



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

**Case Number: CSOS000333/GP/20**

In the matter:

**MASEEPE GLORY RAMUSHU**

**APPLICANT**

and

**MIDLANDS HOME OWNERS ASSOCIATION NPC**

**RESPONDENT**

---

**ADJUDICATION ORDER**

---

**EXECUTIVE SUMMARY**

This is an application against the Midlands Estate Homeowners Association NPC, for dispute resolution in terms of the following section of the Community Schemes Ombud Service (CSOS) Act:

- Section 39 (7) (b) – any other order proposed by the Chief Ombud.

The Applicant seeks an order in the following terms

- The Respondent be ordered to restore full biometric access by the Applicant to the Midlands Home Owners Association, Centurion, Gauteng.



**ADJUDICATION ORDER**

**DATE: 30/04/2020**

Community Schemes Ombud Service  
T: +27 (0)10 593 0533 | F: +27 (0)10 590 6154  
Website: [www.csos.org.za](http://www.csos.org.za)  
Fraud Hotline: 0800 701 701

The order is in line with Section 39 (7) (b) of the CSOS Act No. 9 of 2011 (the CSOS Act).

## FINDINGS

I find for the Applicant in the matter.



## INTRODUCTION

1. The Applicant is Maseepe Glory Ramushu, the registered owner of Erf number 3777 Reodonda Peak Crescent, Midstream Estate, Centurion.
2. The Respondent is the Midlands Home Owners Association NPC (also known as Midstream Estate), a community scheme as defined in terms of the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act).
3. By virtue of her ownership of the aforesaid Erf in the HOA, the Applicant is a member of the Respondent HOA.
4. This is an urgent 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.
5. 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.
6. 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.
7. Being urgent, the adjudication was conducted by telephone conference on Thursday the 25<sup>th</sup> of June at 2 p.m., the Applicant was present telephonically in person, and the Respondent's Attorney, Mr C. Fourie, was present representing the Respondent.
8. The Applicant confirmed that she had no objection to the Respondent's Attorney representing it in this matter.

## 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. 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.”*
13. Since the matter is urgent it has not been referred to conciliation but directly to adjudication.

## INTRODUCTORY COMMENTS

14. I confirmed with the parties that the only matter that would be heard at this time, and as a matter of urgency, would be the denial of free and unhindered access to the Estate by the Respondent to the Applicant, as it was is an urgent matter.
15. If there were any other matters capable of being heard, they would have to be heard at a later date.

16. (At the conclusion of the hearing it was discussed and confirmed that the matter of the summons currently pending in the Magistrates Court, that was issued at the instance of the Respondent against the Applicant, could not be heard by the CSOS, since the matter is *Lis Pendens*)
17. Further to the above, the procedure to be followed during the hearing was explained to the parties. The Applicant was asked to make her submission, whereafter the Respondent would respond thereto.

## SUMMARY OF EVIDENCE

### APPLICANT'S SUBMISSIONS

18. The Applicant confirmed that in February 2020, before the national lockdown due to the Covid-19 virus, she received an email stating that her biometric access to the estate would be suspended.
19. Immediately hereafter same was suspended, and she had to gain access to the Estate as any visitor or contractor would, by having to sign in with the security guard.
20. This has been extremely annoying and frustrating since she has had to stand in queues and fill in access forms before being allowed to enter at any gate into the Estate.

### RELIEF PRAYED FOR BY THE APPLICANT

21. The relief prayed for by the Applicant is as set out in the Executive Summary above.

### RESPONDENT'S SUBMISSION

22. The Respondent's representative submitted that the Applicant should be precluded from bringing this matter before the CSOS in terms of section 41 of the CSOS Act, which states that an application for an order declaring any decision of an association or an executive committee void, may not be made later than 60 days after such a decision has been taken.



23. The Respondent's representative referred me to the Email of the Security Manager of the Applicant of the 17<sup>th</sup> of February 2020, where he refers to the instruction from Senior Management to suspend the Applicant's biometric access.

#### RESPONDENT'S PRAYERS

24. The Respondent prayed for the matter to be dismissed.

#### APPLICANT'S REPLY

25. The Applicant referred me to a further Email from the Respondent's Security Manager to her, dated the 18<sup>th</sup> of February 2020, where he confirms that the Applicant's biometric access must be restored, and to this end she must please come to registration.
26. The Applicant confirmed that she had been to registration but for some reason her handprint could not be 'retaken' and entered into the biometric system.

#### EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

27. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
28. 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



29. Given the content of the Email sent to the Applicant on the 17<sup>th</sup> of February 2020, the Applicant is entitled to have her biometric access to the Respondent HOA fully restored immediately, or as soon as she visits the security registration office and has her handprint taken.

30. *It was agreed that she must do so at any time during office hours, and I will note this in my Order.*

31. I deem it appropriate however, to state the legal position with regard to the matter hereunder.

32. The court, in the matter of **Fisher v Body Corporate Misty Bay 2012 (4) SA 215 (GNP) [2011] ZAGPPHC 23440667/2018 (P20) (13 NOVEMBER 2018)**, stated as follows:

*"[24] Access that is intended to retain possession or use of property should be found to be protected under the principle of mandament van spolie. Therefore, any limitation of access that would curtail the applicant's possession or use of the house and or motor vehicle should be found to amount to spoliation."*

33. The Court stated further that *"[28] Spoliation is a robust remedy. It is intended to secure the status quo, that is to restore possession that was taken away by an action or conduct that amounted to one taking the law into his or her own hands."*

34. Unrestricted access to the scheme and consequently to the Applicant's home, is part and parcel of the Applicant's right of ownership and **irrespective of what the Directors may decide or what may or may not be provided for in the Memorandum of Incorporation or the Rules of the HOA**, the Applicant cannot be deprived of access in any way without an order of Court authorising the Respondent to restrict such access.

35. Whilst the recent South Gauteng matter of **Claudia Niehaus v High Meadow Grove Body Corporate ZAGPHC 2018 40667/2018 (P20) (13 NOVEMBER 2018)** dealt with the deprivation of electricity rather than access to a scheme, the principles enunciated by the Court apply equally to the facts under discussion:

*"In any number of cases it has been held that to deprive a person of electricity supply, is an example of the deprivation of quasi-possession, which is remediable by the mandament van*



*spolie. A full bench decision in this Division, in Queensgate Body Corporate v Claesen (A3076/98) [1998] ZAGPHC 1(26 November 1999) is one such case. There Blieden, J with whom Serobe, AJ agreed, dismissed with costs an appeal from a Magistrates' Court which granted a spoliation order against a body corporate."*

36. The Court further stated that *"where the incorporeal right, such as a right to the supply of electricity, is as a matter of fact, an incident of the possession of immovable property, then the mandament van spolie will protect interference with such possession, as if it were interference with possession of the immovable property itself.*
37. In the instant case, the Respondent's legal representative's argument that the Applicant's case should be dismissed on the grounds that in terms of section 41 of the CSOS Act an application for an order declaring any decision of an association or an executive committee void may not be made later than 60 days after such a decision has been taken, *had such a decision indeed been taken* (which I did not see proof of), would fall flat, since spoliation cannot be justified.

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

38. 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**

39. Accordingly, the following order is made;

The Respondent is ordered and compelled to:

- i. **Immediately upon publication of this adjudication order, reinstate full and unhindered biometric access by the Applicant to the Respondent scheme, subject to the Applicant attending at the security office of the Estate during office hours, to have her handprint taken.**



#### **ADJUDICATION ORDER**

DATE: 30/06/2020  
Community Schemes Ombud Service  
T: +27 (010) 593 0533 F: +27 (010) 590 6154  
Website: [www.csos.org.za](http://www.csos.org.za)  
Fraud Hotline: 0800 701 701

ii. No order is made as to costs.

**RIGHT OF APPEAL**

40. The parties' attention is drawn to Section 57(1) of the CSOS Act of 2011, which states: "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"

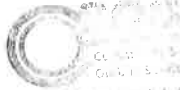
**SIGNED at SANDTON on this 26<sup>th</sup> OF JUNE 2020**

  
\_\_\_\_\_

**K BLEIJS**

**ADJUDICATOR**

***(Due to the urgency of the issue of this Adjudication Order it is sent electronically and therefore is unsigned – a signed and stamped Adjudication Order will be sent in due course)***

  
Community Schemes  
Ombudsman  
**ADJUDICATION ORDER**  
DATE: 20/06/2020  
Community Schemes Ombudsman Service  
T: +27 (0)10 593 6522 / +27 (0)10 590 6154  
Website: [www.csos.org.za](http://www.csos.org.za)  
Fraud Hotline: 0800 701 701