

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 4860/07

In the review between:

CARLLO ANDRIAS GAGIANO

Plaintiff

and

CARRLO ANDRIAS GAGIANO (SNR)

1st Defendant

RACHEL MAGDALENA GAGIANO

2nd Defendant

THERESA JOUBERT GAGIANO

3rd Defendant

JUDGMENT BY:

MOLEMELA, J

DELIVERED ON:

20 AUGUST 2009

[1] This is a review of taxation as contemplated in Rule 48(1) of the Uniform Rules of Court. The review stems from the taxation of a bill of costs rendered by the applicant's correspondent attorney, viz Naudes attorneys, (at the seat of this Provincial Division) to the applicant's instructing attorneys, viz MCC attorneys, (based in Johannesburg).

[2] An objection was lodged by the applicant's instructing attorney in respect of the following items that were allowed by the taxing master, all of which being in respect of perusal of documents by the applicant's instructing attorney: items 1, 3, 4, 10 – 16, 19, 21, 24, 25, 28, 29, 31, 32, 39 – 48, 49 – 52, 56 – 58, 62, 65, 66, 70, 76, 80, 88, 90, 97, 99, 109, 116, 124, 129 and 133. The basis of the objection was that the perusal fee should not have been allowed as the applicant's correspondent attorney was "a mere post office". According to the submissions of the applicant's correspondent attorney "the only input they [applicant's correspondent attorneys] were asked to make in respect of the notice of motion related to addresses, dates and notice periods. They were clearly not asked to apply their minds to the contents of the affidavits attached to the notice of motion... They never had to apply their mind to the substance of the relief sought as that portion had been drafted by MCC. Naudes did not have to brief counsel or attend any consultations with counsel... The professional assistant (PA) from that went to court did so at the request of MCC and her sole function was to be a mere presence, for ethical reasons

without any further role in the proceedings... She could be described as the classical “briefcase carrier” for counsel and that was the end of her role.”

- [3] In his stated case the taxing master mentioned that the applicant’s instructing attorney had during the taxation, not denied that there were a lot of mistakes in the instructing attorney’s documents which had to be corrected by the applicant’s correspondent attorney. He also alluded to the fact that in the instructing attorney’s appointment letter (in terms of which the applicant’s correspondent attorney was appointed as such) there was no specific instruction stating that the correspondent would only act as a “post-box” for the instructing attorney. The taxing master’s attitude was therefore that the correspondent was entitled to a perusal fee in respect of all the disputed items. As authority for that proposition the taxing master relied on the case of **VAN DER BURGH v GUARDIAN NATIONAL INSURANCE CO LTD** 1997 (2) SA 187 (E) at 191 C – G where the court, *inter alia*, stated as follows:

“Be that as it may, the attorney of record generally performs an extremely valuable function in litigation which goes far beyond him merely operating as a 'postbox' and indexing and paginating the papers ...”

- [4] I have carefully considered the stated case submitted to the court and the correspondence attached thereto. I have in particular taken account of the contents of the letter from the applicant's correspondent attorney to the applicant's instructing attorney dated 31 October 2007 where the former, *inter alia*, stated as follows:

“Die kennisgewing van mosie was nie kragtens die reëls van die hof behoorlik voltooi nie, en derhalwe heeltemal gebrekkig. Ons het onmiddellik die balju versoek om die aansoekstukke nie te beteken nie, maar dadelik aan ons terug te besorg, sodat ons die nodige gewysigde kennisgewing van mosie kan voorberei, waarna die stukke aan die respondent beteken kan word. Sal u asb vir kliënt versoek om in die toekoms liefs dokumente wat uitgereik en beteken moet word, eers na ons kantore te bring, sodat dit eers behoorlik nagegaan en voltooi kan word voordat dit uitgereik word. Hierdie is die korrekte prosedure en skep dit vir ons 'n probleem

indien stukke onder ons naam op die wyse hanteer en uitgereik word sonder dat ons eens kennis daarvan dra. Ons vertrou dat u begrip hiervoor sal hê.” (My underlining for emphasis.)

- [5] It is quite clear from the contents of this letter that the applicant’s correspondent attorneys fully dictated the terms of their appointment and that they did not merely consider themselves as a “post-box”. These terms were, in my view, accepted by the applicant’s instructing attorneys when they, in response to the afore-mentioned letter, merely had the following to say:

“Kliënt moes die stukke by u aflewer maar was oorentoesiasties. Ons vra verskoning vir die moeite. Ons wil meld dat ons genoegsame trustfondse het om u rekenings te betaal en vra dat u aub tussentydse rekenings stuur in hierdie saak sowel as die saak tussen kliënt en sy pa.”

I am of the view that this response by the applicant’s instructing attorneys demonstrates their acquiescence to the notion that

the applicant's correspondent attorneys could peruse the documents.

- [6] On the basis of the aforesaid correspondence, the taxing master, was therefore, fully justified in allowing the fees charged for perusal and not perceiving the applicant's correspondent attorneys role as merely that of a "post-box". It is trite law that a court is entitled to interfere with a taxing master's decision only if it is clearly wrong or where he/she has not exercised his/her discretion judicially. I can find no grounds warranting interference with the taxing master's decision to allow the perusal costs in respect of the disputed items and must accordingly dismiss the application for review of taxation. I am of the view that the nature and grounds of the objection fall within the category of frivolous objections that warrant the court to show its disapproval by ordering the unsuccessful party to pay costs to the successful party.

I accordingly make the following order:

1. The application for review of taxation is dismissed.

2. The applicant's instructing attorneys are ordered to pay the applicant's correspondent attorneys a fixed sum of R300.00 in respect of the costs of review.

M.B. MOLEMELA, J

MBM/sp