IN THE HIGH COURT OF SWAZILAND

Civ. Case No.707/89

In the matter between

BRUNA LYRISTIS Plaintiff

vs

SWAZILAND ROYAL INSURANCE Defendant

RULING

13/06/89

Rooney, J.

This is a review of the taxing Master's decision dated the 12 April, 1989 to allow the plaintiff a disbursement of E16,639-03 paid to Messers Kramer and Wesemann of Benoni a firm of Attorneys practising in the Transvaal, who were instructed by the plaintiffs in this matter. The accident which gave rise to this action occurred in the Transvaal where the plaintiffs reside. The defendant is a Swaziland Corporation and proceedings were instituted in this Court.

Messrs Kramer and Wesemanns Bill of Costs was framed in accordance with the tariffs applicable in South Africa. The defendant contends that these costs should be taxed and allowed on the basis of the local tariffs which are much lower than those obtaining in South Africa.

The Taxing Master exercised a discretion to allow the foreign attorney's costs on the basis submitted because he considered that in the circumstances the plaintiffs were entitled to take the convinient course of instruting attorneys in South Africa, where the bulk of the work in preperation for the trial was concluded.

It is a well established principle that the Court will not lightly disturb the ruling of a Taxing Master where he has exercised his discretion. It will be interfered with if (a) he has not exercised his discretion judicially, that is if he has exercised it improperly; (b) he has not brought his mind to bear on the question; or (c) he has acted on a wrong principle [Minister of Water Affairs v. Meyburgh 1966 (4) S.A. 51 at 52.].

The Bill of Costs of the South African attorneys has not been taxed by any authority in the Republic of South Africa. It was presented to the Taxing Master as a necessary disbursement incured by the plaintiff. The Taxing Master allowed the whole bill as presented without taxing off any item.

In Grindlays International Finance (Rhodesia) Ltd. v Ballaro 1985 (2) 636 Kriegler J. took the view at 648

"I hasten to add that a Zimbabwean attorney's bill of costs (and any other foreign attorney's bill) can certainly be taken into account in a South African taxation of a domestic bill of costs. A South African Taxing Master will consider such a foreign bill in exactly the same way as he would consider any voucher for work done in connection with a law suit, the costs of which he is obliged to tax. He wil not take it at face value. He will scrutinise the foreign bill and will, depending upon the circumstances,

place a greater or lesser degree of reliance upon a certificate emanating from the office of his opposite number in the foreign Court. Thus in the instant case, the Taxing Master would be entitled to scrutinise the Zimbabwe bill of costs in the knowledge that the Deputy Registrar of the High Court of Zimbabwe, which shares a common tradition with the Supreme Court of South Africa, has certified that the fees set opposite the various items in that bill are in " accordance with the prevailing Zimbabwean tariff. As far as all foreign bills of costs are concerned, I am in agreement with the learned authors of Jacobs and Ehlers (loc ait at 264), that:
'A Taxing Master is entifled to scrutinise the bill of a foreign attorney and should not accept it as a mere voucher without any attempt to tax the various items.'
(See also May v Federal Supply and Cold Storage Co. Ltd (1904)25 NLR 244 at 250, 251.)"

I am in agreement with this approach. But , in the present instance the Taxing Master did not have the advantage of the assurance that the bill of costs, if presented to a South African Taxing Master, would have been in order. However the defendants have not raised any objection to the bill based upon the fact that it has not been taxed in the foreign jurisdiction. What they contend is that the Taxing Master should scrutinize the bill with reference to the local tariff and disallow so much of it as does not conform to that scale.

The Taxing Master in Swaziland cannot be expected to be aquainted with the scale of costs allowed in foreign countries. Even if he had presented to him a certificate of the South African Taxing Master he would not be bound by it and would have to consider whether or not the bill of costs is reasonable in all the circumstances, one of which might be that the tariff allowed to attorneys in foreign jurisdiction may be much higher than that obtaining here. If the Taxing Master is presented with a bill of costs drawn up in a foreign currency he must still endevour to deal with it.

I am inclined to the view that the defendant has made this application for review on an incorrect premise. The taxing master allowed the bill as a disbursement apparently without detailed scrutiny. He took it at its face value and in so doing he' may have been wrong in principle. But, that is not the issue raised in this review.

The Taxing Master in his stated case indicated that the plaintiff was "entitled to engage an attorney in South Africa who in my view would be entitled to use scale for taxation of bills of costs applicable in South Africa".

I think this is correct. A foreign attorney necessarily engaged for the purposes of litigation in Swaziland should not be expected to make use of the Swaziland tariffs.

The defendant has confined its contention in this matter to the proposition that the Taxing Master's decision to accept that the South African tariff was applicable to the foreign attorneys bill of costs was unprecedented and "seeks to introduce a departure from a well established practice". As I do not accept this submission, I now make an order upholing the decision of the Taxing Master. In accordance with Rule 48 (3) of the High Court Rules I make an order that the defendants pay the costs of this review which I fix in the sum of E100.

F. X. ROONEY
JUDGE