



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 78635/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
28/10/2021	Mahidi.....
DATE	SIGNATURE

In the matter between:

**TAXING MASTER OF THE PRETORIA NORTH
MAGISTRATE'S COURT**

1ST APPLICANT

KEABETSWE MASHALANE

2ND APPLICANT

CHIEF MAGISTRATE CHRISTOPHER CHAUKE

3RD APPLICANT

MR PHIRI (COURT MANAGER)

4TH APPLICANT

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

5TH APPLICANT

**THE NORTHRIDGE PRIMARY SCHOOL
GOVERNING BODY**

6TH APPLICANT

**THE DIRECTOR GENERAL FOR BASIC
EDUCATION N.O**

7TH APPLICANT

**GAUTENG MEMBER OF THE EXECUTIVE
COUNCIL FOR EDUCATION N.O.**

8TH APPLICANT

**HEAD OF DEPARTMENT FOR THE GAUTENG
DEPARTMENT OF EDUCATION**

9TH APPLICANT

and

EDUARD DE LANGE ATTORNEYS

RESPONDENT

In re:

EDUARD DE LANGE ATTORNEYS

APPLICANT

and

**TAXING MASTER OF THE PRETORIA NORTH
MAGISTRATE'S COURT**

1ST RESPONDENT

KEABETSWE MASHALANE

2ND RESPONDENT

CHIEF MAGISTRATE CHRISTOPHER CHAUKE

3RD RESPONDENT

MR PHIRI (COURT MANAGER)

4TH RESPONDENT

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

5TH RESPONDENT

**THE NORTHRIDGE PRIMARY SCHOOL
GOVERNING BODY**

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**THE DIRECTOR GENERAL FOR BASIC
EDUCATION N.O**

7TH RESPONDENT

**GAUTENG MEMBER OF THE EXECUTIVE
COUNCIL FOR EDUCATION N.O.**

8TH RESPONDENT

**HEAD OF DEPARTMENT FOR THE GAUTENG
DEPARTMENT OF EDUCATION**

9TH RESPONDENT

JUDGMENT

MALINDI J:

Introduction:

- [1] The Applicants' for rescission of judgment are the First and Second Respondent in the main application under Case Number: 78635/2018. The deponent to the founding affidavit is cited in her capacity as the Taxing Master and in person in the main application.

- [2] The Respondent in the rescission application is the Applicant in the main application, Eduard De Lange Attorneys.
- [3] In the main application, the Respondent sought an order, *inter alia*, that the decision of the Taxing Master not to tax any of the bills of costs presented for taxation by the Respondent on 8, 10, 11 and 16 October 2018 be reviewed and set aside.
- [4] The main application was set down for hearing on an unopposed basis on 14 March 2019. An order was granted as prayed for and ordering the Third and Fifth Respondents to appoint an alternative Taxing Master to tax all the aforesaid bills of costs, including an order that the Second Respondent, personally, and the Fifth Respondent, in his official capacity, pay the costs on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.
- [5] On 2 August 2019 Applicants' launched an application for rescission of the Order of 14 March 2019.
- [6] Ms Keabetswe Mashalane deposed to the affidavit in the rescission application both as a Taxing Master and in her personal capacity as the First and Second Respondent, respectively.
- [7] For convenience, the parties will be referred to as in the main application, First and Second Respondents' therein being referred to as the Respondent.
- [8] The application is brought in terms of Rule 31(2)(b), alternatively Rule 42(1)(a).

Background facts

- [9] The main application was launched on 26 October 2018. The Respondents' were required to dispatch the record of proceedings relevant to the decision referred to in prayer 1 within 15 days in terms of Rule 53(1)(b). It was only filed on 25 January 2019.

- [10] Although the Respondents' were notified in the Notice of Motion that should no Notice to Oppose be given, the application will be heard on 14 March 2019 on an unopposed basis. No such notice was given, hence the matter proceeded on 14 March 2019 on this basis. Furthermore, Notice of Set Down was served on the Respondents' on 7 March 2019.
- [11] The order granted on 14 March 2019 was stamped by the Registrar on 25 March 2019 but the Respondents' received it only on 12 April 2019. However, the Applicant sent the order as granted to the Respondents on 20 March 2019.
- [12] The Rescission Application was launched only on 2 August 2019, more than 100 days later.
- [13] The Applicant duly filed its answering affidavit on 26 August 2019 and it took the Respondents' until 17 March 2020 to file a replying affidavit for which condonation is sought. The replying affidavit is 7 months out of time.
- [14] The Respondents' seek leave to file a supplementary affidavit dated 19 June 2020.

The Main Application

- [15] The Applicant sought a review, in terms of section 6 the Promotion of Administrative Justice Act¹ ("PAJA"), of the Respondents' decision not to tax the aforesaid bills of costs. The history of this matter goes back to March 2014 when the Applicant and the Sixth Respondent entered into a written agreement that Applicant render certain professional debt collection services to the Sixth Respondent at an agreed rate. The Applicants' mandate was terminated on 1 June 2016.
- [16] The dispute arises out of whether the Applicant is entitled to render the taxation of the relevant bills of costs for work performed after the termination of the mandate, according to the Respondents'. The Applicant contends that the work

¹ Act 3 of 2000.

was performed during the existence of the mandate although the bills were prepared after such termination.

- [17] On 8 October 2018, the Second Respondent refused to tax the bills of costs that are subject to this application. Various attempts were made by the Applicant to tax the bills, including the involvement of the Third Respondent. There is no need to traverse the Applicants' case in detail.

The rescission application

- [18] The Respondents' aver that it was irregular of the Applicant to seek these taxations when its mandate had been terminated on 1 June 2016. The Applicant was advised on how to proceed in view of this, but it rejected the advice and eventually brought these review proceedings.

- [19] In respect of reasons for the Respondents' default, the following is proffered:

[19.1] Co-ordinating all six Respondents' was logistically difficult as all were represented by one and the same attorney.

[19.2] The attorney of record laboured under the mistaken view that the Notice of Intention to Oppose had been filed at the same time as the record.

[19.3] Officials of the Sixth Respondent and the Department of Education, preferred an out-of-court settlement of the dispute between the school (Sixth Respondent) and the Applicant.

[19.4] The Respondents' legal team initiated discussions with the Applicant, which were precipitated by the discussions between the Sixth Respondents officials, the Department of Education and the tax consultant who represented the Sixth Respondent at previous taxations.

[19.5] The Respondents' attorney was unable to attend a meeting of 29 January 2019 and subsequent consultations due to work pressure and court appearances at the beginning of 2019.

[19.6] The bundles for the 14 March 2019 hearing were served a week before the hearing, on the office of the State Attorney, but the attorney of record only became aware thereof "days after the matter had been to court already".

[19.7] The unsigned draft order was received together with the bundles (on 7 March 2019) when the attorney of record received them days after the hearing.

[19.8] The typed and stamped court order could not be found in the court file.

[19.9] Post receipt of the court order, the legal team "continued with a view that settlement avenues were open to be explored" and continued to organise further meetings.

[19.10] Since the stamped order was received on 12 April 2019, the rescission application was launched within the 20-day period for launching this application.

[19.11] Further delays were caused by the change of management of the Sixth Respondent because the outgoing team would not settle the matter on the eve of the new principal taking over in a few months.

Rule 31(2)(b) and 42(1)(a)

[20] In the event that the court finds that the rescission application was launched outside the 20-day period, condonation therefor is sought. The Respondents' need to show good cause to condone the lateness under Rule 31(2)(b) and/or that the order was erroneously sought or granted under Rule 42(1)(a). No good cause needs be shown in terms of this Rule.

Analysis

[21] The rescission application was delivered on 1 August 2019, although it was signed on 1 June 2019. It is averred that it was finalised on 6 May 2019 without substantiating why this unsigned version of the application should be taken as the date of launching the recession. It can only be on the basis that the 20-day period would have lapsed on 10 May 2019.

- [22] The Respondents' had been informed of the existence of the court order on 20 March 2019. This is the date on which they gained knowledge of its existence.
- [23] The Respondents' failure to deliver the Notice of Intention to Oppose may be put down to their attorney being remiss, at best. The rest of the delay is put down to the Respondents' endeavours to settle the matter. It is however evident, that at all material times, the Respondents' deliberately did not take steps that are required of them because of the false hope of reaching a settlement. The Respondents wilfully ignored the rules on this premise. Wilfully in the sense that they were not ignorant of the rules that required them to take all required steps.
- [24] Taking into account the various unexplained delays between the stages of the prosecution of the main application and the rescission application, there has been gross disregard of the rules. The rescission application was itself prosecuted outside the 20-day prescribed period for doing so, despite becoming aware of the judgment taken by default, and there is no full and reasonable explanation for the delay in doing so.
- [25] In *MM van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre: Amicus Curiae)*,² the following was said in regards to the applications for condonation:

[20] This Court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.

² [2007] ZACC 24 (Case no.: CCT/12/07).

- [26] The Constitutional Court refused condonation based on the inordinate delay of 11 months and the lack of a reasonable explanation for the delay. I conclude similarly that it is not in the interests of justice to grant condonation for the late filing of the rescission application in this matter. On the Respondents' own version of events they have been grossly remiss, to put it mildly, in the conduct of this matter causing undue delay and prejudice to the administration of justice and the Applicant. The Respondents' prospects of success in the review are not worth paying much attention to as on the face of it they lack such prospects. The Applicant has demonstrated that the relevant bills of costs pertained to work done during the existence of the mandate and the respondents have not provided cogent evidence to the contrary. The Sixth Respondent did not oppose the taxation but the Respondents' *mero motu* asserted that the bills fell outside the Applicants' mandate.
- [28] Reliance on Rule 42(1) is equally misplaced. The court order of 14 March 2019 was not erroneously sought or erroneously granted by the court. The Applicant was entitled to seek the order on the date stated in the Notice of Motion upon the Respondents' failure to register any opposition and the court has the power to grant the order in the circumstances.³
- [29] The Respondents have further submitted that the order was sought erroneously and/or granted erroneously by reason of it having been sought utilising the incorrect provisions of the law, that is Rule 53 of the Uniform Rules of Court instead of Rule 35 of the Magistrates Court Rules which provides as follows:

Review of taxation

35. (1) *Any interested party may, within 15 days after he or she has*

knowledge thereof, bring before a judicial officer for review-

(a) the costs and expenses claimed in any undefended action;

(b) the assessment by the registrar or clerk of the court of any costs and expenses;

³ Topol and Others v L S Group Management Services (Pty) Ltd 1988 (1) SA 639 (W) at 648-651.

(c) the taxation by the registrar or clerk of the court of any costs awarded in any action or matter; or

(d) the taxation by the registrar or clerk of the court of any fees or charges of the sheriff.

...

(3) Any party dissatisfied with the decision of the judicial officer as to any item or part of an item which was objected to before the registrar or clerk of the court, may, after notice to the other party, within 10 days of the decision require the judicial officer to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the judicial officer: Provided that, save with the consent of such officer, no case shall be stated where the total of the amounts which he or she has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed, respectively, is less than R1000.

...

- [30] The ordinary grammatical reading of this Rule leaves no doubt as to its meaning and application. Subsections (1) and (3) are clear that the rule applies to reviews of items in the bill of costs actually determined by the registrar or clerk of the court or by the judicial officer "as to any item or part of an item". In this case the Respondents refused to consider the bills of costs at all. It is that decision that is reviewable in terms of Rule 53. In *Brenner's Service Station and Garage (Pty) Ltd v Milne and Another*,⁴ it was held that Rule 53 of the Uniform Rules of Court applies in taxation reviews on the ground that an irregularity has been committed. I am satisfied that the Applicant was entitled to approach the court in terms of Rule 53 because it was a decision not to tax that was being challenged not an unsatisfactory decision on a specific item or part thereof.

⁴ 1983 (4) SA 233 (W) at 238B – E.

[31] I have considered the bar *ipso facto* on the replying affidavit and accede to the lifting thereof. I therefore grant leave to the filing of the supplementary affidavit by the applicant. Both decisions will ensure that the matter is fully ventilated.

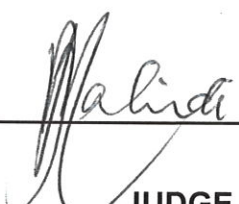
Conclusion

[32] For the reasons stated above, the application for rescission stands to be dismissed for the inordinate delay to file it and wilful default in opposing the main application. The Respondents' were at all times aware of the hearing thereof.

[33] The Applicant has prayed for a costs order on the scale as between attorney and client. I agree that the applicant should not be put out of pocket in circumstances where the conduct of the Respondents has been less-than-desirable. This conduct deserves to be censured by ordering a punitive costs order.

[34] I therefore make the following order in the rescission application:

1. The First to Ninth Applicants' application is dismissed;
2. The First to Ninth Applicants are ordered to pay the costs of this application jointly and severally, the one paying the others to be absolved, on a scale as between attorney and own client.



G MALINDI
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the Applicants: Adv M Makhubele
Instructed by: The State Attorney

For the Respondents: Adv M Coetsee
Instructed by: Eduard De Lange Attorneys

Date of hearing: 28 July 2021
Date of delivery: 28 October 2021