

IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

Johannesburg

CASE NO: 1999/17299

DATE:12/10/2000

In the matter between:

ROY GENNY MITI

Respondent/Plaintiff

and

SHOPRITE CHECKERS (PTY) LTD

Applicant/Defendant

JUDGMENT

WILLIS J:

This is a review of taxation in terms of Rule 48 of the Uniform Rules of Court.

The respondent has brought the application for review.

The proceedings which were the subject matter for taxation by the Taxing Master were an application, brought by the applicant, for the eviction of the respondent from certain premises occupied by the respondent in the Shoprite Centre, Hendrik Verwoerd Drive, Randburg.

The application was successful and the respondent was ordered to pay the costs.

The matter was heard by Meyer AJ. In his judgment he said as follows:

“In the normal course, the applicant should not be entitled to all costs of this application, but ought to be awarded such costs as would be recoverable on the Magistrate’s Court scale. However, in my view, the applicant was justified in approaching the High Court for the relief which it now claims. The Respondent has had no defence to the Applicant’s claim for eviction and has acted vexatiously both in the Magistrate’s court and in the proceedings in this Court.”

He also noted that “....the Respondent has taken every possible technical objection to ensure that the matter cannot be brought to finality. Prior to launching this application, the Applicant withdrew the Magistrate’s Court action, obviously as a result of frustration resulting from the Respondent’s conduct.”

The applicant’s attorneys drew a bill of costs which was taxed by the then Taxing Master of this Court, Ms D.S. Rossouw on 28th July, 2000. The *allocatur* was signed on the same day.

After various claims for fees and disbursements were disallowed, the bill was taxed in an amount of R8 602,92. The total claimed by the applicant for fees and disbursements *prior* to taxation was R16 961,97.

The basis of the respondent’s objection may be summarised as follows:

- (i) Certain of the claims relate to attendances for the Magistrate's Court application;
- (ii) It was not necessary or proper for counsel to have settled various of the affidavits;
- (iii) The respondent was over cautious in drafting three affidavits in support of the application when one would have sufficed;
- (iv) Counsel's fees should not have been allowed;
- (v) There were other items where the applicant had been "over-cautious".

The grounds for review of a Taxing Master's decision may be summarised as follows:

- (a) He or she had acted *mala fide*;
- (b) He or she had acted from ulterior or improper motives;
- (c) He or she had not applied his or her mind to the matter;
- (d) He or she had failed to exercise his or her discretion in the matter;
- (e) He or she had disregarded the express provisions of a statute;
- (f) The Judge is clearly of the view that the Taxing Master was wrong.

(See, for example, **Legal & General Assurance Society v. Lieberum N.O. & Another** 1968 (1) SA 473 (A) at 477B-478H.)

It is also important to bear in mind that with regard to (f) above, the Judge will only interfere if he or she is in a position which is the same as or better than the Taxing Master's to determine the point in issue. (See, for example, **Legal & General Assurance Society** (*supra*) at 478H.)

The applicant, in its response, has asked that certain items be restored to the bill.

The Taxing Master has, in her statement of case, rejected the contentions raised by the respondent and has said:

“ Had the agreement referred to in the Applicant’s papers and the order as granted by Judge Meyer been brought to my attention at the time of taxation, I would have ruled as the Applicant now requests the Court to do.”

It is clear that grounds (a) to (e) listed above are inapplicable to this case. The respondent makes no allegation raising any of these grounds.

I shall now consider the respondent’s objections.

Certain of the claims relate to attendances for the Magistrate’s Court application.

The application in the Magistrate’s Court was withdrawn. Therefore these costs could not be recovered by the applicant in that Court. The attendances were at least fairly and reasonably required even if the application had been brought in the High Court *ab initio*. Upon a certain view they may indeed have been necessary. I cannot find that Taxing Master acted wrongly in this respect.

It was not necessary or proper for counsel to have settled various of the affidavits.

It is clear from the judgment of Meyer AJ that, in view of the conduct of the respondent the matter was to be treated as if it were an ordinary High Court application. It is quite proper for counsel to settle such affidavits in a High Court application. Again, I am unable to find that the Taxing Master acted wrongly.

The respondent was over cautious in drafting three affidavits in support of the application when one would have sufficed.

I am not in a position which is the same as or better than the Taxing Master's to determine whether or not the applicant was over- cautious.

Counsel's fees should not have been allowed.

It is clear the matter was to be treated as if it were an ordinary High Court application. The allowance for counsel's fees was quite proper in the circumstances.

There were other items where the applicant had been " over-cautious".

The total amount is utterly trivial and, in any event, I am not in a position which is the same as or better than the Taxing Master's to determine whether or not the applicant was over- cautious.

Accordingly, the respondent's application for a review of the taxation must fail.

Insofar as the applicant's claim that sums taxed off be restored to the bill is concerned, the following factors influence me: the applicant was originally quite happy to abide the decision of the Taxing Master, it is rather late in the day to raise these issues and the applicant has only itself to blame for the fact that the agreement referred to in its papers and the judgment with order of Meyer AJ was not brought to the Taxing Master's attention. Accordingly, I shall not make an order to affecting the restoration of sums taxed off.

The applicant has succeeded in these review proceedings and is entitled to costs relating thereto. In my view a sum of R600- in this regard would be fair and reasonable in the circumstances.

The following order is made:

- (a) The taxation by the Taxing Master as reflected in her *allocatur* for the sum of R8602,92 dated 28th July, 2000 is confirmed;
- (b) The respondent is to pay the costs of this review application in the sum of R600,00.

DATED AT JOHANNESBURG THIS 12th day of OCTOBER, 2000

N.P. WILLIS

JUDGE OF THE HIGH COURT

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