



CONSTITUTIONAL COURT OF SOUTH AFRICA

Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another

Case CCT 76/12

Date of Judgment: 20 September 2012

MEDIA SUMMARY

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.

The Constitutional Court today handed down a judgment setting aside and reducing the amount of counsel's fees payable by the losing party to the winning party, as awarded by the Taxing Master of this Court in respect of *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another*.¹ The winning party's litigation fees, as taxed by a court's taxing master, represent what the losing party is required to pay to the winning party when costs are awarded.

In that case, an application for leave to appeal against a judgment of the Supreme Court of Appeal was dismissed with costs. Senior counsel retained by one of the successful parties charged a fee, inclusive of hourly preparation and appearance, of R453 150, while junior counsel charged R263 500 for the same items, including VAT. After the losing party objected, this Court's Taxing Master reduced these to a fee of R240 000 for senior counsel and R160 000 for junior counsel, exclusive of VAT. The losing party still considered these fees to be "excessive", and approached the Constitutional Court to review the Taxing Master's award.

The Constitutional Court unanimously affirmed the principle that where argument before the Court was largely "a rehearsal of issues that had already been well trampled out" before previous courts, counsel's fees should be adjusted down accordingly.

In this case, counsel had, for the most part, already thoroughly ventilated the main issues in three previous courts. The Court accordingly found that the amount awarded by the Taxing Master could not be considered fair and reasonable. The Taxing Master's award was therefore set aside. The Court found that total reasonable remuneration for counsel's work on the appeal, inclusive

¹ [2010] ZACC 19; 2011 (4) SA 42 (CC); 2011 (2) BCLR 121 (CC).

of hourly preparation and appearance in the Constitutional Court, was no more than R180 000 for senior counsel and R120 000 for junior counsel, plus VAT.

The Court expressed its disquiet at its observation that counsel's fees have "skyrocketed" in recent years. In a country with high levels of inequality and poverty, the Court stated that it could find no justification for advocates charging hundreds of thousands of rands to argue an appeal. The Court emphasised that, in South Africa, "the legal profession owes a duty of diffidence in charging fees that goes beyond what the market can bear". The Court recognised that many counsel who appear before the Court are accomplished and hard-working. In addition, many counsel take cases pro bono (without charge), and also make allowance for indigent clients in setting their fees. The Court stated, however, that those beneficent practices should find a place even where clients can pay, as in this case.