



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

CASE NUMBER: 6994/2022P

In the matter between:

AMY CLAIR KATE FINDLATER t/a FINDLATER ATTORNEYS APPLICANT

and

M B MORTON ESTATES (PTY) LTD RESPONDENT
(Registration No: 1974/001038/07)

ORDER

Delivered on: 29 November 2022

The following order shall issue:

1. The review is upheld in respect of the following items:
 - (a) WhatsApp messages;
 - (b) Travelling costs relating to item 67 in case number 7410/2019P and item 203 in case number 8527/2016P; and
 - (c) Correspondent's account.
2. The taxing master (Pietermaritzburg) is directed to reconsider the above items in light of the findings and principles set out herein as well as any other information that the parties may wish to place before her.
3. The review fails in respect of the following items:
 - (a) Value Added Tax (VAT);
 - (b) Attendance at court;

- (c) Sheriff's fees;
 - (d) Pound master's fees and
 - (e) The balance of the travelling costs under case numbers 7410/2019P and 8527/2016P.
4. There shall be no order as to costs.

REVIEW OF TAXATION

Seegobin J:

Introduction

[1] This is a review of two bills of cost that were taxed on the scale as between attorney and own client. The applicant is Amy Clair Kate Findlater t/a Findlater Attorneys. The respondent is MB Morton Estates (Pty) Ltd which at all times material hereto was a client of the applicant.

[2] The bills of cost were taxed by the taxing master of the KwaZulu-Natal Division of the High Court, Pietermaritzburg on 23 May 2022. On 1 June 2022, the applicant, aggrieved at the taxing master's decision, invoked the provisions of Uniform rule 48(1) by noting a review of the taxation. In response thereto the taxing master filed her stated case on 20 July 2022.

[3] The taxed bills of cost concern two matters under case numbers 7410/2019P and 8527/2016P dealt with by the applicant on behalf of her client. The disputes surrounding the bill under case number 7410/2019 relate to (a) WhatsApp messages, (b) applicant's travel claim, and (c) value added tax (VAT). Under case number 8527/2016P the disputes concern (a) WhatsApp messages, (b) applicant's travel claim, (c) sheriff's fees, (d) applicant's correspondent's costs under item 138, (e) the pound master's invoice under item 333, and (f) VAT.

Legal principle governing the taxation of attorney and own client costs

[4] The applicant contends that the bills were drawn in accordance with a written mandate signed by her client. The taxing master on the other hand has averred that no such mandate was presented to her when the taxations were being finalized. The applicant states that she is unsure why the written mandate was not presented to the taxing master, despite her engaging the services of a cost consultant to assist in the taxation process.

[5] It is apposite at this juncture to set out the legal principles that govern the taxation of attorney and own client bills. *Ben McDonald Inc and another v Rudolph and another* set out the following principles:

'Attorney and own client costs, whether in the sense of 2.1 above or where they are to be paid by the losing party to the successful party, means all costs incurred except where unreasonable. Agreed items or amounts are presumed to be reasonable. . . This presumption of reasonableness cannot be irrebuttable as this would open the door to clients agreeing to exorbitant fees with attorneys or counsel in the knowledge that the opponent will foot the bill. . . . It follows that even when faced with a written agreement between attorney and client as to the work to be done or the fees to be charged therefor the Taxing Master is still empowered to enquire into the reasonableness of such agreement.

The principles set out above have to be applied to the facts of this review. I emphasise that there is no evidence or suggestion of improper conduct on the part of the attorney concerned.

The Taxing Master was obliged to have regard to the terms of the mandate but was entitled to determine whether it exceeded the bounds of reasonableness. This she did. I cannot fault her conclusion.'¹

[6] In *Malcolm Lyons & Munro v Abro and another* the following was stated:

'All in all, therefore, the Taxing Master in my opinion rightly did not regard the client nor, of course, himself, to be bound by an agreement to the effect that the attorneys would be entitled to payment at the rate of R220 per hour for all the work they did in connection with the action, necessary or unnecessary, prudent or prodigal. Although it is true that a bill of costs as between an attorney and his own client is taxed on a basis different from that on which a party and party bill is taxed - or even different from that upon which an attorney and client bill is taxed when it is to be paid by the opposing litigant, the Taxing Master was

¹ *Ben McDonald Inc and another v Rudolph and another* 1997 (4) SA 252 (T) at 258A-I.

empowered - and indeed in duty bound - to satisfy himself that the fees claimed related to work specifically authorised by the client and that the fees charged were reasonable.¹²

[7] The principles were also recently confirmed by the Supreme Court of Appeal in *R H Christie Incorporated v Taxing Master – Supreme Court of Appeal*:

'In relation to an attorney and own client bill the law is settled. As far as expenses are concerned, that which has been specifically agreed, expressly and impliedly, may be recovered. That too, is qualified. A taxing master has a discretion to disallow certain expenses where an attorney has overreached his client or has been negligent or mala fide. Overreaching means, in the context of an attorney and client relationship, inter alia, the extraction of a fee that is unconscionable or excessive. As stated in *Aircraft Completions Centre (Pty) Ltd v Rossouw and Others*, our legal system does not allow a taxing master to draw, tax and allow a bill of costs that will impose an unjust liability on a costs debtor. It is against the principles referred to in this and the preceding paragraphs that the present review must be adjudicated.¹³ (Footnotes omitted.)

[8] In *Cambridge Plan AG v Cambridge Diet (Pty) Ltd and others*⁴ it was held that the mandate signed between the attorney and the client plays a primary role:

'Thus the Taxing Master, in the proper exercise of a discretion to establish what is reasonable, may feel that fees in certain cases should be allowed as structured in the tariff (say Rx per folio for drafting), or that the expert's time is not as valuable in perusing as it would be in consulting and taking witnesses' statements. All these would in my opinion be valid methods of ascertaining what is reasonable, without detracting from the avowed purpose of the costs order. Moreover, the Taxing Master would then not be merely a rubber stamp on the agreement between the attorney and the client and the principle of fairness and equity in taxation would not be cast overboard. The prime indicator must, however, be the agreement and not the tariff.'

[9] However, in *Coetzee v Taxing Master, South Gauteng High Court and another*⁵ it was stated that the tariff is still to be used as a guide in the taxation of attorney and own client bills.

² *Malcolm Lyons & Munro v Abro and another* 1991 (3) SA 464 (W) at 469C-E.

³ *R H Christie Incorporated v Taxing Master – Supreme Court of Appeal* [2021] ZASCA 152 para 56.

⁴ *Cambridge Plan AG v Cambridge Diet (Pty) Ltd and others* 1990 (2) SA 574 (T) at 602G-I.

⁵ *Coetzee v Taxing Master, South Gauteng High Court and another* 2013 (1) SA 74 (GSJ) para 25.3.

[10] Accordingly, in my view, irrespective of whether a written mandate was presented or not, the taxing master was empowered and indeed duty bound to satisfy herself that the fees claimed were reasonable in the circumstances.

Principles applicable to the review of taxations

[11] A taxing master is required to exercise his or her discretion when taxing a bill. The circumstances under which a court will interfere with the discretion of the taxing master have been stated as follows in *City of Cape Town v Arun Property Development (Pty) Ltd and another*:

'The taxing master has discretion to allow, reduce or reject items in a bill of costs. She must exercise this discretion judicially in the sense that 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, her decision will be subject to review. In addition, even where she has exercised her discretion properly, a court on review will be entitled to interfere where her 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 . . . In the *Price Waterhouse* case (at para 25) the court considered the fact that the taxing master had used the fee charged by the defendant's leading senior counsel as the yardstick by which to determine the fee allowable in respect of the plaintiff's senior counsel as "enough reason for interference".⁶

[12] In *Preller v Jordaan and another*⁷ the court stated as follows:

'It is clear that a discretion is given to the Taxing Master to award such costs etc., ". . . as appear to him to have been necessary and proper . . ." and that the discretion also applies to the limitations contained in the proviso to the effect that no costs shall be awarded "which appear to the Taxing Master" to have been incurred through overcaution, etc. 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.'

⁶ *City of Cape Town v Arun Property Development (Pty) Ltd and another* 2009 (5) SA 227 (C) para 17.

⁷ *Preller v Jordaan and another* 1957 (3) SA 201 (O) at 203B-D.

[13] Accordingly, a court will only interfere with a taxing master's decision if it was 'mala fide; or from ulterior purpose or improper motives; or has not applied his mind to the matter or exercised his discretion at all; or if he disregarded regulatory prescripts'.⁸ A court must be satisfied that the taxing master's decision was 'clearly wrong'.⁹

Further information provided by the applicant

[14] As mentioned already, the applicant was represented by a cost consultant at the taxation. The applicant's submissions to the taxing master's stated case in some instances contains information and/or submissions which appear not to have been presented at the taxation.

[15] In this regard it has been held that '[i]f no effort is made to do so or if when an item is challenged a party fails to make available the information at his disposal to support his contention, he cannot blame a taxing officer who disallows the item'.¹⁰

[16] Whether such information is then to be allowed at the review is up to the judge. See in this regard *Van der Westhuizen v Gibbon and another*:

'For the purposes of this matter I will assume, without deciding the question, that it is permissible for the reviewing Judge or Court, acting by virtue of the powers conferred by Rule 48, to hear further evidence on the merits of an item in issue. No authority is to be found, however, for the view that a party who has failed to lay any evidence or facts before a Taxing Master to support an item to which objection has been taken can as of right lay further evidence before the reviewing Judge or Court. That the reviewing Judge or Court has a discretion as to whether further evidence will be allowed appears to have been the view of GALGUT J - as he then was - in *City Deep Ltd v Johannesburg City Council* (*supra* at 120) where the learned Judge states that

"... if the item is still disputed on review by the opponent or the taxing officer then the applicant cannot expect that the reviewing Court will, in the absence of any amendment or rectification, go out of its way to allow facts to be placed before it which could and should have been placed before the taxing officer. There must be an end to all litigation including taxation. I have not overlooked Rule 48 (2), which provides that a party can 'submit contentions in writing... including grounds of

⁸ *R H Christie Incorporated v Taxing Master – Supreme Court of Appeal* [2021] ZASCA 152 para 55.

⁹ *Ibid.*

¹⁰ *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 119H.

objection not advanced at the taxation'. This does not absolve a party from his duty to draw a bill of costs properly and correctly; nor does it absolve him from his duty to satisfy the Taxing Master that the work was done and was necessary. Hence, if he fails to do what is required of him, then, despite the above Rule, he must not expect the reviewing Court to be too solicitous on his behalf. Each case will depend on its own facts. The reviewing Court in the exercise of its discretion will have regard to all the factors. It will not lightly reverse a taxing officer's ruling on an objection raised for the first time on review."¹¹

[17] The fairness in the introduction of further information which was not provided at taxation has also been raised by the respondent, who described it as a 'proverbial second bite at the cherry'. It will thus need to be determined in each instance whether or not such further evidence is to be allowed in the determination of the review.

Disallowance of some WhatsApp messages

[18] The taxing master disallowed various WhatsApp messages. The respondent provided some further insight into what had happened at the taxation with regard to the WhatsApp messages, and it appears that the primary reason why the WhatsApp messages were taxed off relate to the fact that they were less than 250 words.

[19] The prescribed tariff set out in item B3 of rule 70 only refers to 'letters, facsimiles and electronic mail'. WhatsApp messages have been stated to be a 'form of communication by text message'.¹² It has been suggested that 'it would be appropriate to include correspondence sent by electronic media, such as electronic mail and SMS' under the tariff for correspondence.¹³ There accordingly appears to be no reason why in principle a WhatsApp message should not be treated similarly to any other form of correspondence.

[20] Correspondence is charged on a per page basis – this is in terms of the mandate and the prescribed tariff. The mandate does not define what a page means, but rule 70(9) defines a page as consisting of at least 250 words.

¹¹ *Van der Westhuizen v Gibbon and another* 1983 (1) SA 95 (O) at 99H-100C.

¹² *Johnstone v Shebab* 2022 (1) SACR 250 (GJ) fn 1.

¹³ R Francis-Subbiah *Taxation of Legal Costs in South Africa* (2013) at 291.

[21] The practical effect of the definition for a page was discussed in *Ndzamela v Eastern Cape Development Corporation Ltd and another* as follows:

'[19] The contents of Rule 70(9) are clear and peremptory and are thus not merely a guide but have been worded in this manner to prevent abuse.

[20] The question then arises what is to be done by Taxing Masters under the circumstances where there are less than 250 words on a page.

[21] According to the practice in the Transvaal Provincial Division a page is taken as 250 words in compliance with Rule 70(9). In practice the Taxing Master counts the number of words on a few pages selected at random, say four pages, to determine how many words there are on average on a page and having arrived at an average then multiplies the average figure with the number of pages and then divides the sum total with 250 resulting in the number of 'pages' there are for taxing purposes. Practice has proven that the end result may be a percentage point or two out but nobody apparently is interested in or upset by the said few percentage points. Computer technology nowadays has in any case resolved the problem as the number of words in a particular document produced by the computer are automatically counted and the result can be printed at the foot of the document if so desired. It also seems to be the practice in the Transvaal Division that the Taxing Master requires the attorneys or costs consultants involved in a taxing matter before him to in advance determine amongst themselves the number of pages thus releasing the Taxing Master from the duty to count the words.

[22] The practical approach adopted by the Taxing Masters in the Transvaal Provincial Division adequately deals with the matter and results in a logical and pragmatic resolution . . .'¹⁴

[22] In *Cary v Cary Cape*¹⁵ it was held that the taxing master was correct in allowing correspondence which contained less than 250 words:

'The tariff does not provide for part of a page. This leads to an anomaly. What happens when a letter is sent or received which is less than 250 words? Is the plaintiff denied the costs of either drafting or perusing such a letter? Surely it could not have been the intention of the legislature. The general rule is that a party who has been awarded costs, is afforded a full indemnity for all costs reasonably incurred in the pursuit of justice. The taxing master has a discretion to depart from any provisions of the tariff in extraordinary or exceptional cases, where strict adherence to such provisions would result in an inequitable disposition.

¹⁴ *Ndzamela v Eastern Cape Development Corporation Ltd and another* 2004 (6) SA 378 (TkH) paras 19-22.

¹⁵ *Cary v Cary Cape* 2001 JDR 0864 (C) at 22.

This is a case in point. In my opinion the taxing master correctly exercised her discretion in allowing an item which comprised less than 250 words, as a page.'

[23] It needs to be determined whether or not the taxing master exercised her discretion incorrectly in disallowing the relevant WhatsApp messages, taking into account that attorney and own client costs 'means all costs incurred except where unreasonable'.¹⁶

[24] It is difficult to determine whether the taxing master was correct, as the taxing master does not explain why these specific items were taxed off by her, save to state that she determined what was reasonable. The brevity of the stated case can often cause problems on review. The functions of the stated case were set out in *Brener NO v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd (formerly D'Arcy Masins Benton & Bowless SA (Pty) (Ltd)*:

'As was pointed out by Schutz J in *Nedperm Bank Ltd v Desbie (Pty) Ltd* 1995 (2) SA 711 (W) at 713A-C, when the Taxing Master initially states a case in terms of Rule 48, he is not required to "write an essay". All he must do is, as required by the Rule, to "set out each item or part of an item together with the grounds of objection advanced at the taxation and . . . any finding of facts by the Taxing Master". After that the parties are to deliver to him their contentions in writing. It is only at that stage that the Taxing Master is called upon to prepare a "report". It is his "report", to be made in the light of the parties' written contentions, which is "the occasion to give his reasons in full". After that the parties have the last word in further contentions dealing with the Taxing Master's report.

Despite the fact that Rule 48 makes provision for these exchanges after the Taxing Master has stated a case, it is important to bear in mind that the stated case remains the foundation of the parties' initial contentions, of the Taxing Master's report and of the parties' further contentions that are to follow in terms of the Rule. The stated case, if not initially prepared with due care, is likely to create problems that complicate, or even frustrate, the steps in the review proceeding that have still to follow. The importance of proper compliance with the requirement that the stated case "shall embody any finding of facts by the Taxing Master" was emphasised in *Cordingley NO v BP Southern Africa (Pty) Ltd* 1971 (3) SA 118 (O) at 122B-C.¹⁷

¹⁶ *Ben McDonald Inc and another v Rudolph and another* 1997 (4) SA 252 (T) at 258B.

¹⁷ *Brener NO v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd (formerly D'Arcy Masins Benton & Bowless SA (Pty) (Ltd)* 1999 (4) SA 503 (W) at 508B-F.

[25] In the absence of an explanation by the taxing master, and the fact that in *Cary* correspondence which comprised less than 250 words was allowed or that *Ndzamela* called for a few pages to be counted and then averaged, it seems logical to conclude that the taxing master was incorrect in her approach to the WhatsApp messages. In my view, all of these items should not have been taxed off.

Travelling costs

[26] The taxing master disallowed some fees which were charged by the applicant for travelling to Pietermaritzburg from Howick (the applicant is based in Howick).

[27] Item A11 of rule 70 allows an attorney to claim for such amounts:

'The rates of remuneration in items 1 to 9 do not include time spent travelling or waiting and the taxing officer may, in respect of time necessarily so spent, allow such additional remuneration as he or she in his or her discretion considers fair and reasonable, but not exceeding R357,00 per quarter of an hour or part thereof in the case of an attorney and R111,00 per quarter of an hour or part thereof in the case of a candidate attorney plus a reasonable amount for necessary conveyance.'

[28] The mandate also provided for travelling fees and expenses. The taxing master is however still required to determine whether or not the fees were reasonable.

[29] The taxing master was of the opinion that the fees and expenses were unnecessary as a local correspondent could have been used to reduce the expenses, and accordingly allowed half of the fees and expenses claimed. Items 54, 134, 153 and 193 (for case number 7410/2019P) and items 4, 38, 116, 183, 188, 283, and 324 (for case number 8527/2016P) all relate to travelling from Howick to Pietermaritzburg for purely administrative duties such as filing of documents at court and delivering documents to counsel. In this regard, the taxing master was correct as a correspondent attorney could have attended to these functions, and it seems unreasonable to charge a client for doing this. Item 67 (for case number 7410/2019P) and item 203 (for case number 8527/2016P) are for travelling fees to attend a consultation at counsel's chambers with her client. It is not known why the taxing master halved the travelling fees, taking into account that such a consultation

is reasonable. In my view, item 67 in case number 7410/2019P and item 203 in case number 8527/2016P, ought to have been allowed.

VAT

[30] Item 3A of rule 70 allows for VAT to be charged:

‘(3A) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.’

[31] The issue of whether or not VAT can be claimed was dealt with in *Price Waterhouse Meyernel v Thoroughbred Breeders’ Association of South Africa*.¹⁸ The court set out the procedure for determining whether VAT can be claimed as follows:

‘When the answer to that enquiry has been established it is then that the question arises whether such VAT may be included in the bill. Certainly, that offers a choice but only a choice for the party whose bill it is. Once that party decides to include the VAT, the Taxing Master has to decide whether such inclusion is proper. That is not a matter of discretion. A costs order - it is trite to say - is intended to indemnify the winner (subject to the limitations of the party and party costs scale) to the extent that it is out of pocket as a result of pursuing the litigation to a successful conclusion. It follows that what the winner has to show - and the Taxing Master has to be satisfied about - is that the items in the bill are costs in the true sense, that is to say, expenses which actually leave the winner out of pocket. The subrule is consequently an empowering provision. It enables the party concerned to claim reimbursement of the items referred to but obliges the Taxing Master to allow or disallow them depending on whether they are expenses of the nature I have described.’¹⁹

[32] It then held that a plaintiff who is entitled to claim input VAT, will not necessarily be out of pocket:

‘Consequently, if plaintiff is entitled to claim from the Revenue, as an input tax, the VAT which it is required to pay to its attorney, it does not, in respect of such input tax, incur an out of pocket expense.’²⁰

[33] Thus, the taxing master is required to determine whether or not the VAT is in fact an expense. The taxing master states that the cost consultant confirmed that the

¹⁸ *Price Waterhouse Meyernel v Thoroughbred Breeders’ Association of South Africa* 2003 (3) SA 54 (SCA).

¹⁹ *Ibid* para 18.

²⁰ *Ibid* para 21.

applicant was registered for VAT, and could not prove that the applicant would be out of pocket.

[34] The taxing master conducted an enquiry into whether or not the applicant will be out of pocket, in line with what was required in *Price Waterhouse*. In my view, the taxing master's approach in this regard cannot be criticised and must prevail.

Attendance at court

[35] Although stated in respect of party and party costs, it has been held that 'Fees for attendance in court at a trial are usually allowed only for one set of attorneys acting for a party, that is either for the attorney at the place where the litigant resides (or carries on business) or for the attorney practising at the seat of the court.'²¹

[36] In determining whether the fees were reasonable, the taxing master held that the local correspondent had already attended court, and it was not reasonable to allow the applicant to also charge an attendance fee. Based on the information before the taxing master, it cannot be said that the taxing master committed an error.

[37] However, the applicant in its submissions provided further evidence on why it was necessary to incur these costs – evidence which was not provided at taxation. In my view, this information should have served before the taxing master from the outset and as such should not be allowed now on review.²²

Sheriff's fees

[38] As the sheriff's fee is an expense, '[a] taxing master has a discretion to disallow certain expenses where an attorney has overreached his client or has been negligent or mala fide'.²³

[39] If the attorney was at fault for having to have the warrant of execution reissued, then the client cannot be expected to have to pay for such negligence. In terms of the taxing master's stated case, no submissions were made by the cost

²¹ DE van Loggerenberg and E Bertelsmann *Erasmus: Superior Court Practice* (RS 9, 2019) at D1-789.

²² *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) and *Van der Westhuizen v Gibbon and another* 1983 (1) SA 95 (O).

²³ *R H Christie Incorporated v Taxing Master – Supreme Court of Appeal* [2021] ZASCA 152 para 56.

consultant who appeared on behalf of the applicant as to why the warrant was reissued. Accordingly, there appears to be no reason for interfering with the taxing master's decision.

[40] However, the applicant again in its submissions provided the necessary information as to why the warrant was reissued – which should have been done at the taxation. In my view, such information should not be allowed now on review and the taxing master's decision in this regard stands.

Applicant's correspondent's account

[41] Rule 70(8) allows for the two sets of attorneys to be remunerated under certain circumstances:

'Where, in the opinion of the taxing master, more than one attorney has necessarily been engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.'

As this is also a taxation on the scale of attorney and own client, such expenses as 'which has been specifically agreed, expressly and impliedly, may be recovered'.²⁴

[42] The taxing master is required to ensure that there is no duplication of costs when there are two sets of attorneys:

'As I read Rule 70 (8) it is the function of the Taxing Master, not the Court, to decide whether more than one attorney has been necessarily engaged in the performance of any particular service. That relates to services or work, and in deciding whether Deneys Reitz was necessarily engaged to perform any or all of the services reflected in the second bill of costs the Taxing Master may have regard to the practice for which Mr. *Schreiner* contends. If he does so I think that he should also bear in mind that even if such practice is of general application it is not inflexible, and that the apparent reason for it is to avoid unnecessary duplication of costs. (See *Trethewey v Reinhold*, *supra* at p. 9; *Silber v Silber*, 1964 (3) SA 473 (T) at p. 476). In exercising his discretion on this question the Taxing Master should consider whether there has been any unnecessary duplication of costs and take into account all relevant facts and circumstances, including the facts that costs were awarded on the attorney and client scale and Johannesburg counsel and experts were employed.'²⁵

²⁴ *Ibid.*

²⁵ *Hills and others v Taxing Master and another* 1975 (1) SA 856 (D) at 865A-B.

[43] The taxing master's reason for taxing off the correspondent's account was that no bill of costs was presented in respect of the correspondent's account.

[44] The author of *Law of Costs* states that

'It has been held that where more than one attorney is necessarily engaged, each such attorney may draw up and have taxed a bill of costs and may charge, in addition to the fees allowed or included in such bill, a fee for drawing up the bill and a fee for having it taxed, based on the percentages (or the minimum) referred to. It may well be that in many cases the town attorney will actually draw both bills and may also attend on the taxation of both but in each case, apparently, a separate fee will be allowable.'²⁶ (Footnote omitted.)

[45] It was also stated in *Upfold v Maingard and another*²⁷ that both firms of attorneys are entitled to draw up a bill of costs.

[46] It has however been held that it is not always necessary for the correspondent attorney to draw up a bill of costs, and that it may be sufficient to merely attach the attorney's account. See *Groenewald v Selford Motors (Edms) Bpk*:

'As to the first, while the Port Elizabeth attorney was entitled to submit his own bill of costs (see *Upfold's* case, *supra*, p. 565A), it does not follow that he was bound to do so. He submitted a fully specified account to the Bloemfontein attorneys and it appears to be as detailed as any formal bill of costs might be.'²⁸

[47] What is required is that a detailed account be submitted. It is however not apparent from the documents or any of the parties' submissions whether or not the account was detailed enough to fall within the ambit of what was stated in *Groenewald*. In the circumstances, I direct that the correspondent's bill be placed before the taxing master to allow her to consider whether the fees claimed were necessarily incurred and reasonable in the circumstances. This will also allow her to ensure that there are no duplications in both bills.

Pound master's fees

²⁶ AC Cilliers *Law of Costs* (October 2022 - SI 46) para 13.17.

²⁷ *Upfold v Maingard and another* 1960 (1) SA 561 (N).

²⁸ *Groenewald v Selford Motors (Edms) Bpk* 1971 (3) SA 677 (C) at 682H-683A.

[48] The inclusion of an expense in a bill of costs does not automatically mean that it is reasonable, and that it should be allowed at taxation. Some expenses are indeed taxed off by a taxing master when it was deemed not to be reasonable. See for instance in *R H Christie Incorporated* where the costs of flying to Bloemfontein for the filing of documents was disallowed.

[49] Expenses can be disallowed where 'an attorney has overreached his client or has been negligent or mala fide'.²⁹

[50] A taxing master is entitled to demand proof that the services for which payment is being demanded have in fact been rendered. See *Maasdorp and Smit v Sullivan*:

'In my opinion the Assistant Taxing Master has not taken a right view of the matter. While it is true that he is not concerned with the question of any possible defences that could be brought against a claim for payment of a bill of costs - see, for example, *Lubbe v Borman*, 1938 CPD 211 - his duty is 'to demand proof to his satisfaction that the services for which payment is demanded have actually been rendered' - see *Gluckman v Winter and Another*, 1931 AD 449 at p. 450.'³⁰

[51] With regard to the principles in allowing expenses, *Cambridge Plan AG v Cambridge Diet (Pty) Ltd and others*³¹ stated as follows:

'As far as *expenses* are concerned, that which has specifically been authorised (expressly or impliedly) may be recovered. This may have to be qualified in that the Court may exercise an inherent power to control the activities of officers of the Court and reverse an agreement or authorisation, or the Taxing Master may exercise a discretion to disallow certain expenses, where the attorney has overreached his client or has been clearly negligent or *mala fide*. (See *Jacobs and Ehlers (op cit para 38(vi) at 52 - 3)* and authorities cited there.) As far as other expenses are concerned, those which are *necessary* should be recoverable. However, necessity in the strict sense of the word is not the only test. It often happens that an item is established to have been unnecessary only after a certain line of action has been concluded. Consequently, expenses should be allowed, where there is no limitation in the mandate, which the attorney *bona fide* and reasonably considered necessary in managing his client's affairs. An objective test for the same thing would be to inquire whether the work can be

²⁹ *R H Christie Incorporated v Taxing Master – Supreme Court of Appeal* [2021] ZASCA 152 para 56.

³⁰ *Maasdorp and Smit v Sullivan* 1964 (4) SA 2 (E) at 2H-3A.

³¹ *Cambridge Plan AG v Cambridge Diet (Pty) Ltd and others* 1990 (2) SA 574 (T) at 600A-E.

considered normal or usual in the case of an attorney of reasonable competence in the same position.'

[52] The taxing master stated that no proof was provided that this amount was in fact paid by the applicant or that the applicant was out of pocket. Further issues were raised by the taxing master regarding the fact that the account was a pro forma account and not addressed to the applicant, but in fact to the sheriff which was also not included in a sheriff's return of service. It does not appear as if there was any error committed by the taxing master which entitles the court to interfere in the decision. In the result, the taxing master's decision stands.

Order

[53] In the result, the following order shall issue:

1. The review is upheld in respect of the following items:
 - (a) WhatsApp messages;
 - (b) Travelling costs relating to item 67 in case number 7410/2019P and item 203 in case number 8527/2016P; and
 - (c) Correspondent's account.
2. The taxing master (Pietermaritzburg) is directed to reconsider the above items in light of the findings and principles set out herein as well as any other information that the parties may wish to place before her.
3. The review fails in respect of the following items:
 - (a) Value Added Tax (VAT);
 - (b) Attendance at court;
 - (c) Sheriff's fees;
 - (d) Pound master's fees; and
 - (e) The balance of the travelling costs under case numbers 7410/2019P and 8527/2016P.
4. There shall be no order as to costs.

Seegobin J

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