

SOUTH AFRICA / JUDGMENT

Botha N.O. and Another v Sunfox 148 CC t/a Avanti Restaurant and Others (5106/2019) [2024] ZAFSHC 412 (24 December 2024) [2024] ZAFSHC 412

COURT

Free State High Court, Bloemfontein

BEFORE

Mhlambi

CASE / FILE NUMBER

5106/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT
OF SOUTH AFRICA,
FREE STATE
DIVISION, BLOEMFONTEIN

Reportable:

NO
Of Interest to other
Judges: NO
Circulate to
Magistrates: NO
Case No: 5106/2019
In

the matter between:

PETRU
JACOBA BOTHA N.O.
1st
Applicant
JOHANNES
NICOLAAS LABUSCHAGNE N.O.
2nd
Applicant
and
SUNFOX
148 CC T/A AVANTI RESTURANT
1st
Respondent
ENZO
PANELATTI
2nd
Respondent

LOUISE
PANELATTI
3rd
Respondent
IN
RE
PETRU
JACOBA BOTHA N.O.
1st
Plaintiff
JACOBUS
ELISA KRITZINGER N.O.
2nd
Plaintiff
and
SUNFOX
148 CC T/A AVANTI RESTURANT
1st
Defendant
ENZO
PANELATTI
2nd
Defendant
LOUISE
PANELATTI
3rd
Defendant

JUDGMENT

BY: MHLAMBI, J

DELIVERED: 24 DECEMBER 2024

TAXATION REVIEW

- [1] The applicants were dissatisfied with the ruling of the taxing mistress for having disallowed certain items to which they had objected. They required her to state a case under Uniform Rule 48(1). The items objected to appeared on two bills of cost referred to as Bills A and B. Bill A was taxed in terms of the applicants' attorneys' letter dated 24/06/2021, in which costs were tendered. Bill B was taxed in terms of a court order dated 16 February 2023.
- [2] The items objected to on Bill A are 6 to 9, 12, and 29. Item 29 was related to counsel's fees, but the applicants abandoned the request for its review after noting the taxing mistress' contention that it had not been objected to in taxation. Items 6 to 9 consisted of the following:

Item 6 - the Summons, the Particulars of Claim and Annexures to that (74 folios), allowed in the amount of R4 921.00;

Item 7 - the Defendant's Plea (3 folios), allowed in the amount of R1 99.50;

Item 8 - the Rule 37A Minutes and Annexures to that (6 folios), allowed in the amount of R399.00; and

Item 9 - the Notice of Set Down for Trial (1 folio), allowed in the amount of R66.50.

[3] The Applicants contended that the perusal fees associated with these items would form part of the main action and should not be included in the bill of costs at that stage of the proceedings. At the end of the hearing of the main action, the court would make an appropriate order as to costs, including the said costs. Suppose the Taxing Mistress deemed their inclusion necessary and reasonable at that stage of the litigation, she should have considered awarding a lesser fee for the perusal of the Items as the pleadings, notices, and annexures contained in items 6 to 9 were not entirely new to the respondents' attorney who dealt with and knew the contents those documents before receiving the Rule 28 Notice of Amendment. The Taxing Mistress erred in allowing the full perusal fee for these items. She did not consider the duplication of costs awarded to the respondents by allowing the full perusal fee on all the items.

[4] Item 12 related to the perusal of 122 folios of the first application to amend dated 14 June 2021. A full perusal fee of R8113.00 was allowed. The application to amend consisted of:

the Notice of Motion (4 folios) — a first perusal;

Rule 28 Notice of Amendment dated 28 April 2021 (4 folios) together with Annexures to it consisting of "POC4.1", "POC4.2", and "POC4.3" (3 folios) (7 folios in total) — a second perusal of all 7 folios;

the Founding Affidavit: PJ Botha (15 folios) — a first perusal;

the Annexure 'A' — Resolution dated 10 June 2021 (1 folio) — a first perusal;

the Annexure 'B' - Letter by Applicants addressed to Respondents dated 9 June 2021 (6 folios) — a second perusal of all 6 folios;

Annexure 'C' — Particulars of Claim (13 folios) together with Annexures (a total of 58 folios) to it consisting of:

the Agreement of Lease (28 folios) ("POC")

the Deed of Suretyship (8 folios) ("POC 2"),

the Addendum to Agreement of Lease (4 folios) ("POC 3")

The breakdown of arrears letter (2 folios) ("POC 4")

the Balance Certificate (1 folio) ("POC5");

the Section 129(1) Letters of Demand (9 folios) ("POC6.1", "POC6.2" and "POC6.3"),

the Registered Post Slips for the Section 129(1) Letters (3 folios) ("POC7.1", "POC7.2" and "POC7.3"), and

the SAPO Parcel Tracking (3 folios) ("POC8, and "POC8.3") — all of which constitute a second perusal of all 71 folios.

Annexure 'D' — the Rule 28: Notice of Amendment dated 28 April 2021 (4 folios) together with Annexures thereto consisting of "POC4.1", "POC4.2", "POC4.3" (3 folios) — a third perusal of 7 folios of the Rule 28: Notice to Amend.

Annexure 'E' — Defendant's Notice of Objection in terms of Rule 28(3) (6 folios) a second perusal of 6 folios; and

Annexure 'F' - Defendant's Plea (4 folios) a second perusal of 4 folios.

[5] The applicants stated that the respondents' attorneys perused several of the annexures to the first application to amend and that of the 122 folios, only 20 had not been perused. 4 folios of the notice of motion, 15 of the founding affidavit, and 1 folio of the annexure were entirely new documents to the proceedings. A perusal of such papers should not have been allowed or allowed at a reduced rate as it constituted a re-perusal. Items 6 and 7 were part of the application for leave to amend, and the granting of such costs was a duplication.

[6] Items 5 to 9 on Bill B related to the perusal fees for the following items:

Item 6 - the Plaintiff's Discovered Documents (182 pages) allowed in the amount of R6 051.50- a second perusal of 182 pages (albeit at half the tariff as presented by Respondents in the bill of costs);

Item 7 - Trust Documents (88 folios) allowed for R 5852.00;

Item 8 - the Summons, Particulars of Claim and Annexures (74 folios) allowed in the amount of R4 921.00- a third perusal of 74 folios as the perusal of the same pleadings and annexures had already been allowed i) under Item 6 of Bill A in the amount of R4 921.00 and ii) under Item 12 of Bill A (see Annexure "C") in the amount of R4 721.50 (72 folios x R66,50); and

Item 9—the Notice in terms of Rule 28, which is understood to be the First Application for Amendment dated 14 June 2021 (122 folios), was allowed a second perusal of 122 folios in the amount of R8 113.00 as the perusal had already been allowed under Item 12 of Bill A in the amount of R8 113.00.

[7] The applicants disagreed with the taxing mistress that the perusal of items 5-8 was necessary for drafting the Rule 28(3) notice of objection and their inclusion in the bill of costs. Suppose she deemed their inclusion necessary and reasonable at that stage. In that case, a reduced perusal fee should have been allowed as the respondents' attorneys had

previously applied their legal minds. Items 8 and 9 of Bill B were duplicates of items 6 and 12 of Bill A and were allowed in R4 921.00 and R8 113.00. The applicants paid four times for the perusal of the summons, the particulars of the claim, and annexures thereto, and twice for the first application for amendment dated 14 June 2021.

- [8] The applicants contended that the perusal of the Applicants' discovered documents (182 pages) under item 6 and all the trust documents (88 pages) under item 7 were unnecessary and amounted to overcaution by the respondents. Only four folios were attached to the discovery affidavit, and the trust documents were attached to the respondents' answering affidavit. The taxing mistress should have allowed the perusal of only those pages necessary to draft the respondents' objection to the Rule 28 notice and the answering affidavit.
- [5] In her stated case, the taxing mistress noted that the amendments were made when the matter was already set down for trial. The effect of the amendments on all the pleadings could only be determined by a perusal of these pleadings. Relying on Rule 28(9), she stated that the party giving notice of the amendment shall be liable for the costs thereby occasioned to any other party unless the court otherwise directs.
- [6] The pleadings and notices at items 6 to 9 and 12 could not have been perused at a lesser fee as suggested by the applicant's representative because re-perusal is when the same document is perused more than once for a different reason than when it was initially perused. This perusal will qualify as a justifiable party and party charge according to the taxation of legal costs in South Africa.. She aligned herself with the views of the taxing master in *Lynn-an Civils CC v Eskom Holdings Ltd*[1] that it was reasonable and necessary for an attorney to peruse relevant annexures to determine the way forward. Each amendment to the summons and the particulars of claim required the respondent's attorneys to peruse the documents de novo in so far as they set out the cause of action. Failure to do so would amount to negligence by such a practitioner.
- [7] She noted that Bill B came about after the applicants had brought a fresh Rule 28 application to amend the amount claimed. The respondents' representatives said perusing the documents to recalculate the amended claim amount was vital. The applicants had abandoned one amendment previously, and examining the records in conjunction with the new application to amend them was essential. She followed the same principles in the taxation of Bill A to arrive at her decisions regarding items 5 to 9 of Bill B. The applicants' conduct was repetitive, resulting in increased legal costs.
- [8] The applicants submitted that the objected items constituted a re-perusal. In these extraordinary circumstances, it would be fair and reasonable for the taxing mistress, in applying her discretion, to allow a lesser fee for perusal. She erred in allowing re-perusal fees as these had already been allowed a perusal fee under Bill A, leading to an inequitable award of costs. Even though the rules do not make provision for the re-perusal of documents, Rule 70(5)(a) entitled the taxing master, 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 requirements would be inequitable. The taxing mistress erred in not considering the prior knowledge or even detailed knowledge that the respondent's representatives had on several of the re-perused documents, especially noting the re-perusal of items in Bill B, which had been allowed for perusal in Bill A. The documents were not entirely unknown to the respondent's representatives at the time of re-perusal and, therefore, warranted a departure from the prescribed fee for perusal.

- [9] In her report in terms of Rule 48(5)(b), the taxing mistress stated that it was necessary to note that the first application for amendment was served on 14 June 2021, approximately a year after the matter was considered trial-ready. The amendment sought to amend the claim amount from R 290 205.45 to R 204 010.50, the computation of the rent, electricity, water, sanitation, and refuge amounts. Numerous annexures were attached to the pleadings supporting the applicant's amended claims. The pleadings, application to amend, and discovery documents had to be considered and perused by the respondent's legal representative to make the necessary objection, as the applicants sought to change the fundamental basis and computation of the claimed debt. This was work done.
- [10] The respondent's legal representative had to consider the new calculation that had to be done, how the new information submitted changed and why, who was affected, and why the amendment was not done earlier. All documents filed are reconsidered and analysed to determine the defence in this case. The efforts of the respondent's attorneys resulted in the applicants' withdrawal of the application and tendering the costs of the first amendment. The second amendment application was filed on 23 June 2022, exactly one year after the first Rule 28 application was filed. This was two years since the matter was initially set down for trial. This amendment did not only seek to amend the competition of the amounts comprising the debt and affecting the annexures attached but sought to amend the parties to the main action. This was not a simple application for an amendment as it fundamentally impacted the matter, such as the change of parties, the reliance on a different trust deed, and other letters of authority, which equivocally changed the cause of action.
- [11] In drafting the objection and the answering affidavit, the respondent's legal representatives faced the task of perusing the initial founding papers with annexures, the First Amendment with annexures to it, and all documents discovered to extrapolate evidence and determine the cause and effect on the new, current amendment before the court.[2] The respondents argued that the pleading would have to be exchanged afresh because of the amendment, rendering the previous pleadings

redundant. Upon inspecting the file, the parties began exchanging pleadings again and filing an amended plea.

- [12] The Taxing master must strike a moderating balance that affords an innocent party adequate indemnification within reasonable bounds. This equitable balance should be struck correctly in the light of all the circumstances. The court will not interfere with a ruling made by the Taxing Master merely because its view differs from his or hers but only

when satisfied that the Taxing Master's view differs so materially from its own should it be held to vitiate the ruling. Time-related charges are not decisive, and an objective assessment of the features of the case is primarily used to determine the reasonableness of the fee for that work and to obviate the charging of exorbitant fees for slow and inefficient work.[3]

[10] The court order states that the applicant is granted leave to amend the summons per the amendment sought in annexure FA 5 to the founding affidavit.

[11] Rule 70 (3) of the Uniform Rules of Court provides that the taxing master shall, on every taxation, allow all such costs, charges, and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake.

[12] In deciding what fee to allow for the perusal of documents, the taxing master must inquire into the time necessarily taken by the attorney perusing.[4] When there are delays and documents have to be perused again, a re-perusal fee will be allowed, depending on the delay's length and the matter's nature.[5] The taxing master will consider that the documents perused were not res nova to the attorney the second time around (i.e., at reperusal) and allow a fee at his or her discretion. Tinley and Tulbagh allowed a cost of a third of what was claimed.[6] When the attorney acted in the previous proceedings in which the same documents were read, a mere glance at most of the previous papers

would have been sufficient to satisfy himself which needed perusal for the eventual hearing.[7]

[13] In *De Villiers v Estate Hunt*,[8] the court said that if an attorney has perused documents in one case, he cannot claim to charge for perusing the same documents used in a subsequent case as if they were res nova. The taxing master should have borne that in mind and should, on the facts of the case, have allowed a globular sum concerning the perusal charges under consideration.

[14] The applicants contend that the total amount of R14 563.50 was allowed to peruse the summons, Particulars of Claim, and annexures under Bills A and B. A total amount of R 16 226.00 was allowed to peruse the first amendment in Bills A and B.

[15] As a result, the taxing master's allocatur:

1. Is set aside, and the matter is sent back to the taxing master to reconsider the following items: 6,7,8,9 and 12 of Bill A; 6,7,8 and 9 of Bill B.
2. There is no order as to costs.

MHLAMBI, J

On behalf of the applicant: Adv. JS Rautenbach Instructed by: Van Wyk Attorneys Inc. 7 Collins Road 2nd Floor Linde Building Arboretum Bloemfontein

-
- [1] 1756/2014 Free State Division
- [2] Para 11 of the 48(5)(b) report.
- [3] Van Pletzen v Taxing Master of the High Court (unreported, FS case no 4992/2014 dated 15 January 2021) at paragraph 18.
- [4] Para 8.10.4: Taxation of costs in the Higher and Lower Courts A Practical Guide: Albert Kruger; Wilma Mostert; Lexis Nexis.
- [5] Tinley and Others v Keeble and Another; Keeble and Another v Tinley and Others [2001] Jol 7266 [E] 14; Tulbach Municipality v Waveren Boukontrakteurs (Edms) Bpk and Others 1968 (3) SA 246 (C).
- [6] Taxation of costs, *supra*, para 8.10.5.
- [7] WAPENAAR v TODT AND ANOTHER 1962 (1) SA 239 (W)
- [8] 1940 CPD 518 at p. 526.
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2024/412.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/botha-no-and-another-v-sunfox-unknown-topic-afshc-2024>

Prepared on 11 October 2026 · Esheria