

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2018/45232

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
25/3/2020	
DATE	MOKOSE SNI

In the matter between:

CONRAD KRUGER INC
CONRAD HENDRIK KRUGER

1st Applicant

2nd Applicant

And

THE TAXING MASTER
KARL WEINER LUDERITZ

1st Respondent

2nd Respondent

REVIEW IN TERMS OF RULE 48 OF THE UNIFORM RULES OF COURT

MOKOSE J

[1] The applicants seek a review in terms of Section 48 of the Uniform Rules of Court regarding the rulings made by the Taxing Master on 10 September 2019 in respect of a bill of

costs. The bill was taxed in respect of an application which was heard on 1 August 2018 in which the court granted an order of costs on an attorney and own client scale.

[2] The facts are briefly that the plaintiff (Adv Karl Luderitz) instituted action against the defendants (Conrad Kruger Inc. and Conrad Kruger) after he had been instructed to act as counsel in a matter, the details of which are irrelevant for purposes of this matter. In terms of the mandate as provided in Section 23(a) of the Attorneys' Act the defendants would be liable for payment of the professional fees charged by the plaintiff for legal services rendered and which would be calculated in accordance with the plaintiff's usual hourly tariff.

[3] In compliance with the mandate the plaintiff rendered legal services to the defendants then rendered an invoice in respect of such legal services. The defendants failed to make payment to the plaintiff in respect of the invoice. On 12 February 2018 the plaintiff reached an agreement with the defendants in respect of the amount outstanding. However, the defendants failed to make payment of the agreed outstanding amount in breach of the agreement. Consequently, the action between the parties followed which action was based on the breach of settlement and the present indebtedness.

[4] On 1 August 2018 the court ordered *inter alia* that the defendants pay to the plaintiff the sum of R112 386,76 jointly and severally, the one paying the other to be absolved plus interest at the rate of 2% above the prime rate of lending from time to time from 27 February 2018 to date of payment. The court also ordered the defendants to pay for costs consequent upon the action on the sale as between attorney and own client, which costs shall include the costs consequent upon the employment of two counsel.

[5] The applicants raised a point *in limine* that the taxation should not proceed due to the possibility of a personal relationship existing between the second respondent, his attorneys of record and counsel who were briefed in this matter. The applicants were of the view that if such a relationship existed then they should not be liable for costs of the litigation as the second respondent would not have incurred any legal costs in respect of the litigation.

[6] The second respondent brought to the Taxing Master's attention that because he is in the legal profession it does not mean that the fees would automatically be waived by the counsel and the attorneys of record. A fee agreement was concluded with the attorneys of record when the mandate was given. The Taxing Master ruled that no proof was given in support of the allegation that the legal services were to be provided to the applicants free of charge. Accordingly, the Taxing Master ruled that the taxation should proceed.

[7] I am of the view that the Taxing Master's decision was correct that there is no reason or proof which has been submitted to indicate that the legal services provided to the second respondent were on a *pro bono* basis.

[8] The applicants also contend that the tariff which should be applied is on a party and party basis as there was no complexity in the matter, nor were there any extraordinary or exceptional circumstances which necessitated the use of more than one counsel and as such should deviate from the order of the court. The respondents disagreed with this view that the Taxing Master has the discretion to deviate from the court order.

[9] The Taxing Master ruled that the taxation is to proceed on an attorney and own client basis, the court having considered all the facts therein as to make the ruling. The Taxing

Master awarded costs on double the tariff instead of the amount claimed by the second respondent being R4 400,00 per hour. The Taxing Master found that the amount claimed was more than 3 times the tariff and refused to implement the fee mandate as it was excessive in her view.

[10] I am in agreement with the Taxing Master's contention that the awarding of costs on an attorney and own client scale necessitates the taxing of the fees at a higher rate than those allowed in the tariff. Furthermore, it is the duty and function of the Taxing Master to apply the cost order as per the court order granted. The process of varying such cost order falls outside the scope of the Taxing Master.

[11] A further contention by the applicants is that there was no complexity in the matter and as such, there was no need to brief Senior Counsel on the matter. As such, counsel's fees should not be allowed.

[12] I am in agreement with the argument presented by the respondents that the court order provided for the cost of two counsel. The Taxing Master does not have a discretion to disallow senior counsel's account. I also note that the Taxing Master allowed counsel's account at a reduced rate and with reduced hours on the basis that although the court order provided for two counsel, the matter did not entail any complexity nor was it extraordinary. The court however awarded punitive costs to show its dissatisfaction with the applicants. Accordingly, I am of the view that the Taxing master correctly the costs as ordered by the court order.

[13] The applicant further submitted that there was no proof that the counsel was involved in the matter or that he did indeed provide legal services to the second respondent. This is in

connection with the Taxing Master allowing attendances in relation to preparation, sorting and indexing briefs to counsel. The second respondent argued that the applicants' contention that counsel's brief should not be indexed and paginated had no basis. As similarly stated above, the Taxing Master ruled that no proof was given in support of the allegation that the legal services were provided to the respondents free of charge. Accordingly, the Taxing Master ruled that this item be allowed but in an attempt to be fair and reasonable and not burden the applicant with unnecessary costs, allowed only 15 minutes for indexing and paginating. 15 minutes were disallowed.

[14] I am of the view that the Taxing Master correctly ruled in favour of the respondents in respect of this item as it has previously been ruled that no proof has been proffered to the court that legal services had been provided to the respondents free of charge. I am also satisfied with the ruling that 15 minutes only be allowed.

[15] The applicant also submitted that there is no evidence that senior counsel was in fact involved in the matter and as such, the cost of copies which had been claimed should be disallowed. The second respondent submitted that there was a cost order for two counsel and as such, there is no reason for the invoice to reflect such costs.

[16] Again I agree with the Taxing Master's ruling that both counsel's costs be allowed as per the order of court as stated above.

[17] The applicant made submissions that counsel's fees should be limited in terms of Rule 69(3) of the Uniform Rules of Court in that the amount claimed fell within the jurisdiction of the Magistrates' Court. Subsequently, counsel's fees must also be limited to the Magistrates'

Court scale. In response to this submission, the second respondent argued that the cost order is for attorney and own client fees. Accordingly, counsel's fees should not be limited in terms of Rule 69(3).

[18] Rule 69(3) provides as follows:

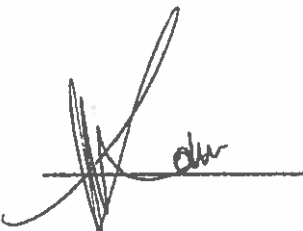
"Save where the defendant or respondent is awarded costs, the tariff of maximum fees for advocates between party and party referred to in part IV of Table A of Annexure 2 of the rules for the Magistrates' Court (hereunder referred to as the tariff) shall apply where the amount or value of the claim falls within the jurisdiction of the Magistrates' Court, unless the Court on request made before or immediately after the giving of judgment, otherwise directs."

[19] The Taxing Master ruled that counsel's fees should not be limited in terms of Rule 69(3) and that the rule refers to a restriction in party and party matters only. Accordingly, this restriction cannot be applied to an attorney and own client costs bill.

[20] I am in agreement with the Taxing Master as Rule 69(3) clearly does not apply to an attorney and own client costs bill.

[21] Accordingly, the following order is granted:

- (i) the application for review is dismissed;
- (ii) no order as to costs.



MOKOSE J

**Judge of the High Court
of South Africa Gauteng
Division, Pretoria**

For the Applicants:

Dawie De Beer Attorneys

For the Second Respondent:

Roestoff Attorneys