

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

STATED CASE IN TERMS OF
REVIEW

RULE 75 : TAXATION

RULING

<p>Case Title: HORST BAUMANN</p> <p>VS</p> <p>THE CHAIRPERSON OF THE COUNCIL OF THE MUNICIPALITY OF THE CITY OF WINDHOEK</p>	<p>Case No: HC-MD-CIV-MOT-GEN-2021/00263</p>
	<p>Division of Court: HIGH COURT (MAIN DIVISION)</p>
<p>Heard before: HONOURABLE MR JUSTICE COLEMAN</p>	<p>Ruling delivered : 16 March 2022</p>
<p>Neutral citation: <i>Horst Baumann v The Chairperson Of The Council Of The Municipality Of The City Of Windhoek.</i>(HC-MD-CIV-MOT-GEN-2021/00263) [2022] NAHCMD 117 (16 March 2022)</p>	
<p>IT IS ORDERED THAT:</p> <p>1. The taxing officer’s refusal to apply the tariffs under Section B of Annexure E in respect of the applicable services rendered to third respondent herein is set aside;</p> <p>2. The matter is referred back to the taxing officer with the direction to apply the tariffs</p>	

under Section B of Annexure E where applicable and consider whether each of the fees are necessary and reasonable; and

3. No order as to costs.

Following below are the reasons for the above order:

Introduction

[1] This is a review of the *allocator* by the taxing officer Ms Meriam Chukwunweolu issued on 27 October 2021. In this *allocator*, she taxed nine items down to the tune of N\$ 57, 876.

[2] My understanding is that Mr Nixon Marcus acting on behalf of third respondent herein did not employ a separate instructed counsel but instead acted as such. The question is now whether he is entitled to charge under the tariffs for instructed counsel? The cost order herein does not make provision for instructing and instructed counsel.

[3] In the matter of *Development Bank of Namibia Ltd v Vero Group CC* (HC-MD-CIV-CON-2021/02716) [2022] NAHCMD 50 (11 February 2022), Mr Justice Masuku found that when the scale is agreed on an attorney and own client scale it includes the costs of instructed counsel even though the cost order does not mention it.

[4] In addition, in his book, *Court-Managed Civil Procedure of the High Court of Namibia*, Juta 2020 at paragraph 14-011 (pages 350-351), Judge President Damaseb writes as follows:

‘In Namibia, a litigant uses the services of either one or more legal practitioners. If a party has used the services of one legal practitioner and it is successful, the normal cost order is of ‘one counsel’ (or ‘one legal practitioner’). In that situation, the practitioner is both legal practitioner of record and also responsible for the advocacy of the case as instructed legal practitioner (or instructed counsel).’

[5] My interpretation of this statement is that if a legal practitioner acts as both legal practitioner of record and ‘advocate’ he or she is considered both instructing and instructed

counsel. If this is correct, it follows that there is no need for a court order authorizing costs for instructing and instructed counsel and the legal practitioner is entitled to charge in terms of the fees prescribed for instructed counsel.

[6]. For this reason, I agree with Mr Marcus that the taxing officer did not exercise her discretion properly in this context. She erred in her assumption that a legal practitioner acting on her or his own as both legal practitioner of record and 'advocate' is not entitled to the fees prescribed for instructed counsel.

Costs

[7] No order as to costs.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondents
N Marcus <i>of</i> Nixion Marcus Public Office, Windhoek	Z. Duvenhage Fisher, Quarmby & Pfeifer, Windhoek and The Taxing Master of the High Court of Namibia, Windhoek