



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

Ref: CSOS004508/GP/21

IN THE MATTER BETWEEN

HAVENHURST BODY CORPORATE

APPLICANT

and

LA & RR MUKHELI

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY.

- Relief applied for in terms of the CSOS Act.

The Applicant requests the following relief:

In terms of section 39:

(1) In respect of financial issues—

(e) an order for the payment or re-payment of a contribution or any other amount.

Date Adjudication conducted: 04 April 2022.

Name of the Adjudicator: Fezile Sithole.

Order: Granted.

INTRODUCTION

1. The Applicant is **HAVENHURST BODY CORPORATE**, a juristic person in terms of the Section Titles Schemes Management Act No. 8 of 2011 (“ST SMA”) situated at Harvenhurst complex, 210 Lyndhurst Road, Lyndhurst, Johannesburg, Gauteng Province, represented herein by CSI Property Management (Pty) Ltd, as the managing agent, in terms of the directors’ resolution dated 01 March 2022.
2. The Respondent is **LA & RR MUKHELI**, the registered co-owners of unit 4 Harvenhurst complex, 210 Lyndhurst Road, Lyndhurst, Johannesburg, Gauteng Province.
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 (CSOS) by way of email.
4. The parties were given 5 (five) business days to make final submissions.
5. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of-
 - a.) Section 39(1)(e)
 - (1) In respect of financial issues—
 - (e) an order for the payment or re-payment of a contribution or any other amount.
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”.
7. The parties were requested to make written submissions on 16 March 2022, by

no later than 22 March 2022. The matter was referred to adjudication on 29 March 2022, adjudication was conducted on the 4th day 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. Section 50 provides-

“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. A conciliation hearing was not held in the matter, which was referred directly to adjudication in terms of section 48 of the CSOS Act.

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

17. The Applicant submitted as follows-: *I quote*

“The respondents are in arrears with their levy account.

In January 2021 the respondents undertook to settle the arrear amount within 60 days. This did not take place.

In March and April 2021, the respondents made two payments of R3000.00 and R3300.00 respectively.

We once again requested the respondents in June 2021 to enter into a repayment arrangement after no further payment was received after April.

On 7 July the respondents agreed to start paying R3500.00 per month until the arrears were up to date.

One payment was made on 30 July 2021. Subsequently the respondents have made no further payments.”

Relief sought by the Applicant:

18. For an order that payment of R2700.00 per month be made by the Respondent towards the arrears levy.

Respondent's Submissions

19. Despite being invited to do so on 16 March 2022, the Respondent has failed to make any submissions.

Relief sought by the Respondent

20. None submitted.

EVALUATION & FINDING

21. I have perused the Applicant's written submissions.
22. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the filed witness statements must be considered.
23. The general rule is that only evidence, which is relevant, should be considered.
24. Relevance is determined with reference to the issues in dispute; the degree or extent of the proof that is required is a 'preponderance of probabilities.
25. This means that once all the evidence has been tendered, it must be weighed up by the Adjudicator in order to determine whether the Applicant has

discharged the burden of proving its case on a balance of probabilities.

26. It involves findings of facts based on an assessment of credibility and probabilities.
27. It is noted that: -

In terms of section 2(1) of the Sectional Titles Schemes Management Act 8 of 2011:

“With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be 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.**”

(my emphasis)

- Section 3(1) of the aforesaid Act further provides as follows:

“A body corporate must perform the functions entrusted to it by or 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 annual operating costs—

(i) for the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs);

(ii) for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;

(iii) for the payment of any insurance premiums relating to the building or land; and

(iv) for the discharge of any duty or fulfilment of any other obligation of the body corporate;

(b) to establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property but not less than such amounts as may be prescribed by the Minister; . . . and

(c) to require the owners whenever necessary to make contributions to such funds . . .”

28. It follows that unit-owners who default on their levy payments, or who do not pay their levy payment in full and up to date every month, are effectively being subsidised by other members of the body corporate who pay their levies and ancillary contributions conscientiously every month.

29. The body corporate cannot perform its functions and duties in the absence of funds from unit owners.
30. The purpose of this order is to bring closure to the case brought by the Applicant to the CSOS, whilst taking into account the rights, as well as the duties of the Respondent.
31. Upon investigation, the Applicant provided me with the latest arrears statement generated on 30 March 2022 in the amount of R 4 909.60 (Four Thousand Nine Hundred and Nine Rand Sixty Cents).
32. I am satisfied that the Applicant has proved on a balance of probabilities that the Respondent is indebted to the Applicant in the amount stated hereinbefore.
33. As a result, the Applicant's prayer in terms of section 39(1)(e) of the CSOS Act is granted.

COSTS

34. No order as to costs.

ADJUDICATION ORDER

35. In the circumstances, the following order is made:
 - I find for the Applicant:
 - 35.1. Consequently, the Respondent owes to the Applicant the amount of **R 4 909.60** (Twelve Thousand Seven Hundred and Twenty-Two Rand and Ninety-Two Cents).
 - 35.2. The Respondent shall pay to the Applicant the amount of **R 4 909.60 (Four Thousand Nine Hundred and Nine Rand Sixty Cents)** in 2 **(two)** equal monthly instalments of **R 2,454.80** (Two Thousand Four Hundred and Fifty-Four Rand and Eighty Cents).
 - 35.3. The first payment shall commence within 30 (thirty days) from date of this order.

- 35.4. Thereafter, payment of the further 1 (One) outstanding instalment must be made on the 1st day of the succeeding month.
- 35.5. No further interest shall accrue to the outstanding amount within the period allowed for the payment.
- 35.6. ***The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.***
- 35.7. In the event of the Respondent defaulting on any 1(one) payment as ordered above, the full amount due to the Applicant shall become immediately due and payable, with interest, by the Respondent.
- 35.8. No order as to costs.

RIGHT OF APPEAL

36. 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 7th DAY OF APRIL 2022.



FEZILE SITHOLE

ADJUDICATOR