

SOUTH AFRICA / JUDGMENT

Likhojane and Another v Mabena (A75/2015) [2016] ZAFSHC 37 (25 February 2016) [2016] ZAFSHC 37

COURT

Free State High Court, Bloemfontein

BEFORE

Phalatsi

CASE / FILE NUMBER

A75/2015

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Appeal number: A75/2015

DATE: 25 FEBRUARY 2016

In the matter between:

MANAU JAN LIKHOJANE.....First Applicant

JOSEPHINE MALIPHOFU LIKHOJANE.....Second Applicant

And

MPHO MABENA.....Respondent

CORAM: PHALATSI, AJ

JUDGMENT BY: PHALATSI, AJ

DELIVERED ON: 25 FEBRUARY 2016

- [1] This is the review of the taxing master's decision to tax off three items from the bill of the applicants' attorneys, Messrs Lovius Block, viz items 5, 6 and 18, as well as six items of the bill of Messrs Cloete Neveling attorneys of Harrismith, viz: items 6, 7, 8, 9, 10 and 11. All the said items relate to the perusal of the record of appeal and all other costs relating to the said record of appeal.

[2] The issue to be determined is whether the applicants' respective attorneys, as well as their counsel, are entitled to the perusal fee of the record, where such record had never been served upon the applicants' attorneys by the respondent's attorneys.

[3] The two applicants were the applicants in an application for eviction in the magistrates' court for the district of Witsieshoek, held at Phuthaditjhaba.

The Magistrate granted an eviction order against the present respondent, Mpho Mabena on 4 July 2014.

[4] The respondent noted an appeal against the said judgment and filed the record with the Registrar of the High Court in terms of Rule 50(7) (a) of the Uniform Rules of Court. The Registrar allocated 18 May 2015 as the date of hearing which had been applied for in terms of Rule 50(4)(a). The copy of the said record was never served by the Respondent's attorneys on the Applicants' attorneys in terms of Rule 50(7)(d), within the time period prescribed by the said Rule. The Applicants' attorneys uplifted the copy of the record from the court to prepare for the appeal. The respondent served the notice of withdrawal of appeal on 28 April 2015 and filed same with the registrar on 29 April 2015.

This was thirteen days before the date of hearing of the appeal.

[5] The applicants had their costs taxed on 15 September 2015 and the allocatur was made on 16 September

2015. The taxing master taxed off the items referred to above and the applicants objected to the taxing off. The applicants launched the review application on 8 October 2015. The taxing master gave a stated case on 5 November 2015 and the respondent filed his submissions in support of the taxing off by the taxing master on 16 November 2015. The applicants filed their submissions on 19 November 2015.

[6] I decided to deal with the matter based on the submissions by the parties as the point in dispute is crisp and to the point.

[7] It is contended on behalf of the Respondent that, because the record was never served on the Applicants' attorneys and that the appeal was withdrawn before it was heard, the Applicants' attorneys and counsel are not entitled to the fees of perusal of the record. If the appeal had proceeded and the record of appeal was not served on the Applicants timeously, the applicants would have had the right to apply for a postponement due to non-compliance by the Respondent with the rule regarding service of the record of appeal, so the argument goes. The taxing master upheld this argument and stated that if the applicants made means to obtain the record earlier than the time that the respondent was obliged to file same, the costs of perusal thereof cannot be recovered from the other party. The point that both the respondent's attorneys and the taxing master seem to lose sight of, is that the appeal was withdrawn 13 days prior to the date of hearing, whereas the Respondent was obliged to furnish the applicants

with the record not less than 15 days prior to the hearing of the appeal.

[8] The contention that the applicants would have applied for a postponement should the appeal have proceeded, is devoid of merit. A party in litigation cannot hold the other party to ransom and cause unnecessary delays in the finalisation of court cases. It is incumbent upon legal practitioners to see to it that matters are dealt with and disposed of expeditiously, for the benefit of not only their clients, but for the benefit of the public at large, in respect of both time and costs. The finding by the taxing master that costs of steps taken by the applicants' attorneys to adequately prepare for the matter before the hearing should be borne by said attorney's client, cannot be upheld. The fact that the record which was perused was not served by the respondent's attorneys, does not mean that the applicants' attorneys could not get the record from other sources, to avoid the delay in the finalisation of the appeal. In fact, the said attorneys should be commended for the manner in which they acted, to protect the interests of their clients. The further contention that there were negotiations for a possible withdrawal of the appeal does not take the matter any further. The negotiations could not stop the attorneys from continuing to prepare for their clients' case. In fact, preparation helps one to conduct meaningful negotiations.

On the basis of the above reasons, the decision of the taxing master stands to be set aside.

[9] I therefore make the following order:

9.1 The taxing master's ruling in taxing off items 5, 6 and 18 of the bill of Messrs Lovius Block and items 6, 7, 8, 9, 10 and 11 of Messrs Cloete Neveling's bill, is set aside.

9.2 All the items referred to in 9.1 above, are allowed.

N.W. PHALATSI, AJ

On behalf of applicant: J.A. Botha

Instructed by: c/o McIntyre & Van Der Post

Bloemfontein

On behalf of 1st& 2ndrespondent: SS Van Wyck

Instructed by: Lovius Block

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Prepared on 11 October 2026 · Esheria