



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable	No
Of Interest to other Judges	No
Circulate to Magistrates:	No

Case No.: **A56/2021**

In the matter between:

CLOETE MURRAY N.O.

First Appellant

RUWAYNE SMITH N.O.

Second Appellant

and

SAREL JACOBUS VAN DER WALT

Respondent

CORAM: S CHESIWE, J *et* L OPPERMAN, J *et* N SNELLENBURG, AJ

HEARD: 13 JUNE 2022

JUDGMENT BY: N SNELLENBURG, AJ

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 30 November 2022 at 15h30

[1] This appeal, with leave of the Court a quo, concerns the order on review of a taxation in terms of Uniform rule 48(1) in terms whereof the Court reviewed and set aside the allocator(s) of the taxing master of 11 February 2020, and referred the bills of costs back to the taxing master to be 'taxed afresh in light of the judgment'.

[2] The taxation followed an order by Naidoo J on 10 September 2019 which provides as follows:

"An order for costs de bonis propriis is made against attorney, Mr FJ Mr Senekal, who is directed to pay the [appellants'] costs of this matter, including all reserved costs, on the scale as between attorney and own client."

[3] The reasons informing Naidoo J's order appear lucidly from the judgment. Considering the nature of this appeal it is, unfortunately, necessary to consider the judgment in some detail.

3.1 The respondent is an unrehabilitated insolvent. His estate was finally sequestrated by an order granted in this Division.

3.2 The appellants are the duly appointed trustees of the insolvent estate.

3.3 The respondent issued an urgent application [the main application] on 6 June 2019 to be heard on 11 June 2019 in terms whereof the respondent sought a rule nisi with immediate legal effect pending the return date, to interdict and restrain the appellants from proceeding with the administration of the insolvent estate as well as that the second meeting of creditors be postponed for a period of 3 months pending the decision of the Master of the High Court in respect of the request to remove the appellants as trustees of the estate [prayer 2.1], alternatively insofar as the Master decides not to remove the

appellants as trustees, then an application to Court for the removal of the appellants as trustees [prayer 2.2]. The respondent also sought costs against the appellants on the scale as between attorney and own client in their personal capacities.

- 3.4 The main application was opposed by the appellants on the basis that the notice of motion was defective in several respects as well as on the merits. The record shows that an extensive answering affidavit was filed.
- 3.5 In the late evening of 10 June 2019, the respondent agreed that the order sought in the main application could be varied. The court was presented the following day with a draft order which was made an order of court. The court order in summation records that the respondent does not persist with the relief in prayer 2.1 insofar as it relates to the second meeting of creditors to be held on 12 July 2019 and that the relief sought in prayer 2.1, insofar as it relates to the administration of the insolvent estate, would proceed in the ordinary course. The respondent would file his replying affidavit in accordance with the Uniform rules whilst the appellants reserved the right to supplement the answering affidavit of 10 June 2019.
- 3.6 The respondent failed to file a replying affidavit. It later transpired that the respondent in fact wished to interrogate the appellants, amongst others, in terms of the provisions of the Insolvency Act 24 of 1936.
- 3.7 A request by the respondent that the main application be postponed on 22 August 2019 pending finalisation of the insolvency enquiry was refused by the appellants who requested the respondent to make a formal application for postponement by 12 August 2019 to afford them an opportunity to file an answering affidavit thereto by 15 August

2019. The respondent did not file a substantial application for the postponement of the main application by 12 August 2019. On 16 August 2019, the appellants, in anticipation of an application for postponement proceeded to file an 'answering affidavit' wherein they dealt with the history of the matter and correspondence that passed between the parties.

- 3.8 The respondent's application for postponement of the main application was only made on 19 August 2019. The respondent also proceeded to file a supplementary affidavit to the founding affidavit, deposed to by the respondent's attorney, in the postponement application on 21 August 2019. This affidavit was filed without leave of the court.
- 3.9 When the main application was called on 22 August 2019, the court file was not indexed and paginated as required by the relevant Practice Directives of this Division. The application for postponement was not filed in the court file and the founding papers were not in the court file, and despite the Registrar searching for the same, it could not be found.
- 3.10 The respondent's counsel requested an opportunity to investigate the matter and when the matter was later called, the respondent's counsel informed the court that his instructions were to withdraw both the main application and the application for postponement with a tender that the respondent pays the appellants' costs on the scale as between party and party. The appellants rejected the offer and informed the court that they sought a cost order against the respondent's attorney (*de bonis propriis*) on the scale as between attorney and own client.

- 3.11 Although the application for postponement was located by the Registrar, both parties declined the court's invitation to make further submissions before the court made a ruling on the issue of costs.
- 3.12 The court was called upon to determine whether the respondent should pay the costs on a party and party scale or whether the respondent's attorney should be ordered to pay the costs on the scale as between attorney and own client.
- 3.13 The Court proceeded to consider the legal principles applicable to punitive orders for costs as well as the standard of conduct that is expected of an attorney.
- 3.14 The court, being astutely aware that it was ultimately called upon to determine a just and equitable costs order, critically analysed the relevant history of the matter, the conduct of the parties and specifically the respondent's attorney as well as the merits of the matter. To this end the court had the benefit of 'a great deal of correspondence' that were exchanged between the legal representatives.
- 3.15 The events during the evening on 10 June 2019 and the morning of 11 June 2019 leading up to the draft order being made an order of court, are especially relevant. Those are the following. Based on an agreement reached with the respondent's attorney the appellants as well as their instructing attorney and counsel would not travel from Johannesburg, Gauteng to Bloemfontein. It was agreed that the respondent's counsel would prepare a draft order that would be presented to court. The respondent's attorney however failed to draw and present the draft order to the appellants' attorney. Attempts during the morning of 11 June 2019 to obtain a copy of the draft order were

unsuccessful. Discussions with another attorney from the same firm that represented the respondent were also unsuccessful as the first mentioned alleged that he did not have any instructions in that regard.

3.16 The appellants were constrained to brief local counsel to appear in court at the scheduled time of 14h00. At that juncture the attorney who had earlier indicated that he did not have instructions however appeared in court without counsel. The attorney, after the matter stood down, was able to take instructions and eventually the draft order was granted. The appellants' attorney eventually drew the draft order that was consented to and made an order of court.

3.17 In summary the court held that:

3.17.1 the only consequence of the litigation of this nature and extent was to incur unnecessary costs, which the insolvent estate would have to bear to the prejudice of creditors;

3.17.2 the respondent's attorney failed to conduct himself with the requisite degree of care and diligence expected of him;

3.17.3 the respondent's attorney's conduct by casting aspersions, abusing the court process and disrespecting the court had to be deprecated;

3.17.4 the respondent never responded to say that he was in fact acting under instructions;

3.17.5 the tone of the respondent's attorney's correspondence showed a lack of respect for his colleagues, a disregard for the Rules of Court and for the court itself.

[4] The judgment leaves no doubt that the manifest purpose of the cost order on the scale as between attorney and own client was to ensure, as far as possible, that the insolvent estate not be burdened, to the prejudice of creditors, with unnecessary costs and expenses brought about by an abortive application which in fact constituted an abuse of process. The order that the attorney pay the aforesaid costs de bonis propriis was a mark of the court's displeasure with the attorney's conduct.

[5] In ***Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597 at 608** the court said the following with regards to costs on an attorney and client scale:

'The true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the court in a particular case considers it just, by means of such an order, to ensure more effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation. Theoretically, a party and party bill taxed in accordance with the tariff will be reasonably sufficient for that purpose. But in fact a party may have incurred expense which is reasonably necessary but is not chargeable in the party and party bill. See *Hearle & McEwan v Mitchell's Executor* (1922 TPD 192). Therefore in a particular case the Court will try to ensure, as far as it can, that the successful party is recouped. I say as far as it can because there may be a considerable difference between the amount of the attorney and client bill which a successful party is bound to pay to his own attorney and the amount of an attorney and client bill which has been taxed against the losing party.'

[6] Eksteen JA explained in ***Sentrachem Ltd v Prinsloo* 1997 (2) SA 1 (A) at 22B-D** that an order that an unsuccessful party pay the costs on the scale as between attorney and own client must be seen *as an attempt by the Court to go a step further than the ordinary order of costs on the scale as between attorney and client to ensure that the successful party is indemnified of all*

reasonable costs of litigation.¹ Taxation will occur on a more liberal scale, whilst not sanctioning unreasonable costs.²

[Emphasis added]

[7] In ***Mouton and Another v Martine 1968 (4) SA 738 (T) at 742A–B*** the Court held that taxation ensures that 'the party who is condemned to pay the costs does not pay excessive, and the successful party does not receive insufficient, costs in respect of the litigation which resulted in the order for costs'.³

[8] In ***Legal and General Assurance Society Ltd v Lieberum NO and Another 1968 (1) SA 473 (A) at 478H***, Potgieter JA articulated the applicable test when the Court reviews a taxation as follows: that the court has the power to correct the taxing master's ruling not only if he acted mala fide or from ulterior and improper motives, or if he did not apply his mind to the matter or failed to exercise his discretion, or if he disregarded the express provisions of a statute, but also when the Court '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.

[9] The test applicable when a court is called upon to review a taxation as established in ***Legal and General Assurance Society Ltd v Lieberum NO and Another 1968 (1) SA 473 (A) at 478H*** was refined and articulated as follows in ***Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others 1984 (3) SA 15 (A) at 18E–G***:

'This case indicates, I think, that the Court was of the view that the test as formulated by POTGIETER JA in the *Legal and General Assurance Society* case supra and the statement that the Court will interfere with a ruling of a Taxing Master only if it is satisfied that he was

¹ Also see *Delfante and Another v Delta Electrical Industries Ltd and Another* 1992 (2) SA 221 (C) at 233B; *In re Alluvial Creek Ltd* 1929 CPD 532 at 535.

² *Cambridge Plan AG v Cambridge Diet (Pty) Ltd and Others* 1990 (2) SA 574 (T) op 589D-G; *Malcolm Lyons & Munro v Abro and Another* 1991 (3) SA 464 (W) op 469D-E.

³ Also see *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) para 13.

clearly wrong, are merely two ways of saying the same thing. I think, with respect, that it is better to state the test to be that the Court must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him, since it indicates somewhat more clearly than does the formulation of the test by POTGIETER JA what the test actually involves, viz that the Court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should be held to vitiate his ruling.'

[10] It bears mentioning that Potgieter JA also issued an injunction in **Legal and General Assurance Society Ltd v Lieberum NO and Another 1968 (1) SA 473 (A) at 478H**, namely that the Court will interfere on the ground that the taxing master is clearly wrong only when it is in the same or in a better position than the taxing master to determine the point in issue.

[11] The test is not whether the reviewing court would have allowed an item or have allowed a different amount for an item.

[12] With regards to the discretion vesting in the taxing master the Court in **Trollip v Taxing Mistress, High Court**⁴ referred to Cilliers, Law of Costs at para 13–03 where the following is stated:

'The discretion vested in the taxing master is to allow (all) costs, charges and expenses as appear to him to have been necessary or proper, not those which may objectively attain such qualities. His opinion must relate to all costs reasonably incurred by the litigant, which imports a value judgment as to what is reasonable. Moreover, the words reasonable and in the opinion of the taxing master that occurred in the tariff appended to rule 70 imported a judgment not referable to objectively ascertainable qualities in the items of a bill in question. The discretion to decide what costs have been necessarily or properly incurred is given to the taxing master and not to the court.⁵ It is now a well-established rule that in regard to quantum, both as to the qualifying fees for medical expert witnesses, other expert witnesses, and counsel's fees, the decision of the taxing master is a discretionary one.

⁴ Fn 3 above.

⁵ Also see *Preller v Jordaan and another* 1957 (3) SA 201 (O) at 203, a Full Court judgment of this Division.

The taxing master has a discretion to allow, reduce or reject items in a bill of costs. This discretion must be exercised judicially in the sense that he or she must act reasonably, justly and on the basis of sound principles with due regard to all the circumstances of the case. Where the discretion is not so exercised, the decision will be subject to review. (*City of Cape Town v Arun Property Development (Pty) Ltd* 2009 (5) SA 226 (C) [at] 232.) In addition, even where the discretion has been exercised properly, a court on review will be entitled to interfere where the decision is based on a misinterpretation of the law or on a misconception as to the facts and circumstances, or as to the practice of the court.

The taxing master's discretion is wide, but not unfettered. In exercising it the taxing master must properly consider and assess all the relevant facts and circumstances relating to the particular item concerned. The discretion is not properly exercised if such facts or circumstances are ignored or misconstrued.¹

- [13] In similar vein the Court confirmed in *Preller v Jordaan and another*⁶ that the taxing master is vested with a discretion to award such costs as appear to him/her to have been necessary and proper. As to the Court's power to interfere with the discretion vested in the taxing master, Smit AJP said:

'Since the discretion is vested in the Taxing Master, the reviewing Court will not interfere with his decisions unless it is found that he has not exercised his discretion properly, as for example, when he has been actuated by some improper motive, or has not applied his mind to the matter, or has disregarded factors or principles which were proper for him to consider, or considered others which it was improper for him to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.'

- [14] Uniform rule 70(5)(a) provides that the taxing master shall be entitled, in his/her discretion, at any time to depart from any of the provisions of the prescribed tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

- [15] In *Coetzee v Taxing Master, South Gauteng High Court 2013 (1) SA 74 (GSJ)* para 25, Sutherland J held that the tariff in rule 70 is designed for and intended for the taxation of party and party costs and the tariff in rule 70 is not

⁶ Fn 5 above.

binding on any taxation of costs other than party and party costs. The tariff in rule 70 must therefore “be used as a guide in the taxation of penal costs ordered by a court to be paid by the defeated adversary, called 'costs on the attorney and client scale’” and, “costs in a bill presented by an attorney to that attorney's own client, called 'attorney and own client' costs”.

[16] The taxing master’s stated case establishes that he was acutely aware of the legal precedent relating to the legal principles that governs taxation in general and especially penal orders as to costs during the exercise of his discretion. The taxing master’s stated case also shows that he approached the taxation with an open mind. In considering the reasonableness of the fees, the taxing master took into consideration the nature of the matter and its complexity; the difficulty and urgency; the time and effort expended on the matter and the results achieved, the skill and competence required as well as the client’s expectations and the client’s ability to pay. I will revert, insofar as necessary to certain items when the Court a quo’s judgment is considered.

[17] Although the appeal lies against the order (***Absa Bank Ltd v Mkhize and Two Similar Cases 2014 (5) SA 16 (SCA) at para 64***), a court order, as in the case of any other document, must be read in the context of the judgment as a whole and particularly in the light of the court's reasons for the order. ***Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd 2015 (4) SA 34 (SCA) para 10*** and ***Firestone South Africa (Pty) Ltd v Genticuro AG 1977 (4) SA 298 (A) at 304D – F***.

[18] The court below identified the issues to be determined as follows in para 6 of the judgment:

‘It is common cause that the taxing master departed from the tariffs and exercised his discretion. The only issue the court needs to ascertain and establish is whether that discretion was properly exercised. The court has to establish if there are any grounds which necessitate

interference with the exercise of that discretion. Such interference will only occur if the court is satisfied that the taxing master was clearly wrong.’

[19] The court a quo’s conclusion was informed by the following reasoning:

[21] The taxation as alluded to above flows from an urgent application that was abandoned, and no trial took place. No extensive exchange of documentation occurred here. There is nothing before court to show that the taxing master took into consideration all the factors he enumerated above when quantifying the costs and the fees were genuinely weighed other than tripling the tariff.

[22] There is nothing further to show that there are any extraordinary or exceptional circumstances established in this matter and that a failure to depart from the tariff will be inequitable.

[23] In the result, I find that the taxing master has not adduced facts upon which I could find that he properly exercised his discretion in this matter. He was clearly wrong, and this warrants interference by this court.’

[20] It is readily apparent from the synopsis of the judgment by Naidoo J, in para 3 above, that the Court a quo committed a material misdirection with regards to the nature and extent of the proceedings as well as the conduct of the respondent and his attorney that gave rise to the cost order.

[21] In my view the extraordinary or exceptional circumstances present itself clearly when the judgment of Naidoo J is considered. The aforesaid is just as apparent when the record of proceedings, that served before the review court, is considered.

[22] To my mind the stated case establishes that the taxing master exercised his discretion judicially in the sense that he acted reasonably, justly and on the basis of sound principles with due regard to all the circumstances of the case.

[23] The Court a quo did not interrogate the separate items forming the subject matter of the review. It merely identified broad categories of objections raised

by the respondent and proceeded to discuss 3 identifiable issues. I will address these issues below.

[24] Fixing the same hourly tariff for both instructing and correspondent attorney:

24.1 The Court a quo states that the taxing master 'submits that he aligned himself' with submissions in ***Taute NO v Heymans (6032/2008) [2009]*** and that, in the circumstances, 'nothing prevents him from allowing a higher fee by adding a surcharge to the prescribed fee of 100%'. The Court states that 'this', which I assume is the taxing master's alignment with the submissions in ***Taute***, is 'in contrast' with ***Aircraft Completions Centre (Pty) Ltd v Rossouw 2004 (1) SA 123 (W) at 116-187A-B*** where the court held that there is no difference between an attorney and client scale and attorney and own client scale. The Court a quo also relied on ***Absa Bank v Robb 2013 (3) SA 619 (GSJ) at 22-25***, which it held, determined that the rote doubling or tripling of the tariff to arrive at an attorney and own client rates does not amount to a proper exercise of the taxing master's discretion.

24.2 The Court also observed that a correspondent 'is a "post box" with a function to deliver documents on behalf of a colleague who is seized with a matter in a court where his practice is outside the 15 km radius of that court. Practice has it that a certain percentage allowance is paid for such a purpose depending on the arrangements between the attorneys.'

24.3 Lastly under this rubric the Court held that 'the taxing master allowed fees due to the attorneys against the backdrop of conceding that he has no knowledge of their experience save *ipse dixit* of the respondent's representative about the seniority of the instructing attorney'.

- 24.4 For his part the respondent takes issue in these proceedings with the taxing master's decision to allow an increased tariff of 50% in respect of the correspondent attorney's attorney and client bill. The respondent argues that the taxing master merely applied a rule of thumb as result of the principles enunciated in **Taute NO v Heymans** (6032/2008) [2009] without making an ad hoc determination. Relying on **Coetzee v Taxing Master, South Gauteng High Court and Another supra**, the respondent contends that the taxing master therefore failed to exercise his discretion properly with regards to items 9, 12 & 14 of correspondent attorney's attorney and client bill.
- 24.5 It should not be contentious that the mere application of a rule of thumb to create a default informal attorney and own client scale would not constitute a proper exercise of a discretion. The appellants do not take issue with the general principle, but do point out that **Absa Bank v Robb** is support for the proposition as that matter concerned a cost order granted by a magistrate applying the incorrect test when granting costs.
- 24.6 In **Coetzee v Taxing Master, South Gauteng High Court and Another supra**, Sutherland also went on to say that:

'[35] In my view a departure from the tariff in any given case must be ad hoc and fact-specific. This is not to say generic factors ought not to be considered.

[36] It cannot be objectionable to strive for a degree of uniformity in the taxation of bills of costs, but the uniformity ought to be informed by a method, or an approach, and based upon some principle, rather than a randomly selected figure or multiple of the tariff, bereft of a convincing justification for that particular selection.

It would not, however, in my view be objectionable to settle on a higher rate per se as a point of departure to tax attorney and own client bills. But, in such event, any higher rate, qua point of departure, must be informed by:

[37.1] A rational factual basis, which may address facts common to all or most matters.

[37.2] A rational policy basis, which may identify generic factors that are considered relevant, and might include comparators about professional fees, overhead expenses, regional variables, and the like — there can be no closed list.

[38] A higher rate which is informed by no more than the notion that such rate ought to be higher and be the 'most generous rate' (as alluded to in Aircraft Completions para 103) is not the product of a proper exercise of the taxing master's discretion.'

- 24.7 The taxing master did not merely apply a rule thumb to make the determination. The taxing master was amongst other matters informed by the nature and extent of the matter; the fact that the Court attempted to go a step further than the ordinary order of costs on the scale as between attorney and client to ensure that the successful party is indemnified of all reasonable costs of litigation; the urgency of the matter and its complexity; the time and effort expended on the matter and the results achieved, the skill and competence required as well as the client's expectations and the client's ability to pay.
- 24.8 It is also not sound, as point of departure without any reference to the specific facts of the matter to rely on a general proposition that a correspondent is a 'post-box' that merely needs to deliver papers on behalf of the instructing attorney. It was certainly not the case in this matter. It is not necessary to labour the point.
- 24.9 The fact that a practice may or may not exist that some instructing attorneys and their correspondent attorneys enter into agreements regarding the sharing of fees is not relevant to this matter.
- 24.10 Lastly with regards to the Court's finding that allowance of fees was done against the backdrop of the taxing master having no knowledge of the experience of the attorneys, save for what was communicated

to him by Ms Meyer, the following. In the submissions in response to the notice of review, Ms Meyer dealt with the fact that she had conceded that in this Division, an hourly rate of R4 100.00 per hour would not be allowed. She argued that based on the principles enunciated in **Taute supra**, the taxing master could allow the *prescribed tariff* plus 100% on an attorney and own client basis. In respect of the Werksmans fee Ms Meyer informed the taxing master that Mr van Tonder has been a director at Werksmans since 2008 and was an admitted attorney since 2004. Nothing to contrary was put before the taxing master.

24.11 The taxing master was astute to the fact that the successful party is indemnified of all reasonable costs of litigation by the specific order, but that unreasonable costs were not sanctioned. What the taxing master *did not do* was to allow a higher rate which was informed by no more than the notion that such rate ought to be higher and be the 'most generous rate'.

[25] The issue of the drafting of the answering affidavit. The matter was clarified in the appellant's response to the notice of review. Counsel drafted the affidavit, not the attorney. The fees allowed were only for 11.5 hours as opposed to the 13.5 hours spent on drafting. The total of 11.5 hours accords with the 45 pages of answering affidavit, and the general approach of 4-5 pages per hour allowed for drafting. It appears that the Court did not consider the response to the review. This specific item on the attorney's bill of costs was conceded at the start, namely that the affidavit was prepared by Mr Smit.

[26] The Court lastly referred to the fact that a new counsel from Bloemfontein appeared whilst the counsel that was on brief did not travel to Bloemfontein and did not appear. The respondent also persisted with its objection in this regard. The Court alludes to the fact that the fees of both counsels were allowed whilst,

according to the Court, no reason for his unavailability is 'discernible' from the documentation. The finding by the Court is clearly wrong. The reason why counsel did not travel to Bloemfontein appears lucidly from Naidoo J's judgment and the papers. The need to appoint a local counsel was the result of the respondent's attorney's conduct which is equally well documented. The taxing master fully understood what happened on 11 June 2019. The taxing master deemed counsel's day fee (at the reduced rate) to be reasonable.

[27] In the respondent's heads of argument reference is made to allowance of copies which were not made. To my mind the taxing master properly addressed these issues. The same applies to the respondent's reliance on the travel time and counsel fees in respect of the opposed [main] application and postponement application in August 2019. The facts with regards to these issues speak for themselves. There is no merit in the respondent's objection to these items.

[28] I am satisfied that the taxing master exercised his discretion judiciously and that the review should have been dismissed with costs. No grounds exist justifying the conclusion that the taxing master was clearly wrong regarding the items that formed the subject matter of the review.

[29] It follows that the appeal must succeed.

[30] The appellants requested that this Court mark its displeasure with the respondent's attorney's conduct in the review proceedings by means of a punitive cost order. The appeal was necessitated as result of the fact that the Court of review concluded that the taxing master was clearly wrong. The appeal must succeed, as stated, but I am not inclined to grant a penal order as to costs.

[31] In the premises I would make the following order:

1. The appeal succeeds with costs, including the cost occasioned by the employment of two counsel where so employed.
2. The order of the Court a quo is set aside and replaced with the following order:

“1. The review of the taxation in terms of rule 48 of the Uniform Rules of Court, dated 3 March 2020, is dismissed with costs.”

N SNELLENBURG AJ

I concur and it is so ordered

S CHESIWE J

I concur

L OPPERMAN J

Appearances:

On behalf of the appellants:

Advv F H Terblanche SC with J E Smit

G Gerdener,

McIntyre & Van der Post Attorneys,

Bloemfontein

[Instructed by Werkmans Attorneys]

On behalf of the respondent:

Adv C Snyman

FJ Senekal, FJ Senekal Inc.

Bloemfontein