

REPUBLIC OF NAMIBIA



“RULE 75 REVIEW”

IN THE HIGH COURT OF NAMIBIA

<b>Case Title:</b>	<b>Case No:</b> I 1089/2016	
<b>HENDRIETHE KATJIVIKUA OLGA HUMAUVA DANIEL TUAPEUA KATJIVIKUA</b>  and  <b>DANIEL BELTSAZER DELPORT</b>	<b>1<sup>ST</sup> PLAINTIFF</b>  <b>2<sup>ND</sup> PLAINTIFF</b>  <b>3<sup>RD</sup> PLAINTIFF</b>    <b>DEFENDANT</b>	<b>Division of Court:</b> High Court, Main Division
<b>Served before:</b> Honourable Justice Herman Oosthuizen	<b>Released on:</b> 11 May 2022	
<b>Neutral Citation:</b> <i>Katjivikua v Delport</i> (I-1089/2016) [2022] NAHCMD 236 (11 May 2022)		
<b>Result on merits:</b> The Taxing Master's decision not to allow items 62 to 73 on the Bill of Costs as it was not included in Court Orders, is reviewed and set aside.		
<b>THE ORDERS:</b>		
<b>IT IS ORDERED THAT:</b>  1. The Taxing Master's decision not to allow items 62 to 73 on the Bill of Costs as it was not included in Court Orders, is reviewed and set aside.  2. Items 62 to 73 on the Bill of Costs are referred back to the Taxing Master for		

taxation.

3. Plaintiffs shall pay the taxed costs occasioned to the defendant/applicant for bringing the review application.

**REASONS FOR ORDERS:**

OOSTHUIZEN J:

[1] The Defendant filed a notice of Motion in terms of Rule 75 against the decision taken by the taxing master, which stated as follows:

'AD ITEMS 62 -73

1.1. The taxing master erroneously concluded that the costs in relation to the amendment by the Plaintiffs should be specifically included in a wasted cost order, which serves as her only mandate to tax same, despite Rule 52(8) specifically regulating the issue of costs.

1.2. The taxing master erroneously concluded that Rule 52(8) still requires a specific ruling to be made by the Court on the issue of costs, despite the subrule containing a deeming provision. Their liability was not rebutted by the Plaintiffs, nor did the Court order otherwise.'

[2] Court orders made by the Court on 6 February 2017 stating that '1. Plaintiff to pay the wasted costs for 6 February 2017.', and on 7 August 2017, the Court makes a further costs order stating that "1. Plaintiff shall be liable to defendant for the wasted costs incurred by the defendant for appearance on the following dates: 17 October 2016, 5 December 2016, 6 February 2017, 8 May 2017, 22 May 2017, 26 June 2017, and 17 July 2017. 2. Plaintiff shall be liable to defendant for all wasted costs as occasioned by various amendments filed by the plaintiff.'

[3] The taxing master stated that it was on the premise of the court orders made by the Court, why she allowed items on the bill of cost as they were wasted costs relating to the cost order, and disallowed items 62 to 73 as they were not included in the order of 7 August 2017.

[4] The Defendant replied to the taxing master's stated case stating that Rule 52(8) regulates the costs pertaining to amendments, which states that "A party giving notice of

amendment is, unless the court otherwise orders, liable to pay the costs thereby occasioned to any party.”

[5] In so far as amendments are concerned the defendant is correct that no specific costs order on 7 August 2017 was required, although the court made a very specific order stating that all wasted costs occasioned by the amendments, shall be included. Obviously the court only made an order up to that stage. The court could not know of subsequent amendments (although I am of the opinion that the court order was wide enough).

[6] Plaintiff elected to request further amendments after the court order of 7 August 2017, activating the provisions of Rule 52(8).

[7] It is evident that items 62 – 73 are items after the court order was made and if the court order did not include the amendments thereafter, Rule 52(8) definitively do, and do not need an order to be valid and operative.

[8] Rule 52(8) obviously was applicable to costs occasioned to defendant by further amendments.

[9] Therefore:

[9.1] The Taxing Master's decision not to allow items 62 to 73 on the Bill of Costs as it was not included in Court Orders, is reviewed and set aside.

[9.2] Items 62 to 73 on the Bill of Costs are referred back to the Taxing Master for taxation.

[9.3] Plaintiffs shall pay the taxed costs occasioned to the defendant/applicant for bringing the review application.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
OOSTHUIZEN Judge	
<b>Counsel:</b>	
<b>Plaintiffs</b>	<b>Defendants</b>

<p>Katjaerua Legal Practitioners Windhoek Namibia</p>	<p>Delpport Legal Practitioners Windhoek Namibia</p>