



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

Ref: CSOS 6277/GP/21

IN THE MATTER BETWEEN

FP SALVATORI

APPLICANT

and

KATHLEEN BODY CORPORATE

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
Section 39(1)(e) In respect of financial issues— (e) an order for the payment or re-payment of a contribution or any other amount.
- Date Adjudication conducted:
8 APRIL 2022
- Name of the Adjudicator:
AJ ANDREAS
- Order:

The relief sought in terms of section 39(1) of the CSOS Act is dismissed.

The Applicant seeks an order in the following terms;

- (a) That the respondent be directed to confirm if they are implementing the rates that were published for water and sewerage that are valid for 2021/2022, and if not they should reimburse the Applicant in the amount of R1200.00.

The relief sought by the Applicant against the Respondent is dismissed.

The relief sought by the Applicant is dismissed, for the reasons provided at paragraphs 37 to 49.

No order as to costs.

INTRODUCTION

1. The Applicant is **FP SALVATORI**, the registered owner of unit number 104, Kathleen, Hathaway Road, Gresswold, Johannesburg, Gauteng Province.
2. The Respondent is the **KATHLEEN BODY CORPORATE**, a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), and to which it would be convenient to refer to as the "Body Corporate".
3. A letter requesting final submissions was sent to the parties on the 25th of March 2022, 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. The parties were given 5-business days to make further submissions.
5. This is an application for dispute resolution in terms of section 38 of the Community Schemes Ombud Service Act 9 of 2011 ("the CSOS Act"). The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email.

6. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of **Section 39(1)(e)** In respect of financial issues— (e) an order for the payment or re-payment of a contribution or any other amount.
7. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution, 2019 as amended and more specifically the amended Practice Directive dated 23 June 2020 which provides under paragraph 8.2 “Adjudications will be conducted on the papers filed by the parties and any further written submissions, documents and information as requested by the appointed Adjudicator”. The parties were requested to make written submissions. The adjudication was conducted on the 8th of April 2022 and an order is now determined.

PRELIMINARY ISSUES

8. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

9. Section 1 of the CSOS Act defines-

"Community scheme" as “any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing cooperative and "scheme" has the same meaning”.

"dispute" as “a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly”.

10. Section 38 of the CSOS Act provides-

“Any person may make an application if such person is a party to or affected materially by a dispute”.

11. Section 45(1) provides-

“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”.

12. Section 47 provides-

“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”.

13. Section 48 (1) provides-

“If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

14. In terms of Section 50-

“The adjudicator must investigate an application to decide whether it would be appropriate to make an order.”

15. Section 51 provides for the investigative powers of the Adjudicator:

“(1) When considering the application, the adjudicator may-

(a) require the applicant, managing agent or relevant person-

(i) to give to the adjudicator further information or documentation;

(ii) to give information in the form of an affidavit or statement; or

(iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview;

(b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and

(c) enter and inspect-

(i) an association asset, record, or other document;

(ii) any private area; and

(iii) any common area, including a common area subject to an exclusive use arrangement”.

16. Accordingly, a certificate of non-resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud referred the application together with any submissions and responses thereto to an adjudicator on the 23rd of March 2022.

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

17. The Applicant submitted that on the 17th of November 2021 he raised a dispute with the managing agent of the body corporate who informed Trustees accordingly.

18. After 14 days had passed the Trustees nor the managing agent had made contact with the Applicant in an attempt to resolve the dispute.
19. On the 6th of December 2021, the Applicant requested the resolution of the dispute through arbitration with parties being given 7 days' notice.
20. The sole objective of the Arbitration proceedings would be to resolve the sewerage fee of R510.00 and the water rate of R125.00 raised on the Applicant's levy account.
21. The Applicant further submitted that he needs the managing agents or Trustees to indicate to him where the abovementioned rates have been captured from.

Relief sought by the Applicant:

- (a) That the respondent be directed to confirm if they are implementing the rates that were published for water and sewerage that are valid for 2021/2022, and if not they should reimburse the Applicant in the amount of R1200.00.

Respondents' Submissions

22. The Respondent submitted that the trustees have always interacted with members of the scheme, at all times.
23. These interactions include the Applicant, and his assertion that this never happened is untrue in furtherance of an agenda of the Applicant.
24. According to the Respondent they have discussed the issue relating to the rates with him, in his apartment a number of times. As well as talking about it, with him, in and around the common property.
25. The Respondent further submitted that they received an invoice from the City of Johannesburg (COJ) in amount of approximately R125.000.00 for sewerage charges, backdated for three years.
26. The Trustees approach was to immediately contact their managing agents, to ask their advice on the way forward. The Trustees were informed that several schemes had been affected with this increase.

27. According to the Respondent they are of the view that this increase was a ploy by the COJ to bolster their coffers.
28. The Respondent submitted that the managing agent referred them to a forensic accountant/investigator, who was tasked to try and resolve the issue, and to obtain a waiver or to reduce the amount substantially, the fee for the consultant was R6500.00.
29. The Respondent further submitted that the consultant was partially successful in that he managed to reduce the credit note to approximately R85 000.00.
30. The COJ would not budge on any further credits. This information was shared with all members of the body corporate including the Applicant.
31. According to the Respondent the Applicant expressed his disappointment at the amount. It was pointed out to him, many times, that the Respondent does not have the financial resources to litigate against the COJ.
32. The Respondent further disputed that the Applicant was indigent since he is the recipient of a pension in Euros.

Relief sought by the Respondents.

33. None submitted.

EVALUATION & FINDING

34. I have perused the parties' written submissions.
35. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
36. 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 weighed up and determined whether the Applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

37. The Applicant seeks an order that the respondent be directed to confirm if they are implementing the rates that were published for water and sewerage that are valid for 2021/2022, and if not they should reimburse the Applicant in the amount of R1200.00.
38. To enable the Adjudicator to make a finding relating to the relief sought by the Applicant against the Respondent, it is prudent to establish whether there is a lawful or alternatively a reasonable basis on which the relief prayed for by the Applicant may be granted.
39. **Section 39(1)(e)** makes provision for the following competent order to be handed down by an Adjudicator “In respect of financial issues— (e) an order for the payment or re-payment of a contribution or any other amount”.
40. The Sectional Titles Schemes Management Act requires a body corporate to collect contributions (levies) from all members of the body corporate, in order to cover the common expenses and operating costs that the scheme will encounter during a given financial year.
41. Readers are referred to the North Gauteng High Court matter of the **Body Corporate of Central Park v Mosa**, where Judge Kathree-Setiloane held that the wording of section 3(2) of *the STSMA* eliminates any ambiguity in its meaning as it specifies that “liability ...accrues from the passing of a resolution to that effect by the trustees and may be recovered”. Properly construed this means that liability for normal levies/contributions accrues from date of the passing of a resolution to that effect by the trustees and can be recovered by the body corporate. In other words, the body corporate’s right to claim payment of contributions/normal levies vests on passing of a resolution by the trustees and becomes due and payable in each consecutive month thereafter”.
42. These contributions are paid into two funds held and operated by the body corporate, (a) the administrative fund, from which monies are drawn to cover the day-to-day maintenance and running costs of the scheme in terms of an approved budget, and (b) the reserve fund, from which monies are drawn to cover the long-term repair and maintenance requirements of the scheme, in terms of the 10-year Maintenance, Repair and Replacement Plan.

43. Once the trustees have determined the estimated costs involved with the running of the scheme over the period of the upcoming financial year, they can then set an admin and reserve fund budget accordingly. These budgets are then sent to all owners for approval at the body corporate's Annual General Meeting.
44. Upon the approval by the owners, the trustees can then calculate the contributions payable by each member of the body corporate. Contributions are divided amongst owners according to the Participation Quota (PQ) of the section that they own, which is arrived at by dividing the floor area of their section by the floor area of all the sections in the scheme.
45. In the matter of **Maitland and Kensington Bus Co (Pty) Ltd v Jennings 1940 CPD 489 at 492** Davis J held, "For judgement to be given for the plaintiff the Court must be satisfied that sufficient reliance can be placed on his story for there to exist a strong probability that his version is the true one".
46. Accordingly, I am not persuaded on the evidence before me that the Applicant has made out a case and proven the Applicant's case on a balance of probabilities.
47. The Adjudicator is unable to support the relief sought by the Applicant that he be reimbursed for sewerage and water charges sought by the COJ in the amount of R1200.00, which is due and payable by all members of the scheme, and not only the Applicant.
48. The Respondent has in my considered view correctly objected to the relief sought by the Applicant on the basis that the water and sewerage charges is as per the directive received from the COJ.
49. Accordingly, the relief sought by the Applicant against the Respondent is dismissed.

COSTS

50. There is no order as to costs.

ADJUDICATION ORDER

51. In the circumstances, the following order is made:

- (a) The relief sought by the Applicant against the Respondent is dismissed.
- (b) The relief sought by the Applicant is dismissed, for the reasons provided at paragraphs 37 to 49.

RIGHT OF APPEAL

52. Section 57 of the CSOS Act, provides for the right of appeal-

- (1) 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.
- (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

DATED ON THIS 26th DAY OF APRIL 2022.



AJ ANDREAS
ADJUDICATOR