

LEGAL COSTS: WHAT CAN YOU RECOVER – John Carr-Hartley (Managing Partner)

When a Judge hands down judgment at the end of legal proceedings, there is almost invariably an award of costs. Usually, costs “follow the event” meaning that the successful party in the legal proceedings is awarded costs which must be paid by the unsuccessful party.

Except in exceptional circumstances, the costs which are awarded by the Court at the end of legal proceedings are what are known as “party and party costs”. Party and party costs are different to the fees paid by a client to its Attorney. These fees are called “Attorney and client costs”.

Attorney and client costs are the fees which are charged by the Attorney to his client in terms of the agreement or mandate given to the Attorney. These fees are usually significantly higher than the party and party costs recoverable at the end of legal proceedings.

Party and party costs are governed and prescribed by a Tariff which is contained in the Rules of Court (the High Court Rules or Magistrate’s Court, as the case may be). The Tariff prescribes maximum amounts which may be recovered for various steps taken in the litigation process; and also prescribes the hourly rate which can be recovered by the successful litigant for time spent by the Attorney who conducted the litigation on behalf of the successful litigant. For example, in terms of the High Court Tariff, where the litigation was conducted for the successful party by an Attorney with more than 15 years’ experience, the successful litigant can only recover an amount of P1,000.00 per hour for time taken by the Attorney. This is almost invariably much lower than the Attorney will have charged his client for the matter. In addition, the Tariffs are not reviewed and updated regularly and therefore, with the time value of money, the real recovery by a successful litigant is even more eroded over time.

Furthermore, after there has been an award of costs (in the event that the costs to be paid by the unsuccessful party cannot be agreed) the successful party must then prepare a “Bill of Costs” for “Taxation”. A Bill of Costs is a document which lists all the costs and cost items (including disbursements) incurred and claimed by the successful party in the litigation process, and must be prepared in accordance with the Tariff. The Bill of Costs is then served on the other party and is filed at the Court. Thereafter a Court official, known as a Taxing Master, requires the parties to appear before the Taxing Master in order for the successful party to “Tax” its Bill of Costs.

Taxation is a process in terms of which the successful party, represented by its Attorney, must demonstrate that the costs being claimed in the Bill of Costs were reasonably incurred in the litigation process and that they fall within the ambit of the Tariff. At Taxation, the unsuccessful party has the right and opportunity to challenge any cost claimed in the Bill of Costs.

After the Taxation of the Bill of Costs, the Taxing Master then finally awards the amount which is ultimately recoverable by the successful party and that amount may then be recovered through the issuing of a warrant of execution.

Although the Court will sometimes award Attorney and client costs (for example where there is an agreement that the unsuccessful party is to pay Attorney and client costs, or where the claim or defence is frivolous) the norm is that a successful party will only be awarded party and party costs and therefore, even if successful in the litigation, will still have to bear a large portion of its own legal costs. Fortunately, costs not recovered can be written off against Tax.