



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT (*IN CHAMBERS*)

Case no: A 121/2015

In the matter between:

MAUNDJA KAURA

FIRST APPLICANT

GODFRIEDINE KAURA

SECOND APPLICANT

NAOMI UPINGASANA

THIRD APPLICANT

EMILIE KANDOZOVAZU

FOURTH APPLICANT

ADOLF RIRUAKO

FIFTH APPLICANT

And

TAXING MASTER OF THE HIGH COURT

FIRST RESPONDENT

UEITELE AND HANS INC.

SECOND RESPONDENT

Neutral citation: *Kaura v Taxing Master of the High Court* (A 121/2015) [2016]
NAHCMD 138 (10 May 2016)

Coram: PARKER AJ

Delivered:: 10 May 2016

Flynote: Costs – Taxation – Review of taxation – Grounds for review based primarily on common law grounds and on grounds wider than common law grounds – Court held that court ought not to interfere with taxing officer's exercise of discretion where applicant in his or her request to taxing officer to state a case did not set forth grounds of objection advanced at taxation and did not include any

finding of fact by the taxing officer – In that event there would be no grounds placed before the court upon which court may determine that taxing officer has exercised his or her discretion wrongly – Principles in *Pinkster Gemeente van Namibia v Navolgers van Christus Kerk SA* 2002 NR 14 applied.

Summary: Costs – Taxation – Review of taxation – Grounds for review based primarily on common law grounds and on grounds wider than common law grounds – Court held that court ought not to interfere with taxing officer's exercise of discretion where applicant in his or her request to taxing officer to state a case did not set forth grounds of objection advanced at taxation and did not include any finding of fact by the taxing officer – In that event there would be no grounds placed before the court upon which court may determine that taxing officer has exercised his or her discretion wrongly – In instant case applicants aver they were dissatisfied with ruling of the taxing officer on items 6, 12, 13 and 17 in the respondents' bill of costs – Applicants requested taxing officer to state a case for decision of a judge – Court found that in their request, applicants failed to set out the items together with grounds of objection advanced at the taxation and also failed to include any finding of fact by the taxing officer – Consequently, court not in a position to determine whether taxing officer exercised his discretion wrongly – In that event court not prepared to interfere with the rulings of the taxing officer on the items applicants were dissatisfied with – Consequently, application dismissed.

ORDER

- (a) The application is dismissed.
- (b) The rulings by the taxing officer, allowing or disallowing items, are confirmed.
- (c) I make no order as to costs.

JUDGMENT

PARKER AJ:

[1] This is a review of taxation brought in terms of rule 75 of the rules of court. The bill of costs was taxed before the taxing officer and an *allocatur* issued on 22 July 2015. The bill was that of the first and second respondents ('the respondents') in a matter brought by the applicants against, *inter alios*, first and second respondents.

[2] At the taxation the applicants were represented by their legal representatives, and the respondents by their legal representatives. The applicants, being dissatisfied with the taxation, delivered a notice on 10 August 2015, calling on the taxing officer to state a case for the decision of a Judge on matters mentioned in the notice. The stated case was placed before the court for decision. The starting point to a consideration and determination of the review of the taxation are the following important principles.

[3] If the costs have been awarded on a party-and-party basis, the taxing officer is required to 'allow all such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred same, no costs shall be allowed which appear to the Taxing Master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, or special charges and expenses to witnesses or to other persons or by other unusual expenses'.

(*Pinkster Gemeente van Namibia v Navolgers van Christus Kerk SA* 2002 NR 14 at 15G-H)

[4] At every taxation the taxing officer is the officer of the court having the power to decide which costs to allow by bringing an objective evaluation on the basis of the stipulated criteria to bear on the bill; and so, during taxation the taxing officer ought to ensure that only the costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice and fairness are allowed.

[5] Thus, in taxation of costs, the taxing master exercises a discretion. In that regard the court may interfere with the taxing officer's decision if he or she has not exercised his or her discretion judicially; if he or she has not brought his mind to bear upon the question; or he or she has disregarded important matters and taken into account extraneous matters, or he or she has acted on the basis of a wrong principle. These are common law grounds of review so succinctly enunciated in the landmark case of *Johannesburg Consolidated Investment Co (JCI) v Johannesburg Town Council* 1903 TS 111 at 116. And, as Maritz J stated in *Pinkster Gemeente van Namibia* at 17B-C -

'It should be borne in mind, however, that the review of the Taxing Master's decision on taxation is one going beyond the rather narrow common law parameters of judicial review applicable to the acts or omissions of public bodies. It is by its nature a review denoting "a wider exercise of supervision and a greater scope of authority than those which the Court enjoyed" under either the review of the proceedings of lower courts or of public bodies acting irregularly, illegally or in disregard of important provisions of statute.'

[6] And it has also been said -

'[T]he court, therefore, has the power to correct the Taxing Master's ruling not only on the grounds stated in *Shidiack's* case, but also when it is clearly satisfied that he was wrong. Of course, the Court will interfere on this ground only when it is in the same or in a better position than the Taxing Master to determine the point in issue.'

(*JCI* at 116, cited with approval by Maritz J in *Pinkster Gemeente van Namibia* at 17E.)

[7] In the instant case, it cannot seriously be argued that the court should interfere on the basis of *Shidiack's* case (*Shidiack v Union Government (Minister of Interior)* 1912 AD 642) or on the basis that the court 'is clearly satisfied that he (the taxing officer) was wrong' (see *Pinkster Gemeente van Namibia*), when the applicant did not, as can be seen from the 'Review of Taxation' filed on 10 August 2015 that the applicants did not 'set out ... grounds of objection advanced at the taxation' and did not 'include any finding of fact by the taxing officer (master)' respecting the items the applicants complain about, as peremptorily required by subrule (2), read with subrule (1), of rule 75 of the rules of court.

[8] What the applicants filed some eight months later, ie on 14 April 2016, was clearly an afterthought. I issued an order on 16 March 2016 not to give the applicants an opportunity to do that which they should have done in August 2015. It was to establish that the applicants did not comply with the peremptory requirements of prescribed by subrule (2), read with subrule (1), of rule 75 of the rules of court. If the applicants had, in their request of 10 August 2015 to the taxing officer to state a case, set out each item together with the grounds of objection advanced at the taxation and had included any finding of fact by the taxing officer, applicants' legal representatives would have simply referred the court to the 10 August 2015 'Taxation of Review', and would not have seen the need to sanitize the 10 August 2015 'Taxation of Review' by submitting the 14 April 2016 'Review of Taxation'.

[9] All this supports my finding that when by the 'Review of Taxation' filed on 10 August 2015 the applicants requested the taxing officer to state a case for decision of a judge, the applicants did not 'set out each item' 'together with the grounds of objection advanced at the taxation' and did not 'include any finding of fact by the taxing officer', as the applicants 'must' do, within the meaning of subrule (2), read with subrule (1), of the rules of court. That being the case, this court is unable to say that 'it is clearly satisfied that he (the taxing officer) was wrong'. Furthermore, the

court is not able to say that 'it is in the same or in a better position than the Taxing Master (Officer) to determine the points in issue'. (See *Pinkster Gemeente van Namibia*, at 17D-E.)

[10] It follows reasonably that where a party, who is dissatisfied with the ruling of the taxing officer as to any item or part of an item, which was objected to or disallowed *mero motio* by the taxing officer, requests the taxing officer to state a case for the decision of a judge and fails to set out in the request each such item or such part of an item together with the grounds of objection advanced at the taxation or fails to include any finding of fact by the taxing officer, the court ought to decline to interfere with exercise of discretion by the taxing officer simply because there would be no grounds placed before the court, as is the case in the instant proceeding, upon which the court may interfere with the taxing officer's exercise of discretion on the basis that the taxing office has exercised his or her discretion wrongly. In that event, the court should decline to interfere with the rulings of the taxing officer on any such item or such part of an item.

[11] Based on the foregoing reasoning and conclusions on the applicants' failure to comply with the peremptory requirements prescribed by subrule (2), read with subrule (1), of rule 75 of the rules of court, I cannot fault the taxing officer's exercise of discretion. Consequently, I decline to interfere with the taxing officer's rulings on items 6, 12, 13 and 17 mentioned in the 'Review of Taxation'; whereupon I make the following order:

- (a) The application is dismissed.
- (b) The rulings by the taxing officer, allowing or disallowing items, are confirmed.
- (c) I make no order as to costs.

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C Parker
Acting Judge

APPEARANCES

APPLICANTS: E K Kasuto
Of Kasuto Law Chambers, Windhoek

FIRST RESPONDENT: Taxing Master (Mr I Shikuambi)
Of High Court Main Division, Windhoek

SECOND RESPONDENT: D Hans-Kaumbi
Of Ueitele & Hans Inc., Windhoek