NORTH WEST HIGH COURT
MAFIKENG

CASE NO.: 443/06

In the matter between:

JACOBUS TAPEDI MASEKA **APPLICANT**

and

LAW SOCIETY OF THE NORTHERN PROVINCES **RESPONDENT**

JUDGMENT

LANDMAN J:

Introduction

[1] Jacobus Tapedi Maseka, the applicant, seeks to review two bills taxed on 9 February 2009 and 4 March 2009 respectively. The Law Society of the Northern Provinces ("Law

Society") opposes the application.

[2] The parties in the review proceedings will be referred to as they appear in the main application. The bills of costs were taxed and allowed on the party and party scale in terms of the court order dated 29 June 2007. The amount by which each item was taxed down or disallowed on taxation or unilaterally "taxed off" or deleted by the applicant appears in parenthesis above each affected fee or disbursement.

The taxation of the Bills

[3] The taxation commenced on 9 February and was postponed to and continued on 4 March. At this taxation, according to Mr Minchin, he wished to hand in written submissions and an amended bill of costs for Minchin and Kelly. The first respondent objected to both, and the taxing master ruled in his favour. Notwithstanding the taxing master's decision, Mr Minchin kept his word and "taxed down, or taxed off", certain items before finalizing the allocaturs on 4 March 2009.

[4] The first respondent does not seen to have realized this. As a result he has made certain unfounded and disparaging remarks about the taxing master. This disposes of the grounds

of review based on the discrepancies between the bills that are signed and those which are unsigned.

The process for reviewing the taxing master

[5] The review of a decision of a taxing master is commenced by the aggrieved party filing a notice in terms of Rule 48(1) of the Uniform Rules of Court. The notice must comply with the requirements set out in Rule 48(2). The taxing master is required, after the receipt of the notice, to state a case for the decision of a judge. See Rule 48(1) which reads:

> "Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 15 days after the *allocatur* by notice require the taxing master to state a case for the decision of a judge."

[6] Both subrules (1) and (2) make it plain that the notice and stated case relate to the items or part of an item which was objected to (or disallowed). Therefore, although the entire bill of costs or bills may be placed before a judge, the subject matter of the review is confined to the items in respect of which objections were disallowed or upheld by the taxing master. See the remarks of Stegmann J in **Brener NO v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd** 1999 (4) SA 503 (W) at 508B:

> "As was pointed out by Schutz J in **Nedperm Bank Ltd v Desbie (Pty) Ltd** 1995 (2) SA 711 (W) at 713A–C, when the Taxing Master initially states a case in terms of Rule 48, he is not required to 'write an essay'. All he must do is, as required by the Rule, to 'set out each item or part of an item together with the grounds of objection advanced at the taxation and . . . any finding of facts by the Taxing Master'. After that the parties are to deliver to him their contentions in writing. It is only at that stage that the Taxing Master is called upon to prepare a 'report'. It is his 'report', to be made in the light of the parties' written contentions, which is 'the occasion to give his reasons in full'. After that the parties have the last word in further contentions dealing with the Taxing Master's report.
>
> Despite the fact that Rule 48 makes provision for these exchanges after the Taxing Master has stated a case, it is important to bear in mind that the stated case remains the foundation of the parties' initial contentions, of the Taxing Master's report and of the parties' further contentions that are to follow in terms of the Rule."

[7] The respondent filed a notice and an affidavit together with annexures objecting to aspects of the taxation of the two Bills. The allocaturs had, however, not been signed by the taxing master.

[8] A bill of costs, as such, is not reviewable until the allocator has been completed. Until this time the taxing master is at liberty to change his or her mind. See AC Cilliers **Law of Costs** pages 13 – 46. It follows that the first application to review the bill of costs, where the allocator had not been, cannot be entertained.

[9] When this was brought to his attention and the allocaturs were signed, the first respondent repeated the process and a "second review" serves before me. It is the only review properly before me.

[10] The taxing master filed a document entitled "Taxation Decision" and one entitled "statement of record". The first respondent filed a document entitled "Response to statement of record by the taxing master" on 12 June 2009.

[11] On 29 April 2010, when the review was referred to me, I requested the taxing master to supply all concerned with a report in terms of Rule 48(5)(6). The taxing master provided a document entitled "Taxation – Decision." It is date stamped 4 June 2010. Mr Minchin filed written submissions regarding the review.

[12] No further documents were filed by parties.

The principles applicable to a review of a taxing master's decision

[13] The general principles governing interference with the exercise of the taxing master's discretion had been stated in

Visser v Gubb 1981 (3) SA 753 (C) 754H – 755C as follows:

> "The court will not interfere with the exercise of such discretion 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 had 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 the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal."

[14] Before the court will interfere with the decision of the taxing master it must be satisfied that the taxing master's ruling was clearly wrong, as oppose to the court being clearly satisfied that the taxing master was wrong. This indicates that the court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate the ruling. See **Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others** 1984 (3) SA 15 (A) and **Legal and General Insurance Society Ltd v Lieberum NO and Another** 1968 (1) SA 473 (A) at 478G.

The items properly on review

[15] The first respondent seeks to review:

(a) Items in respect of which no fee was sought e.g. item 19 of Rooth and Wessels Bill of Costs.
(b) Items which Mr Minchin unilaterally "taxed off" or deleted in favour of the first respondent.
(c) Items which have been settled by agreement.
(d) Items to which, according to the stated case, no objection were made.

[16] It is beyond doubt that the items mentioned in paragraphs (a), (b) and (c) above cannot be reviewed. As regards the items mentioned in paragraph (d) I have considered whether I should follow the approach to that followed by Stegmann J in the **Brener** case.

[17] I have decided not to do so. A review of taxation is confined to matters disputed before the taxing master and may not include matters which were not objected to. It is simply not competent for a judge to be seized with a taxation, as it were, in the first instance. The function of a court is to decide disputes not undisputed items. This is not to say that

there may be exceptions. But this is not such a case.

The employment of three attorneys

[18] Before considering the merits of the review it is necessary to recount the way in which the litigation was conducted. The Law Society for the Northern Provinces has jurisdiction as regards certain matters over attorneys practicing in the territory of the North West Province including those practicing in that part which constituted the "Republic of Bophuthatswana". This is in spite of the continued existence of the Law Society of Bophuthatswana.

[19] The Law Society of the Northern Provinces is situated in Pretoria, City of Tshwane. It appointed Rooth and Wessels as its attorney. Rooth and Wessels in turn briefed Mr Albert Lamey, an attorney in the same firm admitted to practice in this Court, as its counsel. Rooth and Wessels also appointed Minchin and Kelly, a firm which practices in Mafikeng, as its local correspondent.

[20] Rooth and Wessels submitted a bill of costs which reflects the fees of Mr Lamey as counsel. Minchin and Kelly also submitted a bill of costs. As I have mentioned Minchin and Kelly, who attended to the taxation of the bills, undertook to

tax down or tax off certain items. This was done before the allocator was signed. The applicant objects to the entire bill of costs as taxed in respect of Rooth and Wessels. He says:

> "The taxing of this bill of Rooth & Wessels is very irregular in that it was not to have been taxed as Rooth & Wessels have never been on record on any stage and the taxing master decision in making such conspicuous irregularity warrant the whole bill to be reviews and set aside."

[17] The applicant elaborates on this point in paragraph 7 of his affidavit. He says:

> "Rooth & Wessels Incorporated's bill of costs could not have been included as they are not attorneys of records nor instructing attorneys. (See pages 11 -12 of the notice of motion in this matter marked JM 4). It is clear that the applicant's attorneys are Minchin & Kelly Incorporated, and Rooth & Wessels appears nowhere.
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> Rooth & Wessels Incorporated are not instructing attorneys. These attorneys were applicants in Law Society of the Northern Province v Maseka Jacobus Tapedi and the Law Society of Bophuthatswana case no 978/2003 (See attached amended notice of motion marked JM 5, filing notice marked JM 6, notice to oppose marked JM 8).
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> In this matter Rooth & Wessels were not applicant's attorneys but Minchin & Kelly Incorporated were applicant's attorney but not correspondent.
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> The issue raised by applicant's attorney that the was a correspondent can not stand as it does not appear in the documents filed.
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> There can be no issues that two firms of attorneys were instructed by the applicant, and if that could have been the case Minchin & Kelly could have been instructed by

Rooth & Wessels either to act on their behalf or just a post box.

During conference in 2006 by the Honourable Judge President M.T.R. Mogoeng in Mmabatho, Minchin & Kelly brought a proposal and recommendations (See page 5 of his problem marked JM 9) and the fact of the matter is that practice notes have not been changed. He remains a post box and cannot charge fees as an instructed attorney. Rooth & Wessels bill of cost could not have been attended to as this Firm of attorneys were not instructed or were not on record."

[18] The taxing master addresses these issues. She says:

"The question to be answered herein is whether it was necessary for the applicant to appoint Rooth & Wessels in Pretoria, instruct Minchin & Kelly and appoint Mr Lamey as a counsel who is also from the same firm Rooth & Wessels.

Now looking at the facts before me the applicant is situated at Pretoria and it is "*trite law that where a litigant resides away from the place where legal proceedings are instituted, he is entitled to employ an attorney in the place where he lives as well as the place where the proceedings are instituted". The reason for this practice is that it is desirable for litigious to have an attorney at the place where he lives with whom he can consult.* **FANELS (PTY) LTD v/s SIMMONS NO & ANOTHER** 1957 (4) SA 591 (T).

As a result I do not see this as inflation of fees. The fact that they are from the same firm does not change anything because the tariff has been adhered to and furthermore, Mr Bloem's fees from Rooth & Wessels Attorneys were disallowed.

In addition (*my emphasis*) a local attorney plays a very important role than just being a post box it is his duty to ensure that not only the rules but also practice directions of this court are adhered to and this has been demonstrated by the fact that some of our attorneys

> locally, have forfeited their costs as correspondent because the court files were not in order."

[19] It is beyond dispute that the offices of the Law Society are located in Pretoria. It is settled law that:

> "Where a litigant does not reside at the seat of the court where the litigation is being conducted, he will be entitled to enlist the services of one attorney at the place where he resides (or carries on business) and the services of another at the seat of the court. If he is successful and is awarded the costs of the litigation, he will be entitled to recover from the unsuccessful party the reasonable costs incurred by both attorneys. Fees for attendance in court at a trial are usually allowed only for one set of attorneys acting for a party, that is either for the attorney at the place where the litigant resides (or carries on business) or for the attorney practicing at the seat of the court."

[20] The applicant says that Rooth & Wessels were not instructed by the Law Society and were not on record. The taxing master has found to the contrary.

[21] Rooth & Wessels's name appears on the papers as the instructing attorneys of Minchin & Kelly. Correspondence was addressed by Rooth & Wessels regarding the matter to the applicant on behalf of the Law Society.

[22] In taxing the fees of these attorneys the taxing master is subject to a number of duties. The primary one, as laid down by Gregorowski J in **Liquidation Berg….. Ltd v Liquidation of**

Sterling Trading Co 1922 WLD 177 at 181 is:

> "to see that the costs are kept within a proper limit, that no ex…costs are allowed, and especially that opportunity is not taken in making the other side pay for unnecessary costs."

[23] The taxing master has decided that the applicant was entitled to use two firms of attorneys. It was within her discretion to decide this. There is ample authority for the proposition that a corporate body may engage the services where its principal place of business is situated and at the seat of the court. It is well known that the applicant's place of business is located in Pretoria. The appointment of Rooth and Wessels was therefore necessary.

[24] The choice of instructing attorney, subject to it being necessary and not resulting in a duplication of costs, is that of the client. All the indications are that Rooth and Wessels was so instructed. The first respondent objects to this and wishes to have the entire bill of costs (or at least the items to which he objected) disallowed. The basis of his objection rests upon the fact that Minchin and Kelly was the attorney of record. But this description is not decisive; at least not in this case. The facts must be consulted to establish which firm was instructed. The taxing master's finding that it was Rooth and Wessels is upheld.

[25] Rooth and Wessels, on receiving their instructions did two things. They appointed Mr Lamey of their own firm as counsel or appearing attorney. The first respondent says they could have appointed Mr Minchin to be the appearing attorney. He also points out that Mr Minchin has appeared for the same applicant in other matters. This is so. But the choice is that of the instructing attorneys and their choice must be respected.

[26] Rooth and Wessels, as I have said, appointed Minchin and Kelly a local firm of attorneys as their local correspondent. The first respondent has taken the approach that the local attorney in this case generally functions like a post box. The description or the analogy is not in my view a helpful one. The enquiry must be what work did the local attorney do? Was the work necessary? Is there a duplication of work?

[27] The second ground of objection, which Mr Minchin submitted is inconsistent and ambivalent with the first, is that Minchin and Kelly were simply an address for service (a post box) and had no business reading any of the court documents. Furthermore the reading of court documents by both Rooth and Wessels and Minchin and Kelly unnecessarily duplicated fees.

[28] There may be a practice of appointing attorneys at the seat of this court to act as laymen i.e. to receive and deliver documents and process without applying even the *modicum* of their professional knowledge and training but it denigrates the valuable rate which attorneys play in the administration of justice. An attorney whose name appears on documents and processes, or who merely files them, is responsible to ensure that the documents and process comply with the rules and practice of this court. In addition it will not do for an attorney to turn a blind eye to such matters as whether an affidavit received for filing has been properly attested by a commissioner of oath. But it may be, as the first respondent suggests, that the local attorney, depending on his or her mandate, is not responsible for the content of the documents. Minchin and Kelly submitted:

"

[29] I agree with the taxing master that it was necessary to appoint a correspondent in Mafikeng to provide an address within 8 km of the courthouse at which the Law Society would accept service of documents (although a party is not restricted to using the address of a local attorney). The correspondent, as a local attorney, would have the right and

duty to ensure that the procedure and practice of this division is complied with. The taxing master was alert to the obligation to avoid a duplication or inflation of fees. This obligation follows as a matter of logic and principle. Rule 70(8) provide that:

> "Where, in the opinion of the taxing master, more than one attorney has necessarily been engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him."

[30] Jacobs and Ehlers **Law of Attorneys' Costs and Taxation Thereof** Juta (1979) say this at 134:

> "Generally, where two attorneys are employed in an action by a litigant, only the attorney who is largely concerned with the handling of the trial on behalf of the litigant should be entitled to make a charge for the perusal of the documents concerned. In *Grobbelaar's* case Davidson J said:
>
> *'It might well be desirable that in respect of a matter of this sort the taxing master should be entitled to allocate to one of the plaintiff's attorneys a certain portion of a permissible fee and to the other attorney whose attention would of necessity be engaged in some other way, however slight, in dealing with these documents the balance of a proper single fee under the tariff. There is no provision for this and it seems to me, therefore, that the taxing master was correct in awarding a tariff as a whole to one of the attorneys, but that he exercised his discretion wrongly in awarding it to both. Presumably that attorney who was largely concerned with the handling of the trial on behalf of the plaintiff would have been the*

attorney who would be entitled to apply his mind to those documents and, therefore, who earned the fee'."

[31] See **Grobbelaar v Sentrale Raad vir Koöperatiewe Assuransie Bpk** 1973 (1) SA 310 (T).

[32] The problem outlined in **Grobbelaar's** case has been addressed, albeit without reference to this case, in the judgment of Roos J in **H C J Van Marc v A A Kellerman** (unreported judgment of Roos J, 8807/97 TPD). An attorney is entitled to a fee for services which were necessarily rendered. And in the case of a perusal fee it will depend on the purpose of the perusal. If it was in order to identify a document a lesser fee would generally be applicable than where an intensive study of the document was required. This was the approach adopted in **Van Marc's** case (at page 3) where the court confirmed the practice of taxing masters in the Division, now known as Gauteng North, Pretoria, to allow a fee for perusal less than the prescribed fee in appropriate circumstances. R100 was allowed to a correspondent for reading a document for identification purposes as opposed to R600 which would have been allowed for studying the document.

[33] Roos J points out that previously the tariff provided for a fee which was less than the fee of R20 for intense perusing of important documents. To award such a fee where the perusal

is done less intensively would be unfair. But Roos J reasoned that the taxing master in the case before him was correct in relying on Rule 70(5)(a) and departing from the tariff. This Rule reads:

> "The taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable."

[34] Although Roos J decided this in the context of a so-called post box situation, I am of the view that it applies more generally. The interpretation of the Rule might be a trifle strained but it is fair to the party taxing the bill and certainly to the party opposing the taxation in question. I intend to adopt the same approach.

[35] Mr Minchin submits that unlike the situation between a Johannesburg Reef attorney and a Johannesburg city attorney, where both attorneys are admitted in the same court and both know the practice and procedure of that court, Minchin and Kelly was a correspondent in the true sense of the word for the following reasons:

(a) Mr Bloem of Rooth and Wessels, like so many instructing attorneys, is not admitted or enrolled in this court. He cannot consequently sign pleadings and court notices in

this court. Mr Minchin of Minchin and Kelly had to sign all court notices and pleadings. He cannot be expected to sign documents that he has not read and satisfied himself are correct;

(b) Rooth and Wessels a Pretoria based firm, practice predominantly in the Pretoria High Court, are not familiar with the court practice directives in this court and depend on their local correspondent to ensure that the court practice and procedure are fully complied with.

(c) Not only did Mr Minchin sign all court notices and pleadings, he made sure that the matter was ripe for hearing before setting it down, properly paginated and indexed the court file, and attended all the court proceedings. Mr Bloem's attendance at court was disallowed. Furthermore, it is noteworthy that Mr Bloem was not in attendance at court on all occasions, whereas Mr Minchin was.

(d) Consequently, the taxing master correctly found that the local attorney, particularly in this instance, was not simply a post box and played and important role.

(e) The taxing master further correctly found that it was necessary for both the instructing attorney and the local attorney to peruse the court papers, each doing so for different reasons:-

(i) Rooth and Wessels, to consider the first respondent's defence; take instructions from the Law Society on the averments contained in his answer and, if necessary, to formulate and draft the Law Society's reply.

(ii) Minchin and Kelly, to sign the court notices and pleadings after satisfying themselves that they are correct, and to gain an intimate knowledge of the matter in order to give meaningful assistance and instructions to counsel during the hearings.

[36] There is no reason to doubt that Rooth and Wessels instructed Minchin and Kelly to perform the roll of a local attorney in the usual sense. Their client was after all the Law Society of the Northern Provinces and it is their business to ensure that attorneys practice honorably and professionally and serve both the public and the courts in which they practice.

Rooth and Wessel's Bill

Items 1 – 9 and 10

[37] The first respondent contends that items 1 – 9 should be disallowed. He says:

> "In this respect the taxing Master is incorrect because it must have been in the drafting of affidavit of R. Bobroff as this affidavit was drafted based on this particulars in item 10.
>
> The taxing Master is further incorrect to say this documents were completed during the disciplinary hearing as there has never been a disciplinary hearing (sic)."

[38] The taxing master correctly identified Rooth and Wessels as the instructing attorney. These items relate to documents which formed the basis of the application. No fee was charged for an initial consultation. These important documents apparently served in place of a consultation. The taxing master correctly allowed these items. I did not find any passage where the taxing master mentioned a disciplinary inquiry. I also note that the taxing master says the first respondent suggested and she agreed to tax items 10 -13 as a single item.

Items 17 to 41, 52 – 56, 76 – 90, 93 – 102 and 112 – 123

[39] These items all relate to the instructing attorney's perusal of the first respondent's answering and further affidavits, and perusal of specified annexures to those affidavits.

[40] The first respondent's objection to these items is that only

perusal of the affidavit should be allowed. He maintains that a perusal of the annexures should be disallowed. His further objection that Rooth and Wessels were not the applicant's attorneys and were therefore not entitled to any fees has been dealt with. He also objects to perusal of these items by both the local attorney and the instructing attorney as it amounts to an unnecessary duplication of fees.

[41] The approach to the perusal of annexures to an affidavit (and before that annexures to a petition) is settled. Cohen AJ in **Said v Kimmel and Another** 1979 (4) SA 354 (W) at 357H says:

> "It therefore seems to me that the annexures to an affidavit do not form such a unity with the affidavit that they are to be taxed on the tariff applicable to an affidavit. Each annexure should be considered separately by the Taxing Master and the appropriate charge allowed having regard to the nature of the document."

[42] The taxing master was correct to allow a fee for the perusal of the annexures but it is not clear that she considered the annexures individually. This should be done so as to come at the appropriate fee.

[43] Mr Minchin points out that in **Vaatz v Law Society of Namibia** 1994 (3) SA 536 (Nm) the Namibian Court held that the mere fact that documents are annexed to an affidavit does not necessarily make them part of the affidavit, nor one

document with the affidavit. Such documents are not necessarily taxed on the tariff applicable to affidavits. The implication of this case is that the court allowed a fee for perusal of the annexures, albeit on a different scale in terms of the Namibian tariff. However, under the South African tariff, the fee allowed for perusal of affidavits is the same as the fee allowed for perusal of important documents, which makes the argument whether the annexures strictly formed part of the affidavits academic. This is correct but, as I have explained above, it results in unfairness and a lesser fee should be awarded on the basis of the **Van Marc** case.

[44] However, clearly the local attorney who receives documents for delivery must, in accordance with his duty towards the court, satisfy him or herself that the formalities and practices required by the local court have been complied with. If the instructing attorney wished to avoid this he or she should not instruct an attorney to do the delivery of documents. It therefore seems to me that a local attorney who perused documents and pleadings for the purpose which I have outlined necessarily does work. But this must stand over until I come to Minchin and Kelly's bill of costs.

Items 43 – 46, 47 and 48

[45] These items relate to perusal of an index the local attorney prepared, and making copies of documents for counsel's brief (the appearing attorney).

[46] The first respondent's objection to these items is that it was not necessary to make copies for the appearing attorney's brief, particularly because the attorney and the appearing attorney were from the same office.

[47] The taxing master states that items 45 and 46 were either allowed or taxed off. Although Mr Lamey is an attorney in Rooth and Wessels, he is also admitted with a right of appearance in the High Court of South Africa in terms of Section 4(2) of Act 62 of 1995. His role in this matter was confined to that of counsel – to draw heads of argument and appear in court to argue the matter.

[48] An attorney performing the same functions and duties of an advocate is entitled to the same rights and privileges as that of an advocate, including the right to be properly briefed in the same manner as an advocate, and have an attorney present in court to assist. See **Prokureursorder van die Noordelike Provinsies v Francois Joubert**, unreported judgment of Mynhard J in TPD case number 22752/03 and **Promine Agentskap en Konsultante Provinsies Beperk v E du**

Plessis en Andere unreported judgment of van Dijkhorst J, case number 20028/96.

[49] The taxing master correctly allowed fees for making copies for counsel's brief. These fees are allowed under rule 70(6) subject to the standard proviso being that the taxing master must not allow costs for unnecessary duplication in briefs. The taxing master found that it was necessary for the instructing attorney to peruse the index prepared by the local attorney in order for the instructing attorney to collate, index and paginate the appearing attorney's brief.

[50] Item 44 was reduced on taxation by R5.00, the copy for the office file was considered an attorney and own client fee. Item 47 is dealt with in the two unreported cases above. Is item 48 a duplication? The local attorney's fee is for preparation of the court file. This is entirely different and distinct from the instructing attorney paginating and indexing counsel's brief. If one firm had been instructed the attorney would have had to attend to and collate, index and paginate counsel's brief and the court file.

[51] There is no cause for me to interfere with the taxing master's decision.

Items 60, 61 and 63

[52] These items relate to the appearing attorney's account for arguing the matter and perusal of the court order. Mr Lamey appeared as counsel (appearing attorney) and is entitled under Rule 69 to be remunerated at the same rate as counsel. See **Promine Agentskap en Konsultante Beperk v E du Plessis en Andere** (supra).

[53] Mr Lamey was entitled, like counsel, to have an attorney present in court to assist and instruct him during the proceedings. Furthermore, not only is the attorney's presence in court traditionally required, but Rule 76(20) of the Attorneys, Notaries and Conveyancers Act 29 of 194 (Bophuthatswana Act) provides that it will be unprofessional, dishonourable or unworthy conduct for an attorney not to be in attendance during consultation with counsel, or remain in attendance at court for the entire duration of the hearing of the matter.

[54] The local attorney has charged for time actually spent in court. The appearing attorney is entitled in terms of Rule 69 to remuneration at the same rate as counsel.

[55] The taxing master correctly appreciated the position.

Items 63, 64 and 69

[56] These items relate to the instructing attorney's perusal of the judgment, making copies for the applicant and the appearing attorney and drawing the brief to the appearing attorney to prepare heads of argument. The first respondent does not say why he objects to these items save on the grounds which I have found to have no merit and which have been considered above. As the fees are *prima facie* in order, the objection is dismissed.

Item 70

[57] This item relates to perusal by the instructing attorney of the appearing attorney's heads of argument in the application for leave to appeal. The first respondent's objection to this item is that it was perused by the local attorney and so the instructing attorneys are consequently not entitled to also peruse the document. It has been held that the attorney is not entitled to peruse heads of argument prepared by counsel. See **Minister of Water Affairs v Meyburg** 1966 (4) SA 51(E) at 52G – 53B. The attorney is entitled to a brief perusal fee for purposes of identification. An amount of R200.00 was accordingly taxed off. This is sufficient. I decline to interfere with the taxing master's decision.

Item 73

[58] This item relates to the perusal of the appearing attorney's account. The first respondent objects to this item on the grounds that it is not clear who was paid and for what. I do not understand how the first respondent can seriously raise this point. The context of the bill of costs makes it clear that this item relates to the appearing attorney's account for preparing the applicant's heads of argument in the application for leave to appeal. The appearing attorney's account is annexed to the bills of costs and sets out the work done.

Items 109 and 111

[59] These items relate to the perusal by the instructing attorney of an updated further index to include the further documents filed of record prepared by the local attorney. It also relates to the instructing attorney's fee for paginating and indexing the appearing attorney's brief.

[60] The first respondent's objection to these items is that they were charged by the local attorney and so cannot be charged by the instructing attorney. Mr Minchin points out

that this is not a duplication of fees. Mr Minchin, as the local attorney, prepared an updated index, after paginating and indexing the court file. The instructing attorney necessarily perused the index in order to paginate the appearing attorney's brief. There are no grounds to interfere with the taxing master's decision.

Items 131, 132 and 143

[61] These items relate to the appearing attorney's account for preparing to argue the application to strike the first respondent from the role of attorneys. The first respondent's objection to this item is that no proof could be produced for this disbursement. Mr Minchin submits that the first respondent did not call for such proof at taxation. It was, in any event, unnecessary to do so as the appearing attorneys' accounts were attached to the bill of costs.

[62] The taxing master has not commented but any comment would be superfluous. The decision is upheld.

Item 136

[63] This item relates to making copies of the first respondent's supplementary heads of argument for the appearing attorney and the applicant. The first respondent's objection is that it

was not necessary to make and give copies of the first respondent's heads of argument to the appearing attorney and the applicant.

[64] Mr Minchin contends that it is absurd to suggest that it is not necessary to make copies of the first respondent's heads of argument for you his counsel. Therefore he submits it must be inferred that the first respondent's objection relates to the fact that the attorney and the appearing attorney are from the same firm. The rights and privileges of an attorney with right of appearance is the same as those of counsel. This has already been dealt with. The taxing master's decision to allow the fees is uncontestable.

Item 145

[65] This item relates to the perusal of the court's judgment by the instructing attorney. The first respondent objection to this item is that the local attorney noted the judgment, perused the judgment and the instructing attorney cannot also charge for perusal of the judgment. The issue of the instructing attorney and a local attorney both being entitled to peruse court papers has already been dealt with. Furthermore, the instructing attorney clearly has a direct interest in the outcome of the matter in order to advise his client and is entitled, in

terms of item C 1(a) of the tariff, to perusal of any court order or judgment. I will consider the correspondent's fees when I come to consider the bill of Minchin and Kelly.

Items 147 to 150

[66] These items relate to unspecified letters written and received as well as telephone calls made and received. The first respondent's objection to these items is that he disputes the number of letters. The telephone calls are according to the first respondent attorney and own client fees and are not recoverable under party and party costs.

[67] The issue in regard to these items is whether they were necessarily incurred in pursuance of the matter. The first respondent refused to examine these documents despite them being made available at the taxation. The taxing master has, however, examined and counted them and is satisfied they were necessarily incurred. There are no grounds for upsetting her decision.

Minchin and Kelly's Bill

Items 1 – 4, 11 – 13, 18, 20 – 22, 24, 26, 31, 43, 39 – 40, 44, 50, 55, 64 – 66, 71, 74, 79, 83 – 84, 86, 91 – 92, 101, 103, 110, 115, 132, 139 – 141, 145, 147 – 150

[68] These items all relate to the instructions to the local attorney, perusal by the local attorney of the founding papers, perusal by him of papers served on him by the first respondent, his court appearances with the appearing attorney and other aspects of handling the matter.

[69] Mr Minchin submits that the first respondent objects to all these items on the grounds that Rooth and Wessels were not the instructing attorney and that Minchin and Kelly were the applicant's attorneys. His further objection is that perusal of the court papers by both the instructing and the local attorney amounts to an unnecessary duplication of fees. The first respondent's argument that Rooth and Wessels were not the instructing attorney, logically means that Minchin and Kelly were then the only attorneys involved and were entitled to their reasonable fees for dealing with the matter. However, most startlingly the first respondent's also object to all these items for Minchin and Kelly dealing with this matter. Mr Minchin submits that the objection is incoherent and not understood.

[70] The taxing master correctly taxed the bills on the basis that Rooth and Wessels were the instructing attorneys. The only issue is whether it was necessary for both the instructing and the local attorney to peruse the court papers. It is to this

that I turn. Here I am of the view that the taxing master should have taxed the fees in accordance with the **Van Marc's** principle which I have discussed above.

Item 12

[71] This item relates to perusal by the local attorney of the first respondent's answering affidavit and annexures. The first respondent's objection to this item is that only perusal of the answering affidavit itself is permissible. The annexures were attached to the answering affidavit for a very specific reason. They go to the very heart to the first respondent's defence. The documents are consequently important and material documents making perusal of them necessary. Much of this case in the end turned on interpretation of annexures. Mr Minchin submits that the fee allowed in the tariff for perusal of affidavits is the same as that allowed for perusal of important documents which makes any argument whether the annexures strictly formed part of the affidavits academic. However I am of the view that this perusal was not required to be done with the same intensity which the instructing attorney would read these papers. The fee allowed is set aside and the item is remitted to the taxing master to tax this item afresh in the light of this judgment.

Items 14 and 15

[72] These items relates to the local attorney's attendance to sort paginated and index the court's file and drawing the index. The first respondent's objection is that these fees cannot be charged separately and the time taken to paginate and index the court file is exaggerated. The court file at this stage consisted of 445 pages. In terms of this court's practice notes it is not sufficient to simply list the annexures they must be properly described in the index. The taxing master was satisfied that one hour was not unreasonable to properly collate, paginate and index the court file of this volume. The fee charged in item 14 was not in accordance with the tariff and an amount of R300.00 was taxed off at the taxation. The tariff also allows a separate fee for the time spent actually paginating and indexing the court file and a separate fee for drawing the index. I decline to interfere with the taxing master's assessment of the time required and the fee permitted.

Item 45

[73] This item relates to the typing of the court order for service on the first and second respondents arising and flowing from the judgment. The first respondent's objection to

this item is that it should be included in item 43 which relates to the perusal of the judgment.

[74] Mr Minchin contends that a judgment cannot be served on the respondents only order can be served. It was reasonable and necessary to type the order and the taxing master was correct in her discretion in allowing this fee. It is for the registrar to supply the parties with an order at no cost. This item should not have been allowed.

Item 46

[75] This item relates to the making of copies of the court order for service on the first and second respondents. The first respondent's objection is that the fees are not in terms of the tariff. Item D1 of the tariff allows a fee of R1.25 per folio. The fee is consequently in accordance with the tariff and the taxing master's decision is upheld.

Item 59

[76] This item relates to sorting, arranging and indexing the court papers subsequently filed in the court file. This item is allowable on the party and party scale under item C 2 of the tariff. There is no cause to interfere with the taxing master's

decision.

Costs

[77] The first respondent has been successful but not as regards his main complaint. I intend to allow costs in the amount of R400 which the applicant is to pay to the first respondent.

In the result:

(1) The fees as regards item 45 (R450) in the bill of costs of Minchin and Kelly is disallowed.
(2) The fees allowed for items **1 – 4, 11 – 13, 18, 20 – 22, 24, 26, 31, 43, 39 – 40, 44, 50, 55, 64 – 66, 71, 74, 79, 83 – 84, 86, 91 – 92, 101, 103, 110, 115, 132, 139 – 141, 145, 147 – 150** in the bill of costs of Minchin and Kelly are set aside and the items are remitted to the taxing master to assess the applicable fee in the light of this judgment.
(3) The allocatur relating to the bill of costs of Minchin and Kelly is set aside and remitted to the taxing master for recalculation.
(4) The allocatur relating to the bill of costs of Rooth and Wessels is confirmed.
(5) The applicant is to pay to the first respondent costs in the

amount of R400.

A A LANDMAN

JUDGE OF THE HIGH COURT