



**JUDGMENT  
REPORTABLE?**

YES

**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**CASE NO: 2239/2018P**

In the matter between:

**DESIGNER STUDIO INVESTMENTS (PTY) LTD**

**APPLICANT**

and

**THE SHERIFF OF THE HIGH COURT DURBAN COASTAL**

**RESPONDENT**

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**ORDER**

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Having considered the matter and after hearing counsel, I make the following order:

1. The application for condonation is struck off from the roll.
2. The taxing master is directed to set down the sheriff's account which was presented by the applicant under case number 1043/2017 for taxation and to tax it accordingly.
3. Each party is to pay its own costs.

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**JUDGMENT**

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**Date Delivered: 22 August 2018**

**MASIPA J**

**Introduction**

[1] This matter comes before court as an application for condonation for non-compliance with Uniform rule 68(3)(b). The applicant's heads of argument were also

filed late. In terms of KwaZulu-Natal Practice Directive 9.4.1, an applicant's heads must be filed ten clear court days prior to the date of the hearing. For the applicant to have complied with the practice directive, its heads of argument ought to have been filed by 20 July 2018 and not on 25 July 2018 as they were. This meant that the applicant's heads of argument were three days late. As provided for in Practice Directive 9.4.3, the applicant applied for condonation of the late filing of its heads of argument which was unopposed. I granted this application after due consideration. The matter proceeded to be argued in respect of the main condonation application.

### **The facts**

[2] During July 2017, the respondent, a sheriff of the High Court, Durban Coastal appointed in terms of the Sheriffs Act 90 of 1986, received instructions to execute two eviction orders obtained in favour of the applicant. The evictions were scheduled for 7 July 2017. Pursuant to evaluating the nature and extent of the work to be carried out, the respondent furnished the applicant's attorneys with a quotation dated 5 July 2018 to the value of R36 275. This amount was payable before the execution services could be carried out by the respondent.

[3] On 7 July 2017, having received the required payment, the respondent executed his duties as instructed. On 28 July 2017 the respondent rendered his final account in the form of a tax invoice (the account) to the applicant's attorney. The total amount for services rendered was R47 424 and the tax invoice reflected an amount of R11 149 as the balance due, owing and payable.

[4] On 10 August 2017, the applicant's attorney sent an email to the respondent taking issue with the fees charged. The respondent provided his response on 12 September 2017, a month later, setting out how the amount was calculated. Further correspondence was exchanged between the parties on 19 October 2017 which related to payment of the respondent's account. Thereafter no communication was exchanged between the parties until 1 December 2017.

[5] On 1 December 2017, the applicant's attorneys forwarded a letter to the respondent requesting that the account be taxed. The respondent's office replied to the letter and advised that taxing of the account should have occurred within 90 days from the date when the account was rendered, which was 28 July 2017. The respondent stated that the 90 day period as contemplated in rule 68(3)(b) had since lapsed. In view of this, the respondent contended that the applicant was precluded from having the invoice taxed and demanded that payment of the outstanding amount be effected. The contention relating to the 90 days was at that point disputed by the applicant's attorneys.

[6] No further steps were taken by the applicant until 12 January 2018 when it served a notice of intention to tax on the respondent. The respondent instructed his attorneys to oppose the taxation and a notice to oppose taxation was filed on 15 January 2018. The taxation was set down for 12 February 2018.

[7] On 12 February 2018, a point in limine was raised before the taxing officer to the effect that the notice of taxation was delivered outside the 90 day period as prescribed by rule 68(3)(b). After hearing both parties, the taxing officer agreed with the respondent and directed that the applicant apply for condonation for its late request to tax the respondent's account.

### **The issues to be decided**

[8] The issues to be decided are whether or not the taxing officer was correct in directing the applicant to apply for condonation and if so, whether good cause exists to condone the applicant's non-compliance with rule 68(3)(b).

### **Contentions by the parties and analysis**

[9] Nazeema Ismail, who deposed to the applicant's papers conceded that the request for taxation of the sheriff's account was made outside the 90 day period prescribed in rule 68(3)(b). She however contended that the onus was on the

respondent to set the bill down for taxation when he first became aware of the challenge to the account.

[10] The legislature elected to leave the issue of who bears the onus to request taxation of the sheriff's account open. This is unlike in the magistrates' courts, where Magistrates' courts rule 34(3)(a) makes provision for any party having an interest in the sheriff's account being taxed to set it down for taxation. Both parties in this matter were aware of the dispute regarding the respondent's fees as early as 10 August 2017. Therefore, any one of them could have set the matter down for taxation. While the magistrates' courts rules provides for interested parties to tax the account, rule 34(2) requires sheriffs to state on their accounts that parties may require the account to be taxed. This can be construed as placing a duty on the debtor to arrange for the taxation of the account. No such duty arises in this court. It would however be reasonable to adopt the same approach.

[11] In terms of Uniform rule 68(3):

'(a) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.

(b) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed has been rendered.'

[12] Mr *Hattingh* who appeared for the applicant argued that there was a duty on the respondent to tax his account once a dispute arose on 10 August 2017, and further that the role of the taxing officer as envisaged by rule 68(3)(a) is at this stage not to tax the account but to rather determine the dispute.

[13] He argues that this provision must be read separately from the provision in rule 68(3)(b) which requires taxation of an account within 90 days. If this contention is correct it would mean that a dispute must be referred to the taxing officer for resolution and only if the resolution fails, should the account be referred for taxation within 90 days.

[14] This contention is refuted by Mr *Van der Westhuizen* who argues that rule 68(3)(a) and (b) must be read together and are intertwined. According to him, once a dispute arises, a request to tax the account must be made within 90 days. This he submitted is because the legislature would have taken cognizance of the fact that the sheriff's fees are used to operate his office and would have contemplated 90 days as being a reasonable period for him to wait for his fees.

[15] I agree with the respondent's submission in this regard. It makes no sense that the disputed account would be referred to the taxing officer for determination in any form other than that of taxation. If that was the case, any other officer could have been appointed to resolve the dispute before the account was referred for taxation by a taxing officer.

[16] Once it is accepted that the resolution of the dispute envisaged in rule 68(3)(a) is through taxation, it follows that rule 68(3)(b) sets out the procedure to be followed to initiate the taxation process.

[17] In terms of rule 68(3)(b) the time period to request a taxation is 90 days after the date when the account was rendered. In this case, the account was rendered on 28 July 2017. In calculating days referred to in the Uniform Rules, rule 1 must be taken into account which provides that in computing court days Saturday, Sunday and public holidays are excluded. Taking into account the definition of days as applicable in the rules, the 90 day period would have expired on 1 December 2017.

[18] The second issue which arises in the matter is linked to whether or not the taxing officer was correct in directing the applicant to apply for condonation. The issue being what the legislature anticipated by the use of the phrase 'a request to tax the account' in rule 68(3)(b). Does this relate to the normal meaning of the word 'request' in the ordinary grammatical meaning? If so, then the applicant's request in the form of the letter dated 1 December 2017 would suffice and there would be no need for condonation since the request would have been made on the last court day of the 90

day period. The request for taxation in the form of a letter by the applicant was timeously made if such letter constitutes a request as contemplated by the rules.

[19] In *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18 the court had the following to say about interpretation:

‘ . . . Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document.’  
(Footnote omitted)

This was followed in *Novartis SA (Pty) Ltd v Maphil Trading (Pty) Ltd* 2016 (1) SA 518 (SCA) at 525-527.

[20] The word ‘request’ is defined in the Oxford South African Concise Dictionary 2 ed (2010) as ‘an act of asking politely or formally for something’. In my view, it cannot be correct that the legislature contemplated the service and filing of a formal notice of taxation when it used the word ‘request’ firstly, because this goes against the principles of interpretation. Another reason is that rule 70 dealing with taxation makes specific reference to a notice of taxation which is clearly distinguishable from a request to tax.

[21] In *Momentum Life Assurers Ltd v Thirion* [2002] 2 All SA 62 (C) para 23 the court had opportunity to consider the use of the word ‘request’ in respect of a request for a postponement as used in Magistrates’ courts rule 31(1) and concluded that it may be interpreted as referring to an informal application which does not require compliance with any prescribed rule. In view of this, the court found no reason why a formal application which did not comply with the rules could not be treated as a request.

## Conclusion

[22] In my view, a request to tax as provided for in rule 68(3)(b) is to be made prior to the formal taxation process. The purpose of this may be to notify the other party of one's intended action should the parties fail to agree on the account. The applicant's request was therefore timeously made and it was unnecessary to apply for condonation.

[23] It is clear that the respondent calculated the 90 day period using calendar days and not court days, hence their insistence on lateness and condonation. This error was perpetuated by the taxing officer who insisted on condonation being made by the applicant.

[24] I find in this matter that the applicant's letter of 1 December 2017 amounted to a request as envisaged in rule 68(3)(b). The main condonation application was therefore not necessary and the direction by the taxing master was misguided. In respect of costs, find it judicious that each party should bear their own costs.

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Masipa J

DETAILS OF THE HEARING

Date of Hearing: 3 August 2018

Judgment delivered: 22 August 2018

APPEARANCES:

For the applicant: Adv C Hattingh.

Instructed by: Naidoo and Co Incorporated.

For the respondent: Adv A Van Der Westhuizen.

Instructed by: Kershnie Govender Attorneys, Durban North.