

SOUTH AFRICA / JUDGMENT

Silosini v Democratic Alliance (2527 / 2022)

[2023] ZAMPMHC 31 (19 September 2023)

[2023] ZAMPMHC 31

COURT

Middelburg High Court, Mpumalanga

BEFORE

TV Ratshibvumo

CASE / FILE NUMBER

2527 / 2022

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THE

HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION, MIDDELBURG LOCAL SEAT

CASE

NO: 2527 / 2022

(1)

REPORTABLE: YES

(2)

OF INTEREST TO OTHER JUDGES: YES

(3)

REVISED.

DATE: 19 September

2023

SIGNATURE

In the matter between:

SITHI

ALUNCEDO SILOSINI

APPLICANT

And

DEMOCRATIC

ALLIANCE

RESPONDENT

JUDGMENT

RATSHIBVUMO ADJP:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 10H00 on 19 September 2023.

[1]

Introduction.

This is a Rule 30 application brought by Democratic Alliance, the Respondent in the main application. To avoid confusion, I shall refer to the parties as they are in the main application. In this application, the Respondent sought an order setting aside the

Applicant's Taxation Notice as an irregular step or proceeding as contemplated by Rule 30(1)[1] of the Uniform Rules of the High Court (Uniform Rules). The Respondent also sought a cost order against the Applicant. In response to this application, the Applicant raised an exception in terms of Rule 23 of the Uniform Rules. Over 40 days later, the Applicant filed an affidavit in support of the exception and in opposition of the Respondent's current application.

[2] As set out fully hereunder, the relief sought by the Respondent was modified to suit the developments in the case as by the time the application was heard, the Taxing Master had proceeded to tax the bill. This happened while the application was pending. For this reason, the Respondent submitted in the heads of arguments that the taxation should also be set aside. Further to this, and for the language used by the Applicant in attacking the Respondent's legal representative, the Respondent asks for costs order against the Applicant on attorney and client scale, to be awarded *de bonis propriis*. The Applicant also asks for costs against the Respondent on the similar punitive scale.

[3]

Background.

The Applicant issued a notice of motion in the main application on 19 September 2022 against the Respondent seeking an order declaring *inter alia*, that the decision taken by the Federal Legal Commission structure of the Respondent to conduct an investigation relating to allegations made about her was unlawful and/or invalid. There was also a prayer for costs in which the court was asked to order, "costs of the suit against the Respondent on an attorney and client scale in the event of opposing this application."

[4] On 14 November 2022, the Respondent filed a notice of opposition with the Registrar, but did not file an answering affidavit thereafter. As a result, the application remained on the unopposed roll scheduled to be heard on 18 November 2022. On 18 November 2022, and at

07h32, the Respondent served a Notice of Withdrawal of the opposition to the application in terms of Rule 41A, on the Applicant, by email.[2] In the Notice, the Respondent also tendered wasted costs. At 08h31, the Applicant's legal representative sent an email in which she acknowledged receipt of the Notice of Withdrawal of the opposition.[3]

- [5] Having withdrawn the opposition and tendered the wasted costs, it thus came as no surprise that only the Applicant's legal representative was in court attendance when the matter was called on the unopposed roll later that day. The court granted an order which needs to be quoted in verbatim as it is the foundation on which this application was premised. Annexure D reflects that Mthimunye AJ granted the order in the

following terms:[4]

"After having heard the counsel for the parties and having read the documents filed on record, the following order is made:

1. Order granted in terms of Prayers

1.1 Declaring that the decision taken by the Federal Legal Commission structure of the Respondent following a referral to it by the Federal Executive to conduct an investigation relating to allegations made about the Applicant is unlawful and/or invalid.

1.2 Reviewing and setting aside the decision to subject the Applicant to disciplinary action by the Federal Legal Commission.

1.3 Interdicting and restraining the Respondent from continuation with pursuing any disciplinary action against the Applicant relating to the decision or collective decisions of the Federal Legal Commission and/or Federal Executive Structures of the Applicant pending the finalisation of these review proceedings by his [sic] Honourable Court.

1.4 Ordering costs of the suit against the Respondent on an attorney and client scale in the event of opposing this application." [My emphasis].

- [6] On 14 December 2022, the Applicant's legal representative served a document titled, 'Notice of Taxation to Tax Bill of Costs' on the Respondent. In terms of this document, the Respondent was notified that the Applicant intended to submit the attached bill of costs to the Taxing Master on 16 February 2023 at 10h00. The total amounts in the attached bill, excluding the drawing fee and attending taxation were R215 762.00 in fees and R116 153.40 in disbursement. It is as a result of

this notice that this application was launched by the Respondent.

- [7] Prior to launching the application, the Respondent wrote to the Applicant alerting her that the taxation notice was not in compliance with Rule 70 of the Uniform Rules and in particular, Form 26. The Applicant was given until 19 December 2022 to withdraw the notice, failure of which, the Respondent would launch this application and seek costs against her. The Applicant refused to withdraw the notice saying, the application would be opposed.

[8] Irregular Proceedings.

Rule 30 of the Uniform Rules, upon which this application is grounded provides,

“30 Irregular proceedings

- (1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.
- (2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if —
 - (a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;
 - (b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;
 - (c) the application is delivered within fifteen days after the expiry of the second period mentioned in paragraph (b) of subrule (2).
- (3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.
- (4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.”

[9] The grounds on which the Respondent averred that the Notice of Taxation constituted an irregular step are the following. It was submitted that the taxation notice did not comply with Rule 70(3B) and Form 26 of the Uniform Rules. Further to this, the Respondent argued that no costs order was awarded by the Court in favour of the Applicant. In support of this, the Respondent gave brief chronological developments in the matter to the effect that it gave its Notice of Withdrawal of the opposition before the hearing on 18 November 2022, tendering wasted costs occasioned by the withdrawal, not the costs of the application. This notice was accepted by the Applicant’s legal representative who also acknowledged receipt. It was further submitted that up to that stage, the Respondent had not filed an answering affidavit. As a result, the matter proceeded on the unopposed roll. The final submission was to the effect that the court granted an order for costs of the suit against the Respondent on an attorney and client scale in the event of opposing the application, which opposition was absent.

[10] Exception.

In response to the Rule 30 application, and on 10 February 2023, the Applicant raised an exception saying, the application was vague and embarrassing as the litigation between the parties was already settled – res judicata. In terms of this document, the Applicant notified the Respondent that she takes exception to the application in terms of Rule 30 in that the matter has since been adjudicated upon and is thus res judicata. Further, the document notifies the Respondent that Rule 30 application was an incorrect way of seeking a recourse in matters of this nature.

[11] Rule 23 of the Uniform Rules provides,

“23 Exceptions and applications to strike out

- (1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that —
 - (a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and
 - (b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.
- (2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the aforesaid matter, and may set such application down for hearing within five days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit, referred to in rule 6(5)(f): Provided that —
 - (a) the party intending to make an application to strike out shall, by notice delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and
 - (b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.
- (3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4)Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.”

[12] Although the exception was not set down by way of notice, the following prayers were tabled by the Applicant.

1. The exception be upheld;
2. The Rule 30 application by the Respondent is declared excipiable and is accordingly dismissed.
3. Costs occasioned by the Rule 30 application on an attorney and client scale.
4. The Taxing Master’s rulings shall be enforceable; and the Registrar/Taxing Master is hereby authorised to issue a writ of execution against the Respondent as soon as the allocatur is stamped and signed by the Taxing Master.

[13] On 24 March 2023 the Applicant filed an answering affidavit in order to “amplify its exception and opposition to the Rule 30 application.” From this affidavit, the Applicant refers to the exception dated 10 February 2023 as a “special plea.” What is however clear from the affidavit is that the Applicant believes that Rule 30 application should fail because of the principle of res judicata in which it alluded to a notion that once an order or judgment is granted by court, the matter becomes settled and can only be taken further by way of appeal; and not through Rule 30 application.

[14] The Applicant further submitted that the proper approach was for the Respondent to object to items listed in the bill of costs; which it did not do. The Respondent on the other hand contended that it could not have raised an objection and still make use of Rule 30 application as this could amount to a further step being taken. In the answering affidavit, the Applicant further makes disturbing remarks which appear to be an attack on the opponent’s legal representative. This has been dealt with fully in paragraphs 28 to 37 of this judgment.

[15] It suffices for present purposes to state that the Respondent in a replying affidavit contends that an exception can only be raised against a pleading and not an application. It was further contended that the matter cannot be considered as res judicata until parties have gone beyond the costs allocation by the Taxing Master. The Respondent submits therefore that as long as the costs have not been allocated, Rule 30 of the High Court Rules remains open for any of the litigants.

[16] On 16 February 2023, while this application was pending, the Taxing Master proceeded to tax the Applicant’s bill of costs, prompting the Applicant to submit in its answering affidavit and in the heads of arguments, that this application has become moot. In return, the Respondent submits that the taxing of the bill of costs should be equally set aside together with the Taxation Notice.

[17] Discussion.

The court order dated 18 November 2022 was the basis for the taxation notice and the only source of authority for the Taxing Master to tax the Applicant's bill of costs. There was an exchange of emails between the Respondent and the Applicant with the Respondent

suggesting that the Applicant should consider bringing an application in terms of Rule 42 wherein the order erroneously sought and granted could be varied and corrected. The Applicant on the other hand felt that it had no such duty and that the Respondent could approach the court if it wanted the order varied. The standoff turned on whose duty was it to approach the court for the order to be varied. Before making a determination as to whose duty it is/was, one should first determine if it is/was necessary for the order to be varied.

- [18] The answer on whether it was/is necessary for the order to be varied depends on whether the judgment is clear, unequivocal and not susceptible to more than one interpretation. The order made by the court was written the same way the prayers in the notice of motion were framed. Understandably, those who drafted the prayers in the notice of motion were in the dark as to whether the Respondent would oppose their application hence the wording to the effect, "costs of the suit against the Respondent on an attorney and client scale in the event of opposing the application." At the time the order was made, it was already known by everyone involved as to whether the application was opposed or not.
- [19] By the time an order was granted, the Applicant already knew of the email received from the Respondent, in terms of which the opposition to the application was withdrawn. What is not clear is whether this was communicated to the court at the time of the hearing or not. Moreover, paragraph 8.16 of the Practice Directives of this Division, which came into operation on 03 October 2022 provides that "[s]hould an unopposed matter become opposed, it shall be removed from the unopposed motion roll only when an answering affidavit is served on the applicant and after the parties shall have completed Form B ..."
- [20] Even though the Respondent had served a notice to oppose the application, the matter remained unopposed for as long as no answering affidavit was served and Form B were completed. It is for this reason the matter remained on the unopposed roll of 18 November 2022 even after the notice to oppose the application was served. There are therefore two reasons that make the matter to fall under the category of unopposed applications. The first reason is that in terms of the Directives of this Division, this matter was unopposed even without a Notice of Withdrawal of the opposition to the application, as contemplated by paragraph 8.16 thereof. To put the question beyond any doubt, the Applicant was served with a Notice of Withdrawal of the opposition before the application was heard, thereby constituting a second reason why the matter was unopposed.
- [21] Even if it was accepted that the court order is not susceptible to more than one interpretation on costs, as the Applicant would want the court to believe, then the Applicant would not be entitled to costs because the order is conditional in respect of costs. It awards the costs in the event of opposition by the Respondent. In light of the reasons stipulated above, the conditions did not materialise, meaning, the Applicant would not be entitled to

costs in terms of the court order as it stands. The basis on which the Applicant may still be entitled to costs would therefore be what was tendered by the Respondent. If the Applicant wants more

than that, the order may have to be revisited to remove any vagueness in it. For this reason alone, the court would agree with the Respondent's submission that to seek taxation of the bill of costs while there is no court order providing for costs in favour of the Applicant, is an irregular proceeding that must be set aside.

[22] I am of the view that the duty to have a court order varied is on a party that wants it to work in its favour. In this case, the Applicant is the one who wants the order to be interpreted as allowing certain costs in its favour. The Respondent on the other hand has nothing to benefit from a varied court order. In fact, the Respondent stands to benefit paying no costs from the reading of the order as it stands. For this reason, I hold a view that if any party had a duty and responsibility to approach the court

for the order to be varied, it would be the Applicant. After all, that order was made in her presence in the first place and she should have seen to it that the wording therein is with no ambiguity.

[23] The absence of a court order in which costs are unequivocally awarded to any of the parties creates another hurdle for the Taxing Master. Paragraph 27.5 of the Practice Directives of this Division provides that "[a] party in whose favour costs have been awarded, shall provide the Taxing Master with an order for costs or a written and signed settlement agreement. The Taxing Master shall not proceed with taxation without a court file and an order for costs except in matters which have been settled amongst the parties." One can only wonder as to how the Taxing Master dealt with the provision of conditional costs order. If at the time of the hearing of the application, and on the face value of the order, it appears that the court did not know if the application would be opposed or not (although that stage was already in the past); what would inform the Taxing Master to know if the application was opposed or not in the absence of a clear unequivocal court order explaining such? This lacuna invites the court to have a reason set aside the taxation.

[24] Over and above what has been stipulated so far, there are more reasons why Rule 30 application should be allowed. It is clear from the Applicant's opposition and exception filed thereto that the main reason she is opposed to the application is on the belief that the matter has been settled in line with the principle of *res judicata*. When the matter came for hearing, counsel for the Respondent referred the court to the judgment of *Brenner's Service Station & Garage (Pty) Ltd v Milne and Another*.^[5] In this matter, taxation was set aside as an irregular proceeding in terms of Rule 30 for reasons that are no relevant for purposes of this judgment.

[25] The relevance of the Brenner's judgment is that it refutes the whole argument of *res judicata* merely because the case has gone past the judgment stage. Moreover, the Applicant had submitted in her heads of arguments that she conducted a research to test whether

precedents exist in South African law to guide instances where a party to litigation launches Rule 30 application after the main case is concluded, and found there was none. When this was brought to the Applicant's attention, she conceded for the first time that there was indeed precedence to the effect that Rule 30 application can be brought after a judgment had been delivered.[6] That concession takes away the *res judicata* exception or special plea as it was termed by the Applicant. In any event, Rule 23 clearly provides that exception is a measure that can be raised to a pleading, of which, Rule 30 application is not.

[26] Another concession made by the Applicant when the matter was heard, was to the effect that her Taxation Notice did not resemble Form 26 in that Form 26 does not provide for the dates on which taxation was to take place before the Taxing Master. The concession only took place during the hearing when the court shared a copy of Form 26 using the Teams virtual platform, as it appeared that the Applicant's legal representative could not understand the argument advanced by her opponent in this regard. It was only after the exercise of comparing the taxation notice with Form 26 that for the first time she admitted the differences, but she was quick to submit that the differences were trivial and that the Respondent suffered no prejudice as a result thereof.

[27] Lastly, it is worth mentioning that the Applicant's submission to the effect that instead of bringing the Rule 30 application, the Respondent should have raised objections to items in the bill of costs; is misguided. Rule 30(2) provides that the remedy in this rule shall be available to a party who has not taken further steps in the litigation. Taking a further step such as raising objections to the items listed in the bill of cost would have disqualified the Respondent from raising Rule 30 application.[7]

[28] Costs.

Whereas any party is at liberty to ask for any costs, and the granting thereof remains the discretion of the court,[8] I found it interesting that for the Applicant, attorney and client scale seems to be a bottom low scale from which to start, going even higher, if necessary. Sight seems to have been lost that the normal costs is on party and party scale, and that attorney and client scale is a punitive cost order. Costs on attorney and client scale would not be easily granted by court unless a good cause is shown for the other party to be punished. The reason I raise this is that not only did the Applicant seek costs on attorney and client scale in opposing this application, but also in the main application.

[29] When this application was finally heard, both parties submitted in their heads of arguments that costs should be awarded on attorney and client scale *de bonis propriis* against each other. The reason the Respondent seeks the costs on this extra ordinary punitive scale is because it alleges that the Applicant's legal representative has embarked on a mission to attack, insult and discredit its legal representative. The reasons advanced by the Applicant are to the effect that the Respondent's legal representative started this application while there is no legal basis for doing so. It is necessary to look into the papers as to what the practitioners said in verbatim.

[30] The answering affidavit in opposing the Respondent's application was not deposed to by the Applicant, but by her attorney, Ms. T Bambeni, who also appeared to argue the matter herself. In the affidavit, after attesting to the correctness of the contents and that everything in it falls within her knowledge, Ms. Bambeni started presenting a legal argument on res judicata and how wrong the Respondent was in making use of Rule 30 application. She then said, in making use of Rule 30 to seek the relief it seeks, "the Respondent has acted with intent and malice in so issuing this wrong process." [9]

[31] She went on to say, [10]

"On 6 October 2020 the same attorney representing the Respondent, Ms. Elzanne Jonker, wrote an email to the Applicant's attorney in casu under a different matter informing the Applicant's attorney to make use of an application process under Uniform Rule 42(1)(b) in order to amend a high court judgment..."

If the Respondent's attorney was of the genuine view that a mistake has been captured on the court order issue on the main application of this matter on 18 November 2022 the Respondent would have been advised by its attorneys as per the advice she proffered to its opponent on 6 October 2020 [sic].

In all other instances, generally, where a main case has closed but the judgment debtor feels aggrieved by it they usually make use of appeal or review proceedings to challenge that judgment. This avenue was also available to the Respondent, but it has chosen not to make use of it.

The Respondent has not been properly advised or represented by its attorney in this matter because the Respondent's attorney seeks to create unnecessary delays with frivolous and vexatious litigation, while unduly enriching herself financially at the expense of her very client."

[32] Ms. Bambeni went on to make further wild and unsubstantiated allegations when she alleged,

"[w]ithout ever having taken the legal steps to tie the Taxing Master of this court to its plans of unduly delaying the taxation of the Applicant's bill of costs, several attorneys from the office of the correspondent attorneys of the Respondent made several visits in person, telephone calls and wrote emails to the Taxing Master. The purpose of these visits, calls and emails can only be summed up as seeking to harass, bully and intimidate the Chief Registrar of this court into bending to the will of the Respondent i.e. not proceed to tax a properly and lawfully set down taxation of a bill of costs." [11]

No confirmatory affidavit from the officers alleged to have been bullied or intimidated as alleged were attached. Equally, no emails were attached for the court to read and see if they confirm what she alleged.

[33] Ms. Bambeni had not had enough of these wild and unsubstantiated accusations. She went on to accuse the Respondent's legal representative of "forum-shopping exercise for a specific court" when she chose a date for an urgent application on 14 March 2023 while seeking to protect itself from an event taking place on 03 March 2023. Similar accusations were repeated in the heads of arguments when she said,

"...it forms basic logic that any person feeling aggrieved by conduct of their legal opponent which is set to occur on a specific date would set its irregular step proceedings on a date falling before the date the event causing harm is set to occur on. The Respondent in this matter has failed to do that. Instead the Respondent has opportunistically and maliciously set its hearing dates falling very far after the date they seek protection on as they forum-shopped to have their applications come before a specific judge."

[34] The litigation arena has been crafted in a fashion that leaves no room for the legal practitioners to battle. The only space left out is for the litigants, with the practitioners only helping out their clients to acquire justice through their expertise. It is however not unheard of for the practitioners to be critical of each other's approach or reasoning. This should be done with utmost respect and in a dignified manner and there should be good enough reasons to venture along those lines.

[35] The court cannot countenance the savoury language when used by legal practitioners in this manner. It is unfortunate that Ms. E Jonker allowed herself to be dragged to this level when she in a replying affidavit decided to apply the language similar to her opponent's. Thus, in that affidavit, she responded to a paragraph where the Applicant had hinted that appeal or review were the only measures available once a judgment has been handed down saying, "[a] High Court order is not reviewable. I am surprised that the Applicant's attorney who professed to hold a Masters' degree in law and is an admitted legal practitioner (attorney) is not aware of the facts set out in this paragraph."

[36] Whereas the above may be seen as a retaliation by a provoked party, there is no justification for agreeing to stoop to that level even when provoked, especially when she knew she would be asking the court to punish her opponent for using similar language against her. This kind of language does not promote the decorum that comes with the office the legal practitioners hold as members of the court.

[37] There is no justification for the Applicant to pay costs of this application cannot be burdened with the costs of this application. This application has dragged on and it is at this stage owing to the legal practitioner's understanding or interpretation of the law, which cannot be blamed on the litigant whatsoever. Under normal circumstances, costs flowing from errors committed by a legal practitioner in the interpretation of the law need to be carried by the client as the legal practitioner acts on client's mandate. In this case, I am of the view that a case has been made out for the Applicant's legal representative to be ordered to pay the costs, given the reckless manner in which she made wild and unsubstantiated accusations throughout this application instead of focusing on the litigants' interests and mandate. I however am not convinced that it should be on attorney and client scale as the Respondent

submitted. Costs on a normal scale would suffice.

[38] For the aforesaid reasons, I make the following order:

[38.1] The Applicant's Taxation Notice is declared an irregular step, and is hereby set aside.

[38.2] The taxation done, following the Notice referred to in paragraph 38.1 above, dated 16 February 2023, is equally set aside.

[38.3] The Applicant's exception is dismissed.

[38.3] The Applicant's attorney, Ms. T Bambeni is ordered to pay the costs of this application de bonis propriis on party and party scale.

TV RATSHIBVUMO

ACTING DEPUTY JUDGE PRESIDENT

MPUMALANGA - MIDDELBURG

FOR THE APPLICANT: MS. T BAMBENI INSTRUCTED BY: BAMBENI ATTORNEYS C/O: 201

MIDDLE HEIGHTS MIDDELBURG FOR THE RESPONDENT: ADV. HF BRAUCKMANN

INSTRUCTED BY: MINDE SCHAPIRO & SMITH INC C/O: STROH COETZER INC MIDDELBURG

DATE HEARD: 31 AUGUST 2023

JUDGMENT

DELIVERED: 19 SEPTEMBER 2023

[1] Although this was interchangeably referred to as Rule 30 and Rule 30A, by both parties, the Respondent gave clarity during the hearing to the effect that any reference by it to Rule 30A was an error on its part as it meant to refer to Rule 30. For this reason, there will be no reference in this judgment to Rule 30A but just Rule 30.

[2] See Annexure C on p. 17 of the paginated bundle.

[3] See

p. 19 of the paginated bundle.

[4] See Annexure D on p. 20 of the paginated bundle.

[5] 1983

(4) SA 233 (W).

[6] See also *Olgar v Minister of Safety and Security and Another* 2012

(4) SA 127 (ECG) which is an authority on Rule 30 application being properly instituted at the taxation stage.

[7] See *Klein v Klein* 1993

(2) SA 648 (BG).

[8] Naylor v Jansen 2007

(1) SA 16 (SCA) at 23F-28F.

[9] See paragraph 10 of the answering affidavit on paginated bundle 51.

[10] See paragraph 11-14 of the answering affidavit on p. 50 of the paginated bundle.

[11] See paragraph 17 of the answering affidavit on paginated bundle 52.

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