

# IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

**CASE No.:**

**7364/1998**

In the matter between:-

**JUANITA VAN ROOYEN**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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## JUDGMENT : REVIEW OF TAXATION

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**VAN DER BYL AJ:**

[1] This is a review in terms of Rule 48 of a taxation of a bill of costs.

[2] The Applicant was the Plaintiff in an action for damages arising out of injuries sustained in a motor collision.

[3] For the sake of convenience I will in this judgment refer to the parties as they

are cited in the action.

[4] On 3 September 1999 Stafford DJP granted an order by consent in favour of the Plaintiff against the Defendant.

Apart from the merits, the order provided for payment of the Plaintiff's "*taxed party and party costs on the High Court scale, which costs include the costs of the Plaintiff's Pretoria and Port Elizabeth Attorneys, as well as the following:*

- (i) *Senior Counsel's fees;*
- (ii) *the reasonable costs of obtaining all actuarial reports of Mr. G W Jacobson;*
- (iii) *the costs of all medico legal reports furnished to the Defendant, as well as the fees and qualifying fees, if any of .....;*
- (iv) *the reasonable costs of consultations between Plaintiff's counsel and experts in preparation;”,*

as well as various other stipulated costs, none of which I have to quote here.

[5] The Plaintiff's bill of costs was taxed and finalised on 29 March 2000 and the *allocatur* completed and signed on the same day. The Plaintiff was dissatisfied with the taxing master's decision on a considerable number of items and filed a notice of

review in terms of Rule 48 on 12 April 2000. The Taxing Master supplied her stated case almost two years later on 18 February 2002 and the Plaintiff made submissions in reply to the stated case on 13 March 2002, whereupon, the Defendant made submissions in response to both the stated case and Plaintiff's submissions on 7 May 2002.

[6] I will, notwithstanding these delays, consider this matter as if there were proper compliance with all the applicable time limits as prescribed in the Rules.

[7] There are in all 146 items in dispute, each of which has been fully dealt with in Plaintiff's submissions filed in terms of Rule 48(5)(a).

[8] There are in all 146 items in dispute, each of which has been fully dealt with in Plaintiff's submissions filed in terms of Rule 48(5)(a).

[9] It is well-settled law that in general the discretion of the Taxing Master will not be disturbed unless it is found that he or she did not exercise a proper discretion, for example, by disregarding factors which were proper for him or her to consider or by considering matters which it was improper for him or her to consider, or if he or she has disregarded relevant factors or has had regard to improper factors, or by giving a ruling which the Court can see no reasonable person would have given (see: *Wellworths Bazaars Ltd v Chandlers Ltd* 1947 4 SA 453 (T), 457 to 458; *Groenewald v Seford Motors (Edms) Bpk* 1971 (3) SA 677 (C) at 678J-679A). The Courts have also recognized the principle that the Court may interfere in those classes of cases where the Court is able to form as good an opinion as the Taxing Master and, perhaps, even a better opinion (see: *Wellworths case, supra*, 458).

[10] I think it best to deal with each item in the sequence as they are raised in the Plaintiff's notice of review dated 12 April 2000 notwithstanding the peculiar order in which the Plaintiff's attorneys have chosen to set out their reply to the Taxing Master's stated case by dealing at first with certain items out of order before dealing with the rest of the items in the order they are raised in the stated case.

[11] **ITEM 19**

This item relates to an amount of R75 claimed for the attendance by the attorney on the occasion of the taking of certain photos of the Plaintiff's injuries by a professional photographer.

It is the Plaintiff's contention that it was, bearing in mind the intimate nature of the injuries and the serious consequences thereof, reasonable to have the photos taken and for the attorney to take the Plaintiff to a professional photographer.

In her stated case the Taxing Master states that the item was disallowed because in her submission the attendance by the attorney for this purpose was unnecessary and, bearing in mind that a fee has been allowed in *item 22* for the perusal of the photos, resulted in a duplication of costs.

To my mind, it was quite proper and, moreover, necessary for the Plaintiff's attorney to have obtained such evidence in support of his client's claim (see: *Van Rooyen v*

*Commercial Union Assurance Co of SA Ltd 1983 2 SA 465 (O), 475E; Fulane v Road Accident Fund 2003 3 SA 461 (W)*), but I am unpersuaded that any circumstances have been shown which required the attorney to herself attend the taking of the photos in question, and I am accordingly unpersuaded that I should interfere in the Taxing Master's decision.

[12] **ITEMS 66, 84 AND 85**

These items relate to the procurement of the police docket (*item 66*), attending to letter from SA Police, Muldersdrift, enclosing the police docket (*item 84*) and the perusal of statements contained in the docket (*item 85*).

The Taxing Master disallowed these items on the grounds thereof that these items allegedly constitute an unnecessary duplication of costs since an amount had been allowed in *item 39* for a similar function performed by the correspondent attorneys, Rooth and Wessels Attorneys.

This contention does, however, not appear to be correct since in *item 39* an amount is claimed for attending to "*letter Pretoria correspondent, Rooth & Wessels, dated 9 January 1996 with a copy of the criminal case record ..* " (and not for the police docket).

It would accordingly appear that there was no duplication of costs and that the Taxing Master accordingly erred in considering an improper factor.

The Taxing Master's decision on these items is accordingly set aside.

[13] **ITEM 86**

The Plaintiff claimed a fee for a consultation of an hour with the Plaintiff's daughter who had shortly before qualified as a medical doctor and advised "*that Plaintiff cannot cope at work and will need to be seen by a psychiatrist*".

The Taxing Master ruled that a 10 minute telephone call would have sufficed and that an hour consultation was not necessary.

In my view there is no reason to interfere with the decision of the Taxing Master.

[14] **ITEM 106**

This item concerns a fee claimed for a 30 minute consultation during which Plaintiff "*advised that she has been told to have her leg amputated*" and advised "*that she would like this done in Port Elizabeth to save costs and that we must also arrange for her to see a psychologist*".

The Taxing Master allowed a fee for a 10 minute telephone call since in her view the matter did not require, bearing in mind that the Plaintiff had already seen a psychiatrist, a consultation lasting 30 minutes.

The Taxing Master's assessment seems to me to be fair and I am accordingly unable

to interfere with her ruling in this regard.

**[15] ITEM 144**

In this item a fee of R400 is claimed in respect of the drawing of the claim form over and above the fee of R200 claimed in *item 142* in respect of a consultation to draw a statement to accompany the claim form.

The Taxing Master was of the view that the attorney already had the opportunity to consult on the occasion of the drawing of a statement for purposes of the claim form in respect of which a fee was claimed in *item 142*.

The claim form could and should have in my view been completed at the same time as the statement was drawn, and I find myself unable to interfere with the Taxing Master's decision.

**[16] ITEM 146**

This item is no longer in dispute since the Plaintiff now appears to agree with the Taxing Master's ruling, and there is accordingly no reason for to me consider the merits of the original objection.

**[17] ITEMS 163 and 164**

These two items relate to the costs incurred in preparing and forwarding a fax to Defendant furnishing Plaintiff's banking details.

It is the Taxing Master's contention that the costs claimed under these items constitute a duplication of the costs claimed under *items 161 and 162*.

It is explained by the Plaintiff that the fax referred to in these items was prepared and forwarded, in response to the telephonic conversation with Defendant on 25 June 1997 referred to in *items 161 and 162* since the Defendant had agreed, the merits having been conceded, to make an interim payment for purposes of which the banking details of the Plaintiff were to be forwarded to the Defendant by way of the fax referred to in these items.

It would seem to me that the Plaintiff is correct that the amounts claimed in *items 163 and 164*, on the one hand, and *items 161 and 162*, on the other hand, are not amounts which have been duplicated.

In my view the Taxing Master should have allowed the amounts claimed in these two items, and the Plaintiff's objection is accordingly upheld and the Taxing Master's ruling is set aside.

[18] **ITEM 188**

This item relates to an hour consultation with Plaintiff on 2 September 1997 on the occasion of which she advised "*that she cannot continue teaching*", to arrange for her to see Dr Holmes again and to take instructions to institute action.



The Taxing Master allowed a 30 minute consultation on the grounds thereof that summons was issued only five months later and various other consultations had been held during that period of five months.

It does not seem to me to be unreasonable to allow a 30 minute consultation during that early and apparently preliminary stage of this matter, and I am accordingly not prepared to interfere with the Taxing Master's decision.

[19] **ITEM 196**

This item relates to “*(a)ttending consultation at the Collegiate Girls High School, with Counsel, the principal, Plaintiff's immediate superior and bursar*” which consultation lasted 1½ hour.

It appears that the Taxing Master reduced the consultation to an hour consultation.

No reasons are advanced as to why the time of the consultation was reduced with 30 minutes. As appears from counsel's account attached to the bill, it s confirmed that it lasted 1½ hours and that he was paid on that basis.

I agree with the views expressed in the unreported judgment of Jones J in the case of *Mgudlwa v Multilateral Vehicles Accident Fund* that it is improbable that counsel and an experienced attorney would waste time or take unnecessarily long to consult.

It would appear that the Taxing Master arbitrarily considered the period excessive

and she has not properly exercised her discretion. The Plaintiff's objection is accordingly upheld and the Taxing Master's decision is set aside.

[20] **ITEM 216**

This item refers to the perusal of certain medical accounts which was taxed off as a duplication of the amount claimed under *item 138*.

Under *item 138* an amount of R1 800 was claimed for the perusal of certain medical accounts consisting of some 90 pages (which amount was, incidentally, taxed off with an amount of R1 000 on the grounds of a time spent basis of 40 pages per hour).

It would appear that the Taxing Master has done so under the authority of the views propounded by Jacobs & Ehlers, *Law of Attorneys' Costs & Taxation Thereof* at p. 129, par 148, which views were approved by Roos J on 26 October 1998 in the unreported case of *Van Marle v Kellerman, Case No. 8807/1997*. It would appear that in terms of that authority "*a large batch of documents*" might in a particular case be relevant, but not individually important and that a reasonable lump sum, based on the estimated time occupied may be allowed for the examination thereof.

I have no difficulty with the views expressed in these authorities.

In *item 138* we are, however, concerned with the perusal of 90 pages of medical accounts on which an amount of R800 was allowed, being 2 hours at 40 pages per hour at R400 per hour.

This item relates to the perusal of a further 7 pages of similar accounts which were, if regard is had to the Plaintiff's response to the Taxing Master's stated case, perused after the perusal of the accounts referred to in *item 138*. Bearing in mind that in total the attorney in fact perused 97 pages of such accounts, it would have in my view been reasonable to have allowed the attorney another 30 minutes for such perusal.

In the circumstances I am of the view that this item in which an amount of R140 was taxed off should not have been so taxed off, and the objection is accordingly upheld and the Taxing Master's decision is accordingly set aside.

[21]     **ITEM 222**

The Plaintiff concedes the correctness of the Taxing Master's decision on this item and I accordingly find it unnecessary to further deal with the objection initially raised by the Plaintiff.

[22]     **ITEM 223**

This item concerns the drawing of instructions to counsel to draft particulars of claim.

Apart from a letter addressed to counsel, the Plaintiff could not produce at taxation the physical instructions to counsel and the Taxing Master accordingly disallowed the amount claimed for the instructions, but allowed an amount of R40 for the letter addressed to counsel.

In her response to the Taxing Master's stated case, the Plaintiff says the letter had nothing to do with the instructions to counsel.

In my opinion an attorney should attend a taxation fully prepared armed with the necessary supporting documents. If a party's attorney cannot prove at taxation any item due to the non-availability of any document, that party is not entitled to the fee claimed. It does not avail the party to say in review that the document has now become available. A court of review must consider the decision of the Taxing Master as taken at the taxation, and not decide *ex post facto* on review that the Taxing Master was wrong because the documents have now become available. Given the Plaintiff's concession set out above, the Plaintiff was not entitled to any fee under this item.

I am accordingly not prepared to interfere in the Taxing Master's decision.

[23] **ITEM 231**

This item relates to the taxing off of an amount claimed in respect of a letter addressed to a certain Dr. Holmes in payment of his account.

The amount was taxed off because the letter could not have been disclosed at the taxation.

What has been said in respect of the taxing off of *item 223* similarly applies here.

I can accordingly find no reason to interfere with the Taxing Master's decision.

[24]     **ITEM 237**

This item relates to the drawing of instructions to an actuary, Mr. Jacobson.

The amount was taxed off because no proof could have been rendered of the drawing of such instructions.

Like in the case of the previous two items I am similarly unable to interfere with the Taxing Master's decision.

[25]     **ITEM 251**

The item concerns the making of copies of the Particulars of Claim and the Annexures thereto for counsel, Defendant, Plaintiff's Pretoria correspondent and to keep the number of which was reduced by the Taxing Master on account of the fact that the costs of copies of some of the documents had already been allowed under *item 151*.

There is in my view no reason to interfere with the Taxing Master's decision on this item.

[26]     **ITEM 271**

This item relates to the perusal of three further medical accounts handed to Plaintiff's attorney by the Plaintiff.

The amount was taxed off for the same reason advanced in respect of *item 216*.

In so far as an amount has been allowed for the perusal of similar accounts referred to in *item 138* and in so far as I allowed a further amount for the perusal of accounts referred to in *item 216* there is in my view no room for allowing any further amounts for the perusal of any further accounts, I can see no reason to interfere with the Taxing Master's decision in this regard.

[27]     **ITEM 303**

In this item an amount is claimed for copies of Plaintiff's hospital records made for counsel, the Attorney's Pretoria correspondent, Dr Holmes, Dr MacKenzie and to keep.

The Taxing Master taxed the whole amount off because she was of the opinion that it was unnecessary to make a copy for the Pretoria correspondent and a copy to keep since the instructing attorney is in possession of the original. The costs of two copies have accordingly been taxed off.

It is the Plaintiff's contention that it is indeed necessary for the correspondent to have a copy and, in the event of the records being handed in into Court, it was necessary to retain a copy.

No reason is advanced why copies should be made available to the Pretoria correspondent and, should it become necessary to hand the original in into Court, a copy can then be made for the instructing attorney's file.

I am accordingly not prepared to interfere in the Taxing Master's decision.

[28] **ITEMS 313 TO 316**

In these items the Plaintiff claims the costs pursuant to a consultation between her attorneys and her daughter. The items claimed relate to the consultation itself, the taking of instructions for a statement by the Plaintiff's daughter, the drafting of the statement and a copy of the statement for counsel.

The Taxing Master did not regard the claims as relevant towards the continuation of the matter. She disallowed the items because the statement was not discovered, because Dr Rooke (the daughter) was not a medical witness, but only a factual witness and there was sufficient other medical evidence.

The Plaintiff in my opinion shows, quite logically, in her reply to the stated case that the statement had been discovered and that Dr Rooke's evidence would have been relevant had the merits gone to trial. It appears from counsel's notes quoted in the reply that the statement "*deals with virtually every facet of the Plaintiff's life-style prior to the accident and I would recommend that she be available to testify at the trial*".

In my view the Taxing Master clearly erred in respect of the relevance of Dr Rooke's evidence.

*Items 313, 315 and 316* should, therefore have been allowed. *Item 314* is in my opinion a duplication of *item 313* and cannot be allowed.

Plaintiff's objection in so far as it relates to *items 313, 315 and 316* is accordingly upheld and the Taxing Master's decision is to that extent set aside.

[29] **ITEM 317**

This item deals with a brief consultation with Dr. MacKenzie regarding the appointment of further medical experts.

The Taxing Master disallowed the item because Dr. MacKenzie had already drafted a report. She argues that as the recommendations of Dr. MacKenzie were not contained in a follow-up report, such advice falls under attorney and client costs. I agree.

The objection is dismissed.

[30] **ITEM 319**

In this item a fee is claimed for the forwarding of a letter to the Plaintiff received from her employer.



The Plaintiff's attorneys contend that it was in fact a consultation and that it was necessary to consult with the Plaintiff as a result of her being boarded. Following this letter details had to be obtained from the Department, the Plaintiff's employers and the Department of Finance in connection with the Plaintiff's pension to ascertain what pension she would be getting and what amounts would be due to her as a result of her being boarded.

I fail to understand the relevance of the steps to be taken following the letter. Any such steps can be the subject matter of further costs incurred which are, so it seems to me, claimed in *item 324*.

In my view there is no reason to interfere with the Taxing Master's decision.

[31]     **ITEM 324**

This item relates to the attendance by a candidate attorney at the Department of Education "*to ascertain details from the Department*".

The Taxing Master disallowed this item because she regarded it as a duplication of the claim contained in *item 322* in which an amount is claimed in respect of a fax forwarded to the Department of Education to ascertain what the Plaintiff's pension benefits, leave gratuity, etc will be so as to assess the claim.

The Plaintiff's attorney explains that the attendance was suggested by the

Defendant. The reason for the suggestion is not clear from Defendant's reply to Plaintiff's response to the Taxing Master's stated case. In the reply it is indicated that two Departments are involved and that it was suggested by the Defendant that the Plaintiff's attorneys approach the authorities in Bisho to try and get the information as soon as possible. I fail to understand the relevance of these contentions.

I am accordingly unable to find that the Taxing Master failed to properly apply her mind.

[32] **ITEM 366**

In this item an amount is claimed for a 15 minute consultation in relation to the Defendant's Plea and to take instructions to apply for a date of hearing.

As appears from *item 365* the Plaintiff's attorney on receipt of the Defendant's plea wrote to Plaintiff advising her of the Plea and requesting her to call. There was no need for the Plaintiff's attorneys to consult with her in respect of obtaining a trial date, nor would it have been necessary to consult with her in respect of the plea. The explanation that the Plaintiff had called at the attorneys' offices (without an appointment I would presume) does not in my opinion allow for the taxation of the costs of that consultation on the party and party scale.

The objection is dismissed.

[33] **ITEM 398**

This item relates to a 15 minute consultation with Plaintiff who attended at the attorney's offices with letters received from the Department of Finance in relation to her retirement benefits.

The amount was disallowed for the same reasons referred to in respect of *item 319* and I am for the same reasons not prepared to interfere in the Taxing Master's decision.

[34] **ITEM 407**

This item relates to a situation similar to the one to which *item 19* applies and was disallowed for the same reasons.

As in the case of *item 19* I cannot find any reason to interfere with the Taxing Master's decision.

[35] **ITEM 454**

In this item an amount was claimed in respect of a consultation with Plaintiff which lasted 1 hour and 20 minutes during which Plaintiff was consulted in relation to a Request for Further Particulars received from Defendant.

The Taxing Master allowed only one hour for the consultation on the grounds thereof that she was of the opinion that most of the information sought by the Defendant was

by then already at the disposal of Plaintiff's attorneys.

The Plaintiff explains that the request was an extremely comprehensive one dealing with matters 10 years prior to the request and then, for example, also requesting the full name and address of every doctor who treated the Plaintiff, the dates on which the Plaintiff received treatment, the nature of the treatment, the cost of the treatment and the effect of the treatment.

It would seem to me that the Taxing Master either arrived arbitrarily at her decision or failed to duly or properly consider the circumstances pertaining to the consultation.

The Plaintiff's objection is upheld and the Taxing Master's decision is set aside.

[36] **ITEM 489**

This item relates to the making of a copy of the payment into Court for Counsel's information.

According to the Taxing it was not necessary to furnish counsel with a copy of the tender of payment to Court.

It is Plaintiff's case that it was essential to furnish counsel with a copy since the matter had already been set down for hearing, that tender was wrong because costs were tendered on the magistrates' court scale and that it was in any event eventually conceded by Defendant's counsel that the tender was to that extent wrong.

It would seem to me that the Taxing Master misdirected herself in holding that it was unnecessary for counsel to be furnished with a copy of the tender since it was a matter with which counsel would, had it not been conceded by the Defendant, most probably have had to deal with in court.

The Plaintiff's objection is accordingly upheld and the Taxing Master's decision disallowing the costs claimed in this item is set aside.

[37] **ITEMS 493 TO 498**

These items refer to "*Counsel's Advice on Evidence*".

It is the Taxing Master's contention that the advice was shown to her during taxation and that it appears to be advice on *quantum* which constitutes attorney and own client costs which are accordingly not taxable.

Senior counsel for the Plaintiff confirms in a letter dated 11 March 2002 that he intended to and did prepare an advice on evidence.

I am prepared to accept the word of counsel.

Plaintiff's objection is accordingly upheld and the Taxing Master's decision is set aside.

**[38] ITEM 499**

This item relates to a consultation with Plaintiff consequent upon receipt of the advice on evidence referred to in *items 493 to 498*.

The Taxing Master was of the view that the same argument applies as the one advanced in relation to those items.

In the matter of *Meyer v Road Accident Fund* (unreported judgment in Case No. 8241/1998) Botha J said that once it is found that the costs for the advice on evidence is allowed, it follows that the costs for a consultation with the client to discuss the advice on evidence is justified.

Plaintiff's objection is accordingly upheld and the Taxing Master's decision set aside.

**[39] ITEM 516**

In this item we are concerned with the making of copies of certain medico-legal reports to one of the experts referred to in the court order.

It is the Taxing Master's contention that the Plaintiff's attorney could not submit any proof during taxation that the copies concerned totalled 136 pages, but for some reason concluded that the copies totalled only 59 pages were made.

The Plaintiff now submits that a letter was exhibited to the Taxing Master in which the

typist has reflected the number of pages, but, except to say that the letter is available, the letter is not attached to the papers. Another letter in which the expert concerned confirms that he in fact received 136 pages is, however, attached.

Without the letter which was exhibited to the Taxing Master I am unable to determine whether the Taxing Master exercised her discretion incorrectly, and I am not prepared to decide this issue on documentation which were not exhibited to the Taxing Master at the time of the taxation. A party should be able at the taxation to convince the Taxing Master of his or her case and prove to the satisfaction of the Taxing Master his expenses. It does not avail the party to say on review that a letter from the expert confirming the number of pages faxed to the expert, is attached to the review application, but not the evidence the party relied on at the taxation. I find it most strange that the Plaintiff attaches as annexure the letter from the expert that is relied on, but not the *“letter exhibited to the Taxing Master and the Defendant’s attorneys [that] shows on the top right hand corner, that the typist had also reflected the number of pages of the annexures”*.

I cannot accordingly hold that the Taxing Master failed to properly apply her mind to the matter or that she failed to exercise her discretion properly.

[40] **ITEM 518**

I would appear that as far as this item is concerned the Taxing Master was faced with the same facts and arguments than those she was faced in respect of item 516.

I have for the same reasons no reason to interfere with the Taxing Master's decision.

[41] **ITEM 519**

In this item we are concerned with a letter like the one addressed to an expert instructing him and forwarding to him copies of medico-legal reports referred to in *item 517* which was allowed.

It was the Taxing Master's contention that this item constituted, because of its similar nature, a duplication.

The letter referred to in this item, however, relates to a different expert, Dr. Cohen. In terms of the court order the Plaintiff is entitled to the reasonable costs of medico-legal reports, as well as the fees and qualifying fees of Dr Cohen.

In the circumstances it would appear that the Taxing Master exercised her discretion incorrectly, and the objection is accordingly upheld and the Taxing Master's decision is set aside.

[42] **ITEM 520**

Although the Plaintiff indicated that she was aggrieved by the Taxing Master's decision on this item, no comments were rendered on the Taxing Master's stated case.



I cannot in any event find any reason to interfere with the Taxing Master's decision on this item.

[43]     **ITEM 521**

It appears to be common cause that this item is similar in nature than *item 519* dealt with above.

For the same reasons advanced with regard to that item the review on this item is allowed and the Taxing Master's decision is set aside.

[44]     **ITEM 527**

This item relates to a letter addressed to the Pretoria correspondents setting out the names and addresses of the witnesses to be subpoenaed.

The Taxing Master disallowed this item on the grounds thereof that another letter referred to in *item 526* had on the same day been forwarded to the Pretoria correspondents which could also have contained the information referred to in this item.

It is the Plaintiff's contention that the second letter was not sent by post but was a fax.

In my view this does not distract from the plausibility of the Taxing Master's decision.

Practitioners should be mindful of unnecessary expenses and prevent any such costs as far as possible.

I find no reason to interfere with the Taxing Master's decision.

[45] **ITEM 533**

Like in the case of *items 516 and 518* this item relates to the making of copies of medico-legal reports for the attention of an expert witness, but where no proof has been rendered at the time of taxation as to the number of copies made.

Similarly, I cannot find any reason to interfere with the Taxing Master's decision.

[46] **ITEM 583**

In this item a consultation fee was claimed in respect of Defendant's request that the Plaintiff should undergo a medical examination in Johannesburg in respect of which the Defendant tendered the costs.

The Taxing Master taxed the amount off on the grounds thereof that a consultation was unnecessary and that a telephone call would have sufficed.

It is the Plaintiff's contention that "*it was necessary to consult with the Plaintiff ..... Not only did the Plaintiff have great difficulties in moving around, but also had severe psychological and behavioural problem*".

I fail to understand the logic of this contention.

There is in my view no reason to interfere with the decision of the Taxing Master.

[47] **ITEMS 597 TO 599**

These items relate to the sheriff's fees to subpoena the Plaintiff's daughter to testify at the trial.

The Taxing Master disallowed the item stating that it was surely not necessary to subpoena the Plaintiff's own daughter.

The Defendant says it was necessary as Dr Rooke was a newly qualified medical doctor stationed at a State hospital in Cape Town who could not get leave who could not get off work so that it was necessary to subpoena her.

In my view it was in the circumstances not unreasonable to issue a subpoena in respect of the Plaintiff's daughter. It is not unusual to issue subpoenas in respect of witnesses who will, if no subpoena is issued, in any event make his or her appearance. It is also not unusual that a subpoena is often required, as would appear to have been the case here, by the employee of the witness concerned.

In my view the Taxing Master failed to properly exercise her discretion and the objection is accordingly upheld and her decision is accordingly set aside.

These items relate to the subpoenaing of a certain Mr. Kritzinger, an Orthotist and Prosthetist of Cape Town in respect of whom the costs of the medico-legal report, as well as the fees and qualifying fees, were to be paid by the Defendant.

The Taxing Master, relying on an unreported judgment dated 25 November 2000 in the case of *Clement Bosch v Road Accident Fund* in this Court under Case No. 8240/98, held that it is not common practice for a party to subpoena his or her own expert and disallowed the costs claimed (See also: *Randall v Baisley* 1992 (3) SA 448 (E); *Köhne and Another v Union & National Insurance Co Ltd* 1968 (2) SA 499 (N)).

It is the Plaintiff's contention that Mr. Kritzinger was not a specialist engaged by the Plaintiff for purposes of giving expert evidence. The Plaintiff was merely referred to him for a prosthesis to be fitted. Mr. Kritzinger was, therefore, not in a position of an expert witness engaged in giving evidence on behalf of the Plaintiff. It appeared that even after he received the summons he advised that it was not possible for him to be away from his business.

I am of the view that on these facts this matter is distinguishable from the circumstances dealt with in the *Randall*, *Köhne* and *Clement Bosch* cases, *supra*, and that the Plaintiff cannot be faulted for having subpoenaed Mr. Kritzinger.

The objection is upheld and the Taxing Master's decision is set aside.

[49] **ITEM 613**

This item relates to a consultation with Plaintiff in relation to her proposed examination of five days in Johannesburg referred to in *item 583*.

The Taxing Master disallowed this item on the grounds thereof that this consultation could have been combined with the consultation which took place the day before referred to in *item 583* and that in any event a consultation between an attorney and his client in relation to the attendance of medico-legal examination constitutes attorney and client costs.

I am disinclined to interfere in the decision of the Taxing Master notwithstanding the point made by the Plaintiff that if the consultations had been combined the fee for the first consultation would have doubled. There is little wrong with the point of departure used by the Taxing Master and in the circumstances I desist from interfering.

[50] **ITEM 625**

This item relates to a telephone call made in response to a message left by Defendant's attorney, Ms. Mabaso, who was then not available and a message left to the effect that the call had been returned.

*Items 625 and 626* deal with, at first the call made by Ms. Mabaso who requested her call to be returned because Plaintiff's attorney was not available to receive the call,

and thereafter the return of Ms. Mabaso's call which was again, because of her non-availability, not attended to.

In my view the first call referred to in *item 625* should not have been allowed since Plaintiff's attorney was not available to attend to the call. However, the return call, although Ms. Mabaso was not available, should in my view have been allowed.

As it is the decisions cancel each other out and I regard it fair and just in the circumstances not to interfere with the Taxing Master's decision.

[51] **ITEMS 636 TO 637**

These items relate to a letter and accompanying copies of medico-legal sent to a general practitioner, Dr. Fourie.

It is the Taxing Master contention that he was not an expert and could not contribute to the matter.

The Plaintiff, however, is of the opinion that she is entitled to the costs relating to these items as Dr Fourie's evidence would have been that the Plaintiff had undergone a change of personality and was frequently depressed. The Court order provides that this practitioner's costs shall be paid by the Defendant.

In deciding and allowing this item I find the foollowing *dictum* of Erasmus J in the *Randall case, supra* at 454B-C instructive:

*“‘Qualifying expenses’, it seems, covers all acts performed by the expert which relate to the opinion which he would express in court. This may include the observation of persons and places, or the investigation of or experiments on the corpus delicti. It does however not include pre-trial examinations or investigations which go to direct proof of the factum probandum. The pre-trial activity of the expert may relate to both qualifying and non-qualifying preparatory acts; indeed it may be difficult to unravel the one from the other. But the basis of the distinction however is clear: qualifying acts bear upon the expert’s opinion, all other acts fall outside the scope of the concept.”.*

The Plaintiff’s objection is upheld and the Taxing Master’s decision is set aside.

[52]     **ITEMS 640 TO 641**

These items relate to the taking of instructions for Plaintiff’s statement and drawing the statement.

The Taxing Master disallowed the items saying that the attorneys took this statement to protect themselves.

The Plaintiff denies the Taxing Master’s contention and quotes in support of her denial from the unreported judgment of Botha J in the *Clement Bosch*, case, *supra*, which supports the allowance of the costs incurred in this regard.

The Plaintiff’s objection is upheld and the Taxing Master’s decision is set aside.

[53]     **ITEM 642**

This item deals with the drawing of instructions for counsel on trial.

The Taxing Master disallowed this item on the grounds thereof that the tariff in terms of Rule 70 item B2 does not provide for expenses of this nature

The Plaintiff in turn relies on the specimen bill of costs in *Jacobs and Ehlers, item 252, page 425* and the decision in the *Clement Bosch case, supra*, which supports the allowance of such costs.

Notwithstanding the fact that Rule 70, item B2 at first glance does not provide for instructions of the type claimed for under this item, I am inclined to think that written instructions to counsel may be allowed under Rule 70, item B2. I am of the view that in certain circumstances written instructions do not only save time, but also give a clear indication to counsel of new instructions and the further course of action from the attorneys' perspective. I do not, however, think that this item should be allowed under all circumstances, and that it should remain subject to the Taxing Master's discretion.

As I do not have any indication of the instructions given to counsel under this item, I am unpersuaded that I should interfere with the Taxing Master's decision.

**[54] ITEMS 643 AND 644**

These items deal with drawing, sorting out, arranging and paginating counsel's brief, ie., R40 for drawing the brief (which was allowed) under *item 643* and R240 for sorting out, arranging and paginating counsel's brief under *item 644*.



The Taxing Master taxed an amount of R100 off from the amount claimed under *item 644* claiming that a fixed fee of R140 is allowed in terms of Rule 70, item C2 for the sorting out of counsel's brief and R40 in terms of Rule 70, item B1, for drawing counsel's brief.

It would seem that the Taxing Master has obviously lost sight of the fact that the fee prescribed under item C2 of Rule 70 is a fee of R100 per quarter of an hour if prepared by an attorney and R30 per quarter of an hour if prepared by a candidate attorney. The Plaintiff claimed R240 under this item for two hours' work. At R30 per quarter of an hour, if the work was done by a candidate attorney, the fee would have amounted to R240.

I am accordingly of the view that the objection should be upheld and the Taxing Master's decision set aside.

[55]     **ITEM 645**

In this item an amount of R120 is claimed for sorting out, arranging and paginating the attorney's own file.

The Taxing Master disallowed 30 minutes of the one hour claimed for doing that on the grounds thereof that in her discretion 30 minutes would have been sufficient since the work had already been done in respect of counsel's brief.

It is the Plaintiff's contention that it is not reasonable to suggest that the work could

have been done in 30 minutes.

It is correct that, as indicated in respect of *items 643 and 644*, the Taxing Master acknowledged that two hours for the work done in respect of counsel's brief were reasonable. The Plaintiff fails to show that the sorting out, arranging and paginating of the attorney's own file entailed more work than the work necessary to do so in respect of counsel's brief.

I am accordingly unable to establish whether the Taxing Master exercised her discretion improperly.

[56]     **ITEM 654**

This item deals with an attempt by the Defendant to arrange for an examination of the Plaintiff by Dr. Olivier in Pretoria. The amount claimed is for a letter addressed to the Plaintiff informing her of the time, date and place of the examination.

The Taxing Master disallowed the item because, as appears from *item 653*, Plaintiff had already been informed of the examination telephonically and that the letter was an unnecessary duplication of the telephone call.

It is Plaintiff's contention that the letter was, bearing in mind the Plaintiff's mental condition, necessary because of the fact that the examination was arranged in a different city and that the examination was to take place at various times over a five day period at different hours of the day, so as to duly inform the Plaintiff in writing of

the arrangements.

In my view the Plaintiff could have been given full information of the arrangements over the telephone on the occasion of the telephonic conversation, and I am unable to hold that the Taxing Master exercised her discretion improperly.

**[57] ITEM 655**

This item relates to a consultation subsequent to the letter referred to in *item 654* during which the arrangements for her visit to Pretoria to see Dr. Olivier were discussed.

The Taxing Master disallowed the item because in her view a telephone call would have been sufficient to make the necessary arrangements. Her reasoning seems to me to be reasonable.

I can see no reason to interfere with the Taxing Master's decision.

**[58] ITEM 660**

In this item a claim is made for the making of 183 pages of medico-legal reports for a consultant, a certain Mr Wills, who appears to be a personnel consultant in the private sector.

The Taxing Master was of the view that there was no need for copies of any reports other than the reports of the industrial psychologist to be made available to Mr. Wills.

It appears, as explained by the Plaintiff, that Mr. Wills, in preparing his report which dealt with the Plaintiff's employability, indeed had regard to all the medico-legal reports and I cannot see any reason how it can arbitrarily be decided by the Taxing Master that it was not necessary for Mr. Wills to have regard to all the medico-legal reports.

In my view the Taxing Master misdirected herself and that the item should have been allowed in full.

The objection of the Plaintiff is accordingly upheld and the Taxing Master's decision is accordingly set aside.

[59] **ITEM 665**

This item deals with a consultation which lasted 10 hours during which counsel consulted Plaintiff, Dr. Fourie (Plaintiff's general practitioner), the principal of the school where Plaintiff was employed as a teacher and a certain psychologist, Dr. Holmes.

The Taxing Master was of the view that a consultation of six hours (2 hours per witness) would have been sufficient if regard is had to the result of the consultation being an 18 page summary prepared by counsel and to the fact that the consultation took place some three months prior to the date of trial.

It is explained on behalf of the Plaintiff that the consultation was held three months prior to the trial date because senior counsel briefed was to take up an acting appointment to the Bench which would have made it impossible to hold consultations later and that in any event no further consultations were later held with these persons. and that the 18 page summary prepared by counsel had nothing to do with these consultations.

I can see no reason on which four hours of the consultations could have been taxed off. It seems to me that the Taxing Master arbitrarily arrived at her decision.

In the premises Plaintiff's objection is upheld and the Taxing Master's decision is set aside.

[60] **ITEM 687**

In this item we are concerned with a situation similar to the one dealt with in *item 625*.

Similarly, I can find no reason to interfere with the Taxing Master's decision in respect of this item.

[61] **ITEM 699**

In this item we are, once again, concerned with a consultation with Plaintiff in relation to her travel arrangements in respect of her examination by Dr. Olivier in Pretoria.

As in the case of *item 625* the Taxing Master disallowed the item because in her view a telephone call would have been sufficient to make the necessary arrangements. Her reasoning seems to me to be reasonable.

I can see here also no reason to interfere with the Taxing Master's decision.

[62]     **ITEMS 703 TO 705**

These items deal with copies made of certain faxes received from Defendant's attorney and transmitted to Plaintiff's Pretoria correspondents.

The Taxing Master disallowed these items because in her view the costs relevant thereto constitute attorney and client costs.

The Plaintiff's attorneys said the various letters were sent to the Pretoria correspondent "*to keep them in the picture*" because "*if they did not know what was happening, it would have been impossible for them to lodge an objection to the proposed Medical examination*".

I fail to understand the logic of this reasoning since it had already been agreed that the Plaintiff would be so examined and the travel arrangements had already been made.

In my view there is no merit in the objection.

[63] **ITEM 706**

In this item an amount is claimed for perusal of Plaintiff's agenda drafted by counsel for purposes of a pre-trial conference.

Although a fee was allowed for the drafting of the agenda no fee is allowed for perusal of the agenda on the grounds thereof that such a fee would amount to unnecessary duplication as the agenda should in any case have been drafted by an attorney.

I agree with the Taxing Master's contention and the objection is accordingly dismissed.

[64] **ITEM 712**

This item, once again, deals with the Plaintiff's travelling arrangements to Pretoria for purposes of her examination by Dr. Olivier.

It is the Taxing Master's contention that a consultation between the Plaintiff and her attorney was an unnecessary duplication of costs since the arrangements had, apparently referring to *items 583, 584 and 699*, already previously been discussed and obtained from the Plaintiff.

The Plaintiff's response is that they were requested by the Defendant's attorneys to furnish proof of Plaintiff's previous travelling expenses by way of the necessary

invoices which required them to inform Defendant's attorneys that the necessary vouchers were in the possession of their Pretoria correspondents.

I fail to understand the relevance of the Plaintiff's explanation for the amount claimed in this item.

I can, therefore, find no reason to interfere with the Taxing Master's decision.

[65]     **ITEMS 716 AND 717**

In these items an amount of R40 and an amount of R1,96 is claimed respectively by the Plaintiff's attorneys in relation to a fax addressed to their Pretoria correspondents requesting them to subpoena Dr. Fourie, being the Plaintiff's general practitioner.

The Taxing Master reiterates her objection raised in respect of *items 606 to 608* relating to the subpoenaing of a party's own expert witnesses.

The Plaintiff, however, explains that Dr. Fourie was not one of the Plaintiff's expert witnesses and that he in any event made it clear that he was not prepared to go to Court and to be away from his practice, hence the issue of the summons.

I am accordingly satisfied that this is a case where the summoning of Dr. Fourie is distinguishable from the usual cases where a party is concerned with his or her expert witnesses.



The objection is upheld and the Taxing Master's decision is set aside.

**[66] ITEMS 728 TO 733**

These items relate to expenses incurred in respect of the subpoenaing of Dr. Fourie.

For the same reasons advanced in respect of *items 716 and 717*, the Plaintiff's objection is upheld and the Taxing Master's decision is set aside.

**[67] ITEM 738**

The Plaintiff concedes that this item was correctly disallowed and I am accordingly not called upon to decide on the correctness or otherwise of the decision pertaining to this item.

**[68] ITEMS 780 TO 781**

In these two items amounts were claimed pertaining to a fax transmitted to the Defendant's attorneys confirming the Plaintiff's accommodation arrangements for purposes of her examination by Dr. Olivier.

It is the Taxing Master's contention that, if regard is had to *items 777 and 778*, these items amount to a duplication.

The Plaintiff attached to her submission in response to the Taxing Master's stated

case the letter disallowed by the Taxing Master. The letter clearly does not make or confirm any accommodation arrangements but is a recordal of the discontent expressed by the Plaintiff's attorneys in respect of the manner in which the Defendant's attorneys arranged the Plaintiff's accommodation in Pretoria. Letters like these are often written by lawyers, either to impress upon the opposition the seriousness of the issue under discussion, or to express their displeasure, or to threaten the other party. Such letters do not necessarily take the matter any further. It did not do so in this matter.

There is no reason to allow the expense.

In the premises the objection is dismissed.

[69] **ITEMS 792 TO 794**

These items appear to relate to consultations between an expert, Dr. Holmes, and counsel and Plaintiff's attorney.

The Taxing Master disallowed these items saying that the consultation cannot be construed for purposes of qualifying the expert. She says that the expert in later accounts charged for and was allowed his qualifying fees. She relies for her decision on *Van Deventer v Commercial Union Insurance Co Ltd 1997 (4) SA 890 (T) at 891D-892I* where McCreath J quoted with approval the following passage from *City Deep Ltd v Johannesburg City Council 1973 (2) SA 109 (W) at 118B*:

*“It follows from the above that I am of opinion that where an expert consults with counsel or the attorney to go through his report or statement, this is not part of the process of qualifying himself. This also applies where such a witness attends with counsel to assist him. He is in no different position in this regard from an ordinary witness. Such attendance cannot be a party and party charge.”.*

The Plaintiff in her submissions in response to the Taxing Master's stated case says that she is entitled to the reasonable costs of consultations between counsel and the expert. She, however, does not state the purpose for these consultations.

I cannot, therefore, determine from any of the papers before me the purpose of the consultations.

In the premises I am unpersuaded that the Taxing Master's decision was wrong or improper and the objection is accordingly dismissed.

[70] **ITEM 795**

This item also relates to expenses incurred in respect of the subpoenaing of Dr. Fourie.

For the same reasons advanced in respect of *items 716 and 717*, the Plaintiff's objection is upheld and the Taxing Master's decision is set aside.

[71] **ITEM 802**

In this item a fee is claimed for a consultation of half an hour with Plaintiff to arrange an appointment for her to see a psychiatrist on advice of her general practitioner and

the industrial psychologist.

The Taxing Master disallowed the item on the practice followed in this Division that a consultation will not be allowed where a telephone conversation would suffice, particularly, not to arrange some consultation with an expert.

There is in my view no reason to intervene in the Taxing Master's decision.

**[72] ITEMS 840 TO 841**

This item also relates to expenses incurred in respect of the subpoenaing of a certain Dr. Fourie who was not an expert witness, but merely a medical practitioner who treated whilst she was in hospital.

For the same reasons advanced in respect of *items 716 and 717*, the Plaintiff's objection is upheld and the Taxing Master's decision is set aside.

**[73] ITEMS 844 TO 867**

These items relate to costs incurred in relation to the subpoenaing of witnesses to testify on behalf of the Plaintiff.

The Taxing Master disallowed the costs claimed under these items as they pertained to the service of subpoenas on the Plaintiff's own witnesses. The Plaintiff says these witnesses treated and operated in the Plaintiff and that they were therefore not

“volunteers” as defined in a decision in the case of *Köhn & another v Union & National Insurance Co Ltd* (of which unfortunately no copy was attached to the papers or a reference provided).

In so far as these witnesses were not “volunteers”, the Plaintiff’s objection ought in my view be upheld.

The Taxing Master’s decision is set aside.

**[74] ITEMS 868 TO 869**

The costs claimed under these items are described as “(f)ax to Dr. Botha to arrange to call him on Monday, the 6<sup>th</sup> or Tuesday, the 7<sup>th</sup> of September”.

The Taxing Master disallowed these items calling them attorney and client expenses.

The Plaintiff does not advance any acceptable reason why it was necessary to transmit a fax of this nature to Dr. Botha.

I am unpersuaded that the Taxing Master’s decision is wrong.

**[75] ITEMS 913 AND 914**

These items relate to a 10 minute telephone call to Pretoria correspondents in relation to arrangements pertaining to the arrangements for a pre-trial conference.

The Taxing Master allowed only 5 minutes of the 10 minute call saying that the subjects discussed warranted no more than 5 minutes.

Although I would have allowed the full 10 minutes had I been the Taxing Master, I cannot say that there is sufficient reason to interfere with the decision of the Taxing Master.

[76] **ITEMS 923 TO 924**

In these items Plaintiff claimed amounts for making copies of medico-legal reports for Dr Rook, who is the Plaintiff's daughter, Dr Shevel and Prof. Raubenheimer.

The Taxing Master disallowed the letter and accompanying medico-legal reports prepared for the Plaintiff's daughter saying that she was neither a witness nor an expert witness.

The Plaintiff says counsel had suggested that the daughter be called, albeit not as expert, and accordingly that it was necessary to supply the daughter with the relevant reports.

I disagree, the reports were at best of some personal or academic interest to the daughter. She did not require the reports for purposes of her evidence.

The objection is dismissed.

**[77] ITEMS 925 AND 926**

The Plaintiff concedes the correctness of the Taxing Master's decision on these items.

**[78] ITEM 927**

In this item an amount was claimed in respect of a letter addressed to the Pretoria correspondents to ascertain the necessity of the filing of a supplementary discovery affidavit.

It is not clear why it was deemed necessary to write this letter and why the decision could not have been taken by the Port Elizabeth attorneys.

In am not prepared to interfere in the Taxing Master's decision.

**[79] ITEM 930**

In this item an amount was claimed in respect of a consultation held in relation to additional hospital and medical expenses incurred after the particulars of claim was prepared and served.

It is the Taxing Master's contention that since the amendment of Rule 70 with effect from 21 October 1996 there is no longer any provision for the mere attendance

during which further documents are furnished to an attorney and that she accordingly only allowed a perusal fee.

The Plaintiff's attorneys say that she was receiving ongoing medical treatment resulting in further medical accounts being generated.

This may well have been the case. The delivery of such accounts to the attorneys however in my mind does not justify a fee for a consultation on the party and party scale and I am unable to interfere in the Taxing Master's decision.

**[80] ITEMS 931 AND 933**

It would appear that the Plaintiff conceded the correctness of the Taxing Master's decision on these items and I have no reason to consider the merits of the Taxing Master's decision.

**[81] ITEMS 945 TO 947**

These items were billed as expenses in respect of a consultation with a lay witness and the drawing of his witness statement.

The Taxing Master disallowed the expense as the statement was not given to the Defendant nor did the Plaintiff's own counsel deal with this statement. The Taxing Master says it was an abortive consultation and not a necessary step in the prosecution of litigation.



The Plaintiff say that counsel in his Advice on Evidence stated that he had been favoured with the statement of this witness and had recommended that a pre-trial consultation be held with him to determine whether he should be called or not. Counsel's invoice for the Advice on Evidence is dated 24 March 1999. The Plaintiff's attorneys attended to the consultation on 23 August 1999 and drew the statement on the same day. There is in principle nothing wrong with the proposition that consultations with all prospective witnesses should be allowed by the Taxing Master. I am in this specific instance of the opinion that counsel wanted to consult with the witness to determine the relevance of his evidence. Why the attorney chose to consult with the witness in counsel's absence is not clear. I also do not understand the necessity of drawing another statement. It would appear that there is no indication that counsel ever had sight of this second statement.

In the result there is no reason to interfere in the decision of the Taxing Master.

**[82] ITEM 949**

In this item we are, once again, faced with an item in which an amount is claimed in respect of a telephone call in which a message was left for Plaintiff's attorney to return the call.

As already indicated above, I am not prepared to interfere with the Taxing Master's decision disallowing the item.

[83] **ITEM 955**

This item relates to the perusal of the file for purposes of discovery.

It is the Taxing Master's contention that this item is an unnecessary duplication of *items 925 and 926*. It appears from these two items that Plaintiff's attorney perused his file two days earlier for purposes of a supplementary discovery affidavit.

The Plaintiff states that, in addition to the documentation to which *items 925 and 926* relate, she also discovered newspaper clippings, photographs, more hospital records and correspondence between attorneys.

In so far as the perusal of the file was deemed necessary so as to identify the discovery of further documentation I do not regard it unreasonable that a 15 minute perusal fee can be claimed.

In the circumstances I am of the opinion that the Taxing master erred in not allowing this item and the decision of the Taxing Master is accordingly set aside.

[84] **ITEMS 972 TO 977**

These items relate to a consultation between the Plaintiff and her attorney concerning certain pre-trial questions posed by the Defendant and preparing a response to those questions.

It is the Taxing Master's contention that the costs constituted abortive costs since the response was never given to the Defendant and that counsel in any event never charged any fee in that regard.

I am in respectful disagreement with the Taxing Master's contention. The questions were asked and required a response. The action was only settled three days prior to trial. The attendance to questions posed in terms of Rule 37(4) is material in the prosecution of a trial action.

In the premises the Taxing Master's decision is set aside.

[85]     **ITEMS 1003 TO 1005**

In this item an amount was claimed for the making of copies for counsel of a settlement proposal made by the Defendant.

The Taxing Master contends that it is a fixed taxation principle that counsel's advice on settlement proposals is not taxed as between party and party.

It is correct that consultations with counsel on settlement proposals are ordinarily regarded as attorney and client items. Plaintiff's reliance on the decision in the *Bosch case, supra*, seems to me inappropriate in the circumstances of this matter since no payment into Court was made in this matter.

There is accordingly in my view no reason to interfere with the Taxing Master's

decision.

[86] **ITEM 1044**

This item relates to disbursements in the amount of R2 770,20 in respect of an expert witness, Dr. Holmes.

The Taxing Master disallowed an amount of R738, being an amount charged for perusal of medico-legal reports and an amount of R564 charged for a further consultation with the Plaintiff, but allowed the balance of R1128 which she accepted to be qualifying fees. It is the Taxing Master's contention that the first two amounts cannot qualify as qualifying fees since no further report was submitted by Dr. Holmes and that these two amounts should have been included in his qualifying fees.

Plaintiff contends that the entire account of Dr. Holmes was a reasonable qualifying fees since in order to qualify himself Dr. Holmes had to peruse the relevant medical reports, including the additional medical reports and to have a further communication with the Plaintiff. In essence qualifying expenses represent the reasonable charges to be allowed to an expert witness for preparing himself with regard to the specific matter upon which his testimony is required (see: *Champion v Morker 1971 2 SA 121 (R), 128*). On this basis it would seem to me that the perusal of the relevant reports as well as the consultation with the Plaintiff ought to qualify for qualifying fees.

In the premises I am of the view that the item should have been allowed in its entirety. The Taxing Master's decision is accordingly set aside.

[87] **ITEM 1063**

I have already dealt with the taxing off of an amount equal to counsel's fees in respect of four hours of a 10 hour consultation.

For the same reasons advanced in regard to that item, the Plaintiff's objection is upheld and the Taxing Master's decision is set aside.

[88] **COSTS**

I have in terms of the Rule a discretion to make such order as to costs as I deem fit, including an order that the unsuccessful party pay to the successful party a fixed sum as to costs.

A general practice has developed to award a nominal amount without reference to the costs actually incurred by the successful party (*Madlala v Southern Insurance Association Limited 1982 4 SA 280 (D)*).

As appears from the foregoing the Plaintiff was successful in 76 of the 146 items against which her objection was lodged. I am of the opinion that the Plaintiff should at least be granted a realistic amount to cover some of her costs in bringing this application.

Having regard to the time I have spent on this matter and the voluminous nature of

the papers, it seems to me that a lot of time must have been spent by the Plaintiff in preparing this review application. My estimate is that it could not have taken reasonably taken more than 20 hours to prepare. At R400 per hour Plaintiff's total costs could have amounted to R8 000.

Bearing in mind the success the Plaintiff achieved by having launched this review application, she ought to be awarded an amount of R4 000 to cover at least 50 per cent of her costs.

In the result I make the following order: -

1. The review succeeds in respect of items 66, 84, 85, 163, 164, 196, 216, 313, 315, 316, 454, 489, 493 to 498, 499, 519, 521, 597 to 599, 606 to 608, 636 and 637, 640 and 641, 644, 660, 665, 716 tot 717, 728 to 733, 795, 840 and 841, 844 to 867, 955, 972 to 977, 1044 and 1063 and the matter is referred back to the Taxing Master to deal with this matter in accordance with the directions set out in this judgment.
2. The Defendant is ordered to pay to the Plaintiff R4 000 of her costs incurred in respect of this review application.

.....  
**P C VAN DER BYL**  
**ACTING JUDGE OF THE HIGH COURT**  
**21 June 2004**