



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

Case Number: CSOS000508/GP/19

In the matter between: -

MARIUS ALBERTUS MINNIE

APPLICANT

and

PICCOLO BODY CORPORATE

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

This is an application for dispute resolution brought by the Applicant against the Respondent in terms of the following section of the Community Schemes Ombud Service Act No. 9 of 2011:

The Applicant seeks the following order:

39. (1) In respect of financial issues—

(e) an order for the payment or re-payment of a contribution or any other amount

INTRODUCTION


ADJUDICATION ORDER
DATE: 30/06/2020
Community Schemes Ombud Service
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1. The Applicant is Marius Albertus Minnie, the registered owner of unit 88 in the Respondent sectional title scheme, which is situated at von 270 von Willich Avenue, Die Hoewes, Centurion.
2. The Respondent is the Piccolo Body Corporate, a community scheme as defined in the CSOS Act No 9 of 2011 ("CSOS") and a sectional title scheme as set out in section 2 of the Sectional Titles Schemes Ombud Service Act 8 of 2011 ("STSM Act").
3. A letter under cover of an email, was sent to both parties on the 4th of June 2020, confirming that due to the current situation regarding the Covid-19 pandemic, the CSOS is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
4. Parties were given 5-business days to make further submissions, and both parties availed themselves of the opportunity to send further submissions through to the CSOS via email.

BACKGROUND

5. 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's Office, which is situated at 1st Floor, Block A, 63 Wierda Road East, Sandton.
6. The application included a statement of case which set out the relief sought by the Applicant, which relief falls within the scope of the prayers of relief contemplated in section 39 of the Act as will appear more fully from the evidence.
7. The matter was before me as the result of a referral by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
8. The adjudication was conducted on the written submissions and evidence submitted by the parties.

APPLICABLE PROVISIONS OF THE ACT

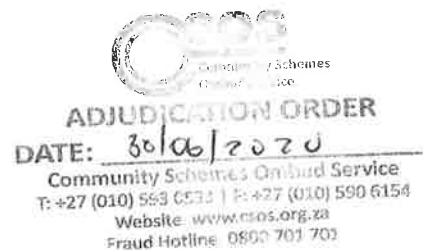


9. Section 45(1) provides that – *“The Ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”*
10. Section 47 provides that –*“on acceptance of an application 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. A conciliation hearing was held in the matter on the 2nd of February 2020, but regrettably the parties were unable to reach a settlement in the matter.
13. Consequently, a certificate of Non-Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011, and the Ombud referred the matter to adjudication in terms of Section 47 of the Act.

SUMMARY OF EVIDENCE

APPLICANT’S SUBMISSIONS

14. The Applicant submitted that a pressure relief valve (PRV) on the geyser servicing his section was damaged and caused extensive water leakage into the geyser overflow, which could not be picked up with the naked eye.
15. This was only picked up when the unit owner received the tenant’s invoice for water consumption in the amount of R 5796.65, and then an extended invoice in the amount of R7793.92.
16. A plumber replaced the faulty PRV with a new one, the cost of which was borne by the insurance company, and the Applicant paid the insurance excess of R 1000.00.
17. The Respondent seeks to hold the Applicant liable for the cost of the water consumption due to the water leak, being the amount of R 7593.92.



18. The amount payable due to the water leak was calculated by the meter reading company, being Impact Meters.
19. The Applicant disputes liability for this amount of R 7593.92, which he has already paid.

APPLICANT'S PRAYER FOR RELIEF

20. The Applicant prays for the amount of R 7593.92 to be refunded to him.

RESPONDENT'S SUBMISSIONS AND RELIEF PRAYED FOR

21. The Respondent's representative stated the following in a written representation:
 - 21.1. Since 2010 each unit at the Piccolo sectional scheme has an individual water supply meter that records the water consumed in each section;
 - 21.2. The aforesaid water meter is read monthly by a professional meter reading company;
 - 21.3. The tenant at the Applicant's section notified the Respondent's managing agent that the water consumption in the section was excessive, however the tenant could not detect any visible reason for the excessive consumption;
 - 21.4. It was immediately arranged for a plumber to do an inspection, and the plumber found that the PRV was leaking and replaced it;
 - 21.5. The reason the leak could not be picked up with the naked eye is because is that the PRV's in the building were installed in such a way that if they leak, then the excess water runs into the overflow pipe and then into the shaft on the outside of the section, and then into the drain.

RESPONDENT'S PRAYER FOR RELIEF

22. The Respondent prays for the Applicant's application to 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 witness/es must be considered.
24. The general rule is that only evidence that is relevant should be considered. Relevance is determined with reference to the issues in dispute. The requisite standard of proof required, as in all civil matters, is a preponderance of probabilities. This means that once all the evidence has been tendered, it must be weighed up by the Adjudicator in order to determine whether the Applicant has discharged the burden of proving its case on a balance of probabilities. It involves findings of facts based on an assessment of credibility and probabilities.

DISCUSSION



25. I have perused all written submissions.
26. At the outset I refer to, and quote hereunder for ease of reference, Management Rule 31(1) contained in Annexure 1 to the Sectional Titles Schemes Management Act 8 of 2011, which reads as follows:

“Obligation to maintain

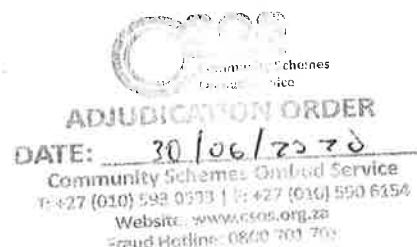
31. (1) *Notwithstanding that a water-heating installation forms part of the common property and is insured by the body corporate, a member must maintain, repair and, when necessary, replace such an installation which serves that member's section or exclusive use area; provided that where such an installation serves sections owned or exclusive use areas held by more than one member, the members concerned must share the maintenance, repair and replacement costs on a pro-rata basis.”*
27. A pressure relief or reduction valve forms an integral part of a geyser installation in South Africa, which is to reduce the municipal supply pressure and protect the geyser from over-pressurisation.
 28. If a pressure reduction valve is not installed, it will damage the geyser and shorten the lifespan.

29. It is usual in any building or house for the geyser overflow to be visible in order for any potential problem to be noticed, however in instances such as the present one, the overflow was invisible and has been installed to discharge into an overflow pipe and then into the shaft on the outside of the section, thereafter into a drain.
30. Any leak will only be picked up by monitoring water consumption readings.
31. Homeowners do not check to see if their PRV's are leaking because usually they do not have to.
32. Regrettably, the water "lost" due to the leak arising from the PRV was metered and "consumed" in the Applicant's section.
33. The Applicant may be heard to say that it is a fault on the Respondent Body Corporate's fault – perhaps a design fault – and therefore it should be liable for the cost, however this is not the Respondent's "fault".
34. When a unit-owner purchases a unit in a scheme, he purchases the unit 'voetstoots'. The Respondent Body Corporate cannot be held liable for the Developer of the scheme's design faults.
35. Consequently, and for all of the aforesaid reasons, I have no alternative but to find that the Applicant is liable for the costs of the water consumption in the amount of R 7593.92 – he is responsible for the cost because of his ownership of the unit.

POWERS AND JURISDICTION OF THE ADJUDICATOR

36. 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




37. Accordingly, I order as follows:

The Application is dismissed with no order as to costs.

RIGHT OF APPEAL

38. 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 26 JUNE 2020.



K. BLEIJS
ADJUDICATOR


ADJUDICATION ORDER
DATE: 30/06/2020
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