KNOW YOUR COSTS

Category: Commercial Law,Dispute Resolution
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Going to court is a costly and time-consuming exercise. There is no guarantee of success and in most cases even if you are successful you would probably not be able to recover all the money that you have spent on legal fees. Before taking someone to court, it is important that you are familiar with the various aspects of legal costs.

The general rule is that the successful party is entitled to recover costs from the unsuccessful party. How much the successful party recovers are dependent on what kind of costs were ordered.

Scale of costs

- ### Party and Party Costs

This cost order is determined by a prescribed tariff for a particular court. There is a prescribed rate for what is charged for each specific attendance. For example, the current tariff[1] allows the successful litigant to recoup between R272.50 – R587.00 for a summons depending on the amount in dispute.

This is the most restrictive scale as it doesn't include legal costs incurred before a summons or notice of motion has been issued and served. This also doesn't include any attendances incurred between the client and Attorney.

It is also important to note that these costs belong to the client, and not to the Attorney.

- ### Attorney and Client Costs

These cost orders are seldomly ordered. The successful party may be awarded costs on Attorney and

Client scale if it was specifically stipulated in a contract which gave rise to the dispute between the parties. They allow the successful party to recover more of its costs because attendances not included in the party and party scale are allowed. Although the costs are subject to same court tariff as party and party costs the taxing master has more discretion in allowing various costs incurred to be recouped.

- ## Attorney own Client costs

If a party is awarded costs on an Attorney and own Client scale the successful party may recover all or most of the legal fees incurred throughout the litigation process. The successful party is entitled to costs as agreed between himself and the Attorney in terms of a written agreement.

How do you recover costs?

After you have been awarded legal costs, a bill of costs is prepared and served on the unsuccessful party. It's also forwarded the taxing master. The taxing master is an official of the court whose primary job is to hear and make orders on bill of costs. The taxing master signs and stamps a certificate known as an "allocator", which can be used to enforce the payment of legal costs by the losing party

Unfortunately, even after the case has been won and the bill of costs has been taxed the successful party may still not get paid especially if the matter is being appealed. The unsuccessful party may also be unwilling to pay. In this case the successful party may have to execute on the unsuccessful party's property.

[1] amended by GNR.1222 of 24 December 2010 and substituted by GNR.760 of 11 October 2013, by GNR.33 of 23 January 2015 and by GNR.1055 of 29 September 2017 and amended by GNR.1318 of 30 November 2018.