

SOUTH AFRICA / JUDGMENT

Pillay v Body Corporate of Dumbarton Oaks (2021/11082) [2023] ZAGPJHC 647 (6 June 2023)

[2023] ZAGPJHC 647

COURT

South Gauteng High Court, Johannesburg

BEFORE

A A Crutchfield

CASE / FILE NUMBER

2021/11082

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IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2021/11082

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

06.06.23

In the matter between:

ISHANA PILLAY Applicant and THE BODY CORPORATE OF DUMBARTON OAKS Respondent

Neutral Citation: Ishana Pillay v The Body Corporate of Dumbarton Oaks (Case no. 11082/2021)
[2023] ZAGPJHC 647 (6 June 2023)

REVIEW JUDGMENT IN TERMS OF RULE 48(1)

CRUTCHFIELD J:

- [1] The respondent reviews the decision of the Taxing Master in respect of certain costs rulings in terms of Rule 48(1) of the Rules of this Court.
- [2] A court seized with the review of a decision by the taxing master in terms of rule 48(1) will be slow to interfere with the decision/s of the taxing master. A review court will interfere only if the taxing master failed to exercise his / her discretion judicially.

Furthermore, the review court will interfere only when it holds the view that the taxing master was clearly wrong but the court must be in at least as good a position as the taxing master was, to determine the matter in issue.[1]

- [3] The relevant costs rulings of the taxing master with which the respondent is dissatisfied are items 57, 69 and 70 of the applicant's bill of costs, taxed and allowed on 9 July 2021 ("the items"). The items relate to costs incurred by the applicant on 16 March 2021, and taxed against the respondent by the taxing master.
- [4] The applicant launched an urgent application set down for hearing on 16 March 2021. The respondent on the latter date, brought an application viva voce and without papers, for condonation of the late filing of its answering affidavit in the main application.
- [5] The urgent court granted the respondent condonation. The respondent did not tender the costs of the condonation application and the urgent court did not make an order in respect of those costs.
- [6] The main application, being the applicant's urgent application, was set down for hearing on 16 March 2021 in terms of the notice of motion but could not proceed due to the late delivery of the respondent's answering affidavit. The urgent application proceeded instead on 18 March 2021.
- [7] The urgent court heard the main application on 18 March 2021 and granted the relief sought by the applicant. The order included that the respondent pay the applicant's costs of the application on a punitive scale together with the costs of two counsel where two counsel were utilised.
- [8] The respondent objected to the items at the taxation. The respondent reviews the taxing master's decision that the respondent pay the items, (albeit in reduced amounts than claimed by the applicant), which relate to the applicant's two counsel's costs incurred on 16 March 2021.
- [9] It is not apparent whether the applicant opposed the respondent's application for condonation or not.
- [10] The court's reasons for the judgment make no mention of the costs of the application for condonation.
- [11] The respondent called upon the Taxing Master to state a case in terms of Rule 48(1) of the Uniform Rules of Court. The Taxing Master refers to that office being vested with the power to exercise a wide degree of supervision and that it is only where a review court considers the taxing master to be clearly wrong that it will interfere with the ruling of the taxing master.
- [12] The various factual errors in the taxing master's stated case are not material.

- [13] The respondent contends that its application for condonation was a distinct interlocutory application separate from the main application and that the costs incurred on 16 March 2021 in respect of the condonation application were not for the respondent's account absent a tender thereof or an order by the court, neither of which were made.
- [14] Whilst the condonation application was interlocutory, it was ancillary to the urgent application and would not have been necessary absent the urgent application. The costs incurred on 16 March 2021 can justifiably be included as costs incurred in respect of the urgent application on 18 March 2021, notwithstanding that the court was silent on the costs of 16 March 2021.
- [15] In the result, I cannot find fault with the taxing master's decision in respect of items 57, 69 and 70 of the applicant's bill of costs taxed on 9 July 2021.
- [16] Accordingly, the outcome of the taxation is upheld and the review is dismissed.

A A CRUTCHFIELD

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

DATED on this the 6TH day of JUNE 2023.

APPLICANT'S ATTORNEYS: SMIT SEWGOOLAN INCORPORATED.

RESPONDENT'S ATTORNEYS: JOSELOWITZ & ANDREWS ATTORNEYS.

- [1] Van Pletzen v Taxing Master of the High Court (unreported, FS case no 4992/2014 15 January 2021 paras 17 – 20.

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