

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 045570-2023

DELETE WHICHEVER IS NOT APPLICABLE

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

In the review application of:

TSHEPO JACOB TAWANA

Applicant

and

MALDIVES BODY CORPORATE

First Respondent

W MANSIONS (PTY) LIMITED

Second Respondent

(The reviewing Parties)

PATRICK MASHELE TRUST

Third Respondent

Coram: Wepener J

Date of judgment: 16 April 2024

This judgment is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge his secretary. The date of this Order is deemed to be April 2024.

REVIEW OF TAXATION

Wepener, J:

[1] Two respondents filed an application to review certain decisions of the Taxing Master. The applicant has objected to the review as the review documents were not filed by Milton Attorneys, the attorneys appointed by the respondents, but by a tax consultant. The applicant relies on the Judge President's Practice Directive 1 of 2020¹ which reads:

"The responsibility to upload pleadings and other relevant documents, in cases issued from the beginning of Term 1 of 2020, save for cases initiated in the Urgent Court roll, shall lie with the party responsible for each particular pleading / document in line with the Rules of Court. Electronic uploading of pleadings and other relevant documents in terms of this clause shall amount to filing as contemplated in the Rules of Court. Consequently, from the commencement of Term 1 2020, the filing of pleadings and other relevant documents shall be by way of the uploading of the said pleadings and other relevant documents on the Caselines system. NO hardcopy pleadings and other relevant documents shall be allowed on all cases designated for handling through the Caselines system and created on the system. The exception shall be where the party(s) is unrepresented."

[2] The problem with the submission is that neither the attorney nor the tax consultant is a party. The respondents are the parties and they caused the review to be set in motion.

[3] The matter was referred to me as reviewing judge by the Deputy Judge President to consider the review application. I must assume that the Deputy Judge President was

¹ Clause 3.5.

aware of the objections and nevertheless decided that the “review application” should be considered. I do so. I deal with the items complained about by the respondents.

Item 2

[4] Allowing counsel’s fees (on party and party scale) where firstly, counsel did not attend to drafting and secondly, should not have done so.² The Taxing Master erred in allowing the item as he is in agreement that it was not complicated at all. The reference to *Reef Lefebvre (Pty) Limited v SA Railways and Harbours*³ regarding consulting fees is incorrect. That matter dealt with senior and junior counsel fees. There is nothing that deviated from the principle that counsel’s fees are not allowed on a party and party scale unless there are particular circumstances (“complicated”) that called for it. The decision to allow the item is reviewed and set aside.

[5] The Taxing Master is directed to disallow item 2.

Item 6

[6] According to the party and party scale, one is only entitled to the drawing fee per page according to the tariff. No additional preparation is allowed for drawing the affidavit. In the circumstances, the applicant is allowed to claim R357,00 per page for drawing the affidavit and not any additional preparation time.

[7] The Taxing Master allowed an additional preparation fee. The decision is reviewed and set aside. The Taxing Master must disallow the preparation fee.

Items 4, 5 9, 10, 23, 26, 28

[8] The complaint is that the Taxing Master erred by allowing the fee for uploading and perusing uploaded documents onto Caselines. The tariff does not provide for this. However, uploading to Caselines is a new phenomena and the Taxing Master exercised his discretion to allow the items. The work was performed and I am of the view that the Taxing Master was correct in taking into account the developing technology by allowing

² *Aloes Executive Cars (Pty) Ltd v Motorland (Pty) Ltd and Others* 1990 (4) SA 587 (T).

³³ 1978 (4) SA 961 (WLD).

necessary costs which were incurred. In the circumstances, the review in relation to these items falls to be dismissed.

Item 19

[9] Unfortunately, I was not placed in possession of the Taxing Master's response to the complaint regarding a deviation by the Taxing Master from the prescribed tariff. In the circumstances, there is nothing to show that a deviation was warranted. The result is that the Taxing Master's decision is reviewed and set aside and the Taxing Master must apply the tariff as set out by the respondents in para (i) 1 and 2 of the application to review dated 2 December 2023.

Item 34

[10] The complaint refers both to item 2 where I upheld the review. The same principles apply to item 34. The decision to allow the second item of item 34 regarding the consultation, is reviewed and set aside. The Taxing Master must disallow item 34 as far as described herein.


W.L. Wepener

Judge of the High Court of South Africa

Attorneys for the Applicant: Tawana Attorneys

Attorneys for the Respondents: Milton Attorneys

