



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

**Case Number: CSOS000378/GP/19**

**IN THE MATTER BETWEEN**

**KGOMOTSO MERONA MANAMELA**

**APPLICANT**

**and**

**THE TRUSTEES OF BOKMAKIERIE BODY CORPORATE**

**1<sup>st</sup> RESPONDENT**

**WILLIAM MOATHLODI**

**2<sup>nd</sup> RESPONDENT**

**MAPULE MOKASEPE**

**3<sup>rd</sup> RESPONDENT**

**STEPHEN LESIBA SAMBO**

**4<sup>th</sup> RESPONDENT**

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

This is an application for dispute resolution in terms of the following section of the Community Schemes Ombud Service Act:

- Section 39 (3) in respect of scheme governance issues;

Applicant seeks an order in the following terms:

- That the Respondents be found guilty of misconduct and the Chairperson of the body corporate be removed from the Board of Trustees.

  
**ADJUDICATION ORDER**  
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The order is in line with Section 39 (3) of the CSOS Act No.9 of 2011 (the CSOS Act).

## FINDINGS

The relief sought by the Applicant is dismissed.



## INTRODUCTION

1. The Applicant is Kgomotso Merona Manamela, the registered owner of unit 03, Bokser Street, Hestea Park, Pretoria North, Gauteng. The Applicant represented herself at the adjudication.
2. The Respondent is the Trustees of Bokmakierie Body Corporate, a body corporate as contemplated in Section 2 of the Sectional Titles Schemes Management Act 8 of 2011.
3. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Service Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the Applicant.
4. This application is before me because of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
5. The parties entered an appearance in terms of the Notice of Set Down which as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

## APPLICABLE PROVISIONS OF THE ACT

6. 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”*
7. 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”*.

8. 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”*.
9. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of the Act.

## SUMMARY OF EVIDENCE

### APPLICANT’S SUBMISSION



#### The Applicant was sworn in and testified as follows:

10. The Applicant, Ms Kgomotso Merona Manamela had no objection in taking the prescribed oath and was duly sworn in.
11. Ms Manamela testified that she is member of the trustees of the body corporate. On 18 February 2019, the trustees had a meeting to resolve the petty cash matter. The person responsible for petty cash owed levies of more than 90 days.
12. According to the Applicant she is the Secretary of the Board of Trustees. She was then told to hand over the files after she wanted slips of all expenses but refused and referred the trustees to PMR13.
13. The Applicant testified that the trustees started to side-line her and went on to make financial decisions in her absence.
14. Ms Manamela further submitted that on 09 March 2019, Applicant noticed that grass was cut outside, next to where her house is situated the grass was not cut and she had paid garden services.
15. The Applicant testified that the managing agent (MEMS) was informed of the feud between the trustees but did nothing to intervene.
16. The Applicant stated that she has exhausted all internal remedies to resolve the matter, but all her efforts were in vain.

## APPLICANT'S PRAYERS

17. That the trustees be found guilty of misconduct and the Chairperson be removed from the Board of trustees for violating the Sectional Title Schemes Management Act and the Prescribed Management Rules.

## RESPONDENT'S SUBMISSION

### The Respondent was sworn in and testified as follows;

18. The Trustees of Bokmakierie were represented by the managing agent, Mari Janse van Rensburg. She had no objection in taking the prescribed oath and was duly sworn in. She confirmed that she had the requisite authority to represent the Respondent in the adjudication proceedings. The Respondent was not legally represented.
19. Ms Janse van Rensburg stated that she attended a trustee meeting where they were swearing at each other and conducted themselves unprofessionally. The trustees were shouting in their own vernacular which she could not understand. The managing agent believed that the trustees were dealing with personal matters which falls outside the ambit of CSOS.
20. The municipality was responsible for cutting the grass, the fact that the grass was not cut to the Applicant's satisfaction does not amount to misconduct and cannot be attributed to the trustees of the body corporate.
21. The Respondent's representative stated that internal remedies have been exhausted.

## RESPONDENT'S PRAYERS

22. That the matter be dismissed.

## EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

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



24. 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.

## DISCUSSION

25. I have perused all written submissions and taken into consideration all submissions stated before me at the day of the hearing.

26. In terms of section 8(4) of the STSMA *"Except as regards the duty referred to in subsection (2)(a)(i), any particular conduct of a trustee does not constitute a breach of a duty arising from his or her fiduciary relationship to the body corporate if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognisant of all the material facts."*

27. *A trustee will be disqualified from holding office if they resign, becomes of unsound mind, is declared insolvent or is sequestrated, is convicted of an offence involving dishonesty, removed by ordinary resolution of the members at a general meeting, is in arrears for more than 60 days with any levies and contributions and has failed to settle the arrears following a 7 day notice period. If a trustee is disqualified or removed from office in one of these ways, the body corporate may, in terms of PMR 14, and at a general meeting, appoint another trustee for the unexpired portion of the term, until the next AGM.*

28. The Applicant is a trustee on the Board, there were disagreements about the manner in which the body corporate is to be managed which should be resolved by the trustees themselves. I could not find the real substance of the dispute. The Respondent's representative submitted that the matter was personal and do not constitute a dispute.

29. The case does not relate to the fiduciary duties of trustees, the Adjudicator is not satisfied that the Applicant was able to proof her case on a balance of probabilities.

## POWERS AND JURISDICTION OF THE ADJUDICATOR

30. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act

  
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enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

#### ADJUDICATION ORDER

31. Accordingly, the following order is made;

- (a) The relief sought by the Applicant is dismissed.
- (b) The relief sought falls outside the provisions of section 39 of the CSOS Act.
- (c) No order is made as to costs.

#### RIGHT OF APPEAL

32. The parties' attention is drawn to – Section 57(1) of the CSOS Act of 2011 refers – *“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”*

SIGNED at SANDTON on this 18<sup>th</sup> DAY OF JUNE 2020.



L BULO

ADJUDICATOR

  
ADJUDICATION ORDER  
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