



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

Ref: **CSOS002774/GP/21**

IN THE MATTER BETWEEN

**FELIX LINDA MAMPURU**

**APPLICANT**

and

**ELSENBURG BODY CORPORATE**

**RESPONDENT**

---

**ADJUDICATION ORDER**

---

**EXECUTIVE SUMMARY**

- Relief applied for in terms of the CSOS Act.  
**Section 39(7)** in respect of general and other matters –  
    (b) any other order proposed by the Chief Ombud.  
**Section 39(4)** in respect of meetings.

Date Adjudication conducted: 04 January 2022.

Name of the Adjudicator: Fezile Sithole.

Order: Dismissed.

## **INTRODUCTION**

1. The Applicant is **FELIX LINDA MAMPURU**, the registered owner of unit 202 Elsenburg complex, situated at Celliers Street, Sunnyside, Pretoria, Gauteng Province.
2. The Respondent is **ELSENBURG BODY CORPORATE**, a juristic person in terms of the Section Titles Schemes Management Act No. 8 of 2011 (“ST SMA”) situated at Celliers Street, Sunnyside, Pretoria, Gauteng Province.
3. A letter requesting final submissions was sent to the parties on the 26<sup>th</sup> day of October 2021, 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(7)** in respect of general and other matters - *(b)* any other order proposed by the Chief Ombud and **Section 39(4)** in respect of meetings.
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 by no later than 29 October 2021.

8. The matter was referred for adjudication on 06 December 2021 and adjudication was conducted on 04 January 2022 and an order is now determined.

### **PRELIMINARY ISSUES**

9. None.

### **RELEVANT STATUTORY PROVISIONS**

10. 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".
11. 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".
12. 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".
13. 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”.

14. 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”.

15. In terms of Section 50-

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

16. 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”.

17. 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 06 December 2021 and now an order is now determined.

## **EVALUATION & FINDING**

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

19. 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.
20. This matter deals with an application for the following reliefs:
  - a. The CSOS to issue an urgent interdict to prevent the previous trustees from issuing any further instructions and engaging in any affairs relating to managing of the Respondent;
  - b. For Mr H. Hoffman and the previous trustees to be charged for issuing misleading information about the SGM and unlawfully continuing to serve as trustees and for any funds spent during such period to be recovered;
  - c. An order declaring the meeting of 24 November 2020 valid after verifying that there was compliance with the STSMA;
  - d. For an investigation to be conducted to establish who exactly intercepted and the communication platform.
21. It is my opinion that all the four prayers sought by the Applicant are interrelated and cannot be isolated when making a decision.
22. An investigation will first need to be conducted into the issues raised by the Applicant, to determine on the subsequent prayers.
23. In terms of the CSOS Act, it is paramount that the relief sought must be within the ambit of the provisions of Section 39 of the CSOS Act 9 of 2011.
24. The Western Cape High Court in the case of **Trustees for the Time Being of the Avenues Body Corporate vs Shmaryahu and Another (A31/2018) [2018] ZAWCHC 54 2018 (4) SA 566 (WCC) (10 May 2018) add paragraph [17]**, held that "the character of the various types of substantive relief that an Adjudicator is empowered to grant in terms of the Act appears from the provisions of Section 39".

25. The court further held add paragraph [18] that “It provides for the possibility of a number of different types of orders being made in respect of seven expressly specified categories of issues; viz (i) financial issues, (ii) behavioural issues, (iii) scheme governance issues, (iv) issues in respect of meetings, (v) in respect of management services, (vi) in respect of works pertaining to private and common areas and (vii) in respect of general and other issues. It is evident from the character of each of the categories of issues that they pertain primarily to matters germane to the community schemes, and only incidentally to related personal or individual interests or rights”.
26. The Court in ***Evergreen Investment (Pty) Ltd v Messerschmidt 2019 (3) SA 481 (GP)*** quoting from the ***Road Accident Appeal Tribunal v Gouws 2018 (3) SA 413 (SCA)*** held that: “*Repositories of power can only exercise such power as had been conferred upon them by law*”.
27. The Adjudicator is not empowered in terms of the applicable legislative framework to make an order as per the relief sought by the Applicant.
28. CSOS is a creature of statute, and the Adjudicator is bound to make orders that are competent and enforceable in terms of the Act.
29. In the premises, it is the adjudicator’s view that the application by the Applicant ought to be dismissed for the aforementioned reasons and I cannot make an order in this regard.

### **COSTS**

30. There is no order as to costs.

### **ADJUDICATION ORDER**

31. In the circumstances, the following order is made:
- (a) The relief sought by the Applicant against the Respondent in terms Section 39 (7)(b) is dismissed.

- (b) The relief sought by the Applicant against the Respondent in terms Section 39 (4) is dismissed.
- (c) No order as to costs.

**RIGHT OF APPEAL**

32. 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 AT JOHANNESBURG ON THIS 12<sup>th</sup> DAY OF JANUARY 2022.**



**FEZILE SITHOLE  
ADJUDICATOR**