



**ADJUDICATION ORDER**  
DATE: 30/06/2020  
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**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54  
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

**Case Number: CSOS00968/GP/19**

IN THE MATTER BETWEEN

**LESHENDRAN CHETTY**

**APPLICANT**

and

**WOODLANDS ESTATE HOMEOWNERS ASSOCIATION**

**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 sections of the Community Schemes Ombud Service (CSOS) Act:

- Section 39 (6) – in respect of works pertaining to private areas and public areas-

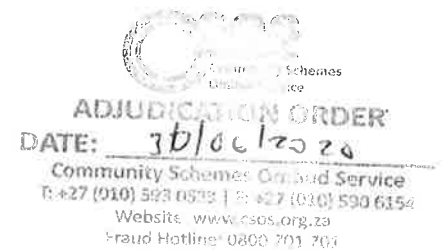
Applicant seeks an order in the following terms:

*“Compensation from the HOA for the amount of R10 000 being the costs of relocating the geyser.  
Compensation of R30 000.00 (occupational rent) due to the HOA stalling the sale of the home by  
withholding the clearance certificate, the new owner could not move in by 1 July 2019.”*

The order is in line with Section 39(6) of the Community Schemes Ombud Service Act No.9 of 2011 (the CSOS Act).

## FINDINGS

The relief sought in terms of Section 39(6) is dismissed.



## INTRODUCTION

1. The Applicant is Leshendran Chetty, the previous registered owner of Unit 880, Woodlands Estate Candican Road, Barbeque Downs, GAUTENG. The Applicant was accompanied by Thanusha Chetty. The Applicant was not legally represented.
2. The Respondents are the Directors of the Woodlands Estate Homeowners Association, a homeowner's association as defined in the Community Schemes Ombud Service Act 9 of 2011, situated at Candican Road, Barbeque Downs, GAUTENG. The Respondent was represented by Diane Kritzinge and Chris Byrne, the managing agents in the Respondent's Scheme. The Respondent was not legally represented at the hearing.
3. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Services 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 as a result 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 were duly served as contemplated section 48 of the Community Schemes Ombud Service Act No.9 of 2011, both parties attended the adjudication hearing and were legally represented.

## 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. Section 50 provides that - *“The adjudicator must investigate an application to decide whether it would be appropriate to make an order, and in this process the adjudicator –*
  - (a) Must observe the principles of due process of law; and*
  - (b) Must act quickly, and with as little formality and technicality as is consistent with a proper consideration of the application; and*
  - (c) Must consider the relevance of all evidence but is not obliged to apply the exclusionary rules of evidence as they are applied in civil courts.”*

## **SUMMARY OF EVIDENCE**

### **APPLICANT’S SUBMISSIONS**

#### **The Applicant was duly sworn in and testified as follows;**

10. The Applicant, Mr and Mrs Leshendran and Thanusha Chetty confirmed that they were the Applicants in this matter.
11. The Applicants testified that they were the registered owner of Unit 880, in the Respondent’s scheme. On 1 September 2017 Mr Chetty installed a solar geyser at their property. At no time after the installation where they formally informed by the HOA that their geyser was in contravention of any rules at the estate.
12. Mr Chetty further stated that it was only on 18 April 2019 that they were advised about the solar geyser being in contravention of the rules of the Estate. He informed the managing agent that he would remove the solar geyser on condition that the other units in the complex that had contravened the rules prior to his contravention, corrected their contraventions as well.



13. The Applicant stated that he did not receive a response from the managing agent, it was only when they were selling their property that the HOA and managing agents informed them that they are withholding the levy clearance certificate even though their levies were up to date. The reason for withholding the levy clearance certificate was that the Applicant must relocate the solar geyser as it was in contravention of the rules of the estate.
14. The Applicant stated that the managing agent contended that some contraventions were approved via a polling system that was put out to all residents and subsequently allowed. The Applicant requested proof of the polling email from the managing agent, but nothing was received.
15. The Applicant submitted that the relocation of the geyser was subsequently done under extreme duress and protests as they have issued him with a lawyer's letter. The Applicant further stated that the managing agent and HOA are abusing their authority and inflicting the rules by threatening to withhold the levy clearance certificate and subsequently sabotage the sale of the property.
16. The Applicant said that the cost of relocation amounted to R10 000 (ten thousand rand) and would like to be compensated for it due to the fact that the HOA have never officially alerted him about this supposed contravention until the sale of his property.
17. The Applicant declared that there has been a relaxation of the rules in the Estate via a polling system sent out to all residents. The HOA has also given relaxation to other residents who are directors of the HOA without a polling system. He has requested the relaxation documentation for these directors' request, but to date, has not received a response.
18. The Applicant indicated that he requested on two occasions (verbally and in writing) that a poll be sent out for relaxation of his solar geyser and both times those requests were ignored and he received no response from the HOA.
19. The Applicant concluded that he feels like the HOA is discriminating and victimizing him in this regard.
20. The Applicant stated that he has exhausted all the internal remedies.

#### **APPLICANT'S PRAYERS**

21. The Applicant prayed for compensation from the HOA for the amount of R10 000 (ten thousand rand) being the cost of relocation of the geyser. The Applicant indicated that the HOA has resorted to extortion and are not being consistent in applying the rules of the estate fairly to all parties.
22. The Applicant seeks compensation of R30 000 (thirty thousand) for occupational rent due to the HOA stalling the sale of his property by withholding the levy clearance certificate. The new owner intended to move in on 1 July 2019, but occupation was delayed due to the withholding of the clearance certificate.

### RESPONDENT'S SUBMISSIONS

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

23. The Respondent was represented by Ms Diane Kritzinger and Mr Chris Byrne, the managing agents. They had no objection in taking the prescribed oath and were duly sworn in.
24. The Respondent submitted that the Applicant is a former member of the Woodlands Estate, who breached the Association Rules by installing an exposed solar geyser and solar panels with approval. The Applicant was a member from 22 July 2016 until 18 September 2019.
25. The transfer was delayed as the Association could not process the transaction due to the stated rules breach. property was a new build, was completed and its construction was deemed complete by the Association on 31 August 2017. At that stage there has been no solar geyser installed at the property, nor were there any solar panels. The installation of the solar geyser and the exposed water tank occurred in the first week of September 2017, whilst the solar panels were installed in April 2018.
26. The Respondent stated that the member was aware of the prohibited nature of the exposed solar geyser and associated exposed water tank, only installing the same after the HOA acknowledged that the build was generally complete and acceptable.
27. The Respondent stated that the undertakings of these prohibited additions only after occupation. The member totally disregarded the protocols and rules of the HOA and breached the HOA rules.

28. The Respondent asserted that in terms of not being advised by the Association of the breach, the legality and rightfulness of the matter is one of the members being required to comply with the Association Rules.
29. The Respondent stated that given the restrictions and the protocols and the doctrine that are required to provide and uphold a community lifestyle that all purchasers should on transfer, and with the knowledge of the rules must maintain such lifestyle that each individual member was required to compromise on certain individual rights. The Applicant was aware of the full detail of the Association Rules. Particularly, the Applicant would have been aware of the rules of the restrictions on solar geysers with exposed water tanks.
30. The Respondent submitted that the Applicant's decision to install such prohibited equipment into a brand new individually designed home would not have been an afterthought, especially given the timing of the installation being immediately after the approval of the build, and knowing that there was no geyser installed of any nature to service the new home.
31. The Respondent corrected that the date the Applicant communicated, about the solar geyser was on 18 April 2018 and not 2019 and stated that the Association rules are binding on all members, are totally unconditional, and do not cater for a member conforming only on the provision that all members of the Association are equally compliant.
32. The Respondent stated that the Applicant was advised in general discussions at the time that the doctrine of the Association requires each member to be compliant, with the Association – and only the Association being tasked with ensuring the compliance of all other members.
33. The Respondent concluded that the rights of the HOA to govern the will of the majority should be respected and that personal opinion of individual members should not find favour over the majority.

#### **RESPONDENT'S PRAYERS**

34. That the complaint be dismissed.

#### **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

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



36. 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

37. I have perused all written submissions and taken into consideration all submissions stated before me.

38. Before dealing with the submission, it is important to note that Woodlands Estate is registered as an HOA. In terms of the MOI the directors of the scheme are referred to as trustees of the HOA.

39. Extraction from the Rules:

### **5. PROHIBITED BUILDING MATERIALS AND INSTALLATIONS:**

*To allow for diversity and interest, a variety of individual architectural designs will be encouraged. In principle no limitations are placed on building materials other than the following items, the use of which is not allowed.*

*5.19 Exposed geysers or solar geysers and associated equipment.*

*5.20 Exposed AC equipment."*

40. The Applicants have already sold the unit and are therefore no longer owners in the scheme.

41. *In TRUSTEES, AVENUES BODY CORPORATE v SHMARYAHU AND ANOTHER 2018 (4) SA 566 (WCC) [19] "the Court held that An individual's right to claim relief in terms of the Act is dependent on them being materially affected by one or other of these community scheme related matters. Even then the individual's right to avail themselves of the special statutory dispute resolution mechanism is also dependent on them having 'a material interest in the scheme'. Both requirements must be satisfied for standing as an applicant in terms of s 38 to be established." In essence the Court confirmed that the relief set out in the CSOS Act is reserved for members of that community scheme.*



42. The Applicants are no longer members of the HOA and therefore do not meet the requirements as set out in the Trustees Avenue case.

43. The complaint is therefore dismissed.

#### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

44. 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 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**

45. Accordingly, the following order is made;

(a) The relief sought in terms of section 39(1)(e) read with 39(3) of the Community Schemes Ombud Service Act No.8 of 2011 is dismissed.

(b) No order is made as to costs.

#### **RIGHT OF APPEAL**

46. The parties' attention is drawn to Section 57(1) of the CSOS Act No.9 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 12<sup>th</sup> DAY OF JUNE 2020.**



**L BULO**

**ADJUDICATOR**

