

**IN THE LABOUR COURT OF SOUTH AFRICA**  
**HELD AT CAPE TOWN**

**CASE NO: C552/02**

In the matter between:

**SASBO - THE FINANCE UNION**

**Applicant**

**and**

<b>U.F.I.W.O.</b>	<b>1st Respondent</b>
<b>P.L.O. LUNGUZA</b>	<b>2nd Respondent</b>
<b>N. MGUGA</b>	<b>3rd Respondent</b>
<b>M.R. PULE</b>	<b>4th Respondent</b>
<b>P.C. MASHALABA</b>	<b>5th Respondent</b>
<b>D. FLETCHER</b>	<b>6th Respondent</b>
<b>P.C. GABARAANE</b>	<b>7th Respondent</b>
<b>ABSA BANK LIMITED</b>	<b>8th Respondent</b>
<b>STANDARD BANK LIMITED</b>	<b>9th Respondent</b>
<b>NEDCOR LIMITED</b>	<b>10th Respondent</b>
<b>FIRST NATIONAL BANK LIMITED</b>	<b>11th Respondent</b>
<b>NATAL BUILDING SOCIETY</b>	<b>12th Respondent</b>

# J U D G M E N T

## **CORAM FARBER AJ:**

On 5 November 2002 the first to seventh respondents lodged a notice with the registrar. It carries the heading "Notice of Review of Taxation" and is couched in the following language:-

"Be pleased to take notice that Respondents require the Taxing Master of the above Honourable Court to state a case for the decision of a Judge in terms of Rule 48 as to why he on the 29th October 2002 in the above matter allowed the under mentioned items in the Respondents bill of costs.

It is the respondents contention that the Taxing Master failed to apply his mind judiciously and allowed the items despite the Respondents objection being items:

2,3,5,6,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,  
26,27,  
28,29,30,31,32,33,34,35,36,38,39,40,41,42,43,44,45,46,47,48,49  
,50,51,  
52,53,54,55,56,57,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73  
,74,75,  
76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,98,99,10  
9,110,111."

I pause to mention that the reference therein to Rule 48 appears to be a reference to Rule 48 of the Uniform Rules

which regulate the proceedings of the several divisions of the High Court of South Africa (the High Court Rules).

The matter has as its background the following:-

1. On 4 June 2002 the applicant instituted proceedings against, amongst others, the first to seventh respondents (hereinafter referred to in the body of this judgment as the respondents) by way of urgency for certain injunctive relief.
2. The application was served on the respondents.
3. Despite this, no appearance was made by them or on their behalf on 6 June 2002, being the date which the applicant had, in the notice of motion in the application, signified as the date upon which the court would be moved for the relief foreshadowed therein.
4. In the result, the court, in the absence of the respondents, granted an order to the applicant in the terms sought. This included an order for costs, it being decreed that the

respondents were jointly and severally liable, the one paying the others to be absolved, to the applicant for the costs of the application.

5. Pursuant thereto, the applicant's attorneys submitted a bill of costs to the taxing master for taxation on 29 October 2002.

6. The respondents were furnished with notice of the taxation, with the result that both the applicant and the respondents were represented before the taxing master on that date.

7. The taxing master directed the parties to endeavour to settle the matter or, failing that, at least to make some attempt to narrow the issues in dispute.

8. The taxation was then adjourned.

9. No accord could be reached and the parties again attended on the taxing master some hours later on that day.

10. The applicant wished the taxation to proceed and its

representative indicated that the respondents were not entitled to be heard in the matter, apparently because the order in the application had been taken in their absence, that in consequence they had not been entitled, by virtue of rule 25(4) of the rules for the conduct of proceedings in the Labour Court (the Labour Court Rules), to notice of taxation, and that in the circumstances their attendance was barred.

11. This point was apparently upheld and the respondents' representative left the taxation, which then proceeded in his absence. Despite an allegation to the contrary in the notice of 5 November 2002, the result was that none of the items in the bill were objected to.

12. The taxing master's allocatur amounted to the sum of R36 910,78.

The taxing master, in his response to the respondents' notice of 5 November 2002, adopts the position that he is "not in a position to state a case in this review". His reasons for so stating appear from the following paragraphs of his

response:-

- "1) The respondents in this matter delivered a notice of review of taxation on the 5th November 2002. In terms of rule 25(5)(a), an applicant is not required to serve a notice of taxation on the parties or their representatives who failed to appear at the hearing. The taxing party however did give notice to the respondents.
- 2) Both parties appeared at the taxation at 10:00 and they were directed to attempt to settle the bill. The taxing master will thereafter only hear argument on those items parties could not being settled [sic].
- 3) At their second appearance, the applicants' representative informed me that their attempts to settle the bill was unsuccessful and requested me to excuse the respondents from the taxation. The request was granted in terms of rule 25(5)(a) and the respondents were excused from the taxation and the bill was taxed in their absence.
- 4) In terms of rule 48(1) of the High court rules a party can only take those items objected to at the taxation, on review. As a result of the respondents being excused from the taxation, they could not object to any of the items on the bill and therefore have forfeited their right of review."

My judgment is sought on the correctness, or otherwise, of the taxing master's stance.

It will readily be appreciated that the taxing master, and at least some of the protagonists to the dispute, have

proceeded on the assumption that High Court Rule 48 is of application to the taxation of bills of costs in the Labour Court.

Rule 25 of the Labour Court Rules deals with taxation. It reads as follows:-

**"25. Taxation**

- (1) The registrar may perform the functions and duties of a taxing master or appoint any person as taxing master who is in the registrar's opinion fit to perform the functions and duties as are assigned to or imposed on a taxing master by these rules on such terms and for such period as may be determined.
- (2) The taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the court.
- (3) At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.
- (4) The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.
- (5) Despite subrule (4), notice need not be given to a party -
  - (a) who failed to appear at the hearing either in person or through a representative; or
  - (b) who consented in writing to the taxation taking place in that party's absence.
- (6) Any decision by a taxing master is subject to the review of

the court on application."

The rule is in my judgment clear and unequivocal. It affords to a party who is aggrieved by a taxing master's decision a single remedy, namely that of common law review. It is precisely this position which obtained in the High Court (then the Supreme Court) prior to the adoption of High Court Rule 48. (See, in this regard, the remarks of Viljoen J in *Gran-or (Edms) Bpk v Bevan* 1969(2) SA 87 (T) at 89G-90E.) There is nothing in Labour Court Rule 25, or any provision of the Act, which renders the machinery of High Court Rule 48 applicable to the Labour Court.

I am advised that taxing masters of the Labour Court have for a number of years approached the review of taxations on the basis that High Court Rule 48 is applicable thereto. This practice is not sanctioned by the rules of the Labour Court. Despite the desirability that the procedure for the review of a taxation ought to be inexpensive and expeditious, and despite the fact that High Court Rule 48 meets those requirements, its provisions cannot simply be made of application to the Labour Court, at least not without the rule



maker's *imprimatur*.

As previously indicated, this is not the case. There is consequently nothing which required the taxing master *in casu* to state a case for the decision of a judge.

In the result, I am of persuasion that the taxing master's decision is correct, albeit for the wrong reasons.

I pause to observe that even postulating the applicability of High Court Rule 48 to the situation, the taxing master was nonetheless freed of any obligation to state a case for the decision of a judge.

The relevant segments of the rule read as follows:-

#### "REVIEW OF TAXATION

**48.** (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 sub-rule (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;
- (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.

(3) .....

(4) .....

(5) .....

(6) .....

(7) ....."

The notice delivered by the respondents manifestly fails to comply with sub-rule (2). By reason of the respondents' absence from the taxation, they are not able to make the allegations referred to in sub-rule (2)(b); nor are they, by reason thereof, able to comply with sub-rule (2)(c). On this score, and postulating that High Court Rule 48 does in fact regulate the situation, the taxing master was correct in his declination. It seems to me that on a plain reading of High Court Rule 48, an aggrieved party who has not attended the taxation cannot invoke its provisions. So much so is

apparent from *Gran-or (Edms) Bpk v Bevan, supra* at 89G-90E. The only remedy available to such a party is for the setting aside of the taxation on the same basis on which judgments by default are set aside. There may be other remedies, and in this regard the exclusion of the respondents from the taxation may well constitute an irregularity. (See generally *Gründer v Gründer en Andere* 1990(4) SA 680 (C) at 684G-685H.)

I have not had the benefit of argument from either the applicant or the respondents. Fairness dictates that my decision to uphold the taxing master's declination should at this stage not be rendered final. It is for this reason that I propose dealing with the matter on the basis of the issue of a Rule *nisi*, leaving it open to the parties to challenge the conclusion at a later stage.

In the result, I make the following orders:-

1. A Rule *nisi* shall forthwith issue calling upon the applicant and the first to seventh respondents to show cause on 23

January 2003 at 10h00, or so soon thereafter as they may be heard, why:-

(a) the first to seventh respondents' Notice of Review of Taxation dated 4 November 2002 should not be set aside;

(b) the taxing master's declination to state a case for the decision of a judge, as required of him under the Notice referred to in paragraph 1(a) hereof, should not be upheld.

2. The registrar is directed to deliver a copy of this judgment to the applicant and the first to seventh respondents forthwith.

3. Should any of them wish to oppose the confirmation of the Rule *nisi* referred to in paragraph 1 hereof, the party so wishing must:-

(a) notify the registrar within ten days of the delivery of this judgment on it of such intention;

(b) deliver an affidavit setting out the grounds of opposition

within a further ten days therefrom.

4. There will be no order for costs in respect of the proceedings thus far.

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**G FARBER  
ACTING JUDGE OF THE  
LABOUR COURT**

**DATE OF JUDGMENT:  
27TH NOVEMBER 2002**

**UFIWO, on its behalf and on behalf of  
second to seventh respondents**  
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