



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

Case Number: CSOS02483/KZN/18

IN THE MATTER BETWEEN  
**SAMANTHA NICOLE PILLAY**  
(Applicant)

And

**ROSEWOOD MEWS BODY CORPORATE**  
(Respondent)



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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

Category of dispute: in respect of financial issues - S39(1)(e)

1. The Applicant seeks an order for the payment or re-payment of a contribution or any other amount.

**INTRODUCTION**

2. The Applicant is Samantha Nicole Pillay an adult female who reside at Unit 01, Rosewood Mews Body Corporate, 27 Terwway street, Woodhaven, Durban.

3. The Respondent are the trustees of the Rosewood Mews Body Corporate a legal person in terms of the provisions of the Sectional Scheme Titles Management Act. 8 of 2011 (“ST SMA”) which is situated Rosewood,45 B Linnet Road, Woodhaven, Durban, by the Managing Agent, Mr Paul Moodley.
4. The Applicant is a registered owner of Unit 01 in the sectional title complex of the Respondent in terms of Section 1 of the ST SMA. The Applicant has an undivided share in and to common property in the scheme apportioned to the said section in accordance with the Participation Quota (PQ).
5. The Application made in terms of section 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:

(1) In respect of financial issues -

(e) An order for the payment or re-payment of a contribution of a certain amount.



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. The application includes a statement of case which sets out the relief sought by the Applicants.
7. A Notice of Set Down was sent out on 04<sup>th</sup> November 2019 and it was communicated to all parties. The adjudication hearing took place on 4<sup>th</sup> December 2019 and all parties were 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. 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 states that she firstly would like to place it on record that the issue concerning the storm damage in October 2017 was never between Rosewood Mews Body Corporate (“the B C”) and themselves ( owners of Unit 01), but it was in actual fact between themselves and the insurance company

called Reid Raetzer Robsons (as a certain percentage of their levies contribution goes towards the insurance of their property). The Applicant alleges that the B C was merely a conduit to hand deliver the claim on their behalf.

13.2 The Applicant alleges that on 21<sup>st</sup> November 2017 they received a trailing email from the B C which was coming from the insurer's representative Julie Sayed with the quotation from the assessors under the letter head of the Frontline Underwriters. The Applicant states that the said email was requesting their banking details.

13.3 The Applicant states that on 28<sup>th</sup> November 2017 they received an email from the B C stating that *"The assessor has further advised that the B C is to pay the unit owner such that they may contract their service provider, as he was advised that Unit 01 has their own contractor."*

13.4 The Applicant states that during the months following the claim they had no correspondence in any form from the B C regarding the claim or repairs thereof. The Applicant submits that it was during the early months of 2018 that they heard from another homeowner that the claim was paid out and that they should ask for their pay out. The Applicant states that it was on 18<sup>th</sup> May 2018 that Mr Pillay (husband of the Applicant) emailed the B C stating the following, "It is my understanding that the insurance has paid out the claim..."

13.5 The Applicant submits that it was then that they had their banking details filled and emailed back to the B C. The Applicant alleges that on 08<sup>th</sup> August 2018 she called the chairman of the B C to which he agreed to pay them, but did they were not paid. The applicant states that she called again on 10<sup>th</sup> August 2018, but she could not get hold of the chairman.

13.6 The Applicant submits that seeing that she could not get hold of the chairman she decided to send a message via WhatsApp advising him that there was payment received by them. The Applicant states that the chairman in turn advised her that he had advised Carolyn, the treasurer and trustee and



ADJUDICATION ORDER

DATE: 21 November 2019  
13.5  
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Managing Agent one Mr Ravi Moodley to attend to the matter. The Applicant submits that on 14<sup>th</sup> August 2018 she messaged the chairman again advising him of non-payment to which he replied as follows, "Please contact Carolyn who is in charge of all payment. Please speak to bottom George he is also a signatory."

13.7 The Applicant states that on 20<sup>th</sup> August 2018 they received an email from the B C requesting their banking detail again as before on the letterhead of the Frontline Underwriters. The Applicant states that once again they filled and resent the form.

13.8 The Applicant alleges that on 19<sup>th</sup> September 2018 she called the Frontline Underwriters and she was advised the claim was paid out to the B C at the end of November 2017 and she was given Julie's details of Reid Raetzer Robsons to contact her, regarding the claim as they were insurers. The Applicant submits that she indeed called Julie on the same day and advise her about their non-payment to which she responded by saying she (Applicant) must send an email and carbon copy (cc) the B C so that they become aware that she (Applicant) had spoken to her. The Applicant alleges that she also advised Julie that they are proceeding with the legal action.

13.9 The Applicant submits that on 12<sup>th</sup> October 2019 she called Julie again making the follow up about non payment to which she her response was that the claim was supposed to be made directly to us hence the letterhead from the Frontline Underwriters, but the Managing Agent one Mr Ravi Moodley asked the insurance company to instead pay it into the B C account.

13.10 The Applicant states that it was on 15<sup>th</sup> October 2018 that they sought an assistance from the Small Claims Court to which the B C was served with the letter of demand which she hand delivered herself to the Managing Agent, one Mr Moodley who signed and acknowledged it, but did nothing about it.

13.11 The Applicant states that the Sheriff of the Court then went to serve the letter to one of the trustees, one Carolyn who reside at Unit 03. However, the Sheriff was unable to serve the letter as the said trustee advised him that she is not responsible for the receipt of such letter.

13.12 The Applicant states that regarding the charge of them selling their property, she states that she must agree. The alleges that it was on 20<sup>th</sup> July 2018 that they put their property up for sale purely because they are so fed up with the way the complex is being managed. The Applicant submits that beside this unpaid claim to them there are numerous issues to which she will label them as "gross mismanagement" of the B C (this is another case that they are proceeding to follow).

13.13 The Applicant submits that more importantly they put up their property for sale because they had come across a judgment against the management agent Mr Ravi Moodley and IOL newspaper article whose headline read: rundown flats "a Living Hell" on the internet whose managing agent was Ravi Moodley.

13.14 The Applicant alleges that regarding the chairman being Dr Paul Lutchman, she is not sure who that is. The Applicant submits that she has been in meetings and the chairman is one P Pillay. The Applicant states that the reason for the chairman to sign as P Pillay in the register of meetings in 'We Indians have many names'. The Applicant is asking why such a prominent person of his nature not address himself as Dr Lutchman at any given time, why the aliases?

13.15 The Applicant states that the chairman owns two Units in the complex but does not reside in the complex itself. However, he dictates to them as homeowners treating them as tenants, an act the Applicant characterise as bullying and intimidation. The Applicant alleges that they have been sued for a R 10 million by the said chairman. The Applicant submits that they have been residing at in B C since March 2003 and had no issues with the B C until 'P Pillay' or 'Dr Paul Lutchman' and Ravi Moodley have taken over the positions, as chairman and Managing Agent respectively.



Community Schemes  
Ombud Service

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DATE: 10/12/19

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13.15 The Applicant submits that “fiduciary duty” means a legal obligation of one party to act in the best interest of another. The Applicant states that the obligated party is typically a fiduciary, that is some one entrusted with care of money or property.

#### 14 **Respondent’s submissions**

14.1 The chairman of the B C states that he writes on behalf of the trustees of Rosewood Mews Body Corporate regarding the CSOS complaint by Mrs S Pillay of Unit 1 and discussed at the trustees meeting of 11 February 2019.

14.2 The Respondent submits that they write to inform you that the application is not within the jurisdiction CSOS as the relief sought is not within the scope of Section 39 of the Act.

14.3 The Respondent submits that regardless by way of resolution, Mr and Mrs Pillay of Unit 1 Rosewood Mews have previously been informed that the trustees will effect payment upon receipt of the contractors invoice duly signed by themselves confirming that the repairs undertaken by their contractor is acceptable to the Pillay's.

14.4 The Respondent states that the process outlined above and conveyed to the Pillay's ensures:

- a) that the work/repair is completed by a contractor of their choice;
- b) the work/repair is accepted as complete by the owner of the affected unit;
- c) the Body Corporate has a paper trail to prove that the work/repair was undertaken.
- d) the insurance company does not repudiate any future claim on the basis that the work/repair was not undertaken and is as a result of previous damage.

- 14.5 The Respondent alleges that the trustees have a fiduciary duty to ALL parties concerned and cannot simply make payment without consideration of the consequences. The Respondent states that there is no reasonable expectation that the trustees pay Mrs Pillay BEFORE the work has been completed!
- 14.6 The Respondent states that further they wish to place on record that Unit 1 is FOR SALE and has been on Sale for some time now. Should the trustees make payment without ensuring that the repairs are first undertaken, then the Body Corporate runs the risk of having to pay twice for the same "repairs"!
- 14.7 The Respondent submits, as we have assured Mr and Mrs Pillay in the past that payment will be effected as soon as they provide us with a contractors invoice accepting the repairs that were undertaken. The timescales involved in receiving payment are entirely dependent upon the Applicant, Mrs Pillay and her husband.
- 14.8 The Respondent states that they reserve our rights to deal with the unfounded allegations made against the trustees and other related parties by Mrs Pillay in her complaint.

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 apparent that there is dispute between the Applicant and the Respondent regarding the financial issues. It is further not a disputed fact there have been exchange of correspondences in the form of email and WhatsApp between the Applicant and the trustees of the B C including the Managing Agent.
- 15.4 I have perused all the written submissions as well as taken all the evidence submitted on the day of the hearing. In other words, I have considered documentary evidence as well as the *viva voce* evidence.
- 15.5 The Applicant's prayer of relief sought is an order requiring the Respondent to pay the Applicant an amount paid by the insurance company as the result of the storm damage. During *viva voce* evidence the Applicant submitted that the insurance company have sent the form to fill for insurance company to process their claim, which they did and sent it back to the insurance company. It is Applicant's submission that the B C role in this process was to facilitate and not to be involved in the processing of claim.
- 15.6 The Applicant further produced evidence of the WhatsApp correspondence between herself and the chairperson of the B C starting from 14 August 2018 to 18 February 2019 and the ones between on one of the trustees one George Mann and the Managing Agent which states the following. *"Good morning Mr Chairman. Tried calling you, you are obviously very busy. See I have sent you the official document sent to us requiring banking details into which insurance payout was supposed to be paid. To date it has not. Also note well the excess was already paid by ourselves in the supporting document attached. As per telecom on Wednesday the 08 August 2018 whereby you agreed to authorise and pay the amount owing to Unit 1 Rosewood Mews kindly see attached banking details. Thank you. Cheryl-Unit 1 Rosewood Mews*  
*Reply: out of the country. I have ask the managing Agent to attend to your matter. Pls contact Ravi*  
*Okay no problem. Thank you, Have you authorised the payment and whose email address can I forward the documents to? Already sent to Ravi and Caroline.*  
*Thank you Mr Chairman. You have a wonderful day further*  
*Good evening Paul, trust you are well. Regret to say but we have not received payment as yet. Can you please explain.*  
*Reply: contact the trustee with your issue. Caroline is in charge of all payments. Please speak to bottom George he is also signature*  
*Hi Paul, still not sure what is going on with the payment. Colleen asked banking details 1 week ago. Today she sends an email asking if we got a contractor. Please explain.*



Paul I implore you please pay us our money for the insurance, we need to repair the awnings. Even the garage roof is leaking. Please Please Please!

Hi Ravi

As yet I still have not been informed of the amount of money that was paid for the storm damage on 10.10.2017 the claim was submitted for damage to no 4 the money was deposited into Rosewood bank account by insurers there was not terms and conditions attached to this money as it was individual claim and nothing to do with the body corporate. It was done for convenience the body corporate has no influence over money so that has been paid out for the claimant. I would like that money to be paid into my account with immediate effect and the proof of payment sent via WhatsApp.

Regards

George Manns

Hi Ravi I have just received a copy of the email sent to Mervin and Cheryl regarding the insurance claim.

1. At the last trustees' meeting it was said that they were looking for a new managing agent as nobody could get hold of you and financials have not been done yet and are long overdue and am rather surprised with this email from you.

2. I have disagreed about the withholding of the insurance claim as I believe it to be illegal the chairperson or any of the trustees cannot show in any of the rules that is legal. I have yet to see what my payment is from the insurance after many request I would like to remind you that this is getting beyond the ridiculous and I would like the legal proof which says this money may be withheld from the legal claimants

George Manns

Reply: including March 2019 you owe R 9884.62. We have given you a credit on your account for R 2500 for the awning insurance." ( my emphasis)

15.7 The correspondence above between the Applicant and the chairman of the B C demonstrate that the chairman did acknowledge that the money was supposed to paid directly to the Applicant's account and this is corroborated by the insurance company sending the claim form to the Applicant which claim form indicates inter alia banking details of the Applicant to be filled. To me the conduct of the insurance company meant that for all intent and purposes the money was meant for the Applicant hence asking her banking details in the claim form.

15.8 Furthermore at no stage did the Respondent during the aforesaid conversation dispute that fact. Instead he was very cooperative except that the payment did not eventually materialise. I quote "I have ask the managing Agent to attend to your matter. Pls contact Ravi". Neither did the Managing Agent did dispute that fact I quote "Good evening Paul, trust you are well. Regret to say but we have not received payment as yet. Can you please explain.



Reply: contact the trustee with your issue. Caroline is in charge of all payments. Please speak to bottom George he is also signature"

15.9 My view is that this matter was not handled in a fair and transparent manner. This my observation based on the WhatsApp conversation between one of the trustees by the name of George and Managing Agent (Paul) I quote "As yet I still have not been informed of the amount of money that was paid for the storm damage on 10.10.2017 the claim was submitted for damage to no 4 the money was deposited into Rosewood bank account by insurers there was not terms and conditions attached to this money as it was individual claim and nothing to do with the body corporate. It was done for convenience the body corporate has no influence over money so that has been paid out for the claimant. I would like that money to be paid into my account with immediate effect and the proof of payment sent via WhatsApp."

15.10 Another WhatsApp message reads as follows, "*I have disagreed about the withholding of the insurance claim as I believe it to be illegal the chairperson or any of the trustees cannot show in any of the rules that is legal. I have yet to see what my payment is from the insurance after many request I would like to remind you that this is getting beyond the ridiculous and I would like the legal proof which says this money may be withheld from the legal claimants*

George Manns

Reply: including March 2019 you owe R 9884.62. We have given you a credit on your account for R 2500 for the awning insurance."

15.11 The above WhatsApp message clearly indicates that the claim for this trustee was paid to him directly and the balance of R 2500 was credited to his levies which are in arrears. Interestingly the Managing Agent during the viva voce evidence he stated that the procedure of claiming was that, the owner will contract a contractor who will do repairs for his or her awning and if the job is done to the satisfaction of the owner, she or he will confirm that to the B C and thereafter the contractor will invoice the B C who will ultimately pay the contractor. However, this does not seem to be the case with the trustee mentioned above.

15.12 When confronted with this, the Managing Agent gave an explanation that the aforesaid trustee did his repairs for his awning using his own money, the fact that is not disputed. What is disputed in the way the claim was process visa vi the way in which the Applicant's claim must be processed. Once again, the Managing Agent stated that the reason why they decided to pay the said



trustee without subjecting him to the same claim process that they are subjecting the Applicant and the answer was that they trusted him because is The trustee. To me is absurd and does not hold water.

15.13 I note that the Respondent also submitted a copy of unsigned minutes of the meeting to substantiate the fact that this was the resolution taken by the meeting. I've got an issue with such minutes, firstly they are not signed and dated by the chairman and secondly there are no trustee's resolution. The only reason I can discern from the said minutes as the reason for refusal for payment is the concern by the trustees regarding the sale of Unit 1. I quote *"The draft was approved but he was requested to add the paragraph confirming that the Unit was up for sale and Trustees were concerned that if the money was paid directly to the owner that the Unit would be sold and the job not completed and then it would be the B C responsibility to pay again to have the job completed."* (my emphasis)

15.13 In light of the above evaluation I am persuaded that the way the process that was followed in processing the claim of the claimant was not transparent, fair and uniform. It is further my considered view that the claims were supposed to paid directly to the claimant account. Furthermore, there are no scheme Conduct Rules that stipulates the process to followed when the claim of this nature is done.

## 16. ADJUDICATION ORDER

16.1 . Having said the above, I hereby grant the Applicant's application as well as her prayer of relief sought;

16.2 The Respondent must pay the Applicant the amount of R 7250.00 within the period of ten (10) days from the date of the delivery of this order.

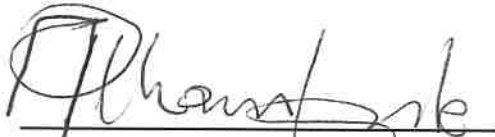
16.3 There is no order as to the costs.



**RIGHT OF APPEAL**

17. 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 thirty (30) days after the date of delivery of the order of the adjudicator. ”

DATED AT DURBAN on 10 December 2019

  
ADJUDICATOR: T KHAMBULE

