

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2010/00255

DATE:20/04/2011

NOT REPORTABLE

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

LEON PHILLIP DU PLESSIS

Plaintiff

and

CITY OF JOHANNESBURG

Defendant

J U D G M E N T: REVIEW OF TAXATION

TSOKA, J:

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

[2] Attorneys Nathanson, Bowman & Nathan, the applicant's attorneys of record, drew a Bill of Costs on the scale as between party and party, which Bill of Costs was duly taxed on 14 September 2010. The Taxing Master only allowed pro-rata cost of items 20, 23, 27, 29, 30 and 31 of the Bill of costs, his reasoning being that in terms of the High Court Tariff contained in the Amendment of Rule 70, he has a wide discretion to do so.

[3] The items referred to above relate to telephone calls made, with the exception of item 27 which relates to a letter written by applicant's attorneys to respondent's attorneys. It must be mentioned that it is common cause that the Taxing Master does not contend that the telephone calls were not made or that the letter was not written. The cost of these items is in terms of the tariff.

[4] In terms of Part D paragraph 3 of the tariff, the cost of necessary telephone calls, which is the cost of making the call plus the call itself, an attorney is entitled to charge R 177.50 per quarter of an hour or part thereof. The disallowed items are in terms of paragraph 3. This is common cause. The Taxing Master, however, contends that he exercised the discretion vested in him in terms of Rule 69(5) of the Uniform Rules of Court and on the basis of a practice that has developed at the South Gauteng High Court in allowing telephone calls on a pro rata basis.

[5] On receipt of the review I arranged with the parties to make representations in my chambers regarding the disallowed items. On 3 March 2011, the parties attended the review. The plaintiff was represented by DW Phillips while the defendant was represented by Mr Fasser and Mr Mohammed. There was no representation for the Taxing Master. The defendant made no representations and indicated that it will abide the decision made in this matter.

[6] From the Taxing Master's stated case, it transpires that his contention is that the charge of R 177.50 is for a quarter of an hour telephone call which translates into R 11.83 per minute on a pro-rata basis for such a telephone call. The applicant contends that the cost of necessary telephone calls that last a quarter of an hour or part of that quarter of an hour, is the amount of R177.50.

[7] The issue in this matter is the meaning of 'per quarter of an hour or part thereof'.

[8] In my view, the cost of necessary telephone calls, plus the actual cost thereof, i.e. the disbursements related to the making of the calls, is R 177.50 for a telephone call that lasts a quarter of an hour. Any necessary calls that do not last for quarter of an hour, but last less than that, the cost remains R177.50. This, in my view, constitutes the maximum amount for a quarter of an hour necessary telephone call. Put differently, for every telephone call that

is necessary whether it is for a minute or for fifteen minutes, the cost thereof is limited to the amount of R 177.50.

[9] My view is fortified by the golden rule of interpretation. Where the ordinary and grammatical meaning of words is clear and unambiguous, such words must be given their ordinary and grammatical meaning. The words “per quarter of an hour or part thereof” are clear and unambiguous. They ought to be given their ordinary grammatical meaning. Furthermore, the expression of one is the exclusion of the other. Had the Legislature intended to mean that necessary telephone calls shall be charged at R 11.83 per minute, it should have said so. It did not. It elected to say that attorneys are, in terms of Part D paragraph 3 of the tariffs entitled to charge a fee of R177.50 for every fifteen minute necessary telephone call or for any telephone call lasting less than fifteen minutes.

[10] Does the Taxing Master have a discretion in terms of Rule 69(5) to disallow the cost of necessary telephone calls lasting less than a quarter of an hour and only allow R 11.83 per minute for such telephone calls? The Taxing Master has no such discretion.

[11] In terms of Rule 70(5)(a) the Taxing Master has the discretion to depart from any of the provisions of the tariff in extraordinary or exceptional circumstances where strict adherence to the provisions of the tariff would be inequitable

[12] The Master relies on the decision of *Aloes Executive Cars (Pty) Ltd v Motorland (Pty) Ltd and Another* 1990 (4) SA 587 (T) as his authority for his discretion in this matter.

[13] In *Aloes Executive*, where the Court was dealing, amongst other things, with the reasonableness of Counsel's fees on consultations and the drafting of affidavits, the Court stated that the Taxing Master has a wide discretion in determining which costs are reasonable. The facts in the present matter differ with the facts in *Aloes Executive*. In the present matter the Court is dealing with interpretation of a fixed fee in terms of the tariff. In *Aloes Executive*, the Taxing Master's wide discretion, as I understand the judgement, was qualified in that the determination as to whether Counsel's fees are reasonable or not should be left to the Judge to determine because of his long experience as an advocate. In any other respect, such costs shall be left to the Taxing Master, because of his experience, to determine which costs are reasonable or not.

[14] In my view the Taxing Master in the present matter has no discretion particularly where the amount claimed is stated in the tariff. If there is proof that the cost was incurred or the fee was earned, the Taxing Master has no discretion but to allow such costs.

[15] The Taxing Master's further reliance on the decision in *Scott v Poupard* 1972 (1) SA 686 (A) is misplaced. In that matter, again, the Court dealt with the reasonableness of Counsel's fees in the preparation of an appeal. So

was the decision in *Weber Stephen Products Co. v Alrite Engineering (Pty) Ltd* 1990 (3) SA 962 (T).

[16] The Taxing Master contends that in the present matter to allow the plaintiff's attorney's to recover from the defendant the costs of the necessary telephone calls, lasting for less than fifteen minutes would be prejudicial to the defendant. The Taxing Master gives an example of an attorney who makes five telephone calls lasting three minutes per telephone call which would result in the attorney charging R 887.50 more than the R 177.50 recoverable for an hour's consultations, court attendance and conferences.

[17] The Taxing Master appears uncertain about the duration of the telephone calls the plaintiff seeks to recover from the defendant. This uncertainty is baffling as the Taxing Master had or ought to have had plaintiff's file at the time of the taxation. His contention that the duration of the telephone calls were of short duration are not borne by facts. In any event plaintiff's attorneys seek to recover the maximum allowed for a fifteen minutes telephone call.

[18] The Taxing Master further relies on a 'practice' in the South Gauteng High Court that allows attorneys to charge R 11.83 per minute pro rata for a fifteen minute telephone call. The practice seems to be unknown to plaintiff's attorneys who practice in the South Gauteng High Court. The practice Manual of this Division states no such practice. The probabilities are that there is no such practice.

[19] In the result I find that the Taxing Master had no discretion but to allow the items claimed by the applicant. There were neither extraordinary nor exceptional circumstances in the present matter that entitled the Taxing Master to disallow items 20,23,27,29,30 and 31 on plaintiff's Bill of Costs.

[20] In the result the following order is made –

20.1 The application for review succeeds in respect of all the items raised. The Taxing Master's taxation in regard thereto is set aside and the full amounts claimed are allowed.

20.2 No order is made as to the costs of review.

M TSOKA
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

COUNSEL FOR APPLICANT	:	MR DW PHILLIPS
INSTRUCTED BY	:	NATHANSON BOWMAN & NATHAN
COUNSEL FOR RESPONDENT	:	MR FASSER
INSTRUCTED BY	:	BHAM & DAYA ATTORNEYS

