



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

Reference Number: CSOS 3928/GP/21

In the matter between: -

FUMANI SANDY MDAKA

Applicant

and

THE TRUSTEES OF LION RIDGE BODY CORPORATE

Respondent

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:

Section 39(1) in respect of financial issues—

(c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way.

- Date referred to Adjudication:

31 March 2022.

- Date Adjudication conducted:

06 April 2022.

- Name of the Adjudicator:

Adv. M.A Mavodze.

- Order:

Dismissed.

INTRODUCTION

1. The Applicant is Fumani Sandy Mdaka, the registered owner of unit 133, at the Respondent's scheme, which is situated at 33 Jeanett Street, Ridgeway, Johannesburg, Gauteng.
2. The Respondent is the Trustees of Lion Ridge Body Corporate a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011 ("ST SMA") which is situated at, 33 Jeanett Street, Ridgeway, Johannesburg, Gauteng.
3. 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 (the CSOS) by way of e-mail.
4. An application seeking relief in terms of Section 39(1)(c) of the CSOS Act in respect of financial issues.
5. A letter under cover of an email was sent to the parties on 11th 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.

6. This matter is adjudicated in terms of the CSOS Act; Practice Directive on Dispute Resolution, 2019 (as amended) and 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 06th April 2022 and an order is now determined.

PRELIMINARY ISSUES

7. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

8. 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".
9. 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”.
10. 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”.

11. 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.”

12. 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.”

13. In terms of Section 50-

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

14. 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.”

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

15. The Applicant submitted that,

- 15.1 The Body Corporate has never conducted a financial audit for the past 8-10 years.

- 15.2 No AGM's were held for the past 5 years.
- 15.3 The interest rate charged on an arrear accounts is more than the regulated interest rates charged in spite of non VAT registration.
- 15.4 There was an introduction of prepaid on both electricity and water metres.
- 15.5 She has attempted to consult the Chairperson of the Respondent but to no avail

Relief sought by the Applicant

- 16. The Applicant is seeking the following reliefs,
 - 16.1 That all interest charged be completely written off.
 - 16.2 All legal fees to be scraped and cleared.
 - 16.3 The electricity meter be unblocked and to allow them to purchase electricity and water as is supposed to be.
 - 16.4 That arrear levies accounts be handled and dealt with on its own without having to be associated with the pre-paid accounts like water and electricity accounts.
 - 16.5 That reasonable and affordable payment arrangements on the arrear levy account be agreed upon after above adjustment is.

Respondent's Submissions

- 17. None.

Relief sought by the Respondent

- 18. None.

EVALUATION AND FINDINGS

19. I have perused the Applicant's written submissions to can adjudicate the matter. The Respondent was requested to provide its response to the Applicant's application on 11th March 2022. No submissions were received from the Respondent.
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 weighed up and determined whether the Applicant's version is probable.
22. The Applicant is seeking the following reliefs;
 - 22.1 That all interest charged be completely written off.
 - 22.2 All legal fees to be scraped and cleared.
 - 22.3 The electricity meter be unblocked and to allow them to purchase electricity and water as is supposed to be.
 - 22.4 That arrear levies accounts be handled and dealt with on its own without have to be associated with the pre-paid accounts like water and electricity accounts.
 - 22.5 That reasonable and affordable payment arrangements on the arrear levy account be agreed upon after above adjustment is.

The complaint regarding writing off of interest charges and the reversal of legal fees

23. In terms of STSMA PMR 25(5) -
“The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.”
24. Upon perusal of the Applicant's levy statement dated 01st October 2021 the interest as well as legal fees charges were reversed.
25. The reliefs sought by the Applicant are therefore without merits and stands to be dismissed in terms of Section 53(1) of the CSOS Act.

The complaint regarding the unblocking of the electricity and water meters

26. The Applicant is seeking a relief that the Respondent should unblock electricity meters and allow owners to purchase their own electricity and water.
27. The Applicant did not provide adequate information motivating the relief sought in this regard. I am not told why I should issue an order that the electricity and water meters be unblocked and what gave rise to the blocking of the meters.
28. The Applicant has failed to prove his case on a balance of probability and the relief sought lacks merits or substance.
29. It follows therefore that the relief sought stands to be dismissed in terms of Section 53(1) of the CSOS Act.

The complaint regarding arrear levy accounts

30. The Applicant is seeking a relief that arrear levies accounts be handled and dealt with on its own without having to be associated with the pre-paid accounts like water and electricity accounts and that reasonable and affordable payment arrangements on the arrear levy account be agreed upon after above adjustment is made.

31. The Applicant seems to be complaining on behalf of himself and other unit owners in the scheme. He has failed to provide evidence to support the relief sought. He also did not provide a written mandate from other unit owners.
32. Accordingly, the relief sought is misconceived and stands to be dismissed in terms of Section 53(1) of the CSOS Act.

ADJUDICATION ORDER

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

33.1 The application is dismissed.

COSTS

34. There is no order as to costs.

RIGHT OF APPEAL

35. 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 06 APRIL 2022



ADV.M. A MAVODZE
(CSOS ADJUDICATOR)