



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil case no. 1488/2010

In the matter between:

**AFRICAN TYRES (PTY) LTD
FAIZEL LATIFF
ABEL JUNIOR DU-PONT**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT**

and

**THE TAXING MASTER
MALAS CAR SALES & SPARES (PTY) LTD
THE ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

In re:

MALAS CAR SALES AND SPARES (PTY) LTD

PLAINTIFF

and

**AFRICAN TYRES (PTY) LTD
FAIZEL LATIFF
ABEL JUNIOR DU-PONT**

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT**

Neutral citation : African Tyres (Pty) Ltd, Faizel Latiff, Abel Junior Du-Pont v The Taxing Master, Malas Car Sales & Spares (Pty) Ltd and the Attorney General (1488/2010) [2013] SZHC 136 (11 JULY 2013)

Coram : MABUZA J

Delivered : 11 JULY 2013

Summary : **Application in terms of Rule 48 - Bill of Costs – Review and setting aside of *allocatur* awarded by the taxing master – Points of law raised by 2nd Respondent – That Applicants have failed to comply with procedure set out in rule 48(1) – The taxing master has not been called upon to state a case – Points of law upheld – Application dismissed with costs.**

JUDGMENT

MABUZA J

[1] The application before me is brought in terms of Rule 48 which deals with review of taxation. The applicants seek an order in the following terms:

1. Reviewing and setting aside the *allocatur* awarded by the 1st respondent to the 2nd respondent on the 17th July 2012;
2. That and pending finality hereof the issue and execution of any process (writ of execution), by the 2nd respondent, emanating and/or arising from the said *allocatur* referred to in prayer 1 above be stayed;
3. That the 2nd respondent pay the costs of this application in the event it is opposed;
4. Further and/or alternative relief;

[2] The background hereto is that the Respondents issued a summons against the Applicant in the main case for payment of certain moneys and ancillary prayers. During the course of exchange of pleadings the Applicants filed a notice of exception which they lost and the Respondents were awarded costs on the party and party scale.

[3] The 2nd Respondent prepared and filed a notice of taxation together with the bill of costs. In the notice of taxation the 2nd Respondent as is required by the rules invited the Applicant's attorney as follows:

- “1. You are required to scrutinize the bill and then decide whether or not it will be opposed.
2. If the bill is not opposed, to return two copies within four (4) days from date hereof to the Plaintiff together with a Certificate in terms of Rule 68 (5) (a) consenting in writing to taxation of the bill in their absence.
3. If the bill is opposed, to return two copies within four (4) days from date hereof to the Plaintiff with a list of all items objected to.

- [4] The Applicant's attorneys duly filed the requisite objection to the bill of costs and indicated the items opposed and the reasons for such opposition to the items. (See Annexure "CJ2").
- [5] The bill came up for taxation before the 1st Respondent on the 17th July 2012 and was allowed in the sum of E9,326.80 (Nine thousand three hundred and twenty six Emalangeneni eighty cents) in the 2nd Respondent's favour.
- [6] The Applicants in their founding affidavit deposed to by Faizel Latiff raise the following grounds for review:
- (a) The sum of E9,326.00 (Nine thousand three hundred and Twenty six Emalangeneni and eighty cents) just for a dismissed exception is very much extreme and induces a wave and sense of shock.
 - (b) The 1st Respondent never applied her mind to the matter, in particular the following items on the bill and did therein allow the said items in amounts that extremely exceed the extents stipulated and allowed by the Tariffs of the Rules of the above Honourable Court.
 - (c) Notwithstanding further that a substantial percentage and/or

part of the 2nd Respondents bill was taxed off, the 1st Respondent however went on to grant and allocate in the 2nd Respondents favour an addition of 5% on total fees allowed for arranging and attending taxation when the tariff provides that if more than 25% of the fee is taxed off this fee shall not be allowed. It was outrightly irregular to do so. I beg leave to refer to a copy of the tariff attached hereto and Marked “CJ5”.

- [7] The execution of the writ emanating from the said taxation was stayed to abide the results of this application.
- [8] The 1st Respondent presented her report on the taxation through her representative, the Attorney General. In the report she has stated that when she taxed the bill of costs on the 17th July 2012, Mr. Bhembe from the Applicant’s attorneys was present and Mr. L. Mdziniso from the 2nd Respondent’s attorneys. She confirms having received a list of items objected to in the bill. She says that Mr. Bhembe raised certain issues which she however used her discretion and awarded the costs in terms of principles enshrined in the rules of court. She further says that the bill was eventually taxed and allowed in the sum of E9,326.80 in favour of the 2nd Respondent. She concludes by stating for the record that Mr. Bhembe and Mr. Mdziniso reached a consensus on the items that were in the objection list.

[9] Mr. Bhembe belatedly filed a supporting replying affidavit whose contents repudiate and deny the taxing master's statements in her report. In particular he says that he did raise objections with regard to various items noted in the list of "items objected to in the bill" which was served on her and the 2nd Respondent's attorneys before the day of objection. He says that he canvassed these objections during taxation as acknowledged by her in her report and she delivered her final word on each item due for taxation. He further denies that he consented to any items that he had objected to.

[10] The 2nd Respondent did not file any opposing affidavit; it instead raised points of law as follows:

“1.1 **The Applicants** have failed to comply with the provisions of **Rule 48 (1)** of the rules of the above honourable court in that:

1.2 The Application is fatally defective because the Applicants ought to have required the **first Respondent** to state a case for the decision of a Judge as a preliminary step to facilitate the subsequent steps provided for in **subsection 2, 3 and 4 of Rule 48** of the Rules of this Honourable Court. In the circumstances, the application for review of taxation is ill-conceived.”

[11] Rule 48 makes provision as follows:

- (1) 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 fourteen days of the *allocatur* require the taxing master to state a case for the decision of a judge, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any relevant findings of fact by the taxing master:

Provided that, save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed respectively, is less than E50.

- (2) The taxing master shall supply a copy of the case to each of the parties, who may within ten days of the receipt of the copy submit contentions in writing thereon, including grounds of objection not advanced at the taxation in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.
- (3) The taxing master shall thereafter make his report and supply a copy thereof to each of the parties who may within seven days of the

receipt thereof submit contentions in writing thereon to the taxing master who shall forthwith lay the case together with the contentions of the parties thereon, his report and any contentions thereon before a judge, who may then decide the matter upon the case and contentions so submitted, together with any further information which he may require from the taxing master, or may decide it after hearing, if he deems fit, the parties or their advocates or attorneys in his chambers or he may refer the case for decisions to the court.

- (4) Any further information to be supplied by the taxing master to the judge under sub-rule (3) shall be supplied by him to the parties who may within seven days of the receipt thereof submit contentions in writing thereon to the taxing master who shall forthwith lay such further information together with any contentions of the parties thereon before the judge.
- (5) The judge or court so deciding may make such order as to the costs of the case as he or it may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or court as and for costs.

[12] In the case of **Attorney-General v Taxing Master and Another** – Civil High Court case 738/09 Maphalala J as he then was stated of the above Rule:

“On a proper interpretation of Rule 48, the aggrieved party has no option but to follow the procedure as laid down therein.”

[13] In the case of **Fourie v Taxing Master & Another** 1983 (4) 210 at 211 G – H, LC Steyn J stated:

“Rule 48(1) in clear and explicit terms requires the Taxing Master:

“to state a case for the decision of a Judge, which case shall set out each item or part of an item with the grounds of the objection advanced at the taxation and shall embody any relevant finding of facts by the Taxing Master””.

[14] It would seem therefore that the point of law is well taken by the 2nd Respondent.

[15] On a further note having read the Taxing Master’s report, it would seem that more is required of the contents of a stated case than the bare skeleton filed off record. Fourie’s case cited above provides useful information as to what the Taxing Master’s stated case should embody and the Taxing Master is enjoined to read it and apply it.

[16] In the event I order that the point of law is upheld and the application for review and sundry prayers is dismissed with costs.

Q.M. MABUZA
JUDGE OF THE HIGH COURT

For the Applicants : Mr. M. Ndlovu
For the 2nd Respondent : Mr. S. Dlamini
For the 1st & 3rd Respondent : Miss T. Simelane