THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 573/2024

In the matter between:

SHOWROOM CENTRE (PTY) LTD	**FIRST APPLICANT**
SIYATHEMBANA PROJECT MANAGEMENT & DEVELOPMENT (PTY) LTD	**SECOND APPLICANT**
STEPHEN ZAGEY	**THIRD APPLICANT**

and

RONALD KAGAN	**RESPONDENT**

Neutral citation: *Showroom Centre (Pty) Ltd v Kagan* (573/2024) [2026] ZASCA 103 (27 July 2026)

Coram: SMITH JA

Heard: 30 June 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the handing down of the judgment is deemed to be 11:00 on 27 July 2026.

Summary **Costs — Taxation — Review of allocatur under rule 17(3)** — Applicants failed to object during taxation to items relating to reconsideration application and

associated condonation application — A party may raise a new ground of review in response to the Taxing Master's stated case only where the item itself is properly before the Court — Applicants have not brought themselves within the scope of review under rule 17(3) of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal in relation to objections concerning the reconsideration application – Applicants failed to show that Taxing Master's decisions were clearly wrong – Taxation review application dismissed with costs.

ORDER

The taxation review is dismissed with costs.

JUDGMENT

Smith JA

Introduction and background

[1] This is a review of the Taxing Master's *allocatur* dated 5 March 2026, brought under rule 17 of the Supreme Court of Appeal Rules (the SCA rules). The review concerns the taxation of the respondent's bills of costs following the applicants' unsuccessful application for leave to appeal, which was dismissed with costs. The respondent presented two bills of costs: one for the fees of its instructing attorneys, EFG Attorneys, and another for the services of its Bloemfontein correspondents, MM Hattingh Inc.

[2] On 8 March 2024, the applicants launched an application for leave to appeal under case number 210/2024. Two judges of this Court considered and dismissed that application with costs on 18 April 2024. The application was placed before them before the applicants had an opportunity to file their replying affidavit and before the time allowed by the rules for the filing of that affidavit had expired. Those facts were not brought to the judges' attention.

[3] After the dismissal of the application for leave to appeal, the applicants applied to the President of this Court (the President) for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013. That application was allocated case number 573/2024. Because it was filed out of time, the applicants also applied, on 28 May 2024, for condonation for its late filing.

[4] On 15 July 2024, the President granted condonation, ordered the applicants to pay the costs of that application, and referred the ruling refusing leave to appeal for reconsideration under s 17(2)*(f).* On 20 August 2024, the applicants filed a further condonation application for the late filing of the required six copies of both the original application for leave to appeal and the reconsideration application. No costs order was made in respect of that application.

[5] The reconsideration application was heard on 7 November 2025. On 21 November 2025, this Court granted reconsideration without making a costs order but again dismissed the application for leave to appeal with costs. The applicants therefore contend that they are liable only for the costs of the application for leave to appeal and the reconsideration proceedings before the President under case number 210/2024.

The taxation and grounds of review

[6] On 2 April 2026, the applicants filed their rule 17(3) notice seeking to review the Taxing Master's decisions allowing items in both bills relating to legal services connected with the reconsideration application, which was successfully argued pursuant to the President's directive under s 17(2)*(f)*, and the condonation application for the late filing of the required number of copies. The applicants contend that no costs orders were made in respect of those applications. They therefore submit that the respondent was not entitled to recover fees charged by either his instructing attorneys or his Bloemfontein correspondents for that work, and that the Taxing Master erred in allowing those items.

[7] The applicants further challenge the amount allowed for counsel's fees under item 102 of EFG Attorneys' bill of costs. They contend that the amount is excessive, having regard to the work performed, and that fees relating to the reconsideration application and the associated condonation application should not have been allowed.

[8] Four further contested items in the EFG Attorneys' bill of costs fall outside those broader review grounds. Items 15, 21 and 62 are challenged on the basis that the Taxing Master allowed perusal charges exceeding the maximum permitted under the rules. Item

51 is challenged on the basis that it duplicates a fee for instructions to counsel that had already been allowed under an earlier item.

The Taxing Master's stated case and the parties' contentions

[9] The Taxing Master delivered her stated case in terms of rule 17(3) on 4 June 2026. She explained that, although the taxation proceeded on an opposed basis, the applicants did not object to any items in either bill on the ground that the respondent was not entitled to recover costs relating to the reconsideration application or the related condonation application.

[10] According to the Taxing Master, most of the items were either not disputed or, in some instances, were agreed to by the applicants. She therefore submits that the new grounds of review, introduced for the first time in the applicants' rule 17(3) notice and directed at items not contested during taxation, fall outside the scope of rule 17(3) and are thus not properly before this Court.

[11] As to the four items properly contested during taxation, the Taxing Master states that she considered the nature of the work performed, the applicable tariffs, the SCA Guidelines, the costs orders made by the Court, and the parties' submissions. She allowed or disallowed items where appropriate and was satisfied that the respondent was entitled to the fees allowed on *allocatur* under the relevant court orders.

[12] In its rule 17(4) reply, the respondent supports the Taxing Master's position. He confirms that the applicants did not object during taxation to the items they now seek to review, and further asserts that the parties had reached agreement on counsel's fees.

[13] In reply to the stated case, the applicants do not deny that counsel's fees were agreed. They, however, dispute the Taxing Master's assertion that they failed to object, during taxation, to items relating to the reconsideration application and the associated condonation application.

Applicable principles on taxation review

[14] The Taxing Master enjoys a wide discretion in determining whether costs claimed in a bill of costs are reasonable. That discretion must be exercised in accordance with the applicable tariff and the requirement that costs be reasonable, unless a justified departure is shown. The test for interfering with a Taxing Master's decision is settled. Courts will not lightly interfere with the Taxing Master's discretion, which is presumed to have been exercised judicially, reasonably and on proper principles. Intervention is warranted only where the Taxing Master was clearly wrong; that is, where the Taxing Master's view differs so materially from that of the reviewing court that the ruling cannot stand.[1]

[15] Judicial interference may also be justified where the Taxing Master acted mala fide, for an improper purpose or with an ulterior motive; failed to apply her mind or to exercise a discretion; disregarded regulatory requirements or applied the wrong principles; or based the decision on an error of law, a misunderstanding of the facts or an unreasonable conclusion.[2]

[16] Rule 17(3) provides that a party dissatisfied with the Taxing Master's ruling on an item, or part of an item, that was objected to or disallowed by the Taxing Master of her own accord may, within 20 days of taxation, require the Taxing Master to state a case for the decision of the President. The stated case must identify each item or part of an item, set out the grounds of objection advanced during taxation, and include any relevant factual findings made by the Taxing Master.

[17] This Court has consistently held that a party who fails to object to an item before the Taxing Master may not later seek to review that item under rule 17(3). Review under the rule is confined to items that were specifically objected to during taxation, or items disallowed by the Taxing Master *mero motu*. The rule does not permit a party to raise, for

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[1] *Ocean Commodities Inc and Others v Gauteng Lions Rugby Ltd and Others Ltd and Others* 1984 (3) SA 13 (A).

[2] *Legal and General Assurance Society v Lieberum, NO and Another 1968 (1) SA 473 (A)*; *R H Christie Incorporated v Taxing Master – Supreme Court of Appeal* [2021] ZASCA 152 para 55; *City of Cape Town v Arun Property Development (Pty) Ltd and Another* [2008] ZAWCHC 22; 2009 (5) SA 227 (C) para 17.

the first time on review, objections that were not advanced during the taxation proceedings.[3]

[18] Rule 17(4) allows a party, in written contentions on the Taxing Master's stated case, to rely on a ground of objection not raised at taxation. That allowance is limited, however, to an item or part of an item that was itself objected to before the Taxing Master or disallowed by the Taxing Master of her own accord. The rule thus permits a new ground in support of an existing objection but it does not permit a party to object for the first time to an item that was previously uncontested.

Whether the disputed items are properly before the Court

[19] The difficulty for the applicants is that their denial that they failed to object to certain items during taxation is not supported by the material on which they rely. In particular, they do not identify the specific items to which objection was allegedly taken, nor do they state the grounds or terms of any such objection. Their reliance on an annexure said to show that the disputed items were marked does not assist them. The annexure contains no marked items capable of demonstrating that the objections now advanced were placed before the Taxing Master.

[20] The applicants then sought, for the first time in their rule 17(4) written contentions, to contend that portions of those items should have been disallowed. But they again failed to identify the impugned portions, explain why those items fell outside the relevant costs orders, or provide any principled basis on which recoverable work could be separated from non-recoverable work. Their case is therefore reduced to a broad proposition: because the Taxing Master may allow only costs authorised by a valid costs order, she was obliged, *mero motu*, to disallow all fees which, in the applicants' view, were not covered by such an order, even though the items were not challenged during taxation. The position is stronger in relation to counsel's fees, which were agreed during taxation.

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[3] *Macbeth Attorneys Incorporated v South African Forestry Company Soc Limited and Others* [2025] ZASCA 118; 2025 JDR 3566 (SCA) (*Macbeth Attorneys*); *NT Makhabele Enterprises CC and Others v Business Partners Limited* [2025] ZASCA 151; *Rock Foundation Properties CC v Dosvelt Properties (Pty) Limited* [2026] ZASCA 43; 2026 JDR 1455 (SCA).

The applicants cannot later reopen those items by recasting their complaint as one concerning jurisdiction or discretion. Those items are therefore not open to review under rule 17(3).

Costs relating to the reconsideration application

[21] In any event, the applicants' argument rests on too narrow a view of the reconsideration process. Reconsideration was granted because the application for leave to appeal had been decided before the applicants' replying affidavit was before the judges considering the application for leave to appeal. Once reconsideration was granted, the question was no longer confined to the procedural irregularity that justified reopening the matter. The Court was required to determine the application for leave to appeal afresh, on the full record then properly before it.

[22] This is apparent from the Court's own formulation of the issue:

'Deciding the application for leave to appeal in the absence of the replying affidavit may result in a grave failure of justice or the administration of justice being brought into disrepute, where the replying affidavit could have resulted in the application for leave to appeal being granted. Accordingly, the refusal of leave to appeal falls to be reconsidered. *The issue for determination is whether, now that all the affidavits relating to the application for leave to appeal to this Court have been placed before it, leave to appeal the orders of the high court should be granted*' (my emphasis).[4]

[23] That passage is significant. It shows that reconsideration did not create a self-standing proceeding detached from the application for leave to appeal. The enquiry under s 17(2)*(f)* is anterior and jurisdiction-related: before the merits of leave to appeal are revisited, the Court first had to be satisfied that the statutory jurisdictional facts for intervention were present. Those jurisdictional facts are not whether the appeal should ultimately succeed, but whether the refusal of leave, if left intact, may occasion grave injustice or bring the administration of justice into disrepute. In this matter, that threshold enquiry was concerned with the irregular circumstance that the application for leave to

[4] *Showroom Centre (Pty) Ltd and Others v Ronald Kagan* [2025] ZASCA 175; 2025 JDR 4947 (SCA) para 22.

appeal had been determined before the applicants' replying affidavit was before the Court and before the time for filing it had expired. Once that anterior threshold was crossed and reconsideration was granted, the effect was to reopen the leave to appeal enquiry so that it could be determined on the complete record. The respondent was, therefore, in opposing leave to appeal, also entitled to engage with material which related to the reconsideration application.

[24] Supreme Court of Appeal Practice Directive 1/2018 reinforces this conclusion. It requires the applicant to file the reconsideration application and supporting affidavits, together with the affidavits and judgments in the dismissed application and the order refusing leave to appeal. Those requirements confirm the procedural link between reconsideration and the dismissed application for leave to appeal: the process enables the Court to decide whether the refusal should be revisited and, if so, whether leave should be granted on the full record.

[25] It follows that fees and disbursements incurred in considering or responding to documents filed for purposes of reconsideration were not automatically excluded merely because they bore that description. The proper question for the Taxing Master to determine was whether the work was sufficiently connected to, or reasonably necessary for, the respondent's opposition to the application for leave to appeal, in respect of which a costs order had been made. If so, those items were capable of falling within the costs covered by that order, subject always to taxation.

[26] Whether, and to what extent, the respondent needed to engage with material filed in the reconsideration application was a matter for the Taxing Master's discretion. In exercising that discretion, she was required to consider the terms of the costs order, the nature and complexity of the proceedings, the applicable tariff and guidelines, and the work actually performed. She then had to determine whether each item was recoverable in principle, reasonably necessary and reasonable in amount. Although her discretion remained confined by the terms of the costs order, the question whether reconsideration-

related work formed part of the broader leave to appeal proceedings was one for determination on taxation.

[27] As explained above, the applicants – on their own version – did not object during taxation to most of the disputed items. Although a party may advance a new ground of review in response to the Taxing Master's stated case, the item itself must still be properly before the Court. A new ground may supplement a challenge to an existing ruling; it cannot turn an uncontested item into a reviewable ruling. Because the Taxing Master was not asked to decide whether these attendances fell outside the costs order, there is no ruling on that question to review.

[28] Moreover, the further difficulty for the applicants is that the objections raised in both notices in terms of SCA rules 17(3) and rule 17(4) were framed on an all-or-nothing basis: they contended that the Taxing Master ought to have disallowed any item connected with the reconsideration application. Once it is accepted that at least some of those attendances may have been necessary for the respondent's opposition to the application for leave to appeal, that premise falls away. What would then be required is a specific challenge to the Taxing Master's rulings on which particular attendances were necessary and what amounts were reasonable to allow on taxation. No such challenge is properly before this Court. There is therefore no basis to conclude that the Taxing Master was wrong in the exercise of her discretion when determining which reconsideration-related items were allowable, or the reasonable amounts to be allowed for them.

The remaining contested items

[29] As to items 15, 21 and 62, the Taxing Master explained that she allowed the fees only after considering both the applicable tariff and the nature of the work performed. And in respect of item 51, namely counsel's fees, the parties had agreed on the amount allowed on *allocatur*. Those were matters falling squarely within the Taxing Master's taxation discretion. The applicants have advanced no factual or legal basis showing that she misapplied the tariff, ignored a relevant consideration, took account of an irrelevant consideration, or reached a conclusion no reasonable Taxing Master could have reached.

Their objection rests instead on bare assertions that the fees were not tariff-compliant or amounted to impermissible duplication. That is insufficient. A review of taxation is not an appeal on the amount allowed; it requires a demonstration that the Taxing Master was clearly wrong. The applicants have not shown that to be the case.

Conclusion and order

[30] Having considered the Taxing Master's stated case and the parties' submissions, I am not persuaded that the applicants have brought themselves within the scope of review under SCA rule 17(3) in respect of objections to items relating to the reconsideration application. Nor has it been shown that any ruling made by the Taxing Master in respect of other contested items in the bills of costs was clearly wrong. The review accordingly cannot succeed.

[31] In the result I make the following order:

The taxation review is dismissed with costs.

J E SMITH

JUDGE OF APPEAL

Appearances:

For the applicants:	Andrew Garratt Inc, Johannesburg Willers Attorneys, Bloemfontein
For the respondents:	Edelstein Farber Grobler Inc, Johannesburg MM Hattingh Attorneys, Bloemfontein.