

The President of the Republic of South Africa and Others v The South African Rugby Football Union (SARFU) and Louis Luyt

CCT 16/98

Explanatory Note

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This judgment deals with aspects of the taxation of bills of costs in the Constitutional Court, a topic it describes as a “mundane yet important aspect of practice in this Court”. In September 1999 the Court made two awards of party and party costs: (i) Dr Luyt was to pay the costs of an abortive recusal application he had brought; and (ii) he and SARFU were to pay the costs of an appeal which succeeded against them. The Court’s rules make provision for such bills of costs to be taxed by the Court’s taxing master and lays down guidelines for the taxation.

In July 2000 a composite bill drafted by the state attorney, totalling R1 139 145,30, was submitted for taxation. It was later debated by the parties’ legal representatives before the taxing master and taxed by her in an amount of R1 054 986,85. The attorney acting for SARFU and Dr Luyt objected to two items in the bill as taxed, a perusal fee of R25 650 for the state attorney and fees of R784 000 for the three advocates he had briefed. The contention was that the perusal fee should be R16 150 and counsel’s fees R472 500.

As regards counsel’s fees, he contended that the taxing master should have followed the practice in the Supreme Court of Appeal (the SCA) and had erred in allowing separate fees for preparation, debited on a rate-per-time-spent basis, and for appearance at the hearing. He submitted that the fees should have been assessed on the basis of a first day fee of R45 000 for the senior plus R22 500 for each succeeding day and R30 000 plus R15 000 per succeeding day for each junior advocate.

Judge Kriegler, writing for the Court, found that separate bills should be drafted for the recusal application and the appeal. Dr Luyt alone had to pay the costs of the recusal and a composite bill would be unjust to SARFU. He also concluded that the Court’s practice regarding more extensive written argument and relatively limited oral argument differed sufficiently from that of the SCA to warrant a different approach to the taxation of counsel’s fees for preparation. Allowing counsel’s fees for preparation to be taxed on a rate-per-time-spent basis and another fee on appearance at the hearing was therefore not objectionable in principle, provided that there was no duplication of fees. A belated postponement of the appeal at the request of SARFU and Dr Luyt was a factor in allowing such taxation here. The rates charged and the time spent were found to be reasonable having regard to all the circumstances of the two highly unusual, long and very difficult cases. Roughly one-fifth of the total should be for Dr Luyt’s account.

Recognising the distinction between costs on an attorney-and-client basis and party-and-party costs, Judge Kriegler found that on the latter basis the fees allowed for counsel should be reduced to R240

000 for the senior and R160 000 for each of the juniors. The matter was sent back to the taxing master for taxation afresh with a limited order as to the costs of review.