



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS02778/KZN/18



IN THE MATTER BETWEEN

DONALD HUNT

(Applicant)

And

THE TRUSTEES OF CRESTVIEW BODY CORPORATE

(Respondent)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute S39(6): in respect of works pertaining to private and common areas.

1. The Applicant seeks an order:

requiring the association to have repairs and maintenance carried out;

INTRODUCTION

2. The Applicant is Donald Hunt an adult male and who is the owner of unit 305 at Crescent View Body Corporate, Amanzimtoti.

3. The Respondent is the Trustees of Crescent View Body Corporate, a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011 (“STMSA”) which is situated at Amanzimtoti.
4. The application was brought in terms of s 39 of the Community Schemes Ombud Service Act No 9 of 2011 (“the CSOS Act”) which provides that:

“An application made in terms of section 39 must include one or more of the following orders:

(6) In respect of works pertaining to private areas and common issues—

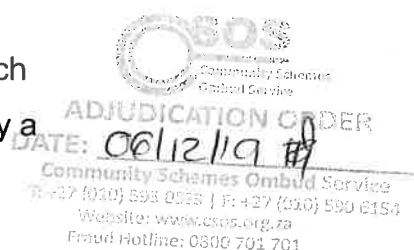
requiring the association to have repairs and maintenance carried out;

6. This is an application for dispute resolution in terms of the CSOS Act. The application was made in the prescribed form and lodged with CSOS.
7. The adjudication hearing took place on 21 November 2019. Only the applicant attended the hearing. The Respondent did not attend. The adjudicator contacted the managing agent and spoke to Mr Neil Harris who indicated that a report was sent to CSOS via email and the body corporate acknowledges the problem but there are no funds to attend to the matter right now but it is in the maintenance plan. The adjudicator advised that a representative should have attended the hearing and in the absence of a representative the matter will proceed.
8. The matter proceeded with only the applicant present.

RELEVANT STATUTORY PROVISION

8. The hearing was conducted in terms of section 38 of the CSOS Act which provides that –

“Any person may make an application if such person is a party to or affected materially by a dispute”.



9. Section 45(1) provides that –

“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”

10. Section 47 provides that –

“on acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation.”

11. Section 48 provides that –

“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

12. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud therefore, referred the matter to adjudication, in terms of Section 48.

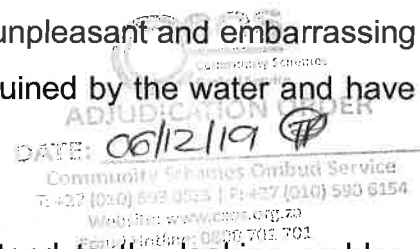
13. **SUMMARY OF RELEVANT EVIDENCE** (That relating to the issues in dispute)

Applicant's Submissions

13.1 The Applicant submitted that he has the problem of the leaking roof with water entering his unit for years now.



- 13.2 He lodged applications with CSOS, and a settlement agreement was entered into between the Applicant and the Respondent.
- 13.3 The leak was noticed in 2011 when the Applicant bought the property. The Applicant paid to repair the source of the leak at his own cost in previous years. The body Corporate and managing agent are aware of the problem that the Applicant is experiencing. The leak has resulted in the damage of his furniture in the unit.
- 13.3 The Applicant submitted that the problem stems from above 305 because the balconies of Crescent View are sloped, and the water will gather at the East edge of the balcony and seep through the floor causing all sorts of problems as witnessed in the Applicants flat. This was established in 2016 between Trustees and contractors of Crescent View.
- 13.4 It is common cause that there is a leak which is causing damage to unit 305 however, the problem has not been resolved to date. In fact, the leaks are becoming worse and the Applicant submits that he is frustrated by this problem.
- 13.5 The Applicant is also in a difficult position because he cannot sell the flat as he is forced to disclose to potential buyers that there is a problem with the leak. Numerous quotes have been submitted to the Applicant and Body Corporate for repairs, but nothing has been done.
- 13.6 The Applicant submits that they are living under unpleasant and embarrassing conditions for years as their furniture has been ruined by the water and have to have buckets around the unit in case it rains.
- 13.7 The Applicant wants the Body Corporate to attend to the leaking problem immediately and in doing that to appoint a reputable company such as PLY Shield because this company appears to know what they are doing. The report that was prepared by this company must be acted upon immediately in the flats that are above unit 305 so that the problem that the Applicant is



experiencing can stop. The Body Corporate must cease to employ companies or people that do not know what they are doing as the problem does not get resolved.

14. **RESPONDENTS SUBMISSIONS**

14.1 The Respondent did not attend the hearing as indicated above but a report was received by CSOS. The report on behalf of the body corporate indicates that the Applicants case is not isolated within the body corporate.

14.2 They currently have a 10-year maintenance plan which would include the noted repairs needed at unit 305 as well as other units in the building.

14.3 The body corporate cannot confirm when repairs to the block will commence and due to the magnitude of repairs required cannot conform to a specific timeline due to availability of funds.

14.4 A report from a contractor currently working with the body corporate was supposedly attached but unfortunately it was not there.

15. **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

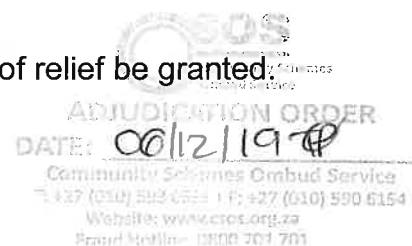
15.1 In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.

15.2 The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighted up and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

- 15.3 It is worth noting that the body corporate is busy with the 10-year maintenance plan, however, it is critical that the body corporate attends to the source of the problem in unit 305 immediately. The damage that the source is causing in unit 305 will have dire effect for the body corporate financially, as if, not attended to, more damage will occur in the unit which will result in the body corporate having to repair or compensate the Applicant for any further losses.
- 15.4 There is mention that the problem is not isolated to unit 305, unfortunately the only applicant before CSOS is the owner of unit 305 who has had this problem as far back as 2011 and how long must it persist before the problem is attended to, there must be an interim solution to prevent this problem.
- 15.5 Reserve funds were purely intended for such situations where urgent attention must be given. The STSMA intention of the reserve fund was to ensure that unexpected costs can be covered by the body corporate which is why it is a requirement in the STSMA.
- 15.6 If the body corporates are not forced to attend to issues that are urgent and affect the wellbeing of owners and raise the issue of lack of funds as an excuse that means that unit owners will suffer indefinitely. The trustees must put themselves in the shoes of this Applicant who is not only elderly but has complained with reason since 2011. They should treat this issue with urgency in finding an interim solution while planning the 10 year maintenance plan failing which the body corporate will have to find accommodation for the applicant at their expense until this problem is resolved.

15.6 It is my considered view that the Applicant's prayer of relief be granted.

ADJUDICATION ORDER



- 16 In the circumstances, the following order is made:
The Respondent must repair the leaking roof within 60 days of receipt of this order especially the area that affects the Applicant;

RIGHT OF APPEAL

18. The parties' attention is drawn to –

Section 57(1) of the CSOS Act of 2011 which provides –

“An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law within 30 days from date of issuing of order.”

DATED AT DURBAN ON 6 DECEMBER 2019



ADJUDICATOR
MS T.P. QWABE

