



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No.37/2013

In the matter between:

AFRICAN TYRES (PTY) LTD

1st Appellant

FAIZEL LATIF

2nd Appellant

ABEL JUNIOR DU PONT

3rd Appellant

vs

THE TAXING MASTER

1st Respondent

MIDAS CAR SALES AND SPARES (PTY) LTD

2nd Respondent

THE ATTORNEY GENERAL

3rd Respondent

Neutral citation: *African Tyres (Pty) Ltd & Another vs The Taxing Master & Others (37/2013) [2013] SZSC 67 (29 November 2013)*

Coram: A.M. Ebrahim J.A.

E.A. Ota J.A.

P. Levinsohn J.A.

Heard: 15 November 2013

Delivered: 29 November 2013

Summary: *Civil Appeal – Application for leave to appeal against the decision of the judge a quo refused. Applicants did not comply with the provisions of Rule 48 of the High Court Rules.*

JUDGMENT

EBRAHIM JA:

- [1] The Appellants in this matter seek leave to appeal against an order of *Mabuza J*, in which she dismissed with costs an application brought by the Appellants against an order of taxation awarded by the first Respondent (the taxing master).
- [2] The Taxing Master’s decision arose out of an exception taken by the Appellants, who were then the Defendants in an action brought against them by the second Respondent. The exception had been dismissed with costs. The Taxing Master taxed the costs. The Appellants objected to numerous items in the taxed bill of costs, but a total of E9 326.80 was allowed in the second Respondent’s favour inspite of the objection. The Taxing Master’s decision was given on 17 July 2012.
- [3] On 19 July 2012, the Appellants filed an application on Notice of Motion purported to be in terms of Rule 48 of the High Court Rules.
- [4] Rule 48 provides as follows:

“48. (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 *allocator* 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 decision to the court.”

[5] In their application, the Applicants sought an order:

- Reviewing and setting aside the *allocator* awarded by the Taxing Master;
- Stay of execution of any process arising from that *allocator*;
- Costs.

[6] The application also called upon the Taxing Master, within 14 days of receipt of the application, 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, and embody any relevant findings of fact in such stated case.

[7] It is patently apparent that thereafter the Applicants did not follow the “user friendly” procedures provided for by Rule 48(1), which stipulates that where a party is dissatisfied with the ruling of a Taxing Master, that party may within fourteen days have the matter referred to a judge who, in chambers, may determine the issue or he may refer the matter to court for a decision.

- [8] It seems to me that had they followed that course the costs incurred by the parties in resolving the issues between them, would have been much less. The provisions in terms of Rule 48 envisage a more cost effective way of resolving issues relating to rulings of the Taxing Master, which are disputed by a party.
- [9] In this matter the Applicants took the matter directly to court by way of Notice of Motion thereby circumventing the less costly and “user friendly” procedures provided by Rule 48 of the Rules.
- [10] In my view they were ill advised to do so.
- [11] When the application was heard by the judge *aquo* on 11 July 2013, the second Respondent raised a point of law *in limine*, in which it was asserted that the Appellants had failed to comply with the provisions of section 48; specifically, it was submitted that the application was fatally defective, in that the Appellants should have required the Taxing Master to state a case. It is apparent that the Applicants had called upon the Taxing Master to state a case and she responded in a form which is not entirely satisfactory in that the wording she used in framing her report was imprecise. That does not however justify the need to avoid the use of the simple procedures provided for in terms of the provisions of Rule 48.

[12] Be that as it may there is a need to draw the attention of the Taxing Master to the case of *Fourie v The Taxing Master and Anor 1983(4) SA 210* at 211G-H where *L.C. 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*”. (my italics)

The purpose of the Rule is to give the reviewing Judge a brief record of the taxation proceedings in which the issues between the parties are clearly defined and the findings of fact by the Taxing Master are briefly set out. The stated case also provides the basis for contentions of the parties, and the report of the Taxing Master.

From a perusal of the cases stated by Taxing Masters in other cases, it appears to be the almost invariable practice in this Division for the Taxing Master to give only the ground on which a particular item was disallowed, without stating the grounds of the objection advanced. In view of the clear requirements of the Rule, this practice cannot be sanctioned, and although it makes the task of the Taxing Master cumbersome, the Rule must in future be complied with.

It seems to me, however, that the burden of the Taxing Master will be considerably relieved if the party dissatisfied with the ruling of the Taxing Master is required to state on what grounds the taxation is alleged to be wrong”.

[13] *Mabuza J* upheld the point *in limine*. I am satisfied that she was correct in doing so. There was clearly a non compliance with the provisions of Rule 48 of the Rules by the Appellants. Rule 48 provides for what has to be done in the event of a dispute arising following a decision made by the Taxing Master. The Rule is simple, and designed to be user friendly, and cost effective, once the bill is taxed and one party is unhappy, submit the issue for resolution before a judge in chambers. The Appellants failed to do so, and spurned the provisions of the Rule, they failed to comply with the spirit of the Rule.

[14] I am satisfied that *Mabuza J* was correct in upholding the point *in limine* despite the shortcomings of the Taxing Master's report. Had the proper course been followed by the Appellants, in terms of Rule 48, the judge in chambers, had he been dissatisfied with the Taxing Master's report, could have dealt with the matter by calling for more details from the Taxing Master in order to resolve whatever was of concern to the Appellants.

[15] I would therefor refuse the Appellants' application for leave to appeal.

[16] Accordingly the application for leave to appeal is dismissed with costs.

A.M. EBRAHIM
JUSTICE OF APPEAL

I agree

E.A. OTA
JUSTICE OF APPEAL

I agree

P. LEVINSOHN
JUSTICE OF APPEAL

For Appellants : T. Ndlovu
For 1st Respondent : S. Dlamini
2nd & 3rd Respondents : T. Simelane