



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

**Case Number: CSOS001669/GP/19**

**IN THE MATTER BETWEEN**

**LINDA KATHLEEN RENNISON**

**APPLICANT**

**and**

**SOHO LOFTS BROADACRES BODY CORPORATE**

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

**CARMEN SLINGER**

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

**XOLANI MAKWABE**

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

**JESSICA LAWRENSON**

**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(2) in respect of behavioural issues*

Applicant seeks an order in the following terms:

- That the Respondents be ordered to resign from the Board of Trustees.

**FINDINGS**



The relief sought by the Applicant is dismissed.



**ADJUDICATION ORDER**

DATE: 20/06/2020

Community Schemes Ombud Service  
T: +27 (010) 593 0593 | F: +27 (016) 590 6154  
Website: [www.csos.org.za](http://www.csos.org.za)  
Fraud Hotline: 0800 701 701

**INTRODUCTION**

1. The Applicant is Linda Kathleen Rennison the owner of unit 07, Soho Lofts Broadacres Body Corporate situated at 43 Rosewood Avenue, Broadacres Fourways, Johannesburg, GAUTENG. The Applicant represented herself at the adjudication hearing.
2. The 1<sup>st</sup> Respondent is Soho Lofts Broadacres Body Corporate, a community scheme as defined in Section 1 of the Community Schemes Ombud Service (CSOS) Act No. 9 of 2011, situated at 43 Rosewood avenue, Broadacres fourways, Johannesburg, GAUTENG
3. The 2<sup>nd</sup> Respondent is Carmen Slinger, a trustee of Soho Lofts Broadacres Body Corporate.
4. The 3<sup>rd</sup> Respondent is Xolani Makwabe, a trustee of Soho Lofts Broadacres Body Corporate.
5. The 4<sup>th</sup> Respondent is Jessica Lawrenson, a trustee of Soho Lofts Broadacres Body Corporate.
6. This is an application for dispute resolution in terms of Section 38 of the Community 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.
7. 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.

**APPLICABLE PROVISIONS OF THE ACT**

8. 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”*
9. 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’.*

10. 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”.*
11. 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.”*
12. 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 Submissions**

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

13. The Applicant had no objection in taking the prescribed oath and was duly sworn in.
14. The Applicant had provided a comprehensive statement of claim setting out the circumstances of the dispute, which were summarised at the hearing.
15. The Applicant stated that she had written a letter to the managing agent requesting a special general meeting. The purpose of the meeting was to address the concerns she had about the conduct of the trustees of the body corporate.
16. The Applicant stated that some of the trustees were swearing at her in the WhatsApp group, especially Xolani. She indicated that the unwarranted behavioural issues were unbearable and boils down to nuisance.



17. The Applicant added that there were governance issues that were not addressed by the trustees such as the illegal wiring that was not fixed, security related issues and an AGM that was not held annually. She further mentioned that she was abused in meetings. Although Xolani resigned from the board of trustees and Carmen stepped down as Chairperson their conduct led to the dispute.

18. The Applicant stated that Carmen attacks her all the time. She related an incident when Jessica Lawrenson went to unit 22 and she was shaking the gate and screaming, Austin the owner of unit 22 came out of his home holding his phone and Jessica hit the phone out of Austin's hand, the altercation was so bad that the police had to be called.

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

19. The Applicant prayed that the Respondents in question should resign from the board of trustees.

#### **Respondents' submission**

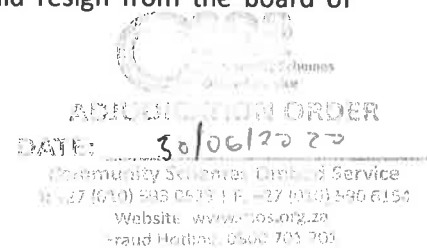
#### **Respondents was sworn in and testified as follows:**

20. The Respondents pointed out that the complaint has no structure whatsoever, is in the main nonsensical and introduces on a random basis many different issues throughout the body of covering email and attachments. They attempted therefore to respond to those issues that they believe the complaint may be pertinent to as best as they can.

21. The Respondents stated that they were not privy to the recordings the Applicant mentioned in her application for a dispute resolution and were not appraised of the details contained therein. They stated that they will make reference to the recording only in passing, where appropriate and insofar as they deemed it necessary.

22. That the trustees of the body corporate are not remunerated in any way for their services and any time spent on the complex is at own cost and time.

23. That only certain trustees, past and present, seemingly deemed "safe" by the Applicant were included in the complaint. They questioned the selection of certain trustees and stated that it is an indication of the Applicants malicious intention.



**RESPONDENT PRAYER**

24. That the Trustees be left alone to discharge their fiduciary duties in a compliant and fair manner without, favour, intimidation or harassment by the Applicant and in the interests of all members of the Body Corporate.

**EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

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

26. 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**

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

28. The issue to be decided is whether the relief sought falls within the provisions of Section 39(2) of the CSOS Act 9 of 2011:

29. The Applicant lodged a complaint of abuse from chairperson and the other trustees of the body corporate. The relief sought by the Applicant falls within the provisions of Section 39 (2)(a) of the CSOS Act. The Applicant seeks that the Trustees in question resign

30. The Respondents attached their response to the matters raised by the Applicant and attached email communications. The trustees submitted that the complaint was nonsensical and requested that they be left alone to discharge their fiduciary duties in a compliant and fair manner without favour intimidation or harassment by the Applicant in the interests of all members of the Body Corporate.

31. The Court held in ***PGB Boerdery Beleggings (Edms) Bpk v Somerville 62 (Edms) Bpk 2008 (2) SA 428 SCA para 9***, that *'An interference with the property rights of another is not actionable as a nuisance unless it is unreasonable. An interference will be unreasonable when it ceases to be a "to-be-expected-in-the-circumstances" interference and is of a type which does not have to be tolerated under the principle of "give and take, live and let live". (own emphasis) The determination of when an interference so exceeds the limits of expected toleration is achieved by invoking the test of what, in the given circumstances, is reasonable. The criterion used is not that of the reasonable man but rather involves an objective evaluation of the circumstances and milieu in which the alleged nuisance has occurred.'*
32. Adjudicator is satisfied that the Applicant has not on a preponderance of probabilities made out a case in support of this application
33. The complaint by the Applicant is dismissed.

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

34. 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**

35. Accordingly, the following order is made;
- (a) The Relief sought is dismissed
  - (b) The Relief sought by the Applicant is dismissed in terms of section 53(1) of the CSOS Act on the basis that the application is frivolous, vexatious, misconceived or without substance.
  - (c) No order as to costs.

#### **RIGHT OF APPEAL**



36. 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**  
DATE: 30/06/2020  
Community Schemes Ombud Service  
T: +27 (0)10 593 0535 | F: +27 (0)10 580 6154  
Website: [www.csos.org.za](http://www.csos.org.za)  
Fraud Hotline: 0800 701 703