CASE NO.: A 179/2007

IN THE HIGH COURT OF NAMIBIA

SPECIAL INTEREST

In the matter between:

JACOB ALEXANDER	**APPLICANT**
And	
RUDOLF MBUMBA	**1ST RESPONDENT**
THE INSPECTOR GENERAL OF THE NAMIBIAN POLICE	**2ND RESPONDENT**
THE MINISTER OF JUSTICE	**3RD RESPONDENT**
THE PROSECUTOR-GENERAL	**4TH RESPONDENT**
MAGISTRATE UAATO UANIVI	**5TH RESPONDENT**

CORAM: **MILLER, AJ**

Delivered on: 22 September 2011

JUDGMENT

MILLER, AJ.: [1] This matter was placed before me pursuant to the provisions of Rule 48 of the Rules of this Court in order for me to decide whether or not I should review the allocator made by the taxing Master, Mr. Olivier, on 26 February 2009.

[2] The parties dissatisfied with the ruling of the taxing master are the respondents who were represented by the Government Attorney. They are dissatisfied because the taxing master allowed, as part of the taxation, the fees of the advocates who appeared for the applicants they being Adv. Hodes SC and Adv. Katz. The respondents contend that the advocates who appeared for the applicants, both of whom practice in the Republic of South Africa, had not been granted right of audience to appear for the applicant, in terms of Section 85 (2) of the Legal Practitioners Act, Act 15 of 1995. Consequently so the respondents contend, counsel were not entitled to any fees.

[3] This argument was pertinently raised by the respondents at the taxation and if upheld will have the result that items 24, 27, 28, 30, 31, 32, 34, 37, 38, 44, 45, 46, 66, 67, 68, 69, 89, 92, 110, 111, 112, 113 and 128 to 134 should have been disallowed.

[4] To place the issue in its proper perspective it is necessary to refer to the history of the matter and the context in which it arose.

[5] The applicant is a citizen of the United States of America, but at the relevant time he resided in Namibia. Certain proceedings were instituted in Namibia with the aim of obtaining an order that the applicant be extradited to the United States of America in order for him to stand trial on certain criminal charges preferred against him. These proceedings were strenuously opposed by the applicant resulting in litigation in the magistrate's court, this court and the Supreme Court. In that sense the different cases have as their common denominator the possible extradition of the applicant to the United States of America. The present matter is no different. It concerned an application before Hoff J to review and set aside a decision taken by the first respondent to refuse permission for the applicant to travel to Walvis Bay during the periods 11 – 12 July 2007

and 7-8 August 2007. I pause to mention that the applicant was on bail and that it was a condition of his bail that he required the permission of the first respondent if he wished to leave the district of Windhoek.

[6] It is common cause that on 13 June 2007, the Chief Justice issued a certificate in terms of Section 85(2) of Act 15 of 1995 to Mr. Hodes SC in the following form:

> "I, Peter Shivute, Chief Justice of the Republic of Namibia, hereby, after due consideration of the application filed with me in the matter of:
>
> **The United States of America** APPLICANT
>
> vs
>
> **Jacob Alexander** RESPONDENT
>
> issued a certificate to Peter Borris Hodes, SC.
>
> In terms of Section 85(2) of the Legal Practitioner Act, Act 15 of 1995.
> Thus done and signed at Windhoek this 13th day of June 2007.
>
> **CHIEF JUSTICE"**

A similar certificate was issued in respect of Mr. Katz.

[7] In response to the respondents' argument before the taxing master, the applicant contended that the certificates mentioned above were sufficient to give Mr. Hodes SC and Mr. Katz the right of audience in all proceedings related to the extradition proceedings against the applicant. The respondent's counter

argument was that a separate certificate was required for each separate piece of litigation. The fact that the matters are inter-related is neither here nor there it was contended.

[8] The taxing master as I indicated ruled in favour of the applicant. The ruling after I had corrected some grammatical errors, reads as follows:

> "Certificate in terms of Rule (sic) 85(2) of the Legal Practitioners Act, Act 15 of 1995 which were issued for the right of appearance of Messrs Katz and Hodes from the Republic of South Africa during the application. a) Bail
> b) Extradited of Mr. Jacob Alexander still stands".

[9] Section 85(2) reads as follows:

> "(2) where the Chief Justice, or in his absence, the Judge-President is satisfied that, having regard to the complexity or special circumstances of a matter, it is fair and reasonable for a person to obtain the services of a lawyer who has special expertise relating to the matter and that the lawyer is not resident in Namibia or a reciprocating country, he or she may, upon application made to him or her on that behalf grant to such lawyer a certificate authorizing him or her to act in Namibia in relation to the matter".

[10] Section 85(3) prohibits a lawyer from engaging in the practicing of law "...except in relation to the matter for which the certificate was granted".

[11] The word “matter” is of wide and general import. In ***Ebrahim’s Estate vs Inanda Rural Licensing Board 1953 (4) SA 490 (N), Broome JP*** said the following at p. 493.

> “In my opinion the word “matter”, a word of loose meaning, was not intended to refer merely to the case itself, taken as a whole; it was intended to include (perhaps inter alia) any interlocutory application in the course of a case.”

[12] In the instant case the “matter” is the judicial process launched in Namibia by the United States of America to have the applicant extradited to that country. The process may in given circumstances involve one or more different or separate proceedings, but they all remain part and parcel of the same process. A reading of the certificate issued by the learned Chief Justice correctly reflects that. The certificate does not confine the right of appearance with reference to a specific case. Instead it is widely worded and refers to the matter between the United States or the applicant, being clearly, the matter of the applicants extradition.

[13] It follows in my view that the taxing master was correct in not upholding the respondents contentions.

[14] There is in my view another reason why the respondents must fail. The order made by Hoff J on 6 August 2007, reads as follows:

"Having heard Adv. P. Hodes SC, assisted by Adv. A. Katz for the applicant, and Mr. N. Marcus, Counsel for the First, Second and Fourth Respondents and the Minister of Home Affairs, and having read the papers filed of record, it is ordered that:

1. Full and proper compliance with the Rules and the relevant practice directives of this Court relating to service and time limits be dispensed with in view of the urgency of the matter.
2. The decision of the first respondent taken on 6 July 2007 to refuse the applicant permission to travel to the Walvis Bay district during the periods 11-12 July 2007 and 7-8 August 2007 is reviewed and set aside.
3. The applicant is allowed to travel to, and from the Walvis Bay district, and to remain there and in the Swakopmund district for the period 7-8 August 2007 subject to the applicant reporting to the Walvis Bay police station between 18h00 and 19h00 on the 7th August 2007 and between 8h00 and 9h00 or the 8th of August.
4. The condition of the applicants' bail imposed on 3 October 2006 that the applicant not leave the Windhoek district without the permission of the first respondent is amended to permit the applicant to leave the Windhoek district on 24 hours written notice to the first respondent.
5. The application for leave to intervene by the Minister of Home Affairs is dismissed.
6. The Registrar of this Court is hereby requested to immediately fax this Court order to the Station Commander of Walvis Bay.
7. The first, second, third and fourth respondents and the Minister of Home Affairs are ordered to pay the applicants costs jointly and severally, the one paying the others to be absolve, which costs are to include those attendant upon the employment of one instructing legal practitioner and two instructed counsel".

[15] What in effect the respondents required the taxing master to do was to vary paragraph 7 of the Courts order by deleting the words "... and two instructed counsel."

Rule 70 of the Rules of this Court sets out the powers and functions of a taxing master when he or she is called upon to tax a bill of costs. These do not entitle the taxing master to vary or rescind any order relating to costs made by the court.

[16] The respondents clearly misconstrued their remedy. If the order made by Hoff J relating to costs was granted in error the respondents ought to have availed themselves of the remedies contained in the common law or in Rule 44 of the Rules of this Court.

[17] The application to review the taxing master's decision is dismissed.

[18] Neither party required of me to make any order as to costs in terms of Rule 48(3). I shall therefore make no such order.

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MILLER AJ