

SOUTH AFRICA / JUDGMENT

Matsepe NO and Others v Master of the High Court Bloemfontein and Another (Venter and Another Intervening) (4528/2018) [2020] ZAFSHC 176 (27 October 2020)

[2020] ZAFSHC 176

COURT

Free State High Court, Bloemfontein

BEFORE

C Nekosie

CASE / FILE NUMBER

4528/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

no: 4528/2018

In

the matter between:

TSIU
VINCENT MATSEPE
N.O. 1ST
Applicant
OTTLIE ANTON NOORDMAN
N.O. 2ND
Applicant
TSIU
VINCENT
MATSEPE 3RD
Applicant
OTTLIE
ANTON
NOORDMAN 4th
Applicant
and
MASTER
OF THE HIGH COURT: BLOEMFONTEIN 1ST
Respondent

PHILLIP
FOURIE
N.O. 2ND
Respondent
ELIZABETH
MARIA VENTER 1ST
Intervening party
SAREL
JOHANNES WESSELS 2ND
Intervening party

CORAM: C NEKOSIE AJ

JUDGMENT

BY: C NEKOSIE AJ

DELIVERED ON: 27 October 2020

- [1] This is a review of taxation in terms of rule 48 of the Uniform Rules of Court. The applicant in the main application, Venter (first intervening party in the review), applied for a declaratory order that she is not in liquidation. The first and second respondents in the main action, Matsepe and Noordman (first and second applicants in the review) opposed the main application.
- [2] On 29 March 2019 Mathebula J ordered Matsepe, Noordman and the fifth respondent in the main application to pay the cost of proceedings of the day and that of 28 October 2018. This order gave rise to the first of the bill of cost in contention.
- [3] On 23 May 2019 Loubser J ordered Matsepe to pay the cost of the main application on attorney client scale in his personal capacity,
- including the costs occasioned by the postponements on 11 April 2019 and 2 May 2019. This resulted in the second bill of cost.
- [4] The two bills of cost having the same case number 4528/2018 were set down for taxation on 1 April 2020 and was postponed without any allocations being made by the taxing master. On 23 June 2020 Frikkie Botes, on behalf of Matsepe Attorneys and Sandra Van Wyck, on behalf of Williers Attorneys settled the two taxations among themselves. They only required the taxing master to endorse the allocatur. No rulings were made by the taxing master.
- [5] Rule 48 of the Uniform Rules of Court prescribes the procedure for review of taxation. Subrule 1 provides that:

‘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] The period of 15 days within which the notice of review of taxation had to be filed expired on 14 July 2020. Apparent from the notice, it was filed with the taxing master on 23 July 2020. No application to condone the late filing was sort. This is the first difficulty with this review application. It is out of time and stands to be dismissed[1]. However, because none of the parties took issue with the late notice, I shall proceed to address the grounds of review as set out in the notices.
- [7] Three notices of review were filed on the same date and time with the same grounds for review. The only difference between them is the references to the items objected to. In the grounds of review the applicants submit that they filed a notice to oppose which included a list of objections on 2 April 2020. I could not find such notice among the papers filed but will accept, in view of the representative of the applicant attending the taxation, that there was opposition on that day.
- [8] A further ground advanced is that the costs consultant acting on behalf of the applicants settled the taxation contrary to their

instructions. Review in terms of rule 48(1) is concerned 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. A ruling by the taxing master is thus a prerequisite for a dissatisfied party to apply for review. The fact that the representative of a party did not fulfil his or her mandate cannot be attributed to the taxing master and therefor cannot be a ground for review.

- [9] The applicant, in the grounds for review, acknowledges that the taxing master was never placed in a position to apply her discretion on an opposed basis. In *Daywine Properties (Pty) Ltd v Murphy And Another*[2] it was stated as follows:

‘Similarly, Rule 48(2) envisages that only the matters objected to before the Taxing Master may be the subject of review because it entitles the parties to submit contentions 'including grounds of objection not advanced at the taxation in respect of any item or part of an item which was objected to before the Taxing Master or disallowed mero motu by the Taxing Master'.

In *Kruger v Secretary for Inland Revenue* 1972

- (1) SA 749 (C) at 750F - G, Van Winsen J made short shrift of a similar matter by saying succinctly:

“I do not deal with the belated objection to item 16 since no objection was made to the Taxing Master's allowance of this at the time of the taxation. It is accordingly not subject to review. (Rule 48(1).)”

I agree with this view, according as it does with the plain meaning of the words used in Rule 48(1) and (2).’

- [10] In *Daywine Properties (Pty) Ltd* [3] supra it was further stated:

‘In my judgment there can be no escape from the clear meaning of the language used in Rule 48(1) and (2). If the party opposing the

taxation fails to object when before the Taxing Master, he cannot thereafter invoke the review of taxation procedure provided by Rule 48 in a belated attempt to attack items which the Taxing Master allowed.'

By their own admission, the applicants did not raise objections at the taxation and cannot do so now.

[11] Rule 48(2) explicitly states what the content of the notice of review should be and reads as follows:

'The notice referred to in subrule (1) must—

- (a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;
- (b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed mero meto by the taxing master;
- (c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and
- (d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.'

(my emphasis)

[12] The grounds contained in the notice does not relate to what transpired at the taxation. The items alleged to be objected to, is in the notices but there are no grounds attached to the objected items. All three notices are therefore defective and does not comply with rule 48(2).

[13] It is stated by the taxing master and supported by the first and second intervening party that the taxation was by agreement.

The list of objections contained in the notices of review, scant and unsubstantiated as they are, were thus never raised with the taxing master. It is therefore not surprising that there are no grounds of objection relied upon at the taxation contained in the notices of review.

[14] In view of the above, the application for the review of taxation cannot succeed. I therefore order that:

1. The application is dismissed.
2. I make no order as to costs.

C NEKOSIE, AJ

On behalf of the Applicants: MATSEPES INC

Attorney for the Applicants

26/28 Aliwal Street

BLOEMFONTEIN

On behalf of the 1st and 2nd intervening parties: WILLERS ATTORNEYS

21 Walter Sisulu Road

Park West

Bloemfontein

[1] See Brener No V Sonnenberg, Murphy, Leo Burnett (Pty) Ltd (Formerly D'arcy Masins Benton & Bowless SA (Pty) (Ltd) 1999 (4) SA 503 (W) at 515I-J

[2] 1991 (3) SA 216 (D) at 217I

[3] At 218E

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