



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO PROVINCIAL DIVISION, POLOKWANE

CASE NO: 968/2012

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST TO THE JUDGES: <u>YES/NO</u>
(3)	RELEVANT: <u>YES/NO</u>

29/10/2019

[Signature]

In the matter between:

BETTY KGOMOTLOKOA MAJA

PLAINTIFF

AND

ABSA BANK LIMITED

1ST DEFENDANT

NTJATJA APHANE

2ND DEFENDANT

JUDGMENT

MF KGANYAGO J

[1] This is the second review application brought by the defendants, regarding the same bill off costs. Regarding the first review application, myself and Semanya J have set aside the Taxing Master's allocatur and referred the matter back for taxation before another Taxing Master. It was further ordered that items which the parties have settled upon will remain settled. The basis for setting aside the Taxing Master's allocatur was that it was found that the costs and expenses incurred by the defendant were necessary costs and expenses incurred in attaining a successful litigation. The Taxing Master in her stated case has also conceded that costs of the counsel were not supposed to have been taxed off on the 4th of February 2016. In the first review judgment it was held that it will be up to the Taxing Master to determine whether the costs or expenses incurred were reasonable or not.

[2] The second bill of costs was presented before the second Taxing Master Kekana M for taxation afresh on the disputed items. The taxation was set down for the 2nd August 2018 and the plaintiff was still opposing the defendants' bill of costs. The second Taxing Master again disallowed all the disputed items.

- [3] Dissatisfied by the second Taxing Master's rulings on the items taxed off on their bill of costs, the defendants brought the second review application. It is the defendant's contention that the second Taxing Master has overridden the first review judgment, and that the question was not whether the items should be allowed or not as that question has already been answered in the affirmative by the first review judgment, and what was left for the second Taxing Master was to determine only the reasonableness of the expenses incurred.
- [4] The second Taxing Master in her stated case criticized the first Taxing Master by stating that the first Taxing Master did not go through the settled items. According to the second Taxing Master, the rule is that a litigant must instruct an attorney and advocate at the seat of the court, and that if they brief one outside the seat of the court, they should not burden the losing party with costs. The second Taxing Master submitted that in party and party costs, counsel's travelling and accommodation costs are not allowed, and normally in all matters the Taxing Master does not allow those costs and expenses unless specifically ordered.
- [5] The general rule is that the court will not interfere with the ruling of the Taxing Master unless it is satisfied that the Taxing Master was clearly wrong. This court

has already found that the costs and expenses which the first Taxing Master has taxed off were necessary costs and expenses incurred in attaining a successful litigation. What was left for the second Taxing Master was to determine whether the costs and expenses incurred were reasonable or not. It was not for her to second guess the judgment. The first Taxing Master has already conceded that she was wrong in taxing off the disputed items from the defendants' bill of costs. The court has further made an order that the settled items will remain settled. The second Taxing Master is now criticizing the approach of the first Taxing Master. The approach of the second Taxing Master is wrong as it was not competent for her or empowered for her to revisit issues which the first review judgment has already settled.

- [6] It is trite that an order of a court of law stand until set aside by a court of competent jurisdiction. Until that is done, the court order must be obeyed even if you dislike it. In **Gauteng Province Driving School Association and Others v Amaryllis Investments (Pty) Ltd and Others** [2011] ZA SCA 237; [2012] 1 All SA 290 (SCA) (1December 2011) it was held that respect for the authority of the courts is foundational to the rule of law.

- [7] It is of paramount importance that orders of the courts are respected and complied with. As a support staff of the court, the second Taxing Master is regarded as an officer of the court and should therefore be an exemplary. Disobedience of the court orders by officers of the court will make a mockery of the courts. As an experienced Taxing Master, in my view, she is expected to know what procedure to follow if she is of the view that the order made is not capable of been enforced, rather than a blatant disregard of the order. A wrong judgment is capable of producing legally valid consequences for so long as it has not been set aside.
- [8] In my view, the second Taxing Master is acting as if she is a court of competent jurisdiction empowered to set aside the first review judgment. She is exercising powers which she does not have. She is compelled to comply with the first review judgment until set aside by a court of competent jurisdiction. It is not her terrain to determine whether the judgment and order is wrong or not, and thereafter out of her own and without following the correct procedures to disregard it.

[9] Under the circumstances, the ruling of the second Taxing Master in disregarding the first review judgment was wrong and stand to be interfered with.

[10] In the results I make the following order:

10.1. The defendants review application is upheld

10.2 The second Taxing Master allocatur is set aside and the matter is referred back to her to determine the reasonableness of the items 88, 149, 165, 170, 171, 172, 176, 177, 178, 183, 184, 185, 186, 189, 191, 192, 193, 194 and drawing fee.

10.3 The items that the parties have settled in the first taxation before the first Taxing Master will remain settled.

10.4 No order as to costs.



MF KGANYAGO

JUDGE OF THE HIGH COURT: LIMPOPO

DIVISION, POLOKWANE

I agree



MV SEMENYA J

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA: LIMPOPO PROVINCIAL DIVISION,

POLOKWANE