

ADJUDICATION ORDERS

JOHLENE WASSERMAN

31 OCTOBER 2022



CSOS ADJUDICATION ORDERS

- Behavioural issues and works pertaining to private areas and common areas
- Management services
- The right to slaughter



Behavioural issues and works pertaining to private areas and common areas

FACTS:

- The Respondent is in **violation of the building manual** of the scheme in that the boundary walls between C38 and C37, C38 and C46 are above the maximum allowable height of 1.8m
- The Board of directors had a meeting with the Respondent and wrote several letters to the Respondent requesting compliance but the Respondent refuses to comply
- At no point were the Directors informed of the height of the proposed fence nor was permission given to erect the fence

Behavioural issues and works pertaining to private areas and common areas

- At no point was the fence as erected approved by the Directors
- The structures erected on the Respondent's stand are not in accordance with the plans he submitted for approval
- The Respondent does not understand the distinction between a screen and a fence. The Respondent's neighbours are not all happy with the fencing
- The Respondent does not present any evidence in the documents presented that permission was given by the Directors as envisaged by the sections 4.10.1 to erect a fence, which approval must be in writing

Behavioural issues and works pertaining to private areas and common areas

- ❑ It is the company's contention that the restriction of the height of the fencing being restricted to 1,8m is reasonable and necessary due the following reasons
- ❑ Due to the inherent nature of a caravan park, members regularly make open fires, as such we need to limit the amount of wood used by members in constructing structures due to the fire risk
- ❑ For obvious security reasons, it is not advisable to allow the building of high restrictive fencing

Behavioural issues and works pertaining to private areas and common areas

- ❑ High fencing prevents the natural wind flow through the caravan park thus causing higher temperatures on caravan stands, members who have caravan stands in the development would have their right to view affected
- ❑ The 1,8m high restriction is reasonable to cater for a member's desire for privacy. Lastly, we point out that at point that the Respondent has not given any reasonable reason for needing such a high walls

PRAYERS FALLS UNDER

- ❑ Section 39(2)(d) (2) In respect of behavioural issues—
an order for the removal of all articles placed on or attached illegally to parts of a common area or a private area.
- ❑ Section 39(6)(b) In respect of works pertaining to private areas and common areas—
 - b) an order requiring the relevant person—
 - (i) to carry out specified repairs, or have specified repairs made; or
 - (ii) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out or to be carried out in respect of the property by the applicant

PRAYERS FOR RELIEF

Relief sought by the Applicant:

- The Applicant is seeking the following relief:
- That the Respondent be ordered to lower his boundary wall to 1.8m
- That the Respondent constructs his walls with materials allowed for in the building manual

Respondent's Submissions:

- He bought the caravan in May 2021, which is the caravans stands and house layout at the club. While the previous owner was transferring documentation he started with renovations on the stand

Behavioural issues and works pertaining to private areas and common areas

- ❑ His official share block certificate was received on 06th of June 2022. Before he could start with any work on the caravan stand he had to get approval from the previous owner and one of the committee members that attended to the sale of properties
- ❑ He proceeded with cleaning the stand as there was a lot of rubble and overgrown shrubs on the stand wall. It was during this stage that he was informed by one of the members that he must forward the building inspector of the committee, a sketch of what he was intending to do on the stand
- ❑ He sent an e-mail to the building inspector on 06th May 2021 on what he proposed for the layout and what he intended to erect

Behavioural issues and works pertaining to private areas and common areas

- ❑ The building regulations that were e- mailed to him on 18th May 2021, also stated no specifications for fencing. Building regulations of 2021, had limited information concerning caravan stands
- ❑ In August 2021 a new committee was elected. In 2022 new building regulations were drafted by the committee and sent out in April 2022
- ❑ The committee has now requested him to comply with these new regulations of 2022 in which the fencing is now specified. He had a meeting with them in 2022 and explained that his plans were approved in 2021 and work was completed by June 2021
- ❑ During the construction phase he mentioned that all the neighbours were consulted as he requested a signature

Behavioural issues and works pertaining to private areas and common areas

- He mentioned to them that all the neighbours' adjacent to stand C38 appreciated the privacy that the wall gave them. He did comply with the building regulations of 2021 and did follow the procedures as laid out by the regulations
- No concerns were received from the building director since completion of the wall in June 2021. Only in 2022 did he receive a concern from the new directors after the amended the rules

CSOS FINDING

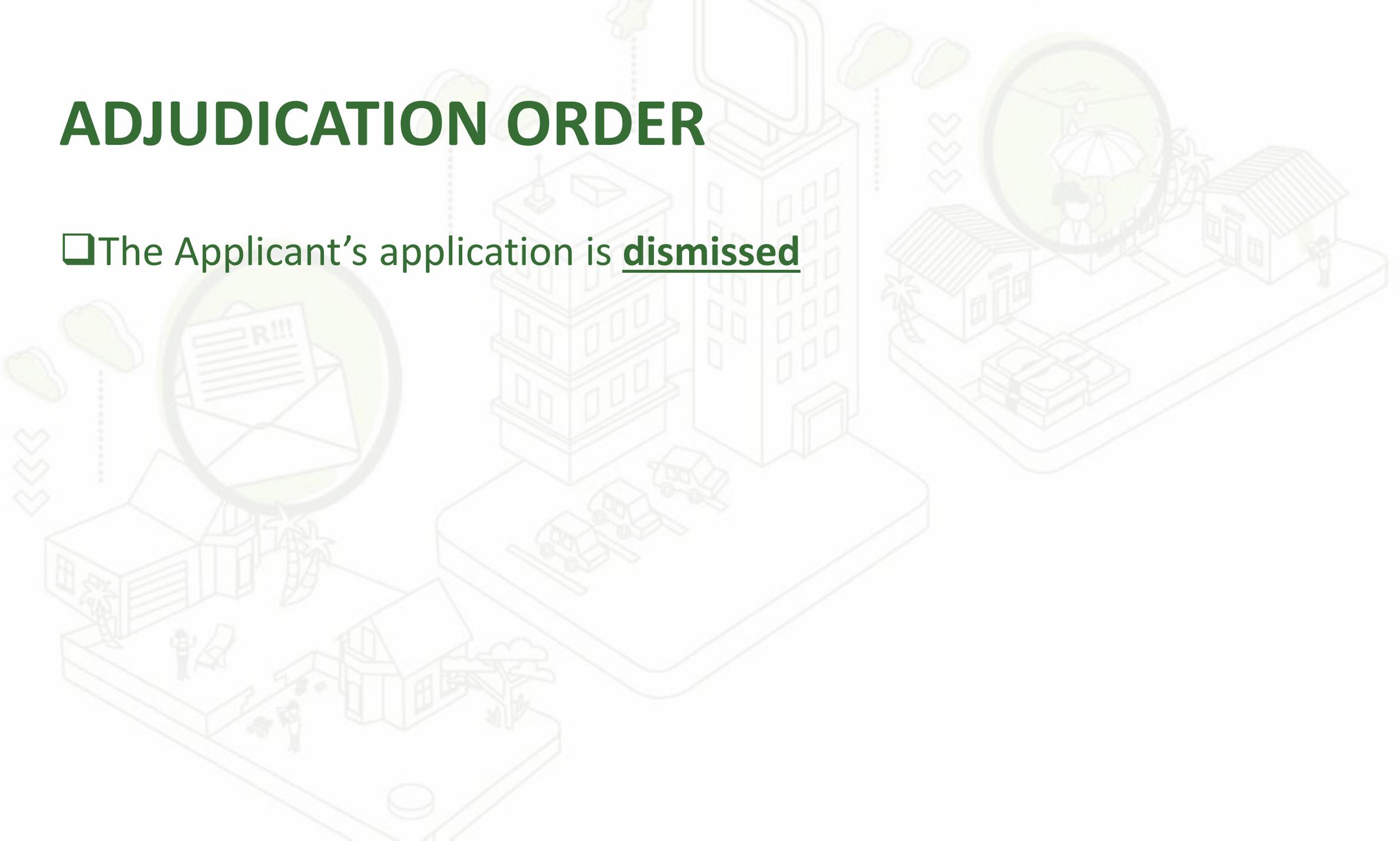
- ❑ The relief sought by the Applicant is in principle to the effect that the Respondent should be ordered to demolish a portion of the boundary wall to reduce the height to 1.8m
- ❑ The boundary wall is a permanent structure and according to the Respondent the demolishing or cutting the height of the wall will compromise the strength of the entire wall
- ❑ The relief sought by the Applicant falls outside the authority and jurisdiction of the Adjudicator, in that the adjudicator cannot authorise or order demolishing of the wall which is a permanent structure allegedly built without following the National Building Regulations. This falls under the function of the building inspectors at the Town Planning division of the Local Municipality

CSOS FINDING

- ❑ Western Cape Division of the High Court, Cape Town under case number A31/2018 in the matter between Trustees for the Time Being of the **Avenues Body Corporate vs Alain Shmaryahu** and CSOS, paragraph 30 wherein the Court held that the Adjudicator granted an order which did not match any of the remedies set out in Section 39 of the CSOS Act and consequently the Adjudication order made in terms of Section 54 of the said Act was set aside

ADJUDICATION ORDER

❑ The Applicant's application is dismissed



MANAGEMENT SERVICES

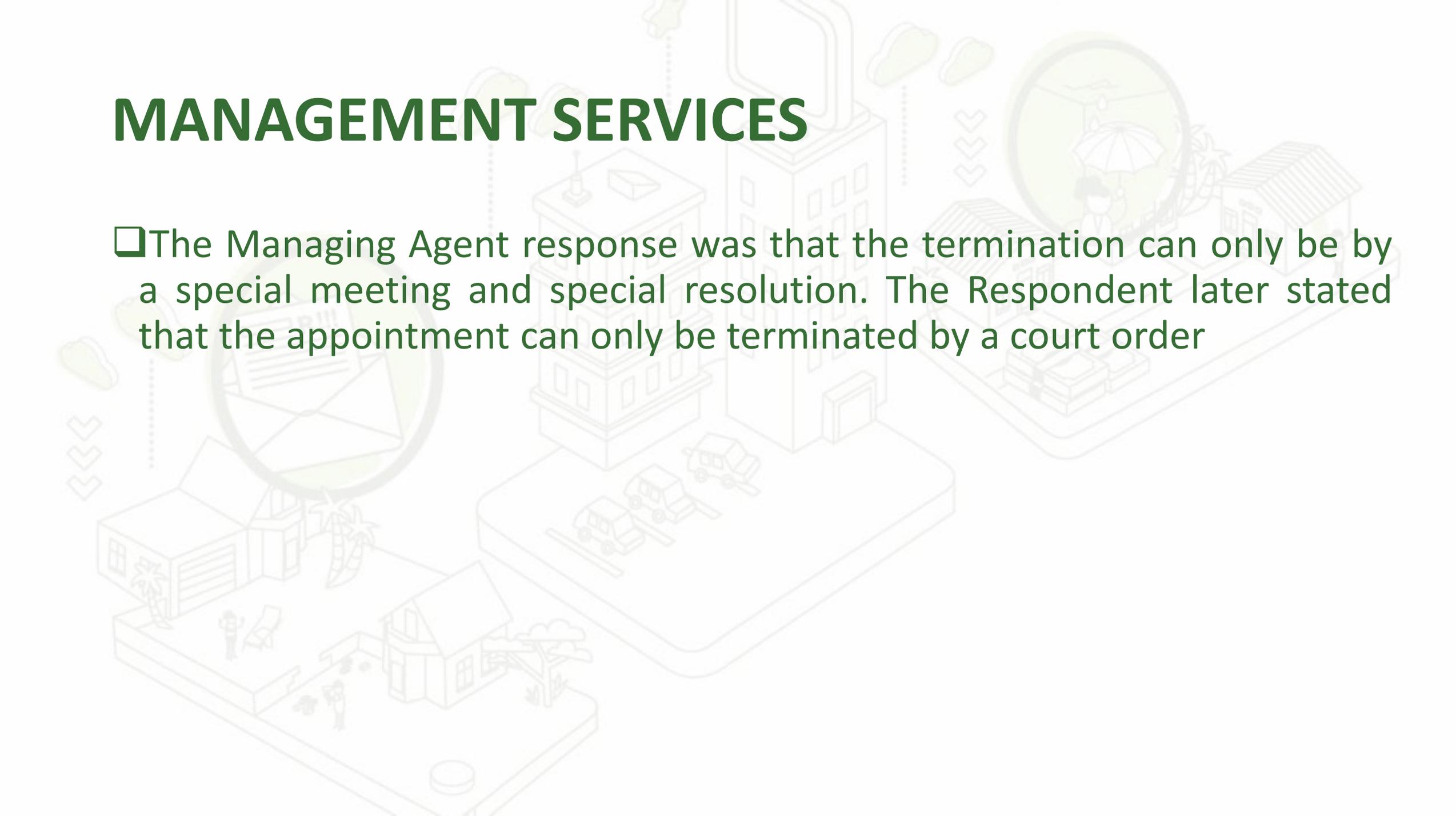
FACTS:

- ❑ The dispute lodged primarily relates to the Respondent's appointment as the Executive Managing Agent of the Body Corporate
- ❑ The Respondent's appointment was unlawfully because there was no special resolution appointing them as managing agents of the body corporate. The trustees who signed the contract were no longer trustees at the time of signing the contract because their term of office had expired
- ❑ The owners tried to notify the managing agent about their unlawful appointment. The respondent sought a legal opinion from their attorneys. According to their opinion, the Respondent was appointed by a special resolution, despite the fact that there are witnesses (owners) and minutes to confirm that there were no trustees at the time and that there was no resolution passed appointing the managing agent as the Executive Managing Agent(EMA) for the scheme

MANAGEMENT SERVICES

- ❑ The owners requested the managing agent to add at the next Annual General Meeting(AGM) an agenda item to terminate the contract when the contract ends. The Respondent refused to add the agenda item and all other items that were proposed by the owners
- ❑ The managing agent stated there were impowered to decline proposed agenda items and to take decisions on behalf of the Body Corporate
- ❑ The Applicant contended that the Respondent was not legally appointed, and the legal opinion was not binding
- ❑ The Applicant submitted that the owners have exhausted all internal remedies. A Promotion of Access to Information Act, 2 of 2000 (PAIA) was sent to the Respondent requesting records to prove that they were appointed lawfully. The documents were not provided

MANAGEMENT SERVICES

An isometric illustration of a city scene. In the foreground, there are several buildings of varying heights and styles, some with palm trees. A road with cars is visible. In the background, more buildings and a person holding an umbrella are visible. The entire scene is rendered in a light green and white color scheme.

- ❑ The Managing Agent response was that the termination can only be by a special meeting and special resolution. The Respondent later stated that the appointment can only be terminated by a court order

PRAYERS FOR RELIEF

Relief sought by the Applicant:

CSOS to review the material at hand and make a call to have the contract terminated due to the unlawful appointment and unlawful behaviour of the EMA. The signatories who appointed EMA were no longer trustees at the time of appointment. There was no Special General Meeting (SGM) that took place where the body corporate voted in favour of the appointment. A legal opinion is not final and/or binding document. The owners wish for the contract to be terminated

Respondent's submission:

The Respondent did not reply to the allegations levelled against the managing agent as alleged by the Applicant

RELIEF FALLS UNDER

□ **Section 39 (5)** In respect of management services—

(a) an order requiring a managing agent to comply with the terms of a person's contract of appointment and any applicable code of conduct or authorization, or

(b) an order declaring that the association does or does not have the right to terminate the appointment of a managing agent, and that the appointment is or is not terminated

CSOS FINDING

- ❑ The gravamen of the dispute relates to the appointment of the Respondent as the EMA for the body corporate. The Applicant was appointed unlawfully because the trustees that signed the EMA agreement did not have the mandate to do so. The trustees' term of office had expired at the time of the appointment and there was no resolution authorizing them to appoint an EMA
- ❑ The Applicant notified the Respondent that the appointment was unlawful. In response to the allegations, the Respondent sought a legal opinion. According to the legal opinion from the Respondent's attorney the appointment was unlawful
- ❑ In terms of the **Section 1 CSOS Act**, "dispute means 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". The Applicant is aggrieved about the administration of the community scheme and therefore entitled to bring the application as an individual

CSOS FINDING

- ❑ Prescribed Management Rule 28 of the STSMA stipulate that: “(1) The body corporate may, by special resolution, appoint an executive managing agent to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees”. The appointment of an executive managing agent requires a special resolution.
- ❑ In terms of **section 1 of the STSMA** a special resolution means a resolution-”
 - (a) passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting; or
 - (b) Agreed to in writing by all members of a body corporate holding at least 75% calculated both in value and in number, of all the votes;”

CSOS FINDING

- ❑ Alternatively, members entitled to 25 percent of the total quotas of all sections **may apply to CSOS** for the appointment of an executive managing agent in terms of **prescribed Management Rule 28(2)**. There is no application in terms of PMR28(2) that was brought to the CSOS
- ❑ Prescribed Management Rule 28-Executive Managing Agent and Managing Agent provides as follows(7), "A management agreement may not endure for a period longer than three years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary —
 - (a) by the body corporate on two months notice, if the cancellation is first approved by a special resolution passed at a general meeting, or
 - (b) by the managing agent on two months notice.

CSOS FINDING

- ❑ The parties acknowledged that the STSMA is applicable before terminating the contract, as per clause 2.12 of the EMA agreement.
- ❑ The averment that the contract can only be cancelled by a court order is without merit.
- ❑ In Court stated in Heathrow Property Holdings No.33 and Others v Manhattan Place Body Corporate and Others 2022 (1) SA 211 (WCC) (1 June 2021) that “...in as much as the declaratory relief which could in the exercise of its concurrent jurisdiction, they were at liberty either to approach the Ombud or to approach the Court for it, and the Court cannot refuse to entertain the application by declining to exercise its jurisdiction. Relying on comments which were made in this regard by Binns-Ward J in Coral Island 7 they contend that all the Court can and should do, in the event that it is of the view that the application should more properly have been brought before the Ombud, is to make an appropriate Order in relation to the costs of the application i.e. an order either disallowing them their costs in the event that they are successful or mulcting them in some way in regard thereto.”

CSOS FINDING

- ❑ Section 38(3)(a) of the CSOS Act specifically states that the application to CSOS for dispute resolution must include statements that set out the relief sought by the Applicant, **and in addition, the relief sought must be within the scope of one or more of the prayers for the relief contemplated in section 39 of the Act.**
- ❑ The managing agents and executive managing agents services falls within the ambit of the STSMA and more importantly PMR 28. Section 39(5) of the CSOS Act, relates to the management contract.
- ❑ The prescribed management rules prescribe the process to be followed to terminate the contract. The parties have agreed to be bound by the STSMA and the CSOS process.
- ❑ The Respondent should therefore convene a meeting of members of the Body Corporate, giving the members of the Body Corporate an opportunity to decide on the appointment or termination of the Executive Management Agreement.

ADJUDICATION ORDER

- The relief sought by the Applicant in terms of section 39 (5)(a);(b) of the Community Schemes Ombud Service Act, 9 of 2011 is **granted**.
- The Respondent is ordered and compelled to convene a General Meeting of the Body Corporate within 30 (thirty) days of receipt of the order.
- The purpose of the meeting is for the members of the scheme to confirm the appointment or termination of the Executive Management Agreement.
- In the event of a termination, a two-month notice must be given to the Respondent. The Respondent must handover the books of the scheme within 10 (ten) days after termination.



THE RIGHT TO SLAUGHTER

THE RIGHT TO SLAUGHTER

FACTS:

- The applicant had informed the Respondent that she would like to have a traditional ceremony, which involves slaughtering a goat.
- The respondent rejected the request as their conduct rules does not allow it.
- The respondent advised that rules needed to be amended and approved by the owners to add a section for slaughtering and them approved by the CSOS.

THE RIGHT TO SLAUGHTER

- The slaughtering was to take place at the applicant's garden.
- The garden/patio is on the applicant's title deed – Notarial Deed of Cession of Exclusive Use area.
- The applicant confirmed that the area is enclosed and private.
- The applicant confirmed that they has spoken to SPCA and are in the process of obtaining a permit from the Municipality.

RELIEF SOUGHT BY APPLICANT

Applicant's prayer for relief:

- That the community scheme record a provision that permits slaughtering of animals for purposes of ritual or cultural purposes, subject to certain reasonable conditions – **Section 39(3) of the CSOS Act.**
- Consent to continue with the ritual slaughtering at the Respondent scheme.

ADJUDICATOR'S FINDINGS

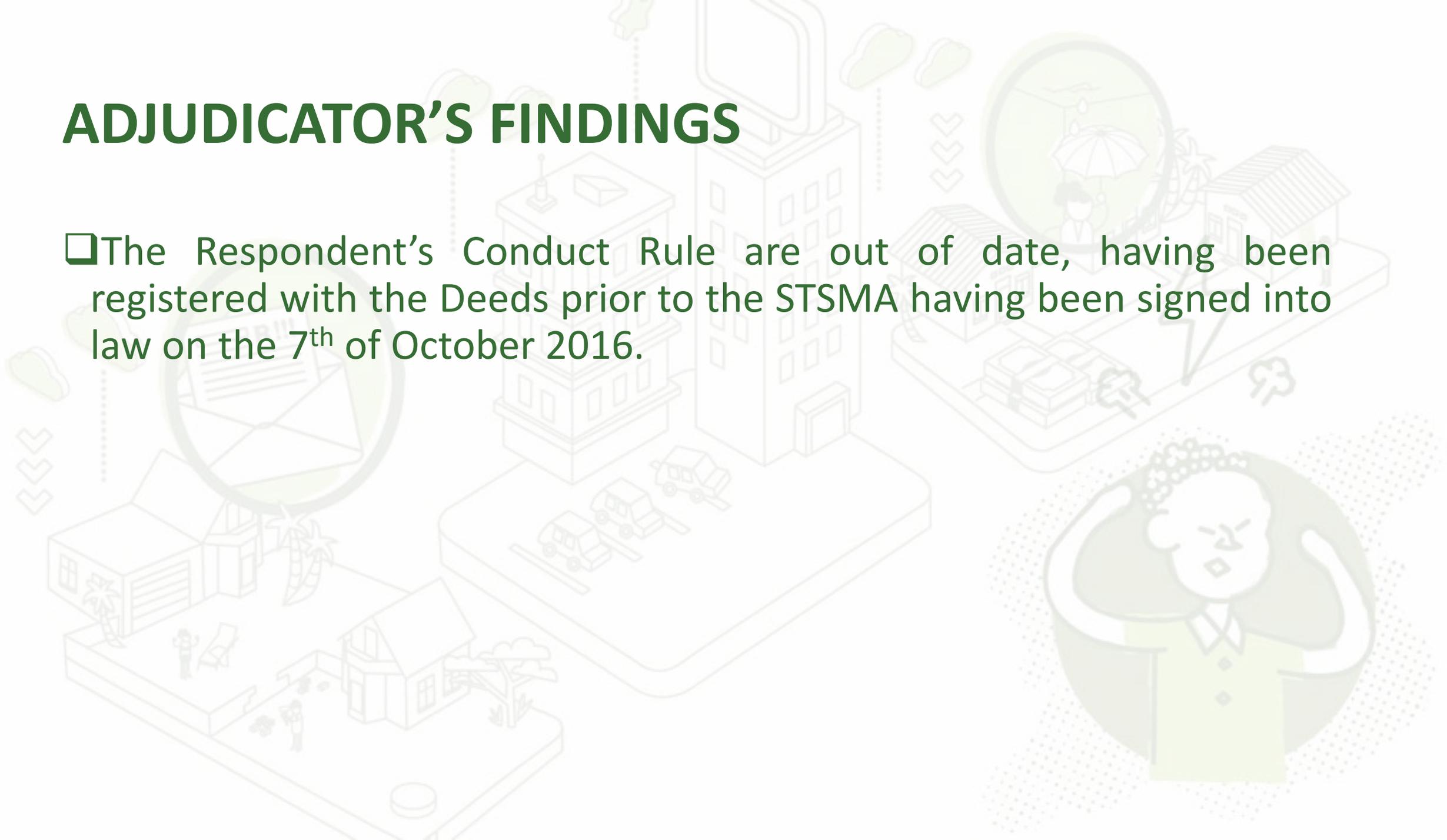
- The managing agent incorrectly advised the applicant in terms of votes needed to approve the conduct rule.
- The approval of conduct rules should be in terms of section 10(2)(b) of the STSMA.
- Section 15 of constitution states that everyone has the right to freedom of religion and belief.
- Section 31 of the constitution protects the right of persons to enjoy their culture.

ADJUDICATOR'S FINDINGS

- ❑ Constitutional right naturally and inherently accrues to such person simply by them being a person, subject to certain conditions, which include respect and consideration of the rights and interest of other legal subjects.
- ❑ The Municipal bylaws have been drafted to protect the interests of the animals being slaughtered and those of the neighbours in an urban environment.
- ❑ The key phrase applicable in this matter is: “***mutual and reciprocal respect and consideration***”, ***by*** all parties for the rights and interests ***of*** other parties concerned.

ADJUDICATOR'S FINDINGS

- ❑ The Respondent's Conduct Rule are out of date, having been registered with the Deeds prior to the STSMA having been signed into law on the 7th of October 2016.



ADJUDICATION ORDER

1. The Respondent was ordered and compelled to add and register a new Conduct Rule with the CSOS in terms of section 10(2)(b) of the STSMA, within 60 days of the date of the order, which reads as follows:

- Slaughtering of animals for religious and cultural purposes **shall only be permitted within the confines of a section or in the exclusive use area allocated to the person requiring consent to slaughter (*and not under any circumstances on the common property*)**, subject to the following conditions: -

ADJUDICATION ORDER

At least two (2) weeks written notice of the intended religious or cultural event requiring such ritual slaughter must be given to the trustees for approval, specifying:

- I. The date and time of the proposed slaughtering,
- II. The type of animal to be slaughtered,
- III. The name and qualification of the person registered by the relevant authority to perform the religious or cultural slaughtering,
- IV. Confirmation that the animal will be brought onto the premises immediately prior to the ritual or cultural slaughtering, and that all remains of the animal will be removed immediately from the premises after the act of ritual or cultural slaughtering;

ADJUDICATION ORDER

- V. A notice from the local authority shall accompany the above notice confirming that all by-laws with regards to the ritual or cultural slaughtering have been/will be complied with;
- VI. A notice shall also be given to all adjacent units of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for unit shall be timeously submitted to the trustees,
- VII. A certificate from the Society for the Prevention of Cruelty to Animals (SPCA) shall accompany the above notice confirming that an OFFICIAL from the SPCA will be PRESENT at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughter;

ADJUDICATION ORDER

viii. A written undertaking shall be provided to the trustees of the Respondent one week prior to the slaughter, that the carcass of the animal will be removed, and the area thoroughly cleaned and sanitised as soon as the ritual is completed.

A period of one week's notice must also be given to all adjacent units of the date and time of the proposed slaughter.

Failure to comply with the requirements set out above shall entitle the Body Corporate to prevent the act of ritual slaughtering from taking place on the premises or penalising the owner with a fine, to be determined by the Body Corporate.

ADJUDICATION ORDER

2. That the Applicant is permitted to perform the ceremony on her exclusive use patio, situated adjacent to her section, subject to the following conditions:
 - I. One week prior notice to the proposed slaughter notify her neighbours of the date and time thereof;
 - II. One week prior to the proposed slaughter, she shall produce to the Trustees and the Managing Agent of the Respondent, the requisite permit in terms of the Municipal By-laws, as well as the health regulations;

ADJUDICATION ORDER

- iii. The requisite certificate from the SPCA notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughtering during such slaughter, must be produced to the Trustees one week prior to the slaughter;
- iv. A written undertaking shall be provided to the trustees of the Respondent one week prior to the slaughter, that the carcass will be removed, and the area thoroughly cleaned and sanitised as soon as the ritual is completed.

An isometric illustration of a city scene. In the center, a tall skyscraper stands on a platform. To its left, a smaller building with a flat roof sits on another platform. In the foreground, a parking lot with several cars is on a third platform. To the right, a person stands under a large umbrella on a platform. The background shows more buildings and a circular inset showing a person under an umbrella. The entire scene is rendered in a light green and white color scheme with dashed lines indicating depth.

THANK YOU

Johlene.Wasserman@csos.org.za

066 302 5408