



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

**Case Number: CSOS001363/GP/19**

**IN THE MATTER BETWEEN**

**NANDIPHA THANDOKAZI MBAM**

**(APPLICANT)**

**and**

**FERNRIDGE BODY CORPORATE**

**(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 (1) in respect of financial issues;

Applicant seeks an order in the following terms:

- Applicant seeks an order that the adjudicator finds that her monthly payments towards her arrear levies do not exceed R4000.00, including her monthly levy.

The order is in line with Section 39 (1) of the CSOS Act No.9 of 2011 (the CSOS Act).

**FINDINGS**

  
**ADJUDICATION ORDER**  
DATE: 29/06/2019  
Community Schemes Ombud Service  
T: +27 (0)10 593 0533 | F: +27 (0)10 590 6154  
Website: www.csos.org.za  
Fraud Hotline: 0800 701 701

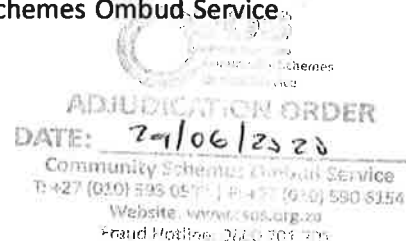
It is the Adjudicator's finding that the Applicant is indebted to the Respondent in the amount of R77 199.24, in respect of arrear levies.

## INTRODUCTION

1. The Applicant is Nandipha Thandokazi Mbam the registered owner of Unit 2, 89 Bramfischer Drive, Randburg, Johannesburg, GAUTENG PROVINCE. The Applicant made written submissions.
2. The Respondent is the Fernridge Body Corporate, a community scheme as defined in the CSOS Act No.9 of 2011 and to which it would be convenient to refer to as the Body Corporate. The Respondent failed to make written submissions when called upon to provide same before the 9<sup>th</sup> of June 2020.
3. 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.
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. A Conciliation hearing was held on the 24<sup>th</sup> of January 2020. A Notice of Set Down was sent to the parties 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 Submissions

10. The Applicant made written submissions that she is indebted to the Respondent in the amount of R77 199.24.
11. The Applicant submitted that she was employed and paid on a commission basis, up until her resignation in December 2018.
12. Further, that she has been unemployed ever since, and had paid whatever funds she had available towards her bond repayments, which resulted in her falling in arrears with her monthly levy payments.
13. According to the Applicant she had on several occasions attempted to enter into an acceptable payment plan with the Respondent. She was however informed by the Respondent that they are only willing to accept R6500.00 as a minimum payment towards her arrear levies.
14. The Applicant submitted that she is unfortunately not in a financial position to pay the R6500.00 requested by the Respondent.
15. According to the Applicant she is willing and able to pay R2500.00 which is the current monthly levy, and a further R1500.00 towards her arrear levies.
16. The Applicant further submitted that she is willing to increase the above amount, should her financial position change.

### APPLICANT'S PRAYERS



Applicant seeks an order that the adjudicator finds that her monthly payments towards her arrear levies do not exceed R4000.00, which includes her monthly levy payments.

### **Respondent's Submissions**

17. The Respondent failed to make submissions when requested to provide same to the Adjudicator on or before the 9<sup>th</sup> of June 2020, the Respondent's version is therefore not before the adjudicator.
18. The Respondent for whatever reason failed to make submissions despite the notice calling upon parties to make final submissions.
19. The Respondent further failed to attend the Conciliation hearing which was scheduled on the 24<sup>th</sup> of January 2020.

### **RESPONDENT'S PRAYERS**

None submitted.

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

20. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
21. 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**

22. I have perused all written submissions and taken into consideration all submissions made by the parties.
23. Section 2 of the of the Sectional Titles Scheme Management Act 8 of 2011 states as follows:



*"with effect from any date upon which a person other than a developer becomes an owner of a unit in a scheme, there shall be deemed to have been established for that scheme a body corporate of which the developer and such person are members, and any person who thereafter becomes an owner of a unit in that scheme, is a member of that body corporate."*

24. In law therefore every owner in a sectional title scheme, such as the Applicant, is a member of the body corporate.

25. Section 3 of the Act provides as follows:

3(1) A body corporate must perform the functions by or entrusted to it under this Act or the rules, and such functions include-

(a) *To establish and maintain an administrative fund which is reasonably sufficient to cover the estimated and annual operating costs-*

(i) *For the repair, maintenance .... of the common property;"*

(ii) *For the payment of rates and taxes and other local municipality charges for the supply of gas, water...;*

(iii) *For the payment of any insurance premiums...;*

(iv) *For the discharge of any duty or the fulfilment of any other obligation of the body corporate."*

(b) *To establish and maintain a reserve fund.*

(c) *To require the owners wherever necessary, to make such contributions to such funds..."*

26. In terms of section 3(2) and (3) of the Act, contributions and special contributions are due and payable on the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered from the persons who were owners of units at the time when the resolution making the contributions due and payable was passed by application to the Ombud.

27. **Prescribed Management Rule 21 (3) (c) Financial year, functions, and powers** states that;

(3) The Body Corporate may, on the authority of a written trustee resolution -

*"charge interest on any overdue amount payable by any member to the Body Corporate, provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005, compounded monthly in arrear".*

28. It is clear from above prescribed management rule that Trustees must pass a resolution as to the interest rate that will be charged on overdue contributions. The determination of the applicable interest rate is a discretion reserved for the Trustees.
29. In such matters it is common to order the Applicant to settle the outstanding levies within a matter of weeks, so as not to prejudice the Respondent. However, the extraordinary circumstances in which our country finds itself as a result of the Covid-19 pandemic justify a different approach.
30. Without condoning the Applicant's non-payment, the current circumstances persuade me that it is in the interests of justice and fairness to grant the Applicant additional time to settle the arrear levies.
31. It is the Adjudicator's finding that the Applicant is indebted to the Respondent in the amount of R77 199.24, in respect of arrear levies.

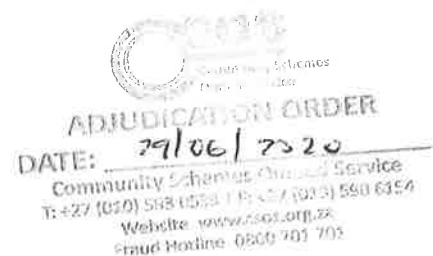
#### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

32. 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**

33. Accordingly, the following order is made;

- (a) The Applicant is indebted to the Respondent in the amount of R77 199.24 in respect of arrear levies.
- (b) The Applicant is ordered to pay R4000.00 monthly from the end of September 2020, until the outstanding levies is settled in full.
- (c) The above amount includes the Applicant's monthly levy.



(d) No interest shall accrue to the outstanding amount within this period allowed for the payment.

(e) Should the Applicant fail to pay any instalment due to the Respondent on the due date, the full outstanding balance of R77 199.24 shall immediately become due and payable and the Applicant must also pay the Respondent the applicable interest on the full outstanding balance of R77 199.24 calculated from the date that the full outstanding balance becomes due and payable to date of payment.

(f) No order is made as to costs.

#### RIGHT OF APPEAL

34. Section 56 (1) – *“If an adjudicator’s order is .....within the jurisdiction of the Magistrates Court, the order must be enforced as if it were a judgment of such Court....”*

35. Section 56(2) – *“If an adjudicator’s order is .....beyond the jurisdiction of the Magistrates Court, the order must be enforced as if it were a judgment of the High Court....”*

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 19<sup>th</sup> day of JUNE 2020.



AJ ANDREAS  
ADJUDICATOR

