

REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 1101/2019

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED.

In the matter between:

LESIBA EZEKIEL MATSAUNG

APPLICANT

And

MERRIAM NGAOKO MATHEDIMOSA

FIRST RESPONDENT

MPOKILE LESETJA SAMUEL MAELE

SECOND RESPONDENT

KAREL VENTER

THIRD RESPONDENT

ANDRE KOTZE

FOURTH RESPONDENT

JOSHUA VAN DER MERWE

FIFTH RESPONDENT

THE SEMOMANO COMMUNITY ASSOCIATION

(AND ALL THE MEMBERS AND/OR AFFILIATES

UNDER ITS AUTHORITY)

SIXTH RESPONDENT

VICTORY MOKUMO

SEVENTH RESPONDENT

MINISTER OF POLICE

EIGHTH RESPONDENT

JUDGEMENT

KGANYAGO J

[1] The applicant, the second and seventh respondents are dissatisfied with the rulings made by the Taxing Master in relation to the respondents' bill of costs

presented before the Taxing Master for taxation on 29th April 2021. The applicant is seeking a review of the Taxing Master's rulings on items 8 to 10, 12 and 13. According to the applicant these items relates to an application in terms of Rule 41(1)(c), and that these items were allowed despite there being no order for costs.

[2] The respondents are seeking a review of the Taxing Master's rulings on items 2, 3, 5 and 6. According to the respondent the Taxing Master erred in disallowing the perusal of the vouchers/annexures attached to the bill of costs in support of the disbursements claimed. The respondent submit that they were obliged to peruse and consider vouchers as it forms part of the bill that was presented for taxation and that was withdrawn on day 10 (ten) after service thereof. Further that the second replacement bill was drafted on a different scale as the first bill that was served, and that the respondent was obliged to again peruse the annexures as the objections (if any) will differ because the scale on which the two bills were drafted differs and the rules for allowing and disallowing items based on that fact differs. Further that if the respondents are successful with the review application, it should follow that the drafting fee and VAT thereon, should also be allowed.

[3] The Taxing Master in his stated case on the applicant's review on items 8 to 10, 12 and 13 has stated that he could not find any reasonable grounds to disallow these items. The Taxing Master has stated that it was his understanding that every attorney acts on instructions and that may be obtained either by telephone call or formal consultation, so he considered it reasonable because if the respondent had called for formal consultation it was going to be expensive than telephone call. The Taxing Master has further stated that the Rule 41(1)(c) application was brought and set down for 26th January 2021, then the respondent filed her amended withdrawal on 15th October 2021 and tendering wasted costs. Further that the respondent removed her Rule 41 (1) (c) on 12th December 2020, and as a result of that, he did not have any reason to disallow the costs related to Rule 41(1) (c).

[4] On the respondents' review application, the Taxing Master in his stated case on item 2 has stated that the scale on which the bill was drafted will not affect the vouchers or amounts on the vouchers, so there was no need to charge for re-perusal of all vouchers on full rate. On item 3 the Taxing Master has conceded that he had

erred. On item 5, the Taxing Master has stated that these were not abortive costs, because they did not serve the purpose they were intended for, otherwise everyone may claim that they had prepared documents in their office, and if they were served he could have allowed them.

[5] It is trite that when a court reviews a taxation, it must be satisfied that the Taxing Master was clearly wrong before it will interfere with the rulings made by him/her. 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 where it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should held to vitiate rulings. (See *President of RSA v Gauteng Lions Rugby Union*¹).

[6] The applicant in its amended notice of withdrawal of taxation dated 15th October 2020 withdrawing the notice of taxation and bill of costs served on the respondents on 17th September 2020 had tendered costs of the withdrawal of taxation. The applicant had earlier served the respondent with a notice of withdrawal of taxation without tendering costs for the withdrawal. That led to the respondent launching an application in terms of Rule 41 (1) (c) which was set down for the 26th January 2021. The applicant in curing the defect in his earlier notice of withdrawal, filed an amended notice of withdrawal in which he tendered the wasted costs of the withdrawal of the notice of taxation.

[7] The applicant when he tendered the wasted costs, he had limited it to the wasted costs of the withdrawal of the notice of taxation, and did not include the costs of the Rule 41 (1) (c) application. There is no court order sanctioning the costs of the Rule 41 (1) (c). Anyhow that application has been rendered moot by the amended notice of withdrawal. The respondent had accepted the amended notice of withdrawal without raising any queries about it. Even though the applicant was forced by the Rule 41 (1) (c) application to file an amended notice of withdrawal, in his notice of withdrawal he had tendered limited costs which the respondent had accepted. Therefore, the respondent cannot include costs which the applicant did not make a tender for, and also there is no court order sanctioning that. In my view the

¹ 2002 (2) SA 64 (CC) at 73C-D

Taxing Master was clearly wrong in allowing costs on items 8 to 10, 12 and 13 of the respondents' bill of costs since they all relate to Rule 41 (1) (c) application, and there is no court order sanctioning that.

[8] Turning to the respondents' review application, on item 3 the Taxing Master has conceded that he had erred and I will not take it any further. Wasted costs are costs occasioned by the postponement or costs previously incurred in preparing for trial and also appearing in court, but rendered useless by reason of postponement. There was no appearance before the Taxing Master as the taxation was withdrawn in advance. The applicant had withdrawn his taxation before the respondents could serve and file their list of objections. It can therefore not be said with certainty that when the applicant served his notice of withdrawal of taxation the respondents list of objections was ready to be served. The court will not function on speculations. On item 2 the respondents are charging perusal of the 6th March 2019 which the Taxing Master found that there was no need to charge for re-perusal of all the vouchers at a full rate. I don't find any reason to fault the Taxing Master on that approach. He was satisfied that the respondents had prior knowledge of those vouchers which they have previously perused, and they were merely refreshing their memories.

[9] Taking into consideration the facts of this case and the submission by all the parties involved in this matter, I am satisfied with regard to the applicant's review application, the Taxing Master was clearly wrong on his rulings and they stand to be reviewed and set aside. In relation to the respondents' review application, I am satisfied that the Taxing Master was clearly wrong on item 3 which he had conceded. On items 2 and 5 I find that the Taxing Master had exercised his discretion correctly, and I don't find any reasons to interfere with his rulings on these items.

[10] In the result I make the following order:

10.1 The applicant's review application is upheld on all the items he had brought in his review application, whilst that of the respondent is partially upheld only on item 3.

10.2 The Taxing Master's allocation is set aside on items 3, 8 to 10, 12 and 13.

10.3 The matter is referred back to the same Taxing Master to finalise the taxation taking into consideration the rulings that I have set aside.

10.4 No order as to costs.

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

For the applicant	: Malose Matsaung Attorneys
For the respondents	: Bosman Attorneys
Electronically circulated on	: 27th June 2022