



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

Case Number: CSOS02605/KZN/18

**IN THE MATTER BETWEEN
TRUSTEES OF DAMARA BODY CORPORATE
(Applicants)**

And

**AVEER INDERJITH
(Respondent)**



ADJUDICATION ORDER
DATE: 18/3/2018
Community Schemes Ombud Service
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Fraud Hotline: 0800 701 701

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute: in respect of general and other issues

1. The Applicant seeks an order declaring that the applicant has been wrongfully denied access to information or documents and requiring the association to make such information or documents available within a specified time.
2. Such relief sought is in line with the provision of section 39 of the CSOS Act¹ which provides that an application made in terms of section 38 must include one or more of the orders listed; in this case section 39 (7)(a).

¹ Community Schemes Ombud Service Act No. 9 of 2011

INTRODUCTION

3. The Applicants are the Trustees of Damara Body Corporate duly represented by Mr Johann Louis Visagie an adult male who reside at Unit 04 Damara Body Corporate, 86 Westview Road, Effingham, Durban.
4. The Respondent is the former chairperson of the said Body Corporate Mr Aveer Inderjith an adult male residing at unit 07 which is the complex of the Applicant
5. The application was brought in terms of s 39 of the CSOS Act, which provides that:

“An application made in terms of that section must include one or more of the following orders:

- (7) In respect of general and other issues”
 - (a) an order declaring that the applicant has been wrongfully denied access to information or documents and requiring the association to make such information or documents available within a specified time.
6. This is an application for dispute resolution in terms of the CSOS Act. The application was made in the prescribed form and lodged with the Kwazulu-Natal Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
7. A Notice of Set Down was sent out on 12th November 2019 and it was communicated to both parties. The adjudication hearing took place on 17th March 2020 and only the applicant was present.
8. The Applicant was represented by the Trustee of the Body Corporate. However, there was non-appearance on the side of the Respondent despite a notice of set down sent to it and there was no explanation given for its non-appearance.

RELEVANT STATUTORY PROVISION

9. The hearing was conducted in terms of section 38(1) the CSOS Act which provides that –
“Any person may make an application if such person is a party to or affected materially by a dispute”.
10. 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”
11. 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.”
12. 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”.
13. certificate of Non- Resolution was issued. The Ombud therefore, referred the matter to adjudication, in terms of Section 48 of the Act.



SUMMARY OF RELEVANT EVIDENCE (That relating to the issues in dispute)

Applicant's Submissions

- 14 The Applicant alleges that there has been misappropriation of funds in the form of payments that was made to the contractor with no invoice for work done from 2015 to 2018.
- 15 The Applicant states that there has been withdrawal of funds with no appropriate invoice for funds needed. The Applicant contend that Mr D Nanand, Mr A Inderjith, Mr K Bridglal and Mrs S Bridglal were trustees at the time in question.
- 16 The Applicant alleges that no invoices and bank statement forthcoming from any of the trustees mentioned above for the years in question, that is 2015 to 2018.
17. The Applicant alleges that numerous requests via email, WhatsApp and in person were made to the former trustees to furnish the new trustees with the relevant information including the aforementioned information to no avail
18. The Applicant submits that even the Managing Agent did make similar request in 2018 when it was appointed to no avail. The Applicant alleges that whenever such request was made it will be answered by saying "all that information is in the drop box", and no further assistance was provided by the former trustees.

Respondent's submissions

19. The Respondent was not represented hence we do not have its version.
20. It must be noted that a notice of set down was sent out timeously on both parties however no response was received from the Respondent.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

21. In the absence of the Respondent disputing the version of the Applicant, the version submitted by the Applicant must prevail. In any event, there is no reason to believe that the Applicant's application should not be accepted as the Respondent is in breach of the terms of the contract entered between it and the Applicant.

The Applicant seeks a relief in terms of section 39 (7)(a) (7) "*In respect of general and other issues*

(a) *an order declaring that the applicant has been wrongfully denied access to information or documents and requiring the association to make such information or documents available within a specified time."* (My underlying)

22. I observe that the Applicant has lodged the dispute against the former chairperson Mr Aveer Inderjirth and in terms of the aforesaid section, it stipulates that such an application may be made against the association not against a person or individual.

23. It is therefore my considered view that since the application is made against the Respondent who is not an association but an individual, therefore section 39(7)(a) does not apply in this case, consequently this application stands to be dismissed.

ADJUDICATION ORDER

24. In the circumstances, the Applicant's application is hereby dismissed.

RIGHT OF APPEAL

25. The parties' attention is drawn to –

Section 57(1) of the CSOS Act of 2011 which provides –
An applicant, the association or any affected person
who is dissatisfied by an adjudicator's order, may appeal


Community Schemes
Ombud Service
ADJUDICATION ORDER
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to the High Court, but only on a question of law within thirty (30) days after the date of delivery of the order of the adjudicator”

DATED AT DURBAN on 18 March 2020



ADJUDICATOR: T KHAMBULE



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