

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA

RULING IN CHAMBERS

PRACTICE DIRECTIVE 61



MAIN DIVISION, WINDHOEK

Case Title: DR KAZUVIRE VEII // DAJA PROPERTY DEVELOPERS CLOSE CORPORATION	Case No: HC-MD-CIV-ACT-CON-2020/05002
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: PARKER, AJ	Date Determined: 10 MAY 2023
	Delivered on: 7 JUNE 2023
Neutral citation: <i>Dr Veii v Daja Property Developers Close Corporation</i> (HC-MD-CIV-ACT-CON-2020/05002) [2023] NAHCMD 299 (7 June 2023)	
The order: <ol style="list-style-type: none">1. The application is dismissed.2. There is no order as to costs.3. The matter is finalised and removed from the roll.	
Reasons for the above order:	
<p>[1] This application is brought in terms of rule 75(1) of the rules of court to review the taxation of costs issued on 7 December 2022 by the taxing officer in an action under Case No. HC-MD-CIV-ACT-CON-2020/05002. In the present review application, the defendant is the applicant and the plaintiff is the first respondent and the taxing officer the second respondent. The defendant (applicant), being dissatisfied with the ruling of the taxing officer as to items objected to or disallowed requested the taxing officer to state a case for the</p>	

decision of a judge. And the respondent and the applicant had submitted their written contentions in compliance with rule 75(4) of the rules of court.

[2] The key principles applicable to the determination of such applications include the following:

[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”.¹

¹ *Kaura v Taxing Master of the High Court* (A 121/2015) [2016] NAHCMD 138 (10 May 2016).

[3] The trite foundational principle on review of exercise of discretion is this. The principles justifying interference by a reviewing (or appeal) court with the exercise of discretion is circumscribed.² If the discretion has been exercised on judicial grounds and for a sound reason, that is, without caprice or bias or the application of a wrong principle, the reviewing court will be very slow to interfere and substitute its own decision.³ Doubtless, the taxing officer exercises discretion in taxation of costs in terms of rule 125(3) of the rules of court.

[4] As it is with any applicant who challenges by judicial review the validity of a decision by an administrative body or official and an inferior court or tribunal, for an applicant who brings an application to review taxation of costs by a taxing officer to succeed, he or she must establish that good grounds exist to review the taxing officer's taxation of costs.⁴ In that regard, it is well to remember that such applicant bears even a more onerous burden. The reason is that a taxing officer, compared with an administrative body, an administrative official, an inferior court and an inferior tribunal, exercises by far a wider discretion.⁵

[5] On the papers, I accept the taxing officer's conclusion that her decision whereby certain items were allowed or disallowed in their entirety and certain items had the claimed amounts there reduced was based on agreement between the parties or concessions made by one party or another. In that regard, it should be emphasised, 'where an item was not objected to at the taxation, an objection cannot be raised afterwards.'⁶

[6] On the facts and in the circumstances, I cannot say that the taxing officer's exercise of discretion was wrong. Indeed, I find that she exercised her discretion on judicial grounds and for a sound reason.⁷ *A priori*, I conclude that the applicant has failed to establish that good grounds exist to review the taxation of costs.⁸

[7] Based on the foregoing reasons, I cannot review the taxing officer's decision without offending *Paweni and Another*;⁹ and *Transnamib Holdings Ltd*.¹⁰ The application stands to be

² *Transnamib Holdings Ltd v Stocks & Stocks Leisure (Namibia Ltd & Others)* 2021 (2) NR 497 (SC) para 58.

³ *Paweni and Another v Acting Attorney-General* 1985 (3) SA 720 (ZS) at 724H-J.

⁴ See *Christian v Metropolitan Life Namibia Retirement Annuity Fund* 2008 (2) NR 75 (SC) para 15.

⁵ See *Pinkster Gemeente van Namibia v Novolgers van Christus Kerk* SA 2002 NR 14 (HC) at 17B-C.

⁶ *Dietmar Dannecker v Leopard Tours Car and Camping Hire CC & Others* [2021] NAHCMD 496 (27 October 2021).

⁷ See *Paweni v Acting Attorney-General* footnote 3; and *Transnamib Holdings v Stocks and Stocks Leisure (Namibia) Ltd & Others* footnote 2.

⁸ *Christian v Metropolitan Life Namibia Retirement Annuity Fund* footnote 4.

⁹ See footnote 3.

refused. In the result, I order as follows:

1. The application is dismissed.
2. There is no order as to costs.
3. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant/Defendant	First Respondent/Plaintiff
J TJIZO of Jerhome Tjizo & Co. Inc., Windhoek	S F MARITZ of Dr Weder, Kauta & Hoveka Inc., Windhoek

¹⁰ See footnote 2.