



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO: 15570/13**

In the matter between

**CHRISTINE PHILLIPS**

**APPLICANT**

**AND**

**DAVID STUART BRADBURY  
CITY OF CAPE TOWN**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

Date of Hearing: 02 October 2023

Date of Judgment: 07 February 2024 (to be delivered via email to the respective  
counsel)

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**JUDGMENT**

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**THULARE J**

[1] This is an opposed application to refer the hearing of a review in terms of Rule 48, for oral evidence to be led to resolve the dispute of fact. A party to party cost order was granted in favour of the 2<sup>nd</sup> respondent against the applicant. The taxation was initially conducted by Mr Solomzi Bezana (Bezana). There were arguments before Bezana to

disallow certain items to which the applicant objected and the 2<sup>nd</sup> respondent disputed those objections. Bezana made some rulings in favour of the applicant. The result was that all items in the 2<sup>nd</sup> respondent's bill of costs relating to the 1<sup>st</sup> respondent were disallowed. The 2<sup>nd</sup> respondent was not satisfied with the rulings and the reasons, and requested a postponement *sine die* in order to consider its options, including to institute a possible review ruling by Bezana. The 2<sup>nd</sup> respondent decided not to challenge the decision of Bezana at that stage. At a later set down, Bezana informed the parties that he was leaving the Department. Bezana did not finalise the taxation and he left the employ of the Department.

[2] Another Taxing Master, Mr Yalezo, took over the taxation. Yalezo started the taxation afresh. Yalezo held the view that he was not bound by the previous rulings of another Taxing Master. The applicant sought the recusal of Yalezo, alleging that he was biased. The 2<sup>nd</sup> respondent opposed the application for recusal before Yalezo. Yalezo refused the application and taxed the bill. The applicant's case was that the taxation before Bezana was not withdrawn and a new bill of costs was not served on the applicant, which was the only basis upon which the matter could start before another Taxing Master. The taxation was partly-heard before Bezana. If Yalezo proceeded with taxation which was started by Bezana, Yalezo had no standing to make a ruling different from what Bezana had ruled. Yalezo overstepped the boundaries of his jurisdiction by making a different ruling. The available avenue was for the 2<sup>nd</sup> respondent to take Bezana's ruling on review. Yalezo refused to entertain the application for his recusal or to stay the taxation pending a decision by the court. The applicant deemed Yalezo's conduct biased and invalid and could not participate further in the proceedings, and left the taxation proceedings.

[3] The applicant's position was that the matter should be referred back to a different Taxing Master altogether. In its papers applicant further prayed that such Taxing Master should honour the binding decisions made by Bezana to exclude all costs relating to the 1<sup>st</sup> respondent and then resume with the balance of the partly-heard taxation from that point onwards. In her heads of argument, however, the applicant only made mention of

a case being made out for the decision of the taxing master dated 4 June 2019 and the allocator signed by him to be reviewed and set aside. The 2<sup>nd</sup> respondent supported the position of Yalezo to start the taxation afresh, and that Yalezo was not bound by the rulings made by Bezana and that Yalezo had the discretion to decide on the further conduct of the taxation.

[4] After the case was laid before me as envisaged in Rule 48(5)(c), I referred the case for decision to the court as envisaged in Rule 48(6)(a). The application for referral for oral evidence was lodged after this decision was conveyed to the parties. It is in dispute as to whether Bezana, when he advised that he was unavailable as he left the employ of the Department, ruled then that the taxation would start *de novo* before another Taxing Master. The parties also have different versions as to the events of 15 June 2017 and 11 May 2018 before Bezana. There is also different versions as to what happened before Yalezo in relation to the Applicant's inability to inspect all the relevant files. The applicant alleged to have audio recordings and transcripts available, which the Applicant sought to place before the court for purposes of the review application.

[5] Rule 6(5)(g) provides as follows:

"6 Applications

(5)(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise."

[6] It seems to me that what the parties sought to be resolved, through the courts, related firstly, to the status of the rulings made by Bezana before he left the employ of the Department and more specifically his decision which had the result that all items in the 2<sup>nd</sup> respondent's bill of costs relating to the 1<sup>st</sup> respondent were disallowed.

Secondly the parties sought to resolve the correctness of Yalezo simply proceeding with the taxation without the decision of a court on the status of Bezana's rulings. Thirdly the parties sought clarity on the correctness of the decision of Yalezo, for all intents and purposes to review and set aside the rulings of Bezana and start the taxation afresh. Lastly, the parties sought clarity on whether the decision of Yalezo to refuse to entertain an application to recuse himself was correct under the circumstances.

[7] In my view, these disputes require rulings on the law, and not necessarily findings on the facts, as the facts underpinning them are common cause. For instance whether Bezana is ordered to appear before me to be examined and cross-examined, and either denied or admitted making the ruling that the proceedings before him are to start *de novo*, his opinion in my view would have no probative value on the legality or otherwise of such pronouncement. It may be so that the Applicant had concerns about the scruples of some of the lawyers and persons representing the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent had an adverse order against them, which denied them of all the costs related to the 1<sup>st</sup> applicant in litigation where they were successful. This is not a cheap exercise in litigation at the High Court where Attorneys, Counsel and Tax Consultants are involved. A u-turn by 2<sup>nd</sup> respondent on their way to court to review Bezana's decision, when the Taxing Master changed to Yalezo is simply too close for comfort, without more. This is moreso when the Applicant alleged that at the court house, sometime before, 2<sup>nd</sup> respondent's cost consultant had made a concerted effort for some strange and unknown reason, to have the taxation specifically heard by Yalezo and not Bezana, and that the efforts failed as Yalezo had not been at court that day. I was unable to trace any denial of these serious allegation against those representing 2<sup>nd</sup> respondent. However, I am not persuaded that even if the Applicant is proven correct on the existence of more than a collegial relationship between Yalezo and 2<sup>nd</sup> respondent's tax consultant or lawyers, that had anything to do with whether Yalezo acted in accordance with the law. At best it could have provided a motive, if Yalezo was wrong.

[8] For these reasons I make the following order:

1. The application for referral to oral evidence is dismissed.
2. No cost order is made.
3. The parties may at their earliest convenience arrange a date with Ms P Siphatho, the Secretary of this court, for the set down of the consideration and decision of the court as envisaged in Rule 48(6) (iv).

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**DM THULARE**  
**JUDGE OF THE HIGH COURT**