



**IN THE NORTH WEST HIGH COURT
MAFIKENG**

CASE NO.: 103/2010

In the matter between:

JOHANNA ADRIANA ROGERS

Plaintiff

and

KENNETH CHARLES ROGERS

DEFENDANT

TAXATION REVIEW

KGOELE J:

- [1] This is a review of taxation in terms of Rule 48 of the Uniform Rules of Court (the Rules)
- [2] The defendant filed a review of the decision of the Taxing Master to tax and allow the plaintiff's bill of costs on the following basis:-

- 2.1 the defendant was not ordered to pay any costs associated with the exception, as is evident from the order of this Honourable Court, dated 9 June 2011;
- 2.2 there was accordingly no legal basis on which the taxing master could have taxed and allowed the Plaintiff's bill of costs;
- 2.3 **Alternatively**, and only in the event of a Judge finding that defendant was ordered to pay any costs associated with the exception on the 9th of June 2011, that the Taxing Master did not act properly in allowing the following items in the plaintiff's bill of costs, namely:-

Item 22	:	Unnecessary consultation
Item 29	:	Unnecessary expense
Item 41	:	Unnecessary expense
Item 47	:	Unnecessary consultation
Item 61	:	Not party and party costs
Item 67	:	Unnecessary expense
Item 74	:	Unnecessary expense – see Item 72
Item 82	:	Unnecessary and unjustified expense
Item 87	:	Unnecessary expense
Item 92	:	Not party to party costs
Item 95	:	Unnecessary expense – see Item 94
Item 101	:	Not party and party costs
Item 104	:	Not party and party costs
Item 107	:	Not party and party costs
Item 110	:	Unnecessary consultation
Item 113	:	Not party and party costs

Item 114	:	Not party and party costs
Item 117	:	Not party and party costs
Item 124	:	Not party and party costs
Item 126	:	Not party and party costs
Item 127	:	Not justified – unnecessary expense
Item 128	:	Not justified – unnecessary expense
Item 129	:	Not party and party costs
Item 130	:	Not party and party costs
Item 131	:	Unnecessary and unjustified expense
Item 132	:	Unnecessary consultation
Item 133	:	Unnecessary telephone calls

[3] The background facts of this matter which are not disputed by any party are that the plaintiff pursuant to a court order that was granted by this court on the 9/06/11 served a bill of costs on the defendant on the 13th September 2011. The defendant served the notice of opposition on the 11th of October 2011. The date of the 14th February 2012 were allocated to the parties for the matter to be entertained before the Taxing Master.

[4] On the 14th February 2012 Mr Scholtz appeared on behalf of the plaintiff and Ms Viljoen on behalf of the defendant. The taxation matter was postponed to the 27th of March 2012 because, as gathered from the Taxing Master's statement of case, the court order which was the subject matter of the taxation before him was erroneously typed.

[5] On the 27th March 2012 although the court order was already rectified, the matter was again postponed to the 3rd of April 2012. On the 3rd Mr Scholtz and his instructing attorney, Mr Du Rand, appeared for the

plaintiff and Ms Viljoen for the defendant again. The matter was stood down at the request of the parties to enable them to settle. On returning back, Ms Viljoen and Mr Du Rand notified the Taxing Master that they had settled and they presented their allocators to him for a signature, which he duly appended.

- [6] It is important for the sake of coming to a conclusion in this matter to quote the notice of opposition of taxation that was filed by the defendant which was couched as follows:-

“KINDLY TAKE NOTICE THAT the Defendant intends to oppose the whole of the Plaintiff’s bill of costs, dated 8 September 2011, and on the following basis:-

- 1. The bill of costs drawn on a scale as between attorney and client*
- 2. The Plaintiff did not at any stage obtain a cost order against the Defendant on a scale as between attorney and client*
- 3. The bill of costs is accordingly defective as it misrepresents the order given by this Honourable Court.”*

- [7] It is further necessary to mention at this stage that the said notice of opposition did not comply with the Practice Direction of this Division in that it did not specify the items on the bill of costs objected to and a brief summary of the reason for such objection.

- [8] The plaintiff in his statement of case replied as follows:-

“The bill of cost in this matter was settled by Ms Viljoen and Mr Du Rand therefore the taxation cannot be reviewed as the Taxing Master made no decision on his own.”

- [9] This court is therefore called upon to decide whether the decision of the Taxing Master to tax and allow the plaintiff’s bill of costs is subject

to review or not on the basis as provided by the defendant in his notice of Review of taxation.

[10] **Rule 48** of the Rules provides as follows:-

- (i) 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 *allocator* by the notice required the taxing master to state a case for the decision of a judge.
- (ii) The notice referred to in subrule (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 a 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.

[11] In the matter of **Daywine Properties (Pty) Ltd v Murphy and Another 1991 (3) SA 216 D** it was decided that:-

“If the party opposing a taxation of a bill of costs fails to object when the matter is before the Taxing Master, he cannot thereafter, if regard is had to Rule 48(1) and (2) of the Uniform Rules, invoke the review procedure provided by Rule 48 in a belated attempt to attack items which the Taxing Master allowed.”

[12] If one looks at the “**notice of opposition of taxation**” and “**the notice of review of taxation**” by the defendant, they are not the same. The notice of opposition of taxation takes issue on the fact that defendant was not ordered to pay costs to the plaintiff on an attorney and client scale. Whereas the notice of review of taxation takes issue

on the whole order itself, that there was no costs order at all granted in favour of the plaintiff. The notice of review also further seeks in the alternative a review of several items which were not included in the notice of opposition to taxation.

[13] It goes without saying that the review that the defendants seeks does not comply at all with the requirements of Rule 48 and the Practice Direction of this court.

13.1 Firstly, it does not deal with any item or part of the item which was **objected** to or **disallowed** *mero motu* by the Taxing Master;

13.2 Secondly, the notice of review of taxation does not contain the allegation that each such item or part thereof was **objected to at the taxation** by the dissatisfied party (the defendant), or that it was disallowed *mero motu*;

13.3 Thirdly, it does not further contain any finding of fact which the dissatisfied party (defendant) contends the Taxing Master has made and which the dissatisfied (the defendant) party intends to challenge, with the grounds thereof.

[14] All these requirements are prescribed by Rule 48 of the Rules and “**must**” be complied with by the defendant party. There can be no escape from the clear meaning of the language used in Rule 48(1) and (2).

[15] I find the following remarks by **Broome J** in the case of **Daywine Properties** quoted above apposite in this matter:-

“In *Kruger Secretary for Inland Revenue 1972(1) SA 749(C) at 750 F – G*, Van Winsen J made short shrift of a similar matter by saying succinctly:

‘I do not deal with the belated objection to item 16 since no objection was made to the Taxing Master’s allowance of this at the time of the taxation. It is accordingly not subject to review. (Rule 48(1)).

I agree with this view, according as it does with the plain meaning of the words used in Rule 48(1) and (2). I should, therefore, mention that I was initially troubled by the learned authors’ comments in Nathan, Barnett and Brink *Uniform Rules of Court* 3rd ed at 314, that:-

‘(t)he amendment to the Subrule (Subrule) (1) make it clear that there can be a review of taxation in respect of items that were not objected to before the taxing master. See *Oil & Feed Mills Ltd v Coleske 1966 (4) SA 459 (E)*’.

And also by the learned author’ comments in Jones and Buckle *The Civil Practice of the Magistrates’ Courts in South Africa* 7th ed at 323 (footnote 18) that

‘(i)n regard to Supreme Court Rule 48(1), as amended by GN R235 of 1966, it has been held that there can be a review of taxation in respect of items that were not objected to before the Taxing Master (*Oil & Feed Mills v Coleske 1966 (4) SA 459 (E)* ...);

These references are misleading because in the *Oil & Feed Mills* cases all that was decided was that an item *disallowed mero motu* by the Taxing Master could be taken on review even though the party aggrieved did not object before the *allocatur* was signed by the Taxing Master. It was the party presenting the bill that was aggrieved by the disallowance of certain items. The learned Judge was not dealing with a case in which the complainant was one by the party opposing the taxation that an item should not have been allowed. The point I make is that the case dealt only with an objection that items were disallowed *mero motu*. In the present case no question arises as to any matter being disallowed. The objection is to matters which were allowed.”

[16] It is quite surprising why the defendant applies for a review well knowing that the Taxing Master did not make a decision of his own, but effected the settled bill of costs in this matter. On the same breath, I do not see any reason why the defendant belatedly raised an objection on whether the order of costs was made or not when it was clear from the explanation of the Taxing Master supported by the papers in the file that the order that the defendant was relying on was erroneously typed. From the papers in this file, it is clear that the order as typed by the typist was erroneously typed in terms of paragraph (a) (b) (c) and (d) of the plaintiff's notice of exception appearing on pages 23 and 24 of the indexed papers instead of paragraphs (a) (b) (c) and (d) appearing on page 27 of the indexed papers. Paragraph (d) states categorically that, "**Die verweerder aanspreeklik sal wees vir die koste van die eksepie**". The order as written on the outside of the file itself also bears this testimony.

[17] I am of the view that this court must show its displeasure for the manner in which the defendant conducted this matter by an award of costs against them.

[18] The conclusion that I reach is that both the main objection and its alternative as contained in the notice of review by the defendant is belated, since no objection was made about them to the Taxing Master's at the time of taxation. They are accordingly not subject to review.

[19] The following order is thus made:-

19.1 The application for review is dismissed;

19.2 The amounts allowed by the Taxing Master are confirmed;

19.3 The defendant is ordered to pay the costs occasioned by the review application.

A M KGOELE
JUDGE OF THE HIGH COURT

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