

SOUTH AFRICA / JUDGMENT

JB Scott Attorneys v Tetani (Review) [2023] ZAGPPHC 358; 36381/2019 (26 May 2023) [2023] ZAGPPHC 358

COURT

North Gauteng High Court, Pretoria

BEFORE

Francis-Subbiah

CASE / FILE NUMBER

36381/2019

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Case No: 36381/2019

In the matter between:

JB SCOTT ATTORNEYS

REVIEW APPLICANT

and

WENDY TETANI

REVIEW RESPONDENT

JUDGMENT – REVIEW OF TAXATION

FRANCIS-SUBBIAH, J

- [1] JB Scott Attorneys set down their bill of costs for taxation. The costs were claimed from their client, Ms Tetani for professional services rendered in a successful claim against the Road Accident Fund. Ms Tetani was the plaintiff in the main action and is the review respondent in the present matter. The parties had entered into a settlement agreement in the main action which was made an order of court. It was recorded by the court order that “no contingency fee agreement exists between the Plaintiff and the Plaintiff’s attorneys”. Such fee agreements are subject to judicial oversight and intervention. This in context maintains a supervisory function over officers of the court, sets aside improper fee agreements and protects the court’s dignity and reputation.

- [2] The taxing master was presented with an attorney and own client bill of costs and a contingency fee agreement that was signed between the attorney and client. Respondent's representative objected to the contingency fee agreement on the basis that a fee agreement was denied and did not exist when the court made the order. The sudden and subsequent reliance on a contingency fee agreement at taxation was viewed with concern and disquiet. As a result, the taxing master was called upon to make a ruling on the relevance of the contingency fee agreement in taxing the bill of costs.
- [3] The taxing master refused to have regard to the contingency fee agreement and ruled in accordance with the court order that no contingency fee agreement exists between the plaintiff and the plaintiff's attorneys. And as a consequence the bill of costs be taxed in accordance with the tariff on a party and party basis. The taxing master accepted that his duty is not to ignore or vary the order made by the Judge, but to quantify the costs in accordance with the court order. He further accepted that where a fee agreement does not exist, an attorney can only be entitled to party and party fees in accordance with the court tariff.
- [4] The taxing master was further called upon to determine the question of a surcharge. A fee agreement may contain a provision that upon success, a legal practitioner shall be entitled to fees higher than his or her normal fee or a surcharge. The taxing master disallowed a surcharge and fees higher than the prescribed tariff on the basis that the court order recorded the non-existence of a contingency fee agreement between the plaintiff and her attorney. JB Scott Attorneys, as review applicant was dissatisfied with the taxing master's rulings and therefore brings this review application in terms of rule 48 of the uniform rules of court.
- [5] Courts have established that it is the duty of the taxing master is to give effect to the order for costs, not to vary it to suit his or her perceptions of what the order should have been. This view was authoritatively held as far back by the court in *Vercuil Magistrate of Wynberg & Another* in 1928 CPD at 532. Subsequent thereto, the Appellate Division in *Benson v Walters* 1984
- (1) SA 73 (A) endorsed this view that the liability for costs is determined by the court and the amount of the liability is determined by the taxing master.
- [6] Before a court will interfere with the decision of a taxing master it must be clearly satisfied that the taxing master's ruling was clearly wrong. This view was expounded in the unreported decision of *Lizette Roux v Road Accident Fund*, ECJ case no 650/04, delivered on 19 May 2005. A 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. In *Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others* 1984 3 SA 15 AD and *Legal and General assurance Society Ltd v Lieberum NO and Another* 1968 1 SA 473A at 478G, it was held that the court will interfere only when it is satisfied that the taxing master's

view of the matter differs so materially from its own that the court should vitiate the ruling of the taxing master.

- [7] The taxing master's reliance on the court order and ruling in accordance with its provisions are correct. I cannot falter the taxing master's assessment of the issues before him. I find the decision to be in accordance with the precedents of our courts and the achievement of justice between the parties.
- [8] The review fails on both accounts and is accordingly dismissed. I find no reason why costs should not be awarded to the successful party.
- [9] For these reasons I make the following Order:

9.1 The review is dismissed.

9.2 The review applicant is ordered to pay the costs of the respondent on an attorney and client basis.

R. FRANCIS-SUBBIAH

Judge of the Gauteng High Court: Pretoria

26 May 2023

For the Reviewing Applicant: J B Scott Attorneys For the Reviewing Respondent: John Walker Attorneys Inc

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Prepared on 10 October 2026 · Esheria