

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF
WINDHOEK



NAMIBIA MAIN DIVISION,

RULING

PRACTICE DIRECTIVE 61

Case Title: M COFFEE-LIND & ASSOCIATES PLAINTIFF and CJ INVESTMENTS 97 (PTY) LTD DEFENDANT	Case No: HC-MD-CIV-ACT-CON-2022/04820 Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE LADY JUSTICE PRINSLOO	Date of hearing: Determined on the papers Delivered on: 10 May 2024
Neutral citation: <i>M Coffee-Lind & Associates v CJ Investments 97 (Pty) Ltd</i> (HC-MD-CIV-ACT-CON-2022/04820) [2024] NAHCMD 220 (10 May 2024)	
Results on merits: Merits not considered.	
The order: 1. The application for the review of the allocatur of the taxing officer is dismissed/ unsuccessful. 2. There is no order as to costs. 3. The matter is removed from the roll and regarded as finalised.	
Reasons for orders:	
Prinsloo J:	

Introduction

[1] This application is brought in terms of rule 75(1) of the rules of court to review the taxation of costs on the items objected to or disallowed by the taxing officer during taxation, which was held on 24 October 2023.

[2] The plaintiff seeks to review items 1 to 10 of the Bill of Costs. According to the plaintiff items 1 to 10 are fees in respect of taking instructions, drawing particulars of claim, creating the case on E-justice and instructions for service of summons to the deputy sheriff.

[3] The taxing officer disallowed the foregoing items and based her decision for disallowing those fees on the provisions of s A 3(b) of Annexure D, which provides for the tariff of fees for instructing legal practitioner on a scale as between party and party as an all-inclusive fee for an application for default judgment in any claim for damages as N\$ 6000.

[4] The plaintiff, being dissatisfied with the ruling of the taxing officer as to the items objected to or disallowed, requested the taxing officer to state a case for the decision of a judge. Since this is an unopposed default judgment only, the plaintiff submitted its written contentions in compliance with rule 75(4) of the Rules of Court.

The stated case in terms of rule 75(1) that served before the taxing officer

[5] In her stated case, albeit briefly, in terms of rule 75, the taxing officer, after making reference to s A 3(b) of Annexure D, contended that this section forms the basis for her decision and that in the absence of good cause shown, she is of the view that she exercised her discretion judiciously.

Submissions by the plaintiff

[6] The plaintiff disputes the factual basis behind the reasons advanced by the taxing officer and submits that on the reading of the provisions of s A (3)(b), all fees for the professional legal services rendered in respect of the application for default judgment in claims for damages are capped at N\$6000. According to the plaintiff, action proceedings involve various phases, the application for default judgment being the second phase in an undefended action.

[7] The plaintiff contends that the fees capped in s A 3(b) are fees incurred only in respect of the application for default judgment and not fees incurred in the entire suit. It further submits that the fees incurred in relation to instituting the claim up to obtaining instructions to move for default judgment are, therefore, not subject to s A 3(b).

[8] According to the plaintiff, the court awarded costs of the entire suit and not only costs of the application for default judgment. Despite this, the allocator issued by the taxing master does not fully indemnify the plaintiff for all costs reasonably incurred in respect of the claim. Subsequently, the taxing officer misinterpreted s A 3(b) and, therefore, failed to exercise her discretion judiciously.

Issue for determination

[9] Whether the taxing officer failed to exercise her discretion judiciously in the determination of the bill of cost.

Applicable legal principles and discussion

[10] The applicable annexure of the High Court tariffs relevant to this matter is:

'ANNEXURE D

TARIFF OF FEES FOR INSTRUCTING LEGAL PRACTITIONER ON A SCALE AS BETWEEN PARTY AND PARTY

SECTION A.

TARIFF OF FEES OF A LEGAL PRACTITIONER ON A PARTY AND PARTY BASIS IN MATTERS CONTEMPLATED IN RULE 124(1)

The fees stated in the table below are, unless on good cause shown and specifically otherwise ordered by the Court, considered to be the reasonable fees for the professional legal services rendered and an all-inclusive fee which fee includes taking instructions, all consultations, drafting, perusals, attendances, telephone calls, copies and appearances, but excludes fees for service of process and court fees.

FEE
N\$

...

3 An application for judgment by default	
(a) without a claim for damages	5
000.00	
(b) on any claim for damages	6 000.00

... ' (my emphasis)

[11] In *Afshani v Vaatz*,¹ the court postulated that the reviewing court would not readily interfere with the discretion of the taxing officer unless he or she has not exercised his or her discretion judicially but has done so improperly or has not brought his or her mind to bear upon the question or has acted on a wrong principle.

[12] Angula DJP in *Kamwi v Standard Bank of Namibia Limited*² stated that:

'The legal principles applied by the courts, over the years are that: the taxing officer has a discretion, to be judicially exercised, in allowing or disallowing items on a bill of costs. Such discretion must be exercised reasonably and justly on sound legal principles. In the exercise of such discretion, the taxing officer must ensure that the unsuccessful litigant is not unduly oppressed by having to pay excessive amount in costs. If the taxing officer fails to exercise his discretion correctly, the court has a duty to interfere.'

[13] Having considered the taxing officer's stated case, it is clear that she had regard to the court order, and having read it together with the provisions of Annexure D, as fully quoted above, she concluded that the all-inclusive fee of N\$6000 is the payable fee due to the plaintiff.

[14] As I indicated earlier, Annexure D clearly stipulates that 'the fees stated in the table below are, unless on good cause shown and specifically otherwise ordered by the Court, considered to be the reasonable fees for the professional legal services rendered and an all-inclusive fee which fee includes taking instructions, all consultations, drafting, perusals, attendances, telephone calls, copies and appearances, but excludes fees for service of process and court fees.'

[15] After careful consideration of Annexure D and the applicable legal principles, I disagree with the plaintiff's contentions that the court awarded costs of the entire suit, and not only costs of the application for default judgment and the further contention that the allocator issued by the

¹ *Afshani v Vaatz* SA 01-2004 [2007] NASC 18 October 2007.

² *Kamwi v Standard Bank of Namibia Limited* (A 101/2011) [2018] NAHCMD 196 (29 June 2018) at para 7.

taxing officer does not fully indemnify the plaintiff for all costs reasonably incurred in respect of the claim.

[16] I say so because, in my view, the provisions of Annexure D are clear and find applicability in this matter. No exceptional circumstances were brought forth by the plaintiff for the taxing master to depart from the provisions in the tariffs, more specifically Annexure D. In the absence of that, I find that the taxing officer exercised her discretion judiciously and in accordance with the guidelines outlined in Annexure D and that the allocator issued by the taxing officer does fully indemnify the plaintiff for all costs reasonably incurred in respect of their claim. Therefore, and for the reasons stated above, the court will not interfere with the taxing officer's decision.

Conclusion

[17] I am of the view that the taxing officer exercised her discretion properly and therefore, the review of the allocator issued by the taxing officer is thus unsuccessful.

[18] In the result, I make the order as set out above.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
U Katjipuka-Sibolile Of Nixon Marcus Public Law Office Windhoek	No appearance