DLWATI JJ**Introduction**

[1] This is a review of five bills of costs referred to this court for consideration since the applicants (plaintiffs before the taxing master) are dissatisfied with the rulings of the taxing master of this court. The applicants seek to review the taxing master's decisions in terms of Uniform rule 48(1) and (2).¹

¹ (1) 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 require the taxing master to state a case for the decision of a judge.

(2) 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 allegation 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;

[2] All five matters were consolidated for purposes of this review as they raised similar issues. The applicants, who are residents of this Province, lodged various medical negligence claims against the MEC for Health in the Province of KwaZulu-Natal. They were successful in their actions and were awarded costs of taxed or agreed party and party costs that included counsel's fees, expert fees and travelling and accommodation costs.

[3] After the finalisation of litigation, the applicants set their bills of costs down for taxation. Various objections were raised on behalf of the respondent. The bills of costs were then set down for taxation before the taxing master of this court. We consider it necessary to quote the entire report and shall return to a discussion of the report later in this judgment. The taxing master's report reads:

'1.

There were issues raised in respect of the fees charged by Counsel in the fee notes presented at the taxation and in the contingency fee agreements as it appeared that there were differences.

2.

I applied my mind to the fees in respect of Counsel and Experts having regard to the established practice in this division.

3.

I considered what was reasonable under the circumstances.'²

[4] The taxing master taxed off various items on the applicants' bills for the reasons stated in the taxing master's case. The applicants remained aggrieved and launched these review proceedings. By agreement between the parties and for the sake of certainty the review was referred to a full bench for oral argument by all interested parties in terms of rule 48(6)(a)(iv).³ The referral was necessitated by the fact that the taxing master's ruling has far-reaching implications for future taxations. In the interests of justice we requested and received heads of argument from the

(c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and
 (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.'

² See pages 158 and 159 of the record.

³ Rule 48(6)(a)(iv) provides:

'The judge may refer the case for decision to the court.'

Society of Advocates, KwaZulu-Natal and the KwaZulu-Natal Law Society. These professional bodies also made submissions during the hearing and we are indebted to them for their assistance, albeit at short notice.

[5] The brief background to this review is that even though all the applicants are residents of this Province and their claims⁴ arose out of treatments received in the various public hospitals in KwaZulu-Natal, their attorney and consequently counsel are from the Gauteng Province. They were also referred to various experts in the Gauteng Province. As a result, various costs relating to consultations with experts and travelling and accommodation for when they went to consult with those experts were incurred. The issues that arose in relation to those costs were the reasonableness of it and whether some costs should be categorised as attorney and client costs and not party and party as ordered by the court in each of the orders. Furthermore, counsel and expert fees were disallowed *inter alia* because the taxing master regarded further attendances, studying the instructing attorney's memorandum and so forth as costs outside the scope of party and party costs.

[6] The following duties of the taxing master have been highlighted and confirmed by our courts. In 1973 the Appellate Division in *Kruger v Sekretaris van Binnelandse Inkomste*⁵ considered the duties of the taxing master in terms of rule 9(2) of the then Uniform Rules of Court and held:

'Die takseermeester het die bepalings van Reël 9 (2) ongelukkig nie behoorlik nagekom nie. Die gestelde saak, soos deur hom opgestel en aan die partye besorg, bestaan hoofsaaklik uit kort antwoorde op die besware wat in die applikant se brief genoem word: dit bevat nie 'n uiteensetting van die items waarteen daar tydens die taksasie beswaar gemaak is nie, en ook nie van die besware wat teen die betrokke items ingebring is nie; dit toon ook 'n gebrek aan feitebevindings op sekere belangrike punte. Ná ontvangs van die gestelde saak, het die applikant 'n kort kommentaar op enkele punte daarin aan die takseermeester gestuur. Die respondent het nie op die gestelde saak gereageer nie. Daarna het die takseermeester 'n verslag opgestel waarin weinig meer gesê word as dat hy al die geskilpunte ("issues") reeds in sy gestelde saak behandel het. Toe die stukke onder ons aandag gekom het, het die betrokke takseermeester reeds afgetree en was hy nie meer beskikbaar nie. Die vermelde gebreke in die gestelde saak skep die probleem dat dit nou nie duidelik blyk teen welke

⁴ The *causa* in all five matters is Retinopathy of Prematurity (ROP).

⁵ *Kruger v Sekretaris van Binnelandse Inkomste* 1973 (3) SA 231 (A) at 232E-H.

items in die rekeninge die applikant by taksasie beswaar gemaak het nie, en dit is belangrik om dit te weet, want uit die bewoording van Reëls 9 (2) en 9 (3) blyk dit dat 'n item alleen in hersiening geneem kan word indien by taksasie daarteen beswaar gemaak is.'

(Our emphasis.)

And Schutz J in *Nedperm Bank Ltd v Desbie (Pty) Ltd*⁶ succinctly defined what rule 8(1) requires of the taxing master:

'state a case for the decision of a Judge, which shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any findings of fact by the Taxing Master.'⁷

[7] The duties of the taxing master do not end with the filing of the stated case and that much is clear in terms of rule 48(5)(a) of the rules. The report should deal with the rulings that were challenged at the time of the taxation. That the taxing master fulfils a specialist's function when it comes to taxations has been recognised in the leading case on taxations, *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa*:⁸

'[25] . . .determination of a reasonable fee will, in the light of the arguments raised on behalf of the defendant before us, involve having regard to fees charged in major cases in this Court over the last few years. Unquestionably the Taxing Master is in a better position than we are, on the material before us, to undertake the necessary survey and evaluation.

[26] Counsel for plaintiff also pressed upon us the submission that the Court should lend its approval to the determination of fees on taxation on a time-related basis, given the prevailing tendency in the profession to charge on that footing. In *JD van Niekerk en Genote Ing v Administrateur, Transvaal* 1994 (1) SA 595 (A) this Court disapproved of that approach to fee assessment for taxation purposes and held that the established practice was to fix a globular first day fee for heads, preparation and appearance. A departure from what was said there –and even a re-appraisal of that practice – would require evidence and argument far beyond that with which we have been presented in this matter.'

⁶ *Nedperm Bank Ltd v Desbie (Pty) Ltd* 1995 (2) SA 711 (W).

⁷ Ibid at 713A.

⁸ *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA).

[8] The taxing master in the stated case stated in relation to expert fees, that she allowed what she deemed was reasonable in the circumstances. Furthermore, when exercising her discretion, she bore in mind that the fee was payable for the amount of work which the witnesses had to do to qualify themselves. With regard to counsel's fees the taxing master stated that many of the items appearing on counsel's fee notes did not fall within the ambit of party and party costs. Furthermore, she regarded counsel's day fee and hourly rates as higher than those ordinarily charged by similar counsel practicing in the Province of KwaZulu-Natal. She therefore allowed what she deemed was reasonable.

[9] With regard to accommodation costs, she allowed what similar entities in Pietermaritzburg would have charged. With regard to shuttle services to transport the applicants to and from the various experts, she was of the view that the attorney could have taken the clients to the experts concerned or hired a cheaper vehicle for that purpose. In the circumstances, she was of the view that these costs were unreasonable and were attorney and client in nature. She also believed that a bus could have been used by the applicants to travel from KwaZulu-Natal to Gauteng instead of flights.

[10] The applicants' legal representatives responded to the taxing master's stated case. With regard to the expert witness' costs, the applicants submitted that there was no support in law for the taxing master to automatically reduce the rate charged by an expert witness. However, so went the submission, it was permissible if the taxing master found, on a factual basis, that a particular expense or portion thereof was unreasonable. Furthermore, the taxing master's decision of allowing one hour assessment at junior counsel's rate and drafting fee at an attorney's rate was arbitrary and therefore not a judicious exercise of her discretion. The applicants submitted also that the experts' fees should be subjected to a test as laid down in rule 70(3).

[11] With regard to counsel's fees the applicants submitted that the taxing master failed to take into account that the amounts charged were for all the work that counsel had attended to over a protracted period of time. Furthermore, allowing counsel's drafting fee at an attorney's rate was only applicable in applications and

not trials. Accordingly, the taxing master had erred in relying on the principle laid down in *Aloes Executive Cars (Pty) Ltd v Motorland (Pty) Ltd & another*.⁹ Accordingly all fees charged by counsel ought to have been allowed as they were necessary in the preparation of the applicants' trials.

[12] With regards to the applicants' travelling costs and accommodation, it was submitted that the taxing master failed to take into account the social context of the applicants and the fact that they came from vulnerable groups of people. The costs therefore were neither luxurious nor elegant in nature but were necessarily and reasonably incurred. It was therefore submitted that the taxing master did not apply her mind in reaching her conclusions in that regard.

[13] Even though the respondent originally filed a notice to abide by the decision of the court, submissions were made on behalf of the respondent in order to assist the court and because the Judge President issued a directive that both parties needed to file heads of argument before the matter was heard. For the purpose of this judgment a few submissions will be referred to, since the respondent in main, supports the taxing master's decision. With regard to counsel's fees, it was submitted that the taxing master had exercised her discretion correctly as she had considered it using the parameters allowed in this Province for such fees. Furthermore, as there was no further information of substance placed before the taxing master by the applicants, other than the accounts in question, the taxing master had in the circumstances exercised her discretion correctly. When the matter was argued, Ms *Gabriel SC*, for the respondent, submitted that the respondent's representative raised objections before the taxing master which were referred to but not described in the report of the taxing master. The issue was raised that the applicants were also advancing arguments that were similarly not reflected in the taxing master's report. A similar submission was also made in respect of expert fees.

[14] The taxing master has filed a detailed stated case, which we consider to be relevant in its entirety:

⁹ *Aloes Executive Cars (Pty) Ltd v Motorland (Pty) Ltd & another* 1990 (4) SA 587 (T).

'The following matters were placed down together for taxation due to the fact that the same attorney was instructed to represent all of the Plaintiffs, namely Paul Du Plessis Attorneys as they specialise in these type of matters (i.e. retinopathy of prematurity) as well as the fact that they were based on relatively similar facts and in all 5 matters the same experts were used to prepare for trial:

5784/16P A Naidoo v MEC for Health;

5785/16P A Naidoo vs MEC for Health;

5786/16P HB Pewa vs MEC for Health;

5787/16P K Govender vs MEC for Health; and

5788/16P S M Nthombela v MEC for Health.

Another point to note is that in all these matters the same counsel was used to represent the Plaintiffs in the individual cases.

The stated case deals with, but does not necessarily consolidate the 5 matters mentioned above, due to the similarities mentioned as well as the fact that all 5 taxations were dealt with together due to the similar arguments that had arisen as a result of the similarity of the facts allowing for similar bills of costs to be drawn up. Where there are differences, this is pointed out specifically within the stated case below in respect of the various points that are being argued.

[A] In KÖHNE v UNION AND NATIONAL INSURANCE CO. Ltd it was held that:

"It has been emphasized in regard to Rules ... that the discretion vested in Taxing Master is to allow costs, charges and expenses as appear to him to have been necessary or proper, not those which may objectively attain such qualities, and that such opinion must relate to all costs reasonably incurred by the litigant which also imports a value judgement as to what is reasonable."

[B] In PHIRI v NORTHERN ASSURANCE LTD it was held that:

"the discretion to decide what costs have been necessarily or properly incurred is given to the Taxing Master and not to the Court". This discretion must be exercised judicially in the sense that the Taxing Master must act reasonably, justly and on the basis of sound principles with due regard to the circumstances of the case.

In the High Court, the Taxing Master must have regard to the fact that for costs to be allowed as between Party and Party they need not be necessary, less still absolutely necessary. Thus if the costs incurred are, though not strictly speaking necessary, but proper in the

sense of having been reasonably incurred and have not been incurred through over-caution, negligence or mistake, and are not luxuries, then they should be allowed as between Party and Party.

Barnett v isemonger 1942 SA 325 CPD at 327, *Hasting v Taxing Master* 1962 (3) SA 789 (N).

FUNCTION OF THE TAXING MASTER

It is trite that the discretion vested in the taxing master is to allow costs, charges and expenses as appear to him/her to have been necessary or proper, and not those which may objectively attain those qualities.

1.

EXPERT FEES:

Please see annexure attached hereto, setting out the fees charged of the expert witnesses and what was allowed in each case.

EXPERT FEES:

What are qualifying fees?

These are the fees charged by the expert witness to study the facts of the particular case and hereby become qualified to render an opinion thereon.

There are thus 3 facets to be considered with regards to qualifying fees:

1. The technical background which the expert possess already (his degree on qualifications etc. that make him an expert);
2. The work the expert does to make the facts of the particular case his own, and;
3. The experts drawing up a report, and possibly attending at Court and giving his expert opinion based on his qualifications and the circumstances of the particular case at hand.

I have taken all the above mentioned facets into consideration to determine a reasonable fee for all the experts as per attached annexure.

Further it is worth noting the following passage from *Elstein v Feinberg N.O. and others* 1968 (3) SA 342 (C) at 346F-H:

“The fees charged by attorneys and counsel or any other professional men are in some measure a guide to the Taxing Master as to what would be a reasonable fee with which to remunerate a professional witness for his labours and exertions in qualifying himself to give expert evidence in regard to the matters in dispute, but they must in themselves be inconclusive. They are, at most, only a general guide. There are a mass of other matters to which weight should also be given, for instance

matters such as the complexity of the subject investigated, the arduousness of the investigation, the standing of the expert witness, the costs to the expert of making the necessary investigations and enquiries.”

In the unreported case of *NH Shange v MEC for Health, KwaZulu-Natal* Case No 7264/2015; and *NN Gcabashe (obo W Gcabashe) v MEC for Health, KwaZulu-Natal* Case No 7265/2015 (KwaZulu-Natal Division, Pietermaritzburg) Booyens AJ quoted the above from *Elstein* with approval, but added this at paragraph 11:

“I wish to point out that the passage quoted above, is no authority for equating expert fees to the same level as counsel’s fees and the paragraph should be read within its context.”

Ultimately the quantum of qualifying fees falls within the discretion of the Taxing Master. In determining same, he/she will bear in mind that the fee is payable for the amount of work which the witness has to do to qualify himself. The discretion of the Taxing Master as to the quantum of the fee will not lightly be interfered with, *Kohne & another v Union National Insurance Co Ltd* 1968 (2) SA 499 (N); *City Deep Ltd v JHB City Council* 1973 (2) SA 109 (W).

The court held in *Champion v Morkel* 1971 (2) SA 121 (R) at 128, that:

“It is of the essence of qualifying expenses that they represent the reasonable charges to be allowed to an expert for so preparing himself with regard to the specific matter upon which his testimony is required that his evidence may be properly impressed with that measure of authority which may be attributed to it by reason of his specialised knowledge and training in the particular field to which his evidence relates.”

2.

COUNSEL’S FEES:

For the record, it is important to mention that the counsel used by the Plaintiffs were based outside the province and the clients were based in KwaZulu-Natal, i.e. local.

Items 334 and 335 : Counsel charged a fee of R447 450.00, R422 558.10 was taxed off. Many of the items that appeared on Counsel fee note does not fall within the ambit of party and party costs, i.e. further attendances, studying instructing Attorney’s memorandum, etc.

Counsel charged a first day fee on brief of R50 000.00 and R5 000.00 per hour. I have allowed Counsel a first day fee on brief at R25 000.00 and R2 400.00 per hour subject to a 10% decrease per annum.

Junior Counsel was only allowed half that of Senior Counsel, *Paton v Santam Ins. Co. Ltd* 1967 (1) SA 98 (E); *Toxopeus v Kwanda Tile & Concrete Works (Edms) Bpk* 1988 (3) SA 440 (T); *SAR & H v Mills* 1924 CPD 110 and paragraph 13.20 *Law of Costs* Cilliers; Rule 69(2) of the Uniform Rules.

I have taken all factors into account in determining a reasonable fee to be allowed, *President of Gauteng Lion's Rugby Union & another* 2000 (2) SA 64 Constitutional Court; *Louw v Santam Bpk* 2000(4) SA 402 (T), *Van Der Westhuizen vs Gibbon & another* 1983 (1) SA 95 (O).

As alluded to the above very same Counsel was used in the other matters with exactly the same cause of action and his charges were as follows:

Case No. 5785/16P A Naidoo v MEC for Health

R419 594.10 R370 423.62 (T/O)

Counsel charged a fee on brief of R45 000.00 and R4 500.00 per hour.

Allowed : First Day Fee on Brief R25 000.00 and R2 400.00 per hour.

Case No. 5786/16P H B Phewa v MEC for Health

R505 020.00 R347 603.00 (T/O)

Counsel charged a fee on brief of R40 000.00 and R4 600.00 per hour.

Allows : R25 000.00 (FOB) and R2 400.00 per hour.

Case No. 5787/16P K Govender v MEC for Health

R753 435.12 R654 990.42 (T/O)

Counsel charged R40 000.00 (FOB) and R4 000.00 per hour.

Allowed at R25 000.00 (FOB) and R2 400.00 per hour.

Case No. 5788/16P S M Nthombela v MEC for Health

R644 670.00 R588 832.80

Counsel charged R45 000.00 and R4 500.00 per hour.

Allowed R25 000.00 and R2 400.00 per hour.

Total Fees Charged By Counsel in these four matters:

R2 322 719.22

Case No. 5784/16P Ayesha Naidoo vs MEC for Health – (Quantum).

Was set down on 06 October 2014 for 5 days. The quantum portion was settled the day before the trial proceeded.

Case No. 5785/16P A Naidoo vs MEC for Health – (Liability). Was set down on 18 November 2013, the trial to run for ten days. Liability was conceded on the first day of trial.

Case No. 5786/16P H B Phewa vs MEC for Health – this matter was settled on 24 May 2013 after all trial preparations had been attended to (the matter was set down for trial on 27-31 May 2013).

Case No. 5787/16P K Govender vs MEC for Health – Liability was set down for 14 October 2013 for 5 days (Liability was settled on the day before trial proceeded). Quantum trial was set down on 01 September 2014 and was postponed until the second day (02 Sept 2014) at request of Defendant. The matter was stood down (again at request of Defendant) until 04 September 2014 on that day, the quantum became settled during the morning.

Case No. 5788/16P S M Nthombela vs MEC for Health – Liability was conceded on first day of trial at 08h30 (11 November 2013) the matter was set down for 4 days. With regards to quantum, the matter was set down on 15 November 2013 but was stood down until 19 November 2013 (this was agreed to by the Plaintiff). The quantum then became settled late on 18 November 2013.

In *Camps Bay Ratepayers' and Residents' Association v Harrison* 2012 JDR 1723 (CC), the Court expressed disquiet at how Counsel's fees have burgeoned in recent years.

Counsel was allowed a drafting fee on the Attorney's rate, the principle used in *Aloes Executive Cars (Pty) Ltd v Motorland (Pty) Ltd and another* 1990 (4) SA 587 (T) was applied.

3.

The applicant's travelling and accommodation costs :

Case NO. 5784/16P

Rate for accommodation was allowed as what similar entitles in Pietermaritzburg would charge.

ITEM : 38

Pay Thatch Cottage for 10 nights at R1400 per night = R14 000.00 and amount of R695.00 was allowed per night and amount of **R10 500.00** was taxed off.

ITEM : 79

Payment of a Corporate Shuttle to transport client to and from expert witnesses = R8500.00 this amount is unreasonable the instructing Attorney could have driven the client to the expert witnesses or used a cheaper alternative, if he chooses to hire a Shuttle, this amount should not then recovered from the other party.

ITEM : 121

Attend to pay Travelstart = R7091.00 (Airticket) an amount of R6673.00 was taxed off, the cheapest mode of transport was a busfare (for example Intercape) at R418.00 there and back.

ITEM : 129

Payment of a Corporate Shuttle to transport client to and from expert witnesses = R1930.00 this amount is unreasonable the instructing Attorney could have driven the client (or used a cheaper alternative) the whole amount was taxed off, if he chooses to hire a Shuttle, this amount should not then recovered from the other party.

ITEM : 161

Pay Richtershuyz at R1390.00 an amount of R695.00 was allowed for one night an amount of R716.00 was taxed off.

ITEM : 189

Attend to pay a Guest House = **R1049.50** an amount of **R404.12** was taxed off an amount of R695.00 per night was allowed.

ITEM : 190

Once again the Instructing Attorney made use of a Corporate Shuttle and paid R1630.00 this amount was taxed off and the instructing attorney or candidate attorney could have driven the client (or a cheaper alternative could have been used).

In *Kruger v De Bruyn* 1943 OPD 38 at 45, Van Den Heever, J made it perfectly clear that: "the tariff of witness fees has no relation to actual travelling expenses in the sense of disbursements whatever. He held that all that the tariff does is to provide that the witness who travels elegantly and expensively, when he may do so inexpensively by public conveyance, shall not recover more from the party condemned in costs than the actual fare on such public conveyance, whether used by him or not."

4.

The Applicant's travelling and accommodation costs : Case No. 5785/16P**ITEM : 149**

Payment of Eurocare (car rental) amount claimed R2 440.00 an amount of R1846.00 was taxed off. A fee of R3.00 p/km (Attorney's Rate) was allowed for 89km.

ITEM : 178

Pay for Corporate Shuttle amount of R1900.00 claimed, disallowed in toto. The Instructing Attorney/Candidate Attorney could have driven the client.

ITEM : 180

Payment of Guest Lodge in the amount of R938.70, the whole amount was taxed off.

ITEM : 224

Pay Redlands R6250.00 and amount of R2083.33 was taxed off.

5.

The Applicant's travelling costs : Case No. 5786/16P**Items 423, 427 and 534:**

The shuttle costs were disallowed, the Instructing Attorney could have driven the Applicant to various appointments.

6.

The Applicant's travelling and accommodation costs : Case No. 5787/16P**Items 205, 223, 239, 251, 275, 350, 365, 375, 393, 480, 482 and 494:**

Flights were disallowed as a bus fare would be cheaper and that is what was allowed.

Shuttle costs were disallowed as the Instructing Attorney could have driven his client, it would not be reasonable to saddle the other party with these costs.

An amount of R695.00 was allowed for accommodation, see the reasoning used in case number 5784/16P.

Vehicle rental costs for the Instructing Attorney was limited to R3.00 p/km.

The Applicant's travelling and accommodation costs : Case No. 5788/16P.**Items : 118, 124, 130, 218, 242, 245, 253, 258, 296, 300, 302, 304, 317, 319, 344 and 378.**

My reasons in disallowing portions of the abovementioned items are set out in the previous cases referred to above.¹⁰

¹⁰ See pages 33 to 42 of the record.

[15] Three issues arise in this review: Firstly, whether the fees charged by the experts and counsel were reasonable and necessary in the circumstance of these cases and ought to have been allowed. Secondly, whether the applicants' costs of travelling and accommodation were reasonable compared to those charged in KwaZulu-Natal and lastly, whether the costs of the expert witnesses were correctly disallowed as per the taxing master's decision. Related to the aforesaid is whether any of these costs claimed fall into the category of attorney and client costs as opposed to party and party costs. Ultimately it has to be decided whether the taxing master erred or exercised her discretion wrongly in taxing the costs. See *SANTS Private Education Institution (Pty) Ltd v MEC for the Department of Education of the Province of KwaZulu-Natal & others*,¹¹ *Lander v O'Meera & another*,¹² *Köhne & another v Union & National Insurance Co Ltd*.¹³

[16] It is trite that the court will not interfere with the exercise of the taxing master's discretion unless it appears that such has not been exercised judicially or it was exercised improperly or wrongly, for example, by disregarding factors which she should have considered, or considering matters which were improper for her to have considered, or she had failed to bring her mind to bear on the question in issue, or she had acted on a wrong principle. The court will however interfere where it is of the opinion that the taxing master was clearly wrong or in circumstances where it is in the same position as, or a better position than the taxing master to determine the very point in issue. The court must be of the view that the taxing master was clearly wrong i.e. its conviction on a review that he or she was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.¹⁴

[17] It is not in dispute that the costs to be considered in these matters are party and party costs. These are described as reasonable and necessary fees or disbursements that the other side should contribute to the winning party.¹⁵ It is not a

¹¹ *SANTS Private Education Institution (Pty) Ltd v MEC for the Department of Education of the Province of KwaZulu-Natal & others* (8539/15) [2016] ZAKZPHC 101 (13 September 2016).

¹² *Lander v O'Meera & another* 2011 (1) SA 204 (KZD).

¹³ *Köhne & another v Union & National Insurance Co Ltd* 1968 (2) SA 499 (N).

¹⁴ *Visser v Gubb* 1981 (3) SA 753 (C) at 754H-755I; *Lander v O'Meera supra* para 14.

¹⁵ See *President of the Republic of South Africa & others v Gauteng Lions Rugby Union & another* 2002 (2) SA 64 (CC) para 47:

full indemnity in respect of all costs but only those reasonably and necessarily incurred in the course of litigation.

Party and party costs

[18] It remains important for purposes of this judgment to be mindful of the fact that party and party costs are distinct from attorney and client costs and that the taxing master was concerned with party and party costs, since that is what the applicants were entitled to in terms of the orders.¹⁶ Kriegler J's definition of party and party costs in *President of the Republic of South Africa v Gauteng supra* remains valid and should be applied in assessing party and party costs.

[19] Rule 70 entrusts the taxing master with the authority to tax any bill of costs for services actually rendered by an attorney or advocate in litigious matters. It is apposite to quote rule 70(3) in relation to the reasonableness and necessity of the costs so incurred. Rule 70(3) provides:

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

(Our emphasis.)

'In addition it should be remembered that although a rate per unit of time worked can be a useful measure of what would be fair remuneration for work necessarily done and although the need for written submissions in this Court may permit this method more readily than in the SCA, the overall balance between the interests of the parties should be maintained. The rate may be reasonable enough and the time spent may be reasonable enough but in the ultimate assessment of the amount or amounts to be allowed on a party and party basis a reasonable balance must still be struck. Here the inherent anomaly of assessing party and party costs should be borne in mind. One is not primarily determining what are proper fees for counsel to charge their client for the work they did. That is mainly an attorney and client issue and when dealing with a party and party situation it is only the first step. When taxing a party and party bill of costs the object of the exercise is to ascertain how much the other side should contribute to the reasonable fees the winning party has paid or has to pay on her or his own side. Or, to put it differently, how much of the client's disbursement in respect of her or his own counsel's fees would it be fair to make recoverable from the other side?'

(Our emphasis.)

¹⁶ Also see rule 69(2) and (5) that regulates bills and taxation as between 'party and party'.

[20] The taxing master is tasked to enquire into the reasonableness and necessity of the costs so charged or incurred. Reasonable costs have been equated with such costs as are necessary or proper for the attainment of justice or for defending the rights of any party.¹⁷ With all of that background and conscious of the fact that this court must not usurp the taxing master's functions,¹⁸ we now deal with the disputed categories of costs.

Travelling and accommodation costs

[21] The taxing master has dealt with the said costs on pages 39 to 42 of the record. With regard to the costs for flights to Pretoria to attend to various consultations with the various experts, we find no error by the taxing master in having taxed off these amounts. There is no reasonable explanation as to why experts or attorneys and counsel outside of the Province had to be used instead of those that are within the Province. We are mindful of the fact that the applicants or any party for that matter can instruct any expert or counsel in the country. However, this must be regarded as a luxury that they can afford and the unsuccessful party should not be burdened with such costs. Nothing has been shown that the specific experts that were instructed were the only ones who could be of assistance in the applicants' pursuance of justice. The costs of travelling to these experts therefore must be limited to costs that are reasonable. There is no doubt that air travel is a luxurious expense for those who can afford it. It has nothing to do with socio-economic rights for any litigant or any right to equality before the law. Mr *Dickson* SC, in argument, submitted that this mode of travel was necessary because the applicants that were transported are blind and air travel limits the discomfort experienced by them. This argument is not persuasive because it was never the case of the applicants that the experts used are the best qualified in their field or that the transport allowed by the taxing master would have resulted in harm being suffered by the applicants.

[22] In any event, instructing the preferred experts appears to have been for the convenience of the attorneys and not necessarily for the benefit of the applicants.

¹⁷ *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 467E.

¹⁸ *Aaron's Whale Rock Trust v Murray & Roberts Ltd & another* 1992 (1) SA 652 (C) at 661C-H.

We agree with the view of Spilg J in *Khoza v MEC for Health and Social Development, Gauteng*¹⁹ where it was held:

[87] Finally, the plaintiff's legal representatives elected to choose the team of experts. This is one of a number of medical negligence cases where the same team of experts is used around the country by the same lawyers.

[88] It is evident that Prof Smith is possibly the leading authority in a very specialised field and can also provide a broader level of expert knowledge, as a number of specialist disciplines need to be traversed. I consider that he is essential to the legal team. However, the other experts are drawn from around him and there is nothing to suggest that there are not suitably qualified experts in these other fields who live in Gauteng, or that the cost implications would be greater despite the Stellenbosch team having to be flown up.

[89] The use of experts who are at the same university as Prof Smith is obviously convenient for the plaintiff. However, the experts do not have the uniqueness within their disciplines to the same degree as warrants setting Professor Smith apart from the reasons given earlier.

[90] Accordingly the plaintiff may well have been able to find equally competent experts locally. Only convenience resulted in their appointment.

(Our emphasis.)

The respondent cannot be expected to foot the bill. The taxing master used her specialist knowledge of the issue and applied her mind to it. We do not believe that any interference is warranted in this regard. This principle also applies to the costs of shuttle services and the costs of the rentals of vehicles for the attorney.

[23] The same principle would apply to the accommodation costs since it would not have been incurred if the attorney had instructed local experts. As such costs have been allowed but at a reduced rate. We are not convinced that the taxing master has erred in any way. She has determined what was reasonable and what would be charged in the Province and nothing to the contrary was produced or advanced to interfere with her decision. Accordingly, we are unable to find that the taxing master was wrong in her discretion to disallow these costs.

[24] This principle also applies to the travelling costs of an attorney and or counsel from outside this Province as there is no evidence before us or placed before the

¹⁹ *Khoza v MEC for Health and Social Development, Gauteng* 2015 (3) SA 266 (GJ).

taxing master that the applicants' rights could only be enforced by lawyers from outside the Province of KwaZulu-Natal. Put differently, there was no suggestion that there are no competent lawyers from KwaZulu-Natal that could have assisted the applicants to attain justice in these matters or that they would have suffered a substantial injustice.²⁰ No evidence was placed before us that the applicants could not find a competent firm in this Province to act on a contingency basis.²¹ There is therefore no reason for our interference with these costs. The underlying principle in this regard is that unless it can be shown that there were no competent attorneys or advocates and experts of a similar standing in KwaZulu-Natal, only then should such costs be allowed.

Counsel's fees

[25] They next category of costs concerns counsel's fees. Mr *Pammenter* SC on behalf of the Society of Advocates submitted that he disagrees with earlier submissions made by counsel for the applicants. He submitted that the fee of counsel should be determined at the time the work was performed and not at the time when the case was finalised. He also referred us to the proposed amendment to rule 69 that has been proposed by the Rules Board for Courts of Law in the Republic of South Africa in 2014.²² Counsel's fees were disallowed in respect of drafting,

²⁰ See *Schoeman v Schoeman* 1990 (2) SA 37 (E) at 42H; *Sonnenburg v Moima* 1987 (1) SA 571 (T) and *Wimbush & another v Erintrade (Pty) Ltd* Case No. 548/13 paras 15 and 16, unreported case of Koen J in Pietermaritzburg.

²¹ See *D & another v MEC for Health and Social Development, Western Cape Provincial Government* 2017 (5) SA 134 (WCC) para 13.

²² The draft proposed amendment contains in subrule (5) the following:

'The taxing master may in his or her discretion depart from any provisions of the tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be equitable.'

Tariff of fees for appearances by advocates includes the following relevant portions:

'1. Appearances in court-

(a) First day of hearing:

(i) Unopposed applications; hourly fee for duration of argument only;

(ii) Opposed applications, day fee for day of hearing of application only;

(iii) Exceptions or motions to strike out, hourly fee for duration of argument only;

(iv) Stated cases, hourly fee for argument only;

(v) Trials, day fee if proceedings in court exceed four and a half hours;

(vi) Trials, hourly fee if proceedings in court do not exceed four and a half hours;

(vii) Appeals from Magistrates' Courts including review or proceedings thereof, hourly fee for duration of appeal argument only.'

In terms of 2 the following scale of tariffs is listed:

ATTORNEY WITH RIGHT OF APPEARANCE
ADVOCATE

preparation time, hourly rate and consequently day rate. With regard to the drafting fees, these were allowed on the attorney's rates and some were determined as falling in the attorney and client category. With the information before us we are not in a better position than the taxing master to determine whether it was necessary for counsel to draft the documents so drafted instead of an attorney. The taxing master has not erred in any way. It may have been overcautious for the attorney to have instructed counsel to draft these documents and if that is the case, such costs would fall squarely in attorney and client costs.

[26] We considered the decision of the full court in *Pretoria Society of Advocates & another v Geach & others*²³ as being of assistance in determining a counsel's fees in relation to the General Council of the Bar of South Africa's Rules of Ethics:

'7.1 Fees must be reasonable

7.1.1 Counsel is entitled to a reasonable fee for all services. In fixing fees, counsel should avoid charges which over-estimate the value of their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his lack of means may require a lower charge, or even none at all. In determining the amount of the fee, it is proper to consider:

- (a) the time and labour required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause;
- (b) the customary charges by counsel of comparable standing for similar services; and
- (c) the amount involved in the controversy and its importance to the client.

No one of the above considerations in itself is controlling. They are mere guides in ascertaining the real value of the service. In fixing fees it should never be forgotten

	0-3 YEARS	3-5 YEARS	5-10 YEARS	10-15 YEARS	15-20 YEARS	20+ YEARS
	R - R	R - R	R - R	R - R	R - R	R - R
Hourly rate	1 100	1 400	1 800	2 300	2 900	3 700
Day fee	6 600	8 400	10 800	13 800	17 400	22 200'

²³ *Pretoria Society of Advocates & another v Geach & others* 2011 (6) SA 441 (GNP).

that the profession is a branch of the administration of justice and not a mere money-getting trade.²⁴

(Our emphasis.)

[27] With regard to the preparation time, it is now accepted that counsel can charge a separate fee for preparation and then a daily fee for each day in court. See *Naval Servicos a Vanegcauo Limitada v Strang Rennies Metal Terminals (Pty) Ltd*;²⁵ *City of Cape Town v Arun Property Development (Pty) Ltd & another*²⁶ and *Society of Advocates of KwaZulu-Natal v Levin*.²⁷ This is especially so in trial matters. What is required is for the taxing master to reconsider the bills and assess what reasonable time of preparation would have been required in each of the matters. This would be in line with an hourly rate that will be determined below.

[28] With regard to the hourly and daily rates the applicants submitted that the rates determined by the taxing master were too low if one had to consider the rates determined in *Levin supra* and *Mkhize v MEC for Health KZN*.²⁸ The respondent on the other hand submitted that the rates determined by the taxing master were reasonable and that she was best placed to determine that as she dealt with various taxations. We do not agree. It is decided that these items must be taxed afresh in line with the rates determined in *Levin* and *Mkhize* and regard being had to inflation where necessary. Previous cases dealt with by various Judges of this division should be used as a guide in determining some of the issues in future. The Constitutional Court has given sufficient guidance in *Hennie De Beer Game Lodge CC v Waterbok Bosveld Plaas CC & another*²⁹ as follows:

[8] The principles guiding the review of 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.

²⁴ Ibid para 19.

²⁵ *Naval Servicos a Vanegcauo Limitada v Strang Rennies Metal Terminals (Pty) Ltd* 2008 JDR 1002 (N) at 15 and 16.

²⁶ *City of Cape Town v Arun Property Development (Pty) Ltd & another* 2009 (5) SA 227 (C) paras 22 - 30.

²⁷ *Society of Advocates of KwaZulu-Natal v Levin* 2015 (6) SA 50 (KZP).

²⁸ Case No. 6867/16P decided by D Pillay J.

²⁹ *Hennie De Beer Game Lodge CC v Waterbok Bosveld Plaas CC & another* 2010 (5) SA 124 (CC).

- 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.

[9] To these general principles must be appended one of particular importance in this case. The Supreme Court of Appeal has taken note of "the almost invariable practice throughout the country nowadays for legal practitioners to make their charges time-related. The principle flowing from this is that time charged is not decisive. An objective assessment of the features of the case is primary, and time actually spent in preparing an appeal cannot be decisive in determining the reasonableness, between party and party, of a fee for that work. The reason is that time alone would put a premium on slow and inefficient work and would conduce to the charging of fees wholly out of proportion to the value of the services rendered."

(Our emphasis.) (Footnotes omitted.)

[29] Lastly on this issue, counsel appearing on behalf of the applicants submitted to us that the contingency fee agreements concluded between the parties in these five matters are of no relevance to the taxation of the aforesaid bills. We disagree. As much as it is not definitive of the fee claimed, it remains a factor to be taken into account in determining the reasonableness of counsel's fees.

Fees of expert witnesses

[30] The last issue is that of fees relating to expert witnesses. Some of the fees were disallowed in that the initial assessments were limited to an hour, consultations by the expert with counsel were disallowed *in toto*, tests and assessments performed by these experts in formulation and compilation of their reports were disallowed and at times reduced. In some instances, the preparation in formulating and compiling of these expert reports was disallowed; their reservation fees were limited to R1 500 per day and their drafting and hourly rates were allowed at attorneys' rates or junior

counsel respectively. The taxing master, in her stated case, submitted that she took into account the amount of work which the witness had to do to qualify himself or herself and determined the reasonableness of the amount so charged.

[31] Counsel for the applicants submitted that these amounts ought to have been allowed in the light of the court orders that allowed the costs of obtaining the reports and the reasonable preparation and qualifying fees of the experts. In counsel's submissions these costs would have included costs for consultation with counsel in some cases and reservation fees in others. Accordingly, so it was submitted, all those fees were reasonable to remunerate those professionals for the work they had done and ought to have been allowed since the accounts are *prima facie* proof of the work done and not unreasonable.

[32] What follows is the experts' fees as presented to the taxing master and the allocation allowed by her:³⁰

'ANNEXURE : EXPERT WITNESS FEES
Case No 5784/16P: A Naidoo v MEC for Health

	EXPERT	FEE CHARGED	TAXED OFF	ALLOWED
77	DA Birrell	4 275.00	900.60	3 374.40
81	Pip Jackson	13 131.60	8 135.27	4 996.33
98	Dr Konig	11 008.20	8 988.20	2 020.00
132	M Henning	7 800.00	5 545.00	2 255.00
144	B Purchase	20 200.00	14 655.00	5 545.00
182	Ida-Marie Hattingh	26 875.00	22 975.00	3 900.00
184	Beryl Carvalho	850.00	380.00	470.00
337	B Purchase	4 000.00	3 765.00	235.00
339	Prof Jacklin	7 050.00	5 030.00	2 020.00
341	Ida-Marie Hattingh	5 375.00	4 905.00	470.00
345	Louis Linde	25 564.50	8 019.90	17 544.60
347	A E Greef	14 863.07	8 273.87	6 589.20
349	K Truter	15 048.00	14 578.00	470.00
350 (should be 351)	Algorithm Actuary's Report	34 200.00	30 181.00	4 019.00
353	Eybers Architects	33 250.00	26 530.00	6 720.00

Case No 5785/16P: A Naidoo v MEC for Health

	EXPERT	FEE CHARGED	TAXED OFF	ALLOWED
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³⁰ See pages 43 to 45 of the record.

216	Prof Johan Smith	11 000.00	7 685.00	3 315.00
218	Dr H L E Konig	5 000.00	2 750.00	2 250.00
220	Dr A Tjale	11 900.00	7 520.00	4 380.00

Case No 5786/16P: HB Pewa v MEC for Health

	EXPERT	FEE CHARGED	TAXED FEE	ALLOWED
64	Prof Cooper	2 250.00	1 780.00	470.00
472	Dr Konig	8 500.00	7 198.20	1 301.80
523	B Purchase	14 500.00	8 939.20	5 560.80
542	Dr Birrell	1 710.00	169.20	1 540.80
559	Kobus Truter	13 680.00	8 758.20	4 921.80
580	Pip Jackson	10 552.41	6 695.61	3 856.80
612	Beryl Carvalho	1 035.00	Nil	
630	Ida-Marie Hattingh	30 237.50	26 380.70	3 856.80
663	Anneke Greef	11 394.90	3 113.03	8 281.87
723	Louis Linde	977.50	Nil	
748				
779	Len Eybers (architect)	3 750.00	3 750.00	travelling
784	Greg Whittaker	22 800.00	15 618.00	7 182.00
886	Prof Jacklin	15 250.00	15 250.00	0
1029	Greg Whittaker	4 560.00	4 560.00	0
1222	Kobus Truter	25 600.00	21 628.00	3 972.00
1223	Dr Birrell	3 990.00	1 518.00	2 472.00
1224	B Purchase	3 000.00	528.00	2 472.00

Case No 5787/16P: K Govender v MEC for Health

	EXPERT	FEE CHARGED	TAXED FEE	ALLOWED
84	Prof Kirsten	28 800.00	25 272.00	3 528.00
105	Dr Konig	5 000.00	3 602.00	1 398.00
143	D Tjale	10 150.00	8 539.00	1 611.00
149	Prof Fielder	14 845.27	11 650.27	3 195.00
227	Dr Truter	15 048.00	10 334.10	4 713.90
234	Dr Konig	10 508.20	8 723.20	1 785.00

272	Ms Jackson	10 200.00	6 065.00	4 135.00
289	Ms Purchase	20 200.00	13 245.00	6 955.00
312	Dr Birrell	3 420.00	849.30	2 570.70
337	Ms Greef	14 863.07	5 059.07	9 804.00
359	Ms Hattingh	27 412.50	23 512.50	3 900.00
382	Dr P Henning	6 825.00	4 805.00	2 020.00
384	Dr M Lippert	12 000.00	10 215.00	1 785.00
488	Mr Whittaker	28 500.00	26 010.00	2 490.00
490	Mr Linde	36 679.50	28 679.50	8 000.00

Case No 5788/16P: SM Nthombela v MEC for Health

	EXPERT	FEE CHARGED	TAXED OFF	ALLOWED
100	Prof Smith	24 000.00	19 740.00	4 260.00
134	Dr Konig	9 500.00	7 889.00	1 611.00
234	Dr Tjale	11 200.00	9 790.00	1 410.00
260	Dr Truter	15 048.00	10 334.10	4 713.90
266	B Carvalho	850.00	380.00	470.00
350	Pip Jackson	11 208.00	7 073.00	4 135.00
359	A Greef	13 274.74	1 595.44	11 679.30
384	Elmarie Prinsloo	25 251.00	16 181.00	9 070.00
403	Dr Birrell	3 420.00	1 385.10	2 034.90
412	Mr L Linde	36 679.50	13 657.20	23 022.30
497	Ida-Marie Hattingh	35 312.50	27 927.50	7 385.00
509	Elmarie Prinsloo	5 301.00	4 831.00	470.00
514	Prof Fielder	15 375.51	13 260.51	2 115.00'

[33] The respondent's counsel submitted that most of the experts' fees were attorney and client costs in nature and ought to be borne out by the applicants. A thorough consideration of the relevant court orders is required in order to determine what should be allowed in the experts' fees. Where a particular expert has qualified herself and that is allowed in terms of the court order, then there is no question that she will be entitled to her fees, provided that it is reasonable. What the taxing master has to consider is the reasonableness of those fees claimed.

[34] Furthermore where the expert has quantified the time spent on consultation and on drafting the necessary report, one should be very slow to determine otherwise. It would be even more difficult to pronounce on them if one has not had sight of those reports. It would also be difficult to determine whether it was necessary for one expert to peruse the report of another in order to come to their own conclusion in a particular matter.

[35] As Mbatha J held in *Kishore Sonny & another v Premier of the Province of KwaZulu-Natal & another*³¹ a limitation of one hour consultation by an expert might not be a fair measure of the time spent by that expert, especially if one considers that experts sometimes carry out assessments and tests during their consultations. Sometimes they have to analyse reports by other experts, like x-ray reports during the consultation, before coming to a particular conclusion. Mbatha J concluded that once an expert has specified the number of hours spent on each consultation that it should be a guideline in the determination of their fees. They should be indemnified for such hours on the basis of their reasonableness.

[36] To emphasise the point of reasonableness, the court in *Mdandalaza v The MEC for Health for the Province of KwaZulu-Natal*³² held that ‘because clients are charged the spill over of costs not recovered on a party and party scale as attorney and client costs that should not be a reason to allow excessive fees on a party and party basis’. Although the taxing master has provided a conclusion for each item taxed, she does not provide reasons as to why a particular amount and not the others have been disallowed. In the absence of such explanation one might conclude, like the applicants, that her discretion was arbitrarily applied in the circumstances.

[37] On the issue of experts we are of the view that where time has been specified for consultation, assessment and drafting of the report, there is no reason why such costs should not be allowed. What the taxing master should then do is to determine whether the time spent is reasonable. If it is deemed to be excessive, then the

³¹ *Kishore Sonny & another v Premier of the Province of KwaZulu-Natal & another* Case No. 33185/2015 decided on 12 December 2016 para 17.

³² *Mdandalaza v The MEC for Health for the Province of KwaZulu-Natal* Case No. 17643/14 decided by D Pillay J.

difference will be attorney and client. This, obviously, would take into account that the expert, even though she might have dealt with numerous similar matters, has to still apply her mind to the facts of each particular matter. Furthermore, the taxing master should also take into account the costs of a similar nature charged by similar experts within this Province.

[38] The aforesaid challenge could have been avoided if the taxing master's report was a true response to the objections made by the applicants.³³ In our view the report filed does not deal with the contentions raised and in future it should. We endorse the view of Schutz J in *Nedperm Bank Ltd v Desbie (Pty) Ltd*³⁴ that the report in terms of rule 48(5)(b) should contain the taxing master's full reasons. This review has focussed on the unenviable task that a taxing master has when it comes to the determination of costs, especially in relation to counsel's fees and experts' fees.

Order

[39] Accordingly, the following order is issued:

- (a) The taxations of the bills of costs dealt with in all the five matters where the *allocaturs* were not confirmed, same are reviewed and set aside insofar as they are not in accordance with the principles endorsed in this judgment.
- (b) The bills of costs are referred back to the taxing master to be taxed afresh in accordance with this judgment;
- (c) Each party to pay its own costs.

STEYN et POYO DLWATI JJ

³³ See *Kruger* supra at 232E-H.

³⁴ *Nedperm Bank Ltd v Desbie (Pty) Ltd* 1995 (2) SA 711 (W) at 713A-C. See also *Brener NO v Sonnenberg, Murphy, Leo-Burnett (Pty) Ltd (formerly D'Arcy Masins Benton & Bowless SA (Pty) Ltd)* 1999 (4) SA 503 (W) at 508C-D.

APPEARANCES

Date of hearing	: 11 May 2017
Date of judgment	: 14 March 2018
Counsel for applicants	: AJ Dickson SC
Instructed by	: Sophia Avvakoumides Attorneys c/o Franci Leppan Attorneys
Counsel for the respondent	: AA Gabriel SC
Instructed by	: State Attorney c/o Cajee Setsubi Chetty Inc
Interested Party	: A Nepaul
Instructed by	: The KwaZulu-Natal Law Society
Interested Party	: CJ Pammenter SC
Instructed by	: The KwaZulu-Natal Society of Advocates