

Ex parte:

In re:

FEE ASSESSMENT

REPORT

1.

We have been appointed by the Bar Council to assess the reasonableness of the fees raised by Advocate [redacted] in a matter in which initially on his own from 11 July 2007 and later from 17 April 2015 was led by Advocate [redacted] in an action against The [redacted] (“the defendant”). The claim for damages initially was for an amount of R3 200 000.00 and ultimately amended in July 2016 to R14 703 090.00. The causes of action were based on the unlawful arrest and detention of the plaintiff and the deprivation of his right to freedom. His damages were for past and future hospital and medical expenses, past and future loss of earnings, past and future general damages as well as costs associated with household adaption.

2.

The defendant accepted full liability for the plaintiff's damages and this was made an Order of Court on 27 May 2015. No evidence was led.

3.

was admitted as an Advocate in and joined the Durban Bar in

4.

On 23 November 2020 a meeting was held with
representing and Advocate and Advocate
 represented the Committee. Advocate was not able to be present
as he was involved in a long running trial matter in Pietermaritzburg. The Full
Committee, however, had met on 18 November 2020 to discuss the matter. The duration
of the meeting on 23 November 2020 was approximately 4 hours during which
was given the opportunity to explain the queries regarding the makeup of his fees. The
queries had been emailed to on 19 and 20 November 2020.

5.

admitted that was not registered as a VAT vendor. We mention this as the
last of the fee notes submitted to us reflected Value Added Tax being added to the total
amount of fees. He explained that that fee note had been prepared by costs
consultant in Johannesburg one did not submit that fee note to
his instructing attorney as costs consultant had done so.
Although the costs consultant copied in on this fee note, had not scrutinised
it and had not noticed that VAT had been included in the total and advanced no reason
for this conduct.

6.

We were furnished with three fee notes of all dated 3 August 2017, all covering the period 11 July 2007 to 4 July 2017 and all addressed to instructing attorney . The first fee note is for an amount of R1 448 110.00 and was submitted to the instructing attorney by . Although there is nothing on such fee note to suggest it was only a draft fee note which was being submitted for the purpose of comment, mentioned he had orally advised his instructing attorney that must regard the fee note as merely a draft for comment purposes. The instructing attorney did not revert with any comments.

7.

The second fee note prepared by increased the fees by R104 145.00 and was for a total of R1 552 255.00. The second fee note was prepared after had attended at the High Court for the purpose of perusing the Court file to make sure that all items he was able to charge for, had been included. This fee note was not submitted to his instructing attorney but was shown to who had grave concerns about it and decided that the second fee note should be assessed by the said costs consultant

8.

This resulted in the third fee note being prepared and was for an amount of R1 166 112.84 inclusive of VAT of R143 206.84 from which was deducted a payment of R250 000.00

reducing the amount to R916 112.84 to which was added a disbursement of R4 000.00 being junior counsel's travelling costs to and from Durban/Pietermaritzburg producing a final total of R920 112.84.

9.

Before dealing with this fee note it is necessary to mention that in terms of a Court Order granted on 4 November 2020 under case number _____ has abandoned any right to claim such outstanding amount. The order also contained a *rule nisi* calling upon _____ to show cause why _____ should not be struck off the Roll of Legal Practitioners and _____ name be removed from the Roll of Advocates.

10.

It is further necessary to mention that on 17 April 2015 concluded a Contingency Fees Agreement with the plaintiff and in terms of that agreement warranted that his normal fees in a matter of this nature on an attorney and own client basis was R2 000.00 per hour for consultations, drafting or settling of affidavits or heads of argument, inspections *in loco*, providing opinions; and R20 000.00 for the first day and a refresher fee of R14 000.00 for each day thereafter for the purposes of appearing at any oral evidence hearing or a trial or an opposed application. Provision was also made for a collapse fee of R20 000.00 for the first day and R10 000.00 per day thereafter, in the event of notification that the matter will not be proceeding received less than 5 days before the scheduled date of trial and 50% of the full trial fee in the event of notification that the matter will not be proceeding received less than 20 days before the scheduled date of the

date of trial. On being asked what his normal hourly rate was at 17 April 2015 said it was R2 500.00 per hour and his trial fee for the first day varied between R18 000.00 and R22 000.00. also said that his hourly rate in July 2007 was R2 000.00. Advocate who has been a longstanding member of the Fee Dispute Committee advised him that in 2007 a reasonable hourly rate for an Advocate of years standing into which category fell at that time, was in the region of R1 000.00.

11.

Prior to 17 April 2015 had not signed any Contingency Fees Agreement and had worked on the basis that would only render a fee note if the plaintiff was successful. Our *prima facie* view is that in the absence of such an agreement he may not be entitled to recover any fee for work done prior to 17 April 2015. We, however, do not need to determine this as has abandoned any claim for fees outstanding. This however does not curtail our powers to determine the reasonableness of the fees charged prior to 17 April 2015.

12.

In determining the reasonableness of the fees we review the fees raised in the third fee note prepared by the costs consultant covering the period 20/7/2007 to 4 July 2017. We divide this period into parts namely :

- 12.1. 20/07/2007 up to 27/07/2007;
- 12.2. 28/07/2007 to 12/04/2014;

12.3. 13/04/2014 to 16/04/2015;

12.4. 17/04/2015 to 04/07/2017 (during which he was led by

Period 20/07/2007 to 27/07/2007

13.

This covered an 8 day period and on each day work is recorded as being done. The fee note records, *inter alia*, the following :

20/7/2007	Perusal of brief, consultations with attorney and client and advice thereon (4hrs)	R8 000.00
21/7/2007	Perusal of Verulam Case Docket : comprising 29 pages and considering same (9hr)	R18 000.00
22/7/2007	Perusal of hospital documents 15 pages and considering same (5hrs)	R10 000.00
23/7/2007	Perusal of Verulam Case Docket comprising 12 pages, perusing the charge sheet of 3 pages and considering same (4hrs)	R8 000.00
23/7/2007	Perusal of hospital records and various letters and considering same (4hrs)	R8 000.00
24/7/2007	Perusal of documents inclusive of a Safe Disposal Certificate, plaintiff's identity documents and considering same (3½hrs)	R7 000.00
25/7/2007	Research on relevant law (9hrs)	R18 000.00
26/7/2007	Consultation with attorney advising on further outstanding documents (3hrs)	R6 000.00
27/7/2007	Further consultation with attorney for purposes of drafting particulars of claim and combined summons (3hrs)	R6 000.00
TOTAL		R89 000.00

14.

- 14.1. The particulars of claim were signed by _____ on 30 July 2007 and the combined summons issued on 3 August 2007. The particulars of claim comprised 14 pages. As mentioned the causes of action were based upon unlawful arrest and detention and the deprivation of the plaintiff's right to freedom. The particulars of claim were well drafted but there was nothing that extraordinary in the preparation of such particulars which required _____ to raise fees of R89 000.00 to do so.
- 14.2. It is breathtaking that _____ charged a cumulative fee of R36 000.00 for the perusal of 59 pages of documents, the total time spent thereon being 18 hours. This is aside from further perusal of hospital records and letters on 23/07/2007 for 4 hours and a further perusal of documents on 24/07/2007 which took 3½ hours for which cumulative fees of R15 000.00 were raised. The documents recorded in the fee note would not have taken more than 2 hours to peruse and probably less.
- 14.3. The amount of R18 000.00 for research on the relevant law is also excessive. It is interesting to note that in the first fee note dated 3 August 2017 which on _____ version had been submitted to the instructing attorney for comment, the fees raised for the perusal of the documents amounted cumulatively to R65 000.00 as opposed to R51 000.00 in the third fee note. The first fee note claimed a fee of R30 000.00 as opposed to R18 000.00 for research on the relevant law.

- 14.4. In summary the fees raised in the third fee note for this period are grossly unreasonable.
- 14.5. It should be noted that did not raise a fee note for the actual drafting of the particulars of claim. Inclusive of a fee for perusal, any necessary consultations and drafting we consider a fee not in excess of R12 000.00 to be reasonable for the drafting of the particulars of claim for an Advocate of years standing. This is in contrast to the fees of R89 000.00 raised.

Period 20/07/2007 to 12/04/2014

15.

No fees were raised during this period except for a consultation on 30 October 2009 for 1 hour for which a fee of R2 000.00 was raised (in the first fee note the amount was R2 500.00). No explanation was given for what occurred during this period.

Period 13/04/2014 to 16/04/2015

16.

- 16.1. Against the date 13/04/2014 two items are recorded, research on the relevant law for the purposes of drafting amended particulars of claim for which a fee of R18 000.00 was charged and drafting particulars of claim (5 hours) for which a fee of R10 000.00 was charged. In the first fee note fees of R30 000.00 and R25 000.00 were charged for the same work.

- 16.2. At the meeting on 23 November conceded that the research on the relevant law was unnecessary and in the event of he having to do some research (which he was unable to give details of) such reasonable time spent should have been built into the fee for amending the particulars of claim. The fee note is misleading as it should have recorded drafting amended particulars of claim.
- 16.3. On 14/04/2014 and 15/04/2014 a cumulative fee of R22 000.00 was raised for the perusal of a bundle of documents to draft a Rule 37(4) agenda, a consultation with his attorney and drafting the Rule 37(4) agenda, in total 11 hours were spent thereon. The Rule 37(4) notice is a 9 page document and follows the normal pattern in matters of this nature. We regard a reasonable fee for the preparation of this document as being R7 500.00 inclusive of perusal and any consultation with attorney.
- 16.4. On 07/05/2014 a trial fee of R18 000.00 was raised. No fee was raised for the second and third days as opposed to the first fee note where the trial fee for the first day was R22 000.00 and refreshers of R18 000.00 on the second and third days. We were not furnished with the Court Order made on that day. The fee of R18 000.00 for the first day appears reasonable.
- 16.5. Nor were we furnished with the Court Order on 19/11/2014 for which a trial first day fee of R18 000.00 was raised and a trial second day fee for a similar amount. was unable to explain why a trial second day fee was raised as it

seemed that the matter had been adjourned again for hearing at a future date. The fee for the second day should not have been charged.

- 16.6. A fee of R12 000.00 was raised against the date 21/11/2014 for preparation for trial on liability. This seems unnecessary as this work would have had to be done immediately prior to the hearing on liability on 27/05/2015. Indeed on 26/05/2015 raised a fee for preparation for trial (liability) of R18 000.00. No proper explanation was given for the need to do this work on 21/11/2014 other than a suggestion that had researched the law and had uncovered case authority to the effect that treatment to an injured leg had to be performed within an 8 hour period to prevent the risk of an amputation. The fee of R12 000.00 should be disallowed.

Period 17/04/2015 to 04/07/2017

17.

- 17.1. During this period became : leader.
- 17.2. We have had sight of the tax invoice of and in respect of such period he raised a cumulative fee of R383 600.00 (excluding VAT). The plaintiff had no issue with the fee of and regarded it as reasonable.
- 17.3. In contrast raised fees totalling R813 900.00 (excluding VAT) which in any event should not have been added and excludes the disbursement of R4 000.00 for travelling on 04/07/2017. fees were more than double fees.

17.4. This can be attributed to, *inter alia*, the following :

17.4.1. on 26/05/2015 not only did charge R18 000.00 for "preparation for trial (liability) (9hrs)" but also on 26/05/2015 charged R9 000.00 for consultations with various witnesses which lasted 4½ hours as well as on the same day for travelling (2 hours) charged R4 000.00. Although the fee note records the travelling to be from Durban to Pinetown explained on 23 November that it also included travelling to Verulam. He had been requested by to accompany the instructing attorney to locate the witnesses who were to be consulted on 26/05/2015. We regard the duplication of charges on 26/05/2015 to be unreasonable as well as the 2 hour travelling charge. charged R28 000.00 for 10 hours work on 26/05/2015 in preparing for the trial and consulting with the said witnesses;

17.4.2. the following entries appear on fee note but do not appear on fee note:

15/2/2016	Research on relevant law to draft interim payment application (9hrs)	R18 000.00
16/2/2016	Drafting notice of amend in terms of Rule 34A (4hrs)	R8 000.00
17/2/2016	Drafting interim payment application Rule 34A (2hrs)	R4 000.00
18/2/2016	Consultation with attorney (3hrs)	R6 000.00

20/2/2016	Perusal of bundles of papers (5hrs)	R10 000.00
	Consultation with attorney on bundles received (2hrs)	R4 000.00
	Consultation with attorney, client and (3hrs)	R6 000.00
25/2/2016	Consultation with 4 witnesses (4hrs)	R8 000.00
7/5/2016	Trial 1 st day	R18 000.00
8/5/2016	Trial 2 nd day	R18 000.00
9/5/2016	Trial 3 rd day	R0.00
19/5/2016	Perusal of bundle of 6 expert reports (6hrs)	R12 000.00
	Consultation with attorney (3hrs)	R6 000.00
20/5/2016	Drafting notice of intention to amend particulars of claim and amended pages (3hrs)	R6 000.00
20/5/2016	Perusal of bundle of experts reports (3hrs)	R6 000.00
	(3hrs)	R6 000.00
	(3hrs)	R6 000.00
21/5/2016	On perusal of expert reports: (3hrs)	R6 000.00
	Actuarial report (30mins)	R1 000.00
24/5/2016	Consultation with attorney and perusal of bundle of 6 expert reports (9hrs)	R18 000.00
24/5/2016	Drafting notice and amending particulars of claim (9hrs)	R18 000.00
24/5/2016	Consultation with attorney (3hrs)	R6 000.00
25/5/2016	Perusal of bundle of papers: Liability- bundle of pleadings, notices, correspondences, discovery affidavit, witness statements, affidavit, etc.	R18 000.00

	Quantum bundle of 6 plaintiff's experts reports (9hrs)	
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17.4.3. in regard to these entries we regard the fee of R18 000.00 for research to draft an interim payment application to be excessive. We do not understand the drafting of a notice of amendment in terms of Rule 34A and this fee of R8 000.00 should be disallowed. We asked for the order granted on 07/05/2016 but this has not been forthcoming. The fee of R18 000.00 for the first day appears reasonable. In regard to the trial fee for the second day, this does not accord with the provisions of the Contingency Agreement which provides for a fee of R14 000.00. Be that as it may even this fee should be disallowed as the matter had been adjourned for a hearing at a future date so a refresher fee was inappropriate. The need to peruse expert reports at that time is questionable as on 03/12/2016 raised fees for perusing the reports again but this time did not spend 3 hours on each report but only 2 hours. We have had sight of the expert reports and take as an example the expert report of It is a 7 page document and would not have taken 3 hours to peruse as was charged for on 20/05/2016. It should be noted that records that the perusal of this expert report took half an hour;

17.4.4. the perusal fees of in respect of such expert reports between 2 - 4 December 2016 were as follows :

- 17.4.4.1. Mr - prosthetist (7 pages - ½ hr) R1 400.00;
- 17.4.4.2. Dr - orthopaedic surgeon (7 pages - ½hr)
R1 400.00;
- 17.4.4.3. - clinical psychologist (15 pages - ½hr)
R1 400.00;
- 17.4.4.4. - occupational therapist (24 pages - 1hr)
R2 800.00;
- 17.4.4.5. - neurologist (previously perused in March
2016) - refresher (11pages - ½ hr) R1 400.00;
- 17.4.4.6. - industrial psychologist (21 pages - 1½ hrs)
R4 200.00;
- 17.4.4.7. - actuary (2 pages - 1hr) R2 800.00;

17.4.5. defendant's experts :

- 17.4.5.1. - prosthetist (9 pages - ½ hr) R1 400.00;
- 17.4.5.2. Professor - industrial psychologist (31
pages - 1½ hrs) R4 200.00;
- 17.4.5.3. Dr - orthopaedic surgeon (6 pages - ½ hr)
R1 400.00;

17.4.6. this is in contrast to the time spent and fees charged by for
the perusal of the expert reports at the end of November and beginning
December 2016 being:

- 17.4.6.1. Dr (3hrs) R6 000.00;
- 17.4.6.2. Professor (3hrs) R6 000.00;

- 17.4.6.3. Dr (3hrs) R6 000.00;
- 17.4.6.4. Dr (2hrs) R4 000.00;
- 17.4.6.5. (2hrs) R4 000.00;
- 17.4.6.6. (2hrs) R4 000.00;
- 17.4.6.7. Dr (2hrs) R4 000.00;
- 17.4.6.8. Actuarial report (20 minutes) R1 000.00;

17.4.7. this is over and above the time spent by in perusing many of the same expert reports in May 2016 as tabulated on page 12 of this report;

17.4.8. reverting to the table referred to in paragraph 17.4.2 hereof a fee of R18 000.00 was raised on 24/05/2016 for drafting the notice and amending the particulars of claim. Although the amendment was comprehensive and went more into detail in regard to the *sequelae* of the plaintiff's injury we do not consider a fee of R18 000.00 to be reasonable and consider that it should be no more than R9 000.00. It should be noted that there is a duplication in regard to this item as four days earlier a fee of R6 000.00 was raised;

17.4.9. on 03/12/2016 the fee note reads :

3/12/2016	On perusal of experts reports:	
	Dr (2 hrs)	R4 000.00
	(2 hrs)	R4 000.00

	(2 hrs)	R4 000.00
	On perusal of expert reports:	
	Dr (2 hrs)	R4 000.00
	Actuarial report (20 mins)	R1 000.00
3/12/2016	On consultation with attorney (3hrs)	R6 000.00
	Drafting amended particulars of claim (full day fee)	R18 000.00
3/12/2016	On perusal of bundles of liability : Summons/pleadings Notice, hospital records Docket, prison records (4hrs)	R8 000.00
3/12/2016	Perusal of bundles of expert reports	
	Dr (3hrs)	R6 000.00
	Dr (3hrs)	R6 000.00
	Dr (3hrs)	R6 000.00
	Dr (3hrs)	R6 000.00
	Dr (3hrs)	R6 000.00
	Actuary (30 mins)	R1 000.00
	Hospital records and docket and prison records (1hr)	R2 000.00

The time billed on this day is almost 32 hours and this excludes a full day allegedly spent amending the particulars of claim. Accepting that there is an error in the duplication of the perusal of expert reports, this does not explain the difference in hours spent on perusing and why a fee could be raised for drafting amended particulars of claim for which fees had been raised for the same work on 20/05/2016 and 24/05/2016 for amounts totalling R26 000.00. We regard it as outrageous that could have debited those for fees work allegedly done on

03/12/2016. Furthermore we do not know why it was necessary to peruse bundles concerning liability when that issue had been determined on 27/05/2015;

17.4.10. on 04/12/2016 a fee of R18 000.00 was raised for research on relevant law against the joinder of a third party. explained that as a result of the expert report of Dr the suggestion was that the hospital should be joined as a defendant for liability to be apportioned. We did not understand this as the issue of liability had been determined on 27/05/2015. The report of Dr does infer that there was negligence at the Hospital. In any event no application was made to join the hospital and this work was unnecessary;

17.4.11. on 07/12/2016 fees of R15 000.00 and R1 400.00 were charged for drafting the minute of the Rule 37(4) conference. This is excessive;

17.4.12. on 08/12/2016 raised a second day trial fee of R18 000.00 in circumstances where the matter had been postponed on 07/12/2016 for it to be heard on 07, 08, 09 June 2017. In our view he was not entitled to charge a refresher fee. Even if he was the fee should be R14 000.00 in accordance with the Contingency Agreement;

17.4.13. on 03 and 04 June 2017 his fee note reads :

03/6/2017	Perusal of trial bundle of plaintiff's expert Dr (4hrs) Dr (4hrs) Dr (4hrs)	R8 000.00 R8 000.00 R8 000.00
03/6/2017	Perusal of trial bundle of defendant's experts Dr (4hrs) Dr (4hrs)	R8 000.00
04/6/2017	Perusal of trial bundle of plaintiff's experts Dr (3hrs) Dr (3hrs) Dr (3hrs)	R6 000.00 R6 000.00
04/6/2017	Perusal of trial bundle of defendant's experts Dr (3hrs)	R6 000.00

The time spent in perusing these reports once again is more than the time spent in May 2016 and December 2016. On 06/06/2017 spent 6 hours on perusal of the expert's supplementary reports of Dr , Dr , Dr , Dr , Dr and Dr each taking 1 hour to peruse. In our view these fees are excessive;

17.4.14. on 08/06/2017 charged a second day trial fee of R18 000.00 which should have been R14 000.00 in terms of the Contingency Fee Agreement on the same day charged one hour's work in drafting amended particulars of claim R2 000.00 and drafting the draft order

(2hrs) R4 000.00. We have not had sight of the amendment to the particulars of claim so we cannot comment thereon but regard the fee for drafting a draft order as being unreasonable as such a fee should have been included in the refresher fee;

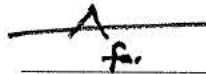
17.4.15. on 04/07/2017 under disbursements charged a fee of R4 000.00 for travelling to and from Durban/Pietermaritzburg. This is also objectionable. Firstly it is recorded as a fee and not as a disbursement but in any event such costs are normally included in the fee for the time spent in Pietermaritzburg and this amount should be disallowed.

18.

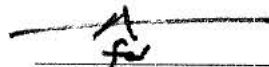
In summary and by reason of what we have stated above we find that fees are exceptionally unreasonable and excessive amounts to serious overreaching.



N D HOLLIS SC



AK KISSOON SINGH SC



MS R SINGH

Chambers
DURBAN

25 November 2020

Report