

SOUTH AFRICA / JUDGMENT

Ngema v Road Accident Fund (234/2005) [2008] ZAKZHC 98 (1 January 2008)

[2008] ZAKZHC 98**COURT**

High Courts - Kwazulu Natal

BEFORE

Nicholson

CASE / FILE NUMBER

234/2005

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Source record**IN THE HIGH COURT OF SOUTH AFRICA REPORTABLE(DURBAN AND
COAST LOCAL DIVISION) Case No: 234/2005In****the matter between:**

EMMANUEL NKOSINATHI NGEMA

Plaintiff/Applicant

and

ROAD ACCIDENT FUND

Defendant/Respondent

JUDGMENT

NICHOLSON J

1. The Applicant seeks to review a decision of the taxing master in terms of Rule 48 (1) of the Rules of Court.
2. Briefly, the Applicant issued summons against the Respondent for the latter's failure to pay a claimed amount. An application for summary judgment was sought and was adjourned to the opposed roll. The opposed application was heard and the Respondent was ordered to pay the Applicant's costs of the action and costs of the application for summary

judgment.

3. The Applicant then proceeded to tax its bill on the 24 th November
2005. Only one item is the basis of this review application. The item sought to be reviewed is the second part of item 15:-

“Perusal of Defendant’s heads of argument... 1750 w... R175, 00.”

4. It seems to me that in these modern times, it is more appropriate to dispense with the term “taxing master” and rather make use of the term “taxing official”.
5. The taxing official contends that the aforesaid item constitutes an attorney and client charge since the heads of argument formed part of the counsel’s preparation for the opposed application. The taxing official further contends that the advocate and the opposing counsel could peruse the heads of argument as their perusal would have the effect of taking the matter forward. Whilst on the other hand the attorney’s perusal would not take matter forward.
6. The Applicant’s view is that perusal of the Defendant’s heads should have been allowed for these reasons firstly, the heads of argument were required in terms of the Rules of Court and secondly, they were of fundamental importance and accordingly required the Applicant’s diligent attention in the same way as he would accord to other documents of fundamental importance.
7. It is trite and a well established principle that the court will not lightly disturb the ruling of a taxing official where he has exercised his discretion. The court will interfere if, firstly, the taxing official has not exercised his discretion judicially, that is, if he has exercised it improperly, secondly, if he has not brought his mind to bear upon the question and thirdly, if he has acted on a wrong principle. This test is set out in *Minister of Water Affairs v Meyburg* 1966 (4) SA 51 (E) at page 52 paragraph E-F.
8. A further requirement appears in *Century Trading Co. (Pty) Ltd v The Taxing Master and Another* 1958 (1) SA 78 (W) where it was held that the court will interfere with the ruling of the taxing master not only when he has exercised his discretion improperly on some question of principle, “ but also when it considers that the taxing master has been clearly wrong in regard to some item in the bill of costs .”
9. In the light of the requirements set out above I have to determine whether the taxing official should have allowed the Applicant’s Attorneys perusal fee of the Respondent’s heads of argument.
10. The initial point of departure is to establish whether or not the Rules of Court required heads of argument to be filed in this matter.
11. In terms of the KwaZulu Natal Practice Directive in Opposed Motion proceedings, both parties are required to file heads of argument.

“9.4.1. The Applicant or Plaintiff in opposed motions... shall not less than five court days before the day of the hearing deliver concise heads of argument’... and not less than three court days before the hearing the Respondent or Defendant shall do likewise...”

12. In Minister of Water Affairs v Meyburg at page 52 paragraph G-H the Court held that if heads of argument are not required in terms of the Rules of Court then these costs should not be allowed on a party and party basis.
13. See also Port Elizabeth Road Transportation Board v Liesing 1968 (4) SA 401 (E) and Jackson and Ginsburg, NNO v Steenkamp 1973 (1) SA 309 (T) which concur with Meyburg.
14. I am of the view that the ratio in the cases of Meyburg and Liesing is correct. The corollary of this is that if there is a Practice Directive of this division that heads of argument be filed by both parties in Opposed Motion proceedings , fees relating to heads of argument must be allowed.
15. A fundamental point was raised in Liesing case, that in deciding cases of this nature, besides looking at whether the charge dealing with heads of argument should be allowed because it is in terms of the Rules of Court, one should also have regard to the duty a attorney owes to his client to give diligent attention to all documents of fundamental importance in his client's matter. (See page 402 B - D). I concur with that view.
17. The matter was not opposed and I propose to make no order as to costs. The following order is made:-
 - (a) The review application is allowed, the ruling of the taxing officer is set aside. (b) There will be no order as to costs.

____NICHOLSON J

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