



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT (IN CHAMBERS)

Case no: I 2051/2007

In the matter between:

STANDARD BANK NAMIBIA LIMITED

PLAINTIFF

and

**NATIONWIDE DETECTIVES AND PROFESSIONAL
PRACTITIONERS CC**

FISRT DEFENDANT

ALEX MABUKU KAMWI

SECOND DEFENDANT

ESTER KAMWI

THIRD DEFENDANT

Neutral citation: *Standard Bank Namibia Limited v Nationwide Detectives and Professional Practitioners CC* (I 2051/2007) [2013] NAHCMD 200 (17 July 2013)

Coram: PARKER AJ

Delivered to the Registrar on: 17 July 2013

Flynote: Costs – Taxation – Taxing master’s disallowance of fees and certain items of disbursement objected to by defendant lay litigant representing himself – Case stated by taxing master in terms of rule 48(1) of the rules of court – Principles on costs awarded to lay litigant representing themselves enunciated in *Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Limited* 2007 (2) NR 592 (HC) and *Nationwide Detectives CC v Standard Bank of Namibia Limited* 2008 (1) NR 290 (SC) followed.

Summary: Costs – Taxation – Case stated by taxing master in terms of rule 48(1) of the rules of court upon objection by defendant lay litigant representing himself to certain decisions of the taxing master – Such lay litigant not entitled to fees for his labour or for loss of earning opportunity – Principles in *Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Limited* 2007 (2) NR 592 (HC) and in *Nationwide Detectives CC v Standard Bank of Namibia Ltd* 2008 (1) NR 290 (SC) followed – Judge finding that s 23(1) of the Competition Act 2 of 2003, Article 23(2) and (3) of the Universal Declaration of Human Rights and Article 10 of the Namibian Constitution do not contradict the well-founded principles – Judge concluding that taxing master was not wrong in disallowing fees claimed by defendant (a lay litigant representing himself) and also in requesting the defendant to establish proper proof, to the satisfaction of the taxing master, that the disbursements claimed are actual and reasonably incurred.

ORDER

The taxing master was not wrong in:

- (a) disallowing fees claimed by the defendant; and
- (b) requesting the defendant to provide a more specific tax invoice on each item representing a disbursement charged in the defendant's bill of costs.

JUDGMENT

PARKER AJ:

[1] The taxing master was requested to state a case in terms of rule 48(1) of the rules of court for a decision of a judge on the items, fees and disbursements following objections raised by the defendant against the taxing master disallowing and refusing certain items and fees during a taxation held on 27 March 2013. The

defendant, a lay litigant representing himself, has submitted contentions pursuant to rule 48(2) of the rules.

[2] A starting point in the determination of the stated case by the taxing master in terms of rule 48(1) of the rules of court is as follows. A lay person, suing personally, cannot recover costs. (*In re Morkel v Howell* (1885) 6 NLR 156) He or she is entitled only to recover disbursements. Thus, where a lay litigant is awarded costs, he or she is awarded costs limited to actual disbursements reasonably incurred. (*Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd* 2007 (2) NR 592 (HC).) Accordingly, Mr Kamwi (the applicant in the present proceeding), a lay litigant who sues personally and is entitled to costs was 'awarded costs limited to *actual* disbursements. And '... under no circumstances should it be allowed for lay litigants to make a "profit" on disbursements. The principle is simple; taxation of a bill of costs should allow the lay litigant to recoup his actual disbursements, reasonably incurred, and not to make a living, or profit, out of lay litigation'. (*Nationwide Detectives v Standard Bank of Namibia Ltd (HC)* at 599I-J)

[3] The question that immediately arises is this: What are disbursements? 'The word "costs" is sometimes apparently contrasted with disbursements such as stamps and court fees and messenger's fees ...' (*Bergh v Khanderia and Sons* 1924 TPD 560, per Mason JP) Disbursements are, therefore, expenses in contrast to fees of counsel, being charges for work done: they are expenses other than fees of counsel that have been necessarily and properly incurred by the person claiming disbursements. It follows that necessary expenses, ie disbursements, does not mean the same thing as costs: 'disbursements are but a genus of costs, the other being 'fees', so said Shivute CJ in *Nationwide Detectives CC v Standard Bank of Namibia Ltd* 2008 (1) NR 290 (SC) at 303F-G. Thus, (a) such expenses must be 'actual', that is, 'existing in fact; real (often as distinct from ideal)' (*The Concise Oxford Dictionary*, 10th ed), and (b) such expenses must have been necessarily and properly, that is, 'reasonably', incurred by the lay litigant for the purpose of instituting, proceeding with or defending proceedings. (See *Bergh v Khanderia and Sons* 1924 TPD 560.) Heathcote AJ put it unequivocally and succinctly thus in *Nationwide Detectives v Standard Bank of Namibia Ltd (HC)* at 599 I-J:

'Lay litigants have every right to litigate in person. But under no circumstances should it be allowed for lay litigants to make a 'profit' on disbursements. The principle is simple;

taxation of a bill of costs should allow the lay litigant to recoup his actual disbursements, reasonably incurred and not to make a living, or profit, out of lay litigation. ’

[4] From the foregoing, the following conclusions emerge inevitably. A lay litigant who represents himself or herself is entitled to only actual disbursements that have been reasonably incurred. He or she ‘is not entitled to claim any fees for his labour, or loss of earning opportunity, in a bill of costs. He cannot take instructions, charge for drafting, perusal of any item in Schedule 6 (of the rules of court). (Those items can only be charged by virtue of the fact that someone is an admitted legal practitioner.)’ (*Nationwide Detectives v Standard Bank of Namibia Ltd (HC)* at 599E.) These are well-founded principles and so I accept them as a correct statement of law. I, therefore, adopt them in the instant proceeding. It follows irrefragably that fees charged for Mr Kamwi’s labour or loss of earning opportunity in Mr Kamwi’s bill of costs cannot be allowed by the taxing master. If the taxing master allowed them, the decision of the taxing master would fly in the face of the well-founded principles I have adverted to previously. Accordingly, Mr Kamwi’s submission that Ms Williams, counsel for the plaintiff, ‘can now not complain that she meant wasted costs to be limited to disbursements’ is, with respect, of no moment in the present proceeding. What I have adverted to are principles of law, and whether or not Ms Williams informed the court about what she meant is not relevant: what she meant or did not mean cannot dissipate those well-founded principles. And *a fortiori*; those principles are not a ‘material matter within her knowledge’, as, Mr Kamwi appears to contend. Accordingly, I find that *Senior Real Estate v Amanda Tsoeu and Others*, Case No. LC 64/2012 (Unreported) and *Disciplinary Committee for Legal Practitioners v Lucius Murorua and Law Society of Namibia* 2012 (2) NR 481 are not of any real assistance on the point under consideration. So also is *Hewat Beukes and Another v CIC Holdings* Case No. SA 24/2003 (SC) not of any real assistance on the point under consideration. I do not read *Hewat Beukes and Another* to enunciate a principle that contradicts the principle that a successful lay litigant is awarded costs limited to actual disbursements reasonably incurred and that such lay litigant is not entitled to claim any fees for his labour or for loss of earning opportunity claimed in a bill of costs.

[5] With the greatest deference to the defendant, I cannot see any relevance of s 23(1) of the Competition Act 2 of 2003, Article 23(2) and (3) of the Universal Declaration of Human Rights and Article 10 of the Namibian Constitution in the

present proceedings. I do not find the provisions of these instruments to contradict the well-founded principles of law discussed in this judgment. Those provisions are of no assistance to the point under consideration. The principles I have discussed in paras 2-3 are approved by the Supreme Court, as I have said more than once. These are the principles that are relevant in the instant proceeding.

[6] From the foregoing reasoning and conclusions, I hold that I cannot fault the taxing master's ruling that the fees on the defendant's bill of costs cannot be allowed and his ruling that the defendant is entitled to actual disbursements reasonably incurred only. In this regard, it is within the discretion of the taxing master to request the defendant to establish proper proof, to the satisfaction of the taxing master, that the disbursements claimed by the defendant are actual disbursements and that they have been reasonably incurred. The taxing master's ruling in that regard can, therefore, also not be faulted. The taxing master's request that 'the defendant must provide a more specific tax invoice meaning itemized by date and item by item' is reasonable. In my judgment, therefore, it has not been established that the taxing master's rulings are wrong.

[8] In the result, I am satisfied that the taxing master was not wrong in –

- (a) disallowing fees claimed by the defendant; and
- (b) requesting the defendant to provide a more specific tax invoice on each item representing a disbursement charged in the defendant's bill of costs.

C Parker
Acting Judge

APPEARANCES

PLAINTIFF : C Williams
Of Andreas Vaatz & Partners, Windhoek

DEFENDANTS: In person