



**NOT REPORTABLE**

CASE NO: SA 36/2016

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY  
AUTHORITY**

**Applicant**

and

**HENDRIK CHRISTIAN t/a HOPE FINANCIAL SERVICES**

**Respondent**

**Coram:** FRANK AJA

**Heard:** IN CHAMBERS

**Delivered:** 20 October 2020

**Summary:** The Supreme Court upheld an appeal by the respondent in which a costs order limited to disbursements was awarded. Respondent (a self-actor) prepared a bill of costs amounting to N\$602 664,70 which was submitted to the taxing master for taxation. The taxing master issued an *allocatur* on 17 March 2020 in the amount of N\$164 605,02. The applicant is seeking a review of this *allocatur* in terms of rule 25(3) of the Rules of the Supreme Court. The review application was filed on 14 May 2020, more than 21 days subsequent to the issuing of the *allocatur*. It was the

taxing master's submission that the review should not be entertained for the reason that it was filed outside the prescribed time period.

During the taxation process, arrangements were made between the parties for the parties to file their written objections to the bill of costs on 12 March 2020 at 14h15 for the applicant and at 16h00 of the same day by the respondent. Both parties failed to meet their agreement and the taxing master proceeded to tax the bill of costs presented to him without the parties' written objections. Due to their failure, the only objection before the taxing master was the issue that the applicant's legal practitioner was not properly authorised to represent it at the taxation. This objection was correctly overruled and dismissed by the taxing master. On 17 March 2020, the taxing master conducted the taxation on an item per item basis without any written objections on behalf of Namfisa.

In terms of rule 25(3), this court can only review an item in a bill of costs if there was an objection to such item. Applicant's purported notice in terms of rule 25(3) had failed to advance the case properly for review. The notice simply stated the items objected to, without giving any acceptable reasons for such objections.

*Held that*, the taxing master overlooked the fact that the Covid – 19 pandemic resulted in a State of Emergency being declared countrywide which also caused the Chief Justice to publish directions relating to judicial proceedings.

*Held that*, in terms of directive 9, the computation of any time limit shall exclude 'the entire lockdown period' which included the 21 day period referred to in rule 25(3). This means that the application for review was filed timeously and cannot be ignored as being out of time.

*Held that*, the taxing master has discretion on taxation. The court will not interfere with this discretion unless it has been exercised improperly, or a question in issue was not considered or the wrong principle was applied. Additionally, for the decision of the

taxing master to be reviewed, it is important that the objections and the submissions made at the taxation be included in the review so that the exercise of the discretion by the taxing master can be assessed in this context.

*Held that*, it is generally not open to an applicant in a taxation review to raise new facts or considerations which were not raised at the taxation. Rule 25(3) is designed to review the decision of the taxing master on the basis of what was presented to him or her at the taxation. The only other matter that can, as a general rule, be raised for the first time on review is expressly provided for in rule 25(3) which stipulates that apart from items in respect of which there were objections, a party can also review an item 'disallowed by the taxing master of his or her own accord'.

*Held that*, since there were no such objections made in the present matter, it means there is nothing to review.

*Held further that*, the review of the *allocatur* issued by the taxing master on 17 March 2020 is dismissed.

The application for review fails.

---

## REVIEW JUDGMENT

---

FRANK AJA:

[1] The respondent was the successful party in an appeal where the applicant was the opposing party. The Supreme Court upheld the appeal by respondent and awarded him costs 'in the form of disbursements'. As it is evident from the judgment

on appeal<sup>1</sup> the costs order was limited to 'disbursements' as the respondent 'appeared in person' and hence accepted 'that costs in the form of disbursements will be appropriate'.

[2] Armed with the costs order in his favour the respondent drew up a bill of costs reflecting a total amount of N\$602 664,70 which he submitted for taxation by the taxing master. This the taxing master did whereafter he issued an *allocatur* in the amount of N\$164 605,02.

[3] The applicant, Namibia Financial Institutions Supervisory Authority (Namfisa) is seeking to review this *allocatur* which was made on 17 March 2020.<sup>2</sup> The intended review was filed on 14 May 2020 and the taxing master submits that this is more than 21 days subsequent to the issuing of the *allocatur* and was thus filed out of time and the review should not be entertained for this reason.

[4] The taxing master overlooked the fact that the Covid – 19 pandemic resulted in a State of Emergency being declared countrywide which also caused the Chief Justice to publish directions relating to judicial proceedings.<sup>3</sup> In terms of directive 9 thereof, the computation of any time limit shall exclude 'the entire lockdown period' which included the 21 day period referred to in rule 25(3). This means that the application for review was filed timeously and cannot be ignored as being out of time.

---

<sup>1</sup> *Christian t/a Hope Financial Services v Namibia Financial Institutions Supervisory Authority* 2019 (4) NR 1109 (SC) para 69.

<sup>2</sup> Rule 25(3) of the Supreme Court.

<sup>3</sup> Directions relating to judicial proceedings issued by the Chief Justice in terms of regulation 13(1) of the State of Emergency COVID – 19 Regulations, GN 90, GG 7160, 31 March 2020.

[5] The matter was set down for taxation on 11 March 2020. The respondent appeared in person at the taxation whereas a legal practitioner appeared on behalf of the applicant. The taxation was intended to deal with two bills of costs namely one in the High Court (Case No. A 244/2010) and the successful appeal emanating therefrom in the present matter (Case No. SA 36/2016). The first issue raised by the taxing master was to establish whether the respondent was an admitted legal practitioner. This simple factual question took a while as the respondent evaded the question in an attempt to suggest that although he was not an admitted legal practitioner, he was also not a layperson as he has certain qualifications. The taxing master quite correctly was not swayed by this approach. Whatever his qualifications, the respondent acted in person and hence the order in his favour for necessary and reasonable disbursements only.<sup>4</sup>

[6] The respondent also questioned whether the person who stated he was the legal practitioner of the applicant was properly authorised to appear on behalf of Namfisa at the taxation. The taxing master ruled against the respondent on this score and the taxation could thus proceed. At this stage there was a break in the proceedings as the taxing master temporarily excused himself from the proceedings. On his return the following happened, I quote from the record:

'MR CHRISTIAANS: We the parties agreed that Mr Haraseb the Counsel for Namfisa will take a bill of cost and make his objections in writing, and tomorrow 14:15 he will serve the papers on me, or I will collect at the office of Laurens & Angula (sic) the objected bill of costs.

---

<sup>4</sup> *Standard Bank Namibia Limited v Nationwide Detectives and Professional Practitioners CC* (I 2051/2007) [2013] NAHCMD 200 (17 July 2013).

MR SHIKWAMBI: Okay.

MR CHRISTIAANS: And then I will do a summary as a response to the objections.

MR SHIKWAMBI: Yes.

MR CHRISTIAANS: And deliver that 16:00 at the Taxing Master.

MR SHIKWAMBI: Okay tomorrow?

MR CHRISTIAANS: And we expect that by Friday the Taxing Master will come out of this (indistinct). That is how we agreed.

MR SHIKWAMBI: Not that is good for me. Let us just stick to our agreement, thank you so much (inaudible).'

[7] After the discussion quoted above the meeting adjourned. For completeness sake it should be mentioned that the taxation was meant to take place on Wednesday, 11 March 2020. This meant the legal practitioner of Namfisa would indicate his objections to the bill of costs presented by the respondent by 14h15 on Thursday, 12 March 2020. Respondent would respond to the objections in writing by 16h00 on the same day (ie Thursday) and it was contemplated that the taxing master would, somehow, deal with the matter on Friday 13 March 2020.

[8] The parties did not file the written objections and/or submissions and the taxing master proceeded to tax the bill of costs presented to him and on 17 March 2020 issued an *allocatur* in the amount of N\$164 605,02. Because of the parties' failure to adhere to their own arrangement referred to above, no objections were raised on an item per item basis when the taxing master went ahead and taxed the bill of costs without any objections on behalf of Namfisa.

[9] In terms of rule 25(3) of this court a party can only review an item in a bill of costs if there was an objection to such item.<sup>5</sup> As there was no such objections made in the present matter it means there is nothing to review.

[10] The taxing master has a discretion when it comes to taxation and this discretion will not be interfered with unless it has been exercised improperly, or a question in issue was not considered or the wrong principle was applied.<sup>6</sup> In addition, for the decision of the taxing master to be reviewed, it is important that the objections and the submissions made at the taxation be included in the review so that the exercise of the discretion by the taxing master can be assessed in this context. It is generally not open to an applicant for review to raise new facts or considerations which was not raised at the taxation.<sup>7</sup>

[11] The notice filed on behalf of Namfisa that purports to be a rule 25(3) notice does not advance the case for review at all. It simply states the items objected to without giving any acceptable reasons for such objections. Thus as an example of objections taken to a number of items read as follows:

- '(a) Filing notice: first copy per page N\$4;  
Each further necessary copy N\$2,50;
- (c) Typing and type setting does not constitute a disbursement;

---

<sup>5</sup> *Dannecker v Leopard Tours Car and Camping Hire CC* (SA 79/2016) [2020] NASC (17 September 2020) para 8, *Mcunu v Southern Insurance Association Ltd* 1977 (2) SA 18 (SE) at 19, *Kruger v Secretary for Inland Revenue* 1972 (1) SA 749 (C) at 750F and *Somaeb v Standard Bank Namibia Ltd* (SA 32/2018) [2019] NASC (29 November 2019) para 15.

<sup>6</sup> *Nourse Mines Ltd v Clarke* 1910 TPD 660 at 661, *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 113E.

<sup>7</sup> *Kruger* case at 750F-G, *Brener NO v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd (formerly D'Arcy Masins Benton & Bowless SA (Pty) Ltd)* 1999 (4) SA 503 (W) at 508D-G and *City Deep Ltd* at 119H-120C.

(d) Travel to and from Katutura N\$24.'

No reason whatsoever is given as to why it is stated that copies complained of should not have been allowed. Is it because too many copies are claimed or that the amount per copy was unreasonable? Mr Christian is not a legal practitioner and if he had to pay someone to type his documents for the purpose of the litigation, how can this not be disbursement on his part? Once again no facts or reasons are given for the contrary stance taken in the notice on behalf of Namfisa. Whether Mr Christian had to travel from Katutura to the court to file his papers and if so, what mode of transport he had to use and what the reasonable costs of such travel was is a factual question. The taxing master reduced the amount claimed from N\$200 to N\$24. The reason for this objection is not stated. A number of items are objected to on the basis that 'Formal attendance and preparation constitutes legal costs and not disbursements'. The problem with this objection is that nowhere did the taxing master allow these items as he, quite correctly in view of the costs order, only allowed disbursements which he viewed as necessary and reasonably incurred.

[12] In short, even accepting for the moment that what was intended by Namfisa was to launch a review of the taxation in terms of rule 25(3) the objections cannot be entertained as they are simply not motivated by the necessary facts to establish what the bases for these objections are. Where it is averred that the wrong principle was applied to allow legal costs or other costs that were not disbursements – the objections are on the face thereof incorrect as the taxing master either did not allow those items or where he allowed items such items could be regarded as



disbursements. It appears that the objections filed under cover of the purported rule 25(3) notice were probably those that were supposed to be filed in terms of the original agreement between Mr Christian and Namfisa. As already pointed out, a review pursuant to rule 25(3) cannot be used to get a second bite at the cherry to raise objections never raised at the taxation. Rule 25(3) is designed to review the decision of the taxing master on the basis of what was presented to him or her at the taxation. The only other matter that can, as a general rule, be raised for the first time on review is expressly provided for in rule 25(3) which stipulates that apart from items in respect of which there were objections, a party can also review an item 'disallowed by the taxing master of his or her own accord'. There is no objection on this basis and this category is thus irrelevant to this review.

[13] It goes without saying that where an item is objected to, the reasons for such objection should be on record together with the motivation for such item and the reasoning by the taxing master to justify his or her decision. In fact rule 25(3) requires the taxing master to state a case where an objection is made and mention in such stated case what items were objected to, the grounds of such objection and any relevant facts he or she relied upon in coming to his or her decision. Because of the manner this taxation was handled, it is impossible for the taxing master to comply with rule 25(3). There were no objections at the taxation and the taxing master could thus not respond in any meaningful way to the complaints of Namfisa as the bases for the complaints were never explained to the taxing master nor are they apparent from the notice itself. Furthermore, some of the complaints are imaginary as the taxing master

did not allow the items that seem to be the bone of contention as far as the complaints are concerned.

[14] It follows that the review of the *allocatur* issued by the taxing master cannot succeed and is to be dismissed.

[15] Mr Christian responded to the purported rule 25(3) notice and apart from taking issue with the said notice on the basis that the objections were not raised at the taxation and hence the stated case by the taxing master could not comply with rule 25(4) which requires from the taxing master to state the 'grounds of objection advanced during the taxation' he raises the question of the authority of the legal practitioner present at the originally intended date for the taxation and in respect whereof the taxing master ruled against him.

[16] In my view, the issue of the authority of the legal practitioner is irrelevant as the legal practitioner was not present when the bill was actually taxed and the *allocatur* in question was issued. This is the reason why there cannot be an objection against the *allocatur*. In addition, the point raised is without merit and was correctly dismissed by the taxing master. The basis for the authority point was that this court held that the legal practitioners representing Namfisa had not been authorised to act on its behalf in the litigation and that their actions or lack of authority could not be ratified subsequent to the judgment being obtained. In other words the legal practitioner's unauthorised conduct prior to the judgment could not be authorised subsequent to the judgment. This is in line with the principle that unauthorised acts by legal practitioners

can only be ratified prior to judgment. As the legal practitioner involved was authorised to act for Namfisa prior to the taxation it is not a question of ratification of an unauthorised act but a question of being granted the authority upfront to act in respect of the taxation.

[17] In the result, the application fails. In terms of rule 25(9) I am empowered to award a fixed sum to be paid by the unsuccessful party to the opposing party, and this appears to be a matter where I should utilise this procedure. The contentions on behalf of Namfisa fell woefully short of what was required and hence did not take up much time from Mr Christian who, apart from the technical issues raised and mentioned above, devoted the bulk of his written submissions to elaborate on his authority point. The stated case, compiled by the taxing master, because there were no objections at the taxation, was likewise short and focused on the technical defects of the Namfisa application. In addition to this, Mr Christian not being a legal practitioner would only be entitled to the actual disbursements necessarily and reasonably incurred by him in this regard. It follows that the disbursements by Mr Christian to have the three relevant pages of his response to the application typed and delivered must be very modest and an amount of N\$100 would constitute a sufficient award in my view.

[18] In the result, the application fails and the applicant (Namfisa) is ordered to pay the amount of N\$100 as costs to the respondent (Mr Christian).

---

**FRANK AJA**

APPEARANCES

APPLICANT:

K Haraseb

Of ENSafrica | Namibia (Incorporated as  
LorentzAngula Incorporated), Windhoek

RESPONDENT:

In Person