

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

CASE NUMBER: 2020/13582

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED:

In the review application of:

PHENEUS VIKA ZULU

Applicant

and

THE TAXING MASTER OF THE HIGH COURT JOHANNESBURG, MS N.**NDENGANE**

Respondent

Coram: Wepener J**Date of judgment:** 8 February 2023

This judgment is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge his secretary. The date of this Order is deemed to be 8 February 2023

JUDGMENT

Wepener, J:

[1] There are two issues raised for review of the decision of the Taxing Master of this Division. Firstly, despite the court having ordered that costs are to be paid on an attorney and client scale, the Taxing Master refused to increase costs of the bill above a part and party scale according to the tariff in terms of Rule 70.

[2] Secondly, if that decision is wrong, what tariff is to be applied? This second question need not be answered as the Taxing Master has not considered it on this basis.

[3] The first issue must be found in favour of the applicant. There is a authority for the proposition that a taxation of a bill on an attorney and client scale is higher, despite the discretion retained by the Taxing Master to only apply the party and party scale. A refusal to apply a higher scale when a court has so ordered is, in my view, clearly wrong. The tariff should be used as a guide in the taxation of costs which was awarded on a penal scale.¹ In this matter the Taxing Master has not set out any acceptable reasons why a higher scale than tariff is not justified as it ordinarily would when a penal order for costs is granted. In the circumstances I make no order in relation to the second question pending a revision by the Taxing Master.

[4] I make the following order:

1. The review succeeds.
2. The Taxing Master's decision is set aside.

¹ Coetzee v Taxing Master South Gauteng High Court and Another 2013 (1) SA 74 (GSJ).

3. The Taxing Master is directed to reconvene a hearing and consider afresh a bill of costs as presented by attorney Van Merwe.

W.L. Wepener

Judge of the High Court of South Africa

Attorneys for the Applicant: J.C. Van der Merwe Attorneys