

IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN CAPE TOWN

CaseNo: C614/2009

In the matter between:

NATIONAL UNION OF MINEWORKERS

1st Applicant

SECOND TO FURTHER APPLICANTS

AS PER SCHEDULE “A” HERewith

2nd Applicant and
Further Applicants

And

TRANS HEX OPERATIONS (PTY) LTD

Respondent

JUDGMENT: REVIEW OF TAXATION

GUSH J

[1] This is an application by the applicants to review the ruling of the taxing master in respect of the taxation of the bill of costs in this matter. The application is brought in accordance with the provisions of Rule 48 of the Rules of the High Court.

- [2] As the rules of the Labour Court do not prescribe the form or procedure to be followed in reviewing rulings of the taxing master, in the interests of an expeditious and inexpensive procedure, a practice has developed whereby reviews of the taxing master are dealt with in accordance with rule 48 of the High Court Rules. I can see no reason why despite the absence of any similar provision or reference to rule 48 in the rules of this court I should not follow this practice.
- [3] I am satisfied that I am able to “decide the matter upon the merits of the case and the submissions so submitted”¹
- [4] In considering the applicant’s review I am mindful of the general principles applicable to matters of this nature as set out in the judgment of Tebbutt AJ in the matter of VISSER v GUBB², where it was held:

The Court will not interfere with the exercise of [the] discretion [of the taxing master] unless it appears that the Taxing Master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he has failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The Court will also interfere where it is of opinion that the Taxing Master was clearly wrong but it will only do so if it is in

¹ Rule 48(6)(i)

² 1981 (3) SA 753 (C); see also Bedford Pharmaceuticals Ltd v S A Pharmacy Board and the Taxing Master 1947 (1) SA 291.

*the same position as, or a better position than, the Taxing Master to determine the point in issue.*³

- [5] Rule 48 entitles any party dissatisfied with the ruling of the taxing master in respect of any item or part of an item which was objected to or disallowed by notice require the taxing master to state a case for the decision of a judge.

The notice:

- (i) *must identify each item ... sought to be reviewed;*
- (ii) Set out the grounds of objection or the finding of fact which is challenged.⁴

In response to the taxing master's statement of case the parties are entitled to make submissions in writing but only in respect of those items in respect of which the taxing master has stated a case.⁵

- [6] As regards items 10 and 56 of the taxed bill of costs the applicant's did not require the taxing master to state a case in this regard and although she has done so, these items do not form part of this review and her original decision must stand.

- [7] Items 3, 6, 7, 8, 11, and 12 referred to in the respondent's response did not form part of the applicant's objection nor has the taxing master stated a case in respect of these items and accordingly the taxing master's original decision must stand.

³ At pages 754/5

⁴ Rule 48(1) and (2)

⁵ Aircraft Completions Centre (Pty) Ltd v Rossouw 2004 (1) SA 123 (W)

[8] In respect of the taxing masters ruling in respect of the following items to which the applicants objected, either:

- (i) The applicants were satisfied with the taxing masters statement of case and/or withdrew the objection viz: Items 43, 47, 49, 58, 65, 72, 73, 80, 128, 131, 133 and 142; or
- (ii) The respondents were either satisfied with the taxing masters statement of case, or have referred to items not objected to by the applicant, in respect of: items 16, 22, 25, 35, 38, 48, 52, 57, 63 66 74, 95;

And the taxing master's decision in respect of these items must be confirmed.

[9] In the circumstances only items 14, 15, 75, 76, 79, 84, 85, 90, 96, 99, 101, 105, 107, 112, 122, 125, 129, 130, 132, 134, 136, 141 and the objection to the VAT allowed by the taxing master therefore remain to be considered.

[10] In respect of items 14, 15, 75, 76, 85, 90, 96, 101, 107, 122, 125, 129, 130, 132 and 136 the applicant in its notice of review states that these items should be disallowed on the grounds that

The court order does not make provision for recovering fees on this basis. The taxing master allowed the fees as if the respondent had obtained a special costs order.

[11] In response:

- (i) The taxing master stood by her decision in respect of items 15 and 132. In response thereto the applicant submitted that the amount referred to in item 15 should be reduced by one hour as the time spent was excessive and duplication and that item 132 be disallowed as being excessive and unreasonable.
- (ii) Regarding items 75, 76 the taxing master conceded that these items should be taxed off. The respondent's response hereto was simply *"The taxing master was correct in allowing these items and opposes the applicant's objections"*
- (iii) As regards items 85, 90, 96, 101, 107, 122, 125 and 136 the taxing master in response to the objection and did not concede that these items should be taxed off but reduced the fee for the second and subsequent days to two thirds of the amount claimed. The decision of the taxing master was accepted by the applicant but opposed by the respondents on the grounds that the taxing master in other matters had allowed fees in excess of those claimed by the respondent in its bill of costs.
- (iv) The taxing master conceded the objection to items 129 and 130 and agreed to tax off these items. The ruling of the taxing master was accepted by the applicant. The respondent submitted that these amounts should be allowed as legitimate party/party expenses.

- [12] The applicant's objection to items 79, 84, 99, 105, 112, and 134 was based on the time claimed by the respondent for the appearances which included the short and long adjournments. The taxing master conceded the objection and reduced the amounts commensurately. The respondent submitted that the *"items were correctly allowed ... and should not be reduced"*
- [13] The taxing master conceded that the applicant's objection that item 141 constituted an attorney and client fee and ruled that it be taxed off. The respondent simply submitted that the amount was originally correctly allowed.
- [14] The respondent's objection to the taxing master having allowed the respondent VAT on its fees was dismissed by the taxing master. The respondents in responding to this decision of the taxing master relied on the matter of PRICE WATERHOUSE MEYER NEL v THOROUGHbred BREEDERS' ASSOCIATION OF SOUTH AFRICA⁶. In this matter the taxing master had held that *"the VAT issue was not for him to determine"*⁷ In this matter it was held that it was not for the Court to decide this issue and the matter was referred back to the taxing master for reconsideration *"subject to such proof and arguments as the parties may wish to present"*.⁸ Neither party in this matter has suggested that the question of whether or not VAT should be included in the bill of costs was not considered by the taxing master or that the parties had not presented proof or arguments on whether

⁶ 2003 (3) SA 54 (SCA)

⁷ At page 62

⁸ At page 62

the VAT constituted an “*out of pocket expense*”⁹. This is a matter for the taxing master to decide. In any event, in the absence of such any such averment proof or argument there is no basis upon which this court can even consider referring the matter back to the taxing master to decide afresh.

[15] Taking the above into account, in respect of the items referred to in paragraph 9 above (save for item 14) and bearing in mind the principles enunciated in *VISSER v GUBB* I am not satisfied that:

- (i) *the Taxing Master has not exercised [her] discretion judicially and has exercised it improperly; or*
- (ii) *the Taxing Master was clearly wrong”*

[16] It is clear from the applicant’s notice of review that it objected to the taxing master having allowed item 14. The taxing master has however not dealt with this item in her statement of case.

[17] Accordingly I uphold the taxing master’s rulings as set out in her statement of case in respect of those items referred to in paragraphs 8 and 9 above and direct that item 14 be referred back to the taxing master to be

⁹ At page 61

considered and for her to issue a statement of case in respect of that item.

There is no order as to costs.

GUSH J

Date of Judgment : 24th May 2011

In Chambers.

LABOUR COURT