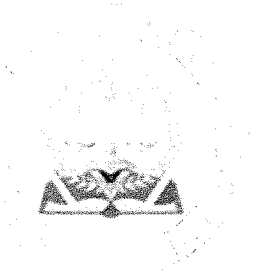

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 1961/10

12193/11

In the matter between:

GRANCY PROPERTY LIMITED	First Applicant
MONTAGUE GOLDSMITH AG IN LIQUIDATION	Second Applicant

and

TAXING MASTER OF THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE DIVISION, CAPE TOWN)	First Respondent
DINES CHANDRA MANILAL GIHWALA	Second Respondent
LANCELOT LENONO MANALA	Third Respondent
DINES CHANDRA MANILAL GIHWALA N.O	Fourth Respondent
SHANTI GIHWALA N.O	Fifth Respondent
KANTIELAL JERAM PATEL N.O	Sixth Respondent
NARENDRA GIHWALA N.O	Seventh Respondent
KIRAN GIHWALA N.O	Eighth Respondent

JUDGMENT 26 JUNE 2018

STEYN J

1] Applicants are applying for an order that the decision of the first respondent, a taxing master of the High Court of South Africa, Cape Town, Mr Bezana, referred to as '*the taxing master*', be reviewed and set aside. The taxing master who took the decision which is the subject matter of this application, was cited in his capacity as the official responsible for conducting taxations for this court. The alleged decision taken by him on 8 May 2017 entailed that he would not depart from the tariff appended to Rule 70 of the Uniform Rules of Court in relation to all or any items in the bills of costs that were the subject matter of taxation in this matter.

2] Applicants are applying that a different taxing master be appointed by the Chief Registrar of this court to tax the relevant bills of costs as soon as reasonably possible and, in addition, the new taxing master is directed, when taxing the bills of costs, to take certain steps and consider certain relevant aspects in his/her determination. Rule 70 of the Uniform Rules of Court, which deals with taxations and the tariff of fees of attorneys, sets out in much detail the discretion of the taxing master, how fees ought to be computed and that the taxing master shall have regard to all appropriate facts and circumstances including the exceptional nature of the matter, in order to compute an equitable taxation. The relief requested in paragraph 3 of the notice of motion, relating to proposed court ordered obligations of the taxing master in taxing bills of costs, will be addressed later, as will the special costs orders claimed by applicants from the second to eighth respondents, who are referred to as

the '*taxation respondents*' or the '*respondents*' in this judgment. These respondents oppose the relief sought by the applicants. The taxing master is not opposing the application and has not filed any explanatory affidavit.

3] The applicants have been embroiled in litigation against the taxation respondents in action proceedings since about 2010. The proceedings relate to investments, shares and loans of some magnitude through various corporate vehicles in a relationship described by Fourie J, then a Judge of this Division, as a joint venture akin to a partnership. It was found that the taxation respondents, or some of them, had committed wide-ranging complex breaches of a serious nature of agreements relating to common- and company law.

4] By May 2012 actions between the parties were consolidated and a large number of documents (in excess of 10,000 pages) were discovered, some secured pursuant to subpoenas. The trial, clearly requiring extensive preparation and consultation, proceeded for 7 weeks. Argument lasted 4 days. According to applicants they were '*overwhelmingly successful*' as reflected in the order of Fourie J, mentioned above, dated 26 June 2014. In the Supreme Court of Appeal ('SCA') the matter was heard over two days with the SCA taking into account the complexity of the matter and confirming the punitive costs order granted by Fourie J, namely that the taxation respondents were jointly and severally liable to the applicants for costs on the scale as between attorney and client. The order of the SCA dated 24 March 2016, has been reported, allegedly due to the complexity of issues raised.

5] Applicants allege, with apparent justification, that the matter before the trial court was factually and legally complex. They point out that an interlocutory order during the trial was taxed in 2014 on the basis of an attorney-client bill for wasted costs. The complexity of the matter was then regarded as justification for a substantial deviation from the usual tariff.

6] The applicants presented to the taxing master extensive bills of costs pursuant to the said punitive awards of costs ordered by the High Court and the SCA. The taxation was set down for taxation before the taxing master for an uninterrupted period of 5 days, commencing on 12 May 2017, mindful thereof that some representatives were not based in Cape Town.

7] When the taxation was due to commence the taxing master advised the parties to settle, before advising them that he was not available to hear the matter for the full five days. Shortly thereafter the taxing master was faced with a narrow point *in limine* raised by the costs consultant of the taxation respondents, namely the format of the bills of costs and whether these were properly drawn. He then asked '*in passing*' and generally, whether he should deviate from the tariff at all. Applicants explained that the bills were drawn with reference to authorities and SCA and High Court judgments/orders. Limited argument was presented by the applicants' representatives on the complexity of the matter and it was explained that the formulation of the rates would be fully justified in relation to specific items in the bills.

8] The taxing master intimated that he was not interested in argument in relation to specific items. He stood the matter down to consider a ruling, as far as the

applicants understood, relating to the point *in limine*, whether the bills should be redrafted due to form. When he returned he gave the controversial decision (*'the decision')* that would, according to applicants, have a fundamental effect on the entire taxation. He allegedly declared, unequivocally, that he would not depart from or deviate from or permit any amounts in excess of the tariff, (*'the tariff')* appended to Rule 70 of the Uniform Rules of Court. As regards the point *in limine*, he indicated that it was not necessary to redraft the bill of costs as the bill contained sufficient particularity to allow taxation.

9] The gist of the ruling of the taxing master is disputed on behalf of the taxation respondents in the affidavit of their costs consultant, Ms van Staden. It was her view that the taxing master '*ruled that the plaintiffs were not required to redraw their bills with reference to the tariff*', which is undisputed. She admits that he stated that he would not depart from the High Court tariff, which she maintains she '*understood*' to mean that he would not deviate from using the tariff as a '*guide*'. She maintains that he did not say he would not allow any rates in excess of the tariff and she does not '*recall*' that the taxing master said he would not come to any conclusions in relation to the complexity of the matter, as alleged. Her '*perception*' is allegedly not that the taxing master said that he would not be applying the party and party tariff, but she '*understood*' his approach to mean that the tariff would be used as a guide, from which he would not depart '*unless a deviation or departure was justified*'. It was her stance that nothing the taxing master said suggested that the tariff was cast in stone.

10] Applicants, not surprisingly, immediately and again shortly thereafter, queried what the taxing master meant to convey by his decision and he allegedly confirmed

that he would not permit any item of the 2 600 items contained in the bills of costs before him to exceed the party and party tariff, a tariff that is generally regarded as being applicable to legal costs on a party and party scale in amounts less than the scale between attorney and client. This clarification aspect was not responded to by the respondents who later argued that the allegation was ignored in view of a previous denial, not a satisfactory or persuasive answer. One expects a specific response or denial of the clarification request by applicants and the response of the taxing master. Respondents' failure to respond to the applicants' contentions relating to this aspect indicates an inability to do so.

11] Applicants allege that, apart from the punitive costs orders made by the High Court and the SCA permitting deviations from amounts in excess of the tariff, the matter requiring taxation is extraordinary and exceptional, warranting a departure from the tariff as provided for in Rule 70(5)(a) of the Uniform Rules of Court.

12] As noted, when the taxing master made his decision he had not heard argument in relation to any item in the bills of costs in respect of whether a deviation from the tariff was justified or not and he was ostensibly not aware of or interested in the extraordinary nature of or the material facts and considerations relevant to the consolidated action proceedings, circumstances warranting a departure from the Rule 70 tariff in a complex matter where punitive costs orders had been issued against the taxation respondents.

13] The taxing master allegedly stated that he would not come to conclusions on the complexity of the matter, as it was for a Judge to decide and that he would be

applying '*the (party and party) tariff*' and would not allow items in excess of the tariff. It was his stance that *'this was the approach he always took in all taxations and he had never lost on judicial review*'.

14] The applicants' representatives requested a postponement to allow a review of the ruling relating to the decision of which tariff the taxing master would apply, which was granted. To the astonishment of applicants' representatives the taxing master then '*implored*' the taxation respondents to defend any review, adding that applicants would have to pursue the review in terms of Rule 53 of the Uniform Rules of Court.

15] Any remaining doubt as to the meaning of the taxing master was removed by his alleged further conduct in a later unrelated taxation in which applicants' costs consultant, Mr Beagle, 'Beagle', was involved in May 2017, when the same taxing master would not permit departures from the Rule 70 tariff despite costs having been awarded on an attorney-client scale in a matter of some complexity. At the said later taxation the taxing master reminded Beagle that: '*as you are aware from the last time you appeared before me, I never depart from the tariff*', before not permitting a single item in the bill to exceed the tariff, by applying party-party rates to all the items in an attorney-client bill. That taxation is on review.

16] The taxation respondents make common cause with the decision of the taxing master by opposing the review of his ruling, according to applicants, on unsustainable grounds, since they admit that the taxing master decided not to depart from the tariff, nor do they deny the reply to the said follow-up query to the taxing

master. They do not take issue with the taxation principles set out by applicants. Their version, in opposition, is in essence that the decision has been misinterpreted or not made. Applicants maintain that there is no basis for opposition, which merely delays the applicants' rights to payment, to the financial benefit of the respondents and the prejudice of the applicants.

17] Since the version by Beagle of events and comments by the taxing master at a different taxation took place after the founding papers had been filed, the taxing master was invited to respond to Beagle's affidavit as well as the replying affidavit filed on behalf of the applicants. He continued to refrain from any response.

18] The impression created is that the taxing master has unlawfully fettered his discretion by adopting a uniform approach to all bills, whether they were party-party or attorney-client or attorney and own client. If this impression is correct, it represents an error of law as he appears to fail to appreciate what is required of him in assessing bills of costs ordered on any scale other than party-party. I cannot fault the argument on behalf of applicants that if the conduct of the taxing master, as alleged, is correct, as it appears to be, his conduct creates a perception of and a well justified apprehension of bias.

19] The ruling of the taxing master, as interpreted by applicants, would cause substantial prejudice to them as it would allegedly result in an immediate reduction of over R 5 million in relation to costs in circumstances where the taxing master would then not consider the complexity of or the facts of the case or any specific items.

Applicants argue that the decision of the taxing master was unlawful, without explanation or justification, and must accordingly be set aside.

20] As noted, the taxing respondents maintain that the application is premised on a '*fundamental misunderstanding on the part of the applicants as to the terms and import of the taxing master's interim ruling.*' They maintain that the ruling, '*correctly understood*' is lawful, reasonable and rational and should not be set aside. In addition they maintain that the application is premature as the taxing master has not affixed his *allocatur* (a statement under the signature of the registrar certifying the amount at which the bill has been taxed) to any of the bills of costs, which remain untaxed; that the interim ruling was capable of being altered and as such is not a reviewable decision and that the taxing master did not rule on any individual item in the proposed bills with the result that the effect of the taxing master's determination was unknown. The gist of their argument is that the applicants have mischaracterised the terms and import of the taxing master's interim ruling and the '*nature*' of their opposition.

21] The respondents dispute the allegations of applicants that the taxing master ruled that he would not be departing from the tariff '*at all*' and maintain that in fact he made it clear that '*he would not be allowing any rates in excess of the tariff*'. It is their stance that the taxing master actually said that he would '*stick to*' the High Court tariff and would not '*adhere to the tariffs the applicants had used*', a contrived response if ever there was one, maintaining that the terms of the ruling differ from those alleged by the applicants. The respondents appear to be attempting to introduce a self-created factual dispute and a difference of understanding as to the

terms of the taxing master's ruling, which allegedly lies at the heart of the application, seeking in this rather transparent way to turn the tables on the applicants in accordance with the principles of resolving factual disputes on motion.

22] Respondents maintain, *inter alia,* that their costs consultant submitted during the *in limine* objections by her, that the court tariff should be used as a guide even when presenting a bill on an attorney and client scale. So trite is the logic of this principle that it is difficult to take these comments seriously. The respondents' costs consultant allegedly argued that the bills of costs did not refer sufficiently to the high court tariff and should accordingly be redrawn, a request the taxing master did not allow.

23] The respondents' tax consultant also stated that she '*understood*' the taxing master's ruling to mean that he would not direct the applicants to redraw their bills of costs but would proceed using the high court tariff *'(rather than the applicant's tariff) as a guide'*. She stated repeatedly what she understood the taxing master to have meant or to have implied and did not agree with the obvious conclusion reached by the applicants. I believe if the actual words, that the high court tariff would be used as a '*guide*' only, were uttered, we would not be dealing with the matter. This reconstruction on behalf of the respondents is improbable and not persuasive.

24] I agree with the applicants' argument that the respondents' interpretation of the ruling offers a reinterpretation of the decision of the taxing master by not disputing the gist of his comments, but by reinventing his ruling based on their alleged understanding of what the taxing master meant, namely that he would not

deviate from the tariff unless such deviation was justified and would not allow rates in excess of the tariff unless convinced otherwise, which is not what he conveyed or stated. (Own underlining here, as elsewhere.)

25] Applicants maintain that the respondent's interpretation is contrary to the plain meaning and only reasonable interpretation of the unambiguous comments followed by the clarification of the taxing master; that the respondents' interpretation is plainly contrary to and does not take into account the express clarification sought and subsequent understanding by all four of applicants' representatives at the taxation and (importantly) is not at all confirmed or explained or responded to by the taxing master himself, who has elected not to oppose the application and not to file an explanatory affidavit to be of assistance to the parties or the court. I agree with the submission by the applicants that the meaning ascribed to the utterances of the taxing master by the respondents renders his comments meaningless. The reasons for the opposition to the application were not clarified.

26] There does not appear to be a real dispute relating to the ruling or decision by the taxing master, followed by his clarification of the ruling, followed by his comment at a further taxation, followed by his failure to step into the arena to explain his comments and the meaning thereof, not ignoring the fact that he inappropriately encouraged the respondents to oppose the application. Arguments relating to '*context*' by the respondents, explaining their '*understanding*' of the ruling by the taxing master are not reasonable or plausible. Their so-called understanding appears to be fabricated and unrealistic. How respondents can maintain in earnest that the taxing master '*appreciated that he had a discretion to deviate from the tariff*'

baffles the mind, an aspect he has remained silent on, as with all relevant interpretational or factually disputed issues.

27] A more relevant argument on behalf of the respondents is that the application is premature as the bills of costs remain untaxed and the ruling may be construed as an interim ruling. Considering the circumstances, I do not believe, based on the information before me, that there was any reasonable prospect that the ruling could or would be amended or applied differently. It is correct that ordinarily bills of costs are not reviewable under Rule 48 until the allocatur has been finalised and usually a Rule 48 review is regarded as premature in the absence of such an allocatur, mainly because it is open to the taxing master to change his mind until the granting of the allocatur.

28] The applicants contend that these principles are pre-constitutional and that different considerations should and do apply under the principle of legality and PAJA and that the authorities address the Rule 48 process, not the special powers under a review in terms of Rule 53. The applicants maintain that a decision may be reviewable, dependant on the facts of the case and whether the decision has the capacity to affect rights and is otherwise final in effect. The applicants argue that in this matter, in view of special and extraordinary circumstances, the taxing master's decision or ruling was final and that it would have been futile for the applicants to proceed, for several days at great costs, with a taxation where the result was a foregone conclusion, as confirmed by the taxing master himself.

29] The respondents do not agree that the principles of PAJA and legality should be allowed to displace established pre-constitutional authorities, with reference to Maseka v Law Society of the Northern Provinces, (443/06)[2010]ZANWHC 13 (1 January 2010) and Ex Parte: Workforce Group v Futter and Another, (6188/2009, 290/2010) [2011] ZAFSHC 144 (1 September 2011) Both these matters reaffirm the position, as set out in Pretorius and Another v Cohen 1953(3) SA 639 (O) at 639 H – 640, that an allocatur signifies the finality of the taxation process and that until that is attended to, the taxing person has not made up his/her mind and that until he/she has done so, he is not bound by a declaration he may have made as to what costs he intends to allow and that he/she is at liberty to change his/her mind. In the last matter, dealing with only two items, Horwitz AJP added, although obiter, that there was no reason for interference as there was no indication that the taxing master was wrong, made an error in principle or failed to exercise his discretion properly.

30] A similar view is held under the discussion of Rule 48 in Erasmus, Superior Court Practice, D1-653 to 656. The authors deal with reviews of rulings of taxing masters and their discretion, to be exercised judicially, and hold that a bill of costs cannot be reviewed until the allocatur has been affixed and failing such allocatur an application for review is defective. Under the heading 'General' on D1-654 and with reference to authorities, it is noted that a review of a taxation is not strictly a review in the sense of the court interfering only with the exercise of an improper discretion; '*The powers of the court are wider than the known and recognized grounds to which a power of review is limited at common law.*'

31] Respondents argue that the trite principles that a review of taxation in the absence of an allocatur is premature remain sound, with the result that the applicants are precluded from reviewing the taxing master's ruling. They maintain that the basis upon which applicants maintain that the taxing master's decision is reviewable under PAJA is flawed, as a taxing master may change his mind until the allocatur is affixed. They repeat that the applicants misconceived the taxing master's ruling which respondents maintained did not have a final determinative effect.

32] Applicants contend that the assertion by the respondents that the review is premature is divorced from the particular extraordinary and exceptional facts of this case where there was no justifiable reason for the taxing master's explicit final ruling. They concede that a bill of costs is not usually reviewable under rule 48 until the allocatur has been completed and that a rule 48 review in the absence of an allocatur is ordinarily held to be premature, in view of the fact that it is considered that it is open to the taxing master to change his/her mind until the granting of the allocatur. In view of the facts of the matter they do not agree that in this case the ruling was an interim preliminary hearing capable of alteration at any time. Authorities are clear that the court will interfere with a discretion exercised by a taxing master where such discretion has clearly been exercised improperly, for instance by disregarding factors which should have been considered or where the taxing master clearly acted on a wrong principle.

33] The applicants maintain that the taxing master's decision was unambiguous and can only, from his conduct and comments, reasonably be interpreted to mean that he conveyed a final (and reviewable) ruling to the parties that he would not

depart from or allow amounts in excess of the high court tariff, regardless of the material facts of the matter. They emphasise that the taxation in this matter is of an extraordinary and exceptional nature warranting a departure from the High Court tariff, triggering the application of rule 70(5)(a) of the Uniform Rules of Court under circumstances where there was no justifiable reason for the taxing master's ruling as described.

34] They accordingly maintain that since the events that culminated in the launching of the application constituted extraordinary circumstances, a ruling/decision by the taxing master, final in its effect, will undoubtedly (not only possibly) affect applicants' rights to a proper lawful taxation, with the inevitable result, a substantial negative impact on the taxed amount of the vast number of items of bills to be taxed to the substantial financial prejudice of applicants, before a review would be competent. It is the reasonable perception of the applicants that it would have been futile, unsustainable and highly prejudicial for applicants to proceed with a taxation that was '*irreparably tainted*', where the outcome was predetermined, where bias on the part of the taxing master was reasonably perceived and anticipated in view of his conduct and comments and where an eventual decision by him would inevitably require a review.

35] I agree that it would have been a remarkable and unjustifiable waste of resources if the entire taxation had been allowed to proceed under these circumstances, just to be referred back for a review after a successful challenge to the ruling, for another 5 days of renewed taxation. Insisting on such a course of

action would be a failure of justice and not in the interests of the court or any of the parties.

36] Applicants list the grounds for the review relief they seek under s 6 of PAJA in view of the administrative action taken in this matter. There are many relevant grounds, some that I have referred to. Important grounds include that the taxing master's decision was taken in bad faith, arbitrarily or capriciously, not rationally connected to the purpose for which it was taken and it was so unreasonable that no reasonable person could have made such a decision, which was unlawful and an abuse of his discretion. In addition and importantly the taxing master's conduct and his comments to the respondents to align their views with his in defending and supporting the ruling and his later comment to Beagle that he should be aware of the preconceived stance of the taxing master, all create a very reasonable and real apprehension of bias, compounded by the failure of the taxing master to assist the parties or the court in any explanatory affidavit.

37] The respondents' costs consultant conceded in her affidavit that she had approached the taxing master after these proceedings had been launched to ascertain from him what his attitude to the application was. Although allegedly stating that he did not want to become involved in the matter, he apparently advised her that did not believe that he made a reviewable ruling, that the application was premature, and that he did not want to depose to an affidavit. The relevance and evidential value of this hearsay evidence, even if admitted as requested by respondents, is minimal. It does not address the *crux* of the matter or the

'*understanding*' of Ms van Staden, which is contradictory to the well explained perception of the applicants.

38] Ms van Staden does not mention any response from the taxing master for the reasons for his ruling, which she characterises as '*an oral interim preliminary ruling*', without addressing the argument of applicants that the ruling was final in effect. This hand-in-glove discussion between the respondents and the taxing master did nothing to alleviate the reasonable perception and apprehension of bias held by applicants with regard to the taxing master and the injudicious nature of the opposition.

39] The applicants argued persuasively, with reference to authorities, that the courts are empowered and obliged to grant just and equitable relief upon a finding of unlawfulness in the exercise of a public power, which principles should also apply to private disputes. I agree that the decision of the taxing master is unlawful and falls to be set aside in order that the matter may proceed on the correct lawful basis.

40] The respondents submit that the relief sought by the applicants in par 3 of the notice of motion, relating to court ordered factors and criteria to be considered by the taxing master when attending to the taxation in this matter, is inappropriate and excessive. I agree. The relevant rule provides details of the functions and duties of the taxing master, the ambit of his/her discretion and the factors and circumstances he is entitled to take into account. Any taxing master should be mindful thereof that the taxation of costs is a '*regulating procedure based upon notions of fairness and practicality and designed to effect a balance between the fruits of victory and the burden of defeat in the sphere of litigation expenses.*'

Van Rooyen v Commercial Union Assurance Co of SA Ltd 1983 (2) SA 465 (O) at 467 D.

41] I recently ascertained that the taxing master, Mr Bezana, who had been involved in this matter, is no longer employed at the Cape Town High Court. Accordingly the Chief Registrar of this court will have to appoint a new taxing master to tax the relevant bills of costs as soon as possible, bearing in mind that at least five consecutive days have to be allocated for the taxation in view of the complexity and volume thereof and the fact that some legal representatives are from outside Cape Town.

COSTS

42] It was argued on behalf of applicants that the only individuals or entities that stand to gain financially by an order that the matter should proceed before the same taxing master, which will almost certainly lead to a postponement in order to launch a review, are the respondents, which is why the applicants ask for special costs orders against them. Applicants submit that the court, in framing a just and equitable remedy (in favour of the applicants) should penalise the taxation respondents for their dilatory tactics and the harm caused by the delay, by indemnifying the applicants with a suitable costs order from the deleterious effects of the delay in the finalisation of the matter.

43] In paragraph 3A of the amended notice of motion applicants claim an order that interest on any amount taxed in the bills of costs shall run from 30 August 2017, alternatively from 6 November 2017 until the final determination of the relief sought

in relation to a review hearing and a subsequent substitution of the taxing master. It was claimed that the interest will be in addition to and shall not detract from or substitute any other interest which the bills of costs may ultimately attract.

44] In paragraph 3B applicants claim that the court should order that the additional interest shall be paid by the taxation respondents jointly and severally, the one paying the other to be absolved.

45] In paragraph 4 of the notice of motion applicants request that the court should order any respondent who opposes the requested relief to pay the costs of the application jointly and severally, the one paying the other to be absolved, on an attorney-client scale, including the costs of two counsel. .

46] The court, in its discretion, may make any costs order that is just and equitable after consideration of the facts and circumstances of the particular matter. As apparent from the above, applicants seek a special interest award whereby the taxation respondents are ordered to pay special interest on the taxed amount from 30 August 2017, alternatively from 6 November 2017 until finalisation of the review. The justification for the dates was the submission that if the matter had proceeded on the unopposed roll, it would have been finalised on either 30 August 2017 or 6 November 2017, which amounts to speculation.

47] Applicants submit that the imposition of a special interest regime is the only safeguard available to applicants to mitigate the negative financial effects arising

from the taxation respondents' baseless opposition to the application. They submit that the opposition is a dilatory tactic and an abuse of court process in an attempt to avoid court-ordered payments of costs, with the result that applicants stand to lose significant amounts in interest as no allocator has been issued. It is of course a fact that no allocator has been issued as a result of the application, interrupting taxation proceedings.

48] In addition to the above applicants pray for costs of the application on the scale as between attorney and client, including the costs of two counsel. They submit, correctly, that it is a well-established principle that a litigant who is put to unnecessary expense through the irresponsible, unreasonable conduct of an opposing litigant, a costs order that compensates the former litigant, such as a punitive costs order, is appropriate. Attorney client costs orders indicate the strong disapproval of the conduct of a party by the court and it aims to ensure that the party in whose favour the order is granted is more fully indemnified than with the usual unspecified costs orders.

49] The taxation respondents oppose the unusual claim for interest. They deny that the opposition to the application has no merit and constitutes a delaying tactic and submit their opposition is *bona fide*. They maintain that by bringing the application prematurely, applicants caused a delay in the finalisation of the taxation and maintain that if the applicants had waited for the finalisation of the taxation before launching a review, they would have been able to claim immediate payment of the taxed costs and would have received payment of the amounts taxed,

forgetting that such taxed costs would probably have been on a prejudicial scale, not the court ordered scale nor with reference to the complexity or nature of the matter.

50] In the circumstances of this matter and in view of the order I make, I believe the taxation respondents, respondents two to eight in the review application, should be liable for the costs of the applicants on a scale as between attorney and client including the costs of two counsel. I am not persuaded that a special interest award is appropriate in this matter, although the argument in its favour was attractive.

ORDER

It is ordered that:

1. The decision of the first respondent, taken on 8 May 2017, not to depart from the tariff appended to Rule 70 of the Uniform Rules of Court in relation to any and all items in the bills of costs that were the subject matter of the taxation in this matter in the Western Cape Division of the High Court (**'the bills of costs'**) is reviewed and set aside;

2. The Chief Registrar of this Court is directed to appoint a different taxing master to tax the bills of costs, which taxation should take place as soon as possible;

3. The taxation respondents, respondents two to eight in the taxation matter, shall be liable for the costs of the application jointly and severally (the one paying the others to be absolved) on the scale as between attorney and client, including the costs of two counsel.

E STEYN

Judge of the High Court, Cape Town