

**IN THE HIGH COURT OF SOUTH AFRICA  
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case No.: SK0517

In the matter between:

**J KONGELEBERG**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**JUDGMENT ON REVIEW OF TAXATION : 23<sup>RD</sup> OCTOBER 2002**

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**COMRIE J. :**

This is a review of taxation of costs in terms of uniform rule 48. The underlying litigation was an action against the Road Accident Fund for damages arising out of a motor accident. The matter was settled before it came to trial on the basis, that the Fund would pay the plaintiff's taxed party and party costs.

The plaintiff's bill was duly taxed but the Fund objects to a number of decisions by the taxing master. This has led to the stated case, to which the Fund's attorney has replied. The plaintiff abides.

The objections fall into four categories. I shall deal with each category in turn.

**CATEGORY A** (bill items 12, 17, 35, 61, 72, 76, 128).

The issue here is how a "page" is to be calculated for the purpose of drafting or perusal. Uniform rule 70(9) provides that:

"Save for the forms set out in the First Schedule to these Rules, a page shall contain at least 250 words and four figures shall be counted as a word."

None of the documents in contention is a First Schedule document. None of them, moreover, contains less than 250 words. It is accordingly unnecessary for me to express a view as to what the position would be if one or more of the documents in this category comprised less than 250 words in all. Compare *Cary v. Cary* (29.10.2001) per Moosa J at p. 22. Compare *Wildhaber v. Schellau ff* per Botha J. quoted in the Fund's reply. For present purposes the meaning of Rule 70(9) is plain enough: a document containing between 251 and 499 words constitutes one page, not two.

Rule 70(5)(a) provides:

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"The taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable."

If a document contains say 720 words, and is clearly the product of careful thought and draftmanship, then such might be a proper case for the exercise by the taxing master of his foregoing discretion: he might be persuaded to allow three pages. Ditto for perusal, if the document clearly merits the most careful study.

In the present case the number of words in each document inevitably do not amount to precise multiples of 250. The taxing master has consistently allowed a fraction (i.e. a part) of 250 words as a page. Thus item 12 is for drafting an affidavit of 283 words. The taxing master allowed two pages. Item 17 is for perusing the SAPS report (286 words). Again, the taxing master allowed two pages. In the absence of extraordinary or exceptional circumstances, which have not been advanced before me, the taxing master was in my opinion wrong. The same is true of all the items listed above with the exception of items 61 (infra).

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It may be, however, that extraordinary or exceptional circumstances, if any, were not canvassed in front of the taxing master because of his stance that part of a page constituted a page.

Item 61 reads:

"05/07/2000

Drafting letter to insurer  
commenting on matter and  
enclosing documentation in  
support of claim (358 words)  
23 Page/s 920."

The taxing master appears to have taxed off R840, leaving a balance allowed of R80. It is not clear to me how this item was assessed.

The order on this part of the review is that all the listed items are remitted to the taxing master for re-taxation in terms of the principles set forth above.

**CATEGORY B** (bill items 15, 22, 66, 81, 82, 83, 89, 90, 96, 107, 111)

These items all relate to telephone attendances by the plaintiff's attorney, for which the tariff at D3 provides:

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"Necessary telephone calls: The actual cost thereof plus, per quarter of an hour or part thereof-

(a) by an attorney R100

(b) by a candidate attorney R 30."

It is not suggested that any of the telephone calls were unnecessary. In *Hackland v. Aegls Insurance Co. Ltd* (DCLD; 19/2/99) Trikamjee AJ held that a rigid application of the tariff would produce unintended consequences and distortions. In terms of rule 70(5) he held that the tariff should be prorated to R6.60 per minute. The Cape taxing master states that here a block system is used whereby 15 minutes is broken up into intervals of 3 minutes, each block being worth R20. The items under review were manifestly drawn on this basis. The Fund, however, contends that the telephone calls should be taxed at R6.60 per minute.

I respectfully agree with Trikamjee AJ that too rigid an application of the tariff would produce undesirable results. I do not think, however, that it is for the Court to lay down an alternative formula as a general rule in such cases. The taxing master must exercise his own discretion in terms of rule 70(5) on a case by case basis. I can see no objection to his applying the block system in the present case. The plaintiff's attorney sought no more than that.

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The objections to Items 15, 22, 66, 81, 82, 83, 89, 90, 96, 107 and 111 are accordingly dismissed.

**CATEGORY C** (bill Items 41 and 48)

Item 41 is for perusing witnesses' statements obtained from the SAPS. Eight pages were allowed at R20 per page in accordance with the tariff. The objection is that they should have been taxed on a time basis "as these documents comprise batches of similar documents relevant but not individually important." Cf. *Jacobs & Ehlers* at p. 29. I disagree. It seems to me that the statements of witnesses, obtained from the police, required careful and individual scrutiny.

Item 48 is for perusing Milnerton Medl Clinic's records. R5 860 was allowed on taxation for 293 pages at R20 per page. The initial objection was that these records should also have been assessed on a time basis. In reply to the stated case, the Fund's attorney says:

"4.2. The Defendant however, is willing to concede R20.00 per page for the hospital records of 162 pages, which then equals R3 240.00. The accounts however, should be perused at 40 pages per hour which would be 4 hours and an amount of R1 600.00 should be allowed. The amount to be subtracted should be R1 020.00."

I called for, and have looked at, the Medi Clinic's records. Many of the pages consist of internal hospital records relating to the plaintiff's operation and post-operative treatment. This was not a case in which the plaintiff was suing the hospital or a medical practitioner, where a close and detailed scrutiny of the records by the attorney would have been warranted. Here the records would have been more of interest to an expert engaged to testify on the quantum of damages. In the circumstances I consider the Fund's concession, noted above, to be generous; but I accept it.

The position with the accounts, it seems to me, is that arguably they constitute a batch of documents to be studied together. In my view the attorney needed to check whether the accounting was correct and whether all the supporting vouchers were available. That would have been a painstaking and time consuming job. The taxing master exercised his discretion, and allowed the account documents for perusal on a page basis, at R20 per page. I do not think that sufficient ground has been shown for interfering with the exercise by the taxing master of his discretion.

The objections falling into this category are dismissed.

**CATEGORY D (Item 120)**

It appears that when the matter was settled, the Fund sent a discharge form for signature to the plaintiff's attorney. The attorney charged R20 for perusing the form and:

"120. Attending on Insurer to sign  
Discharge Form  
15 mins R100."

On taxation the Fund objected to this item on the basis that this was a formal attendance not provided for by the tariff, and that the form was completed by the claims handler. In the stated case the taxing master observes:

"Rule 70 (s)(a) entitles the taxing master to apply his discretion in exceptional cases. The Road Accident Fund sent an unsigned discharge form to the plaintiff's attorney. According to the Item 120 if took 15 minutes of an attorney's time to attend to the Road Accident Fund to have the charge form signed. The item should be allowed as it stand."

In reply the Fund submits:

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"It is submitted that all the Attorney had to do was sign the document, which was compiled and completed by the claims handler. Therefore item 120 remains a formal attendance, just like receiving registered mail at the post office, which the tariff also does not provide for and which is not allowed on taxation."

I have looked at the discharge form. It is not an entirely straightforward document, its perusal was more than a formality; so was attending on the signature thereof. In my view the taxing master was correct in allowing the fee on attendance. This objection is overruled.

**Costs**

There is no prayer for costs, and the plaintiff has abided the decision of the Court. The Fund has achieved only limited success. In terms of Rule 48(7) I deem it appropriate to make no order for costs.

**R.G. COMRIE**  
**JUDGE**

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