

ADJUDICATION ORDERS

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20 OCTOBER 2022



CSOS ADJUDICATION ORDERS

- Interest on levies and legal fees
- CSOS Jurisdiction
- CSOS Jurisdiction and Urgency of applications



Interest on Legal fees and contributions

□ Facts:

- The Applicant fell into arrears with levy payment after losing his employment
- The Respondent obtained default judgement against the Applicant for the outstanding amount, plus interest at 24% per annum and legal fees
- The Applicant offered through his attorney to settle the judgement debt and requested that the judgement debt be separated from the current levy. The Respondent mentioned that the body corporate is unable to provide a separate invoice as all levies are reflected on one account
- The Applicant further stated that due to the Respondent's inability to separate the historic debt from the current levy account, he could not keep record of the payment progress. The Respondent stated that the default judgement debt has been settled

Interest on Legal Fees and Contributions

❑FACTS:

- The Applicant raised a concern that the Respondent refused to provide a breakdown of the levies and interest. Instead, the Respondent's attorney drafted an acknowledgement of debt for the Applicant to sign and was charged for drafting of the acknowledgement of debt
- The interest on the levy account was charged based on a resolution that was not signed by all the trustees of the body corporate. The resolution did not contain the date of the meeting where the resolution was taken
- The Applicant submitted that they have exhausted all internal remedies

APPLICANT'S PRAYER FOR RELIEF SOUGHT

- An order in terms of section 39(1)(c) of the CSOS Act, that the contributions levied on the Applicant's levy account, or the manner in which it is to be paid have been incorrectly determined or unreasonable. And an order for the adjustment of the contribution to a correct or reasonable amount.
- An order in terms of section 39(4)(c) of the CSOS Act, declaring the resolution purportedly passed at a meeting of the trustees, or at a general meeting of the association is void and invalid and for all interest to be reserved.

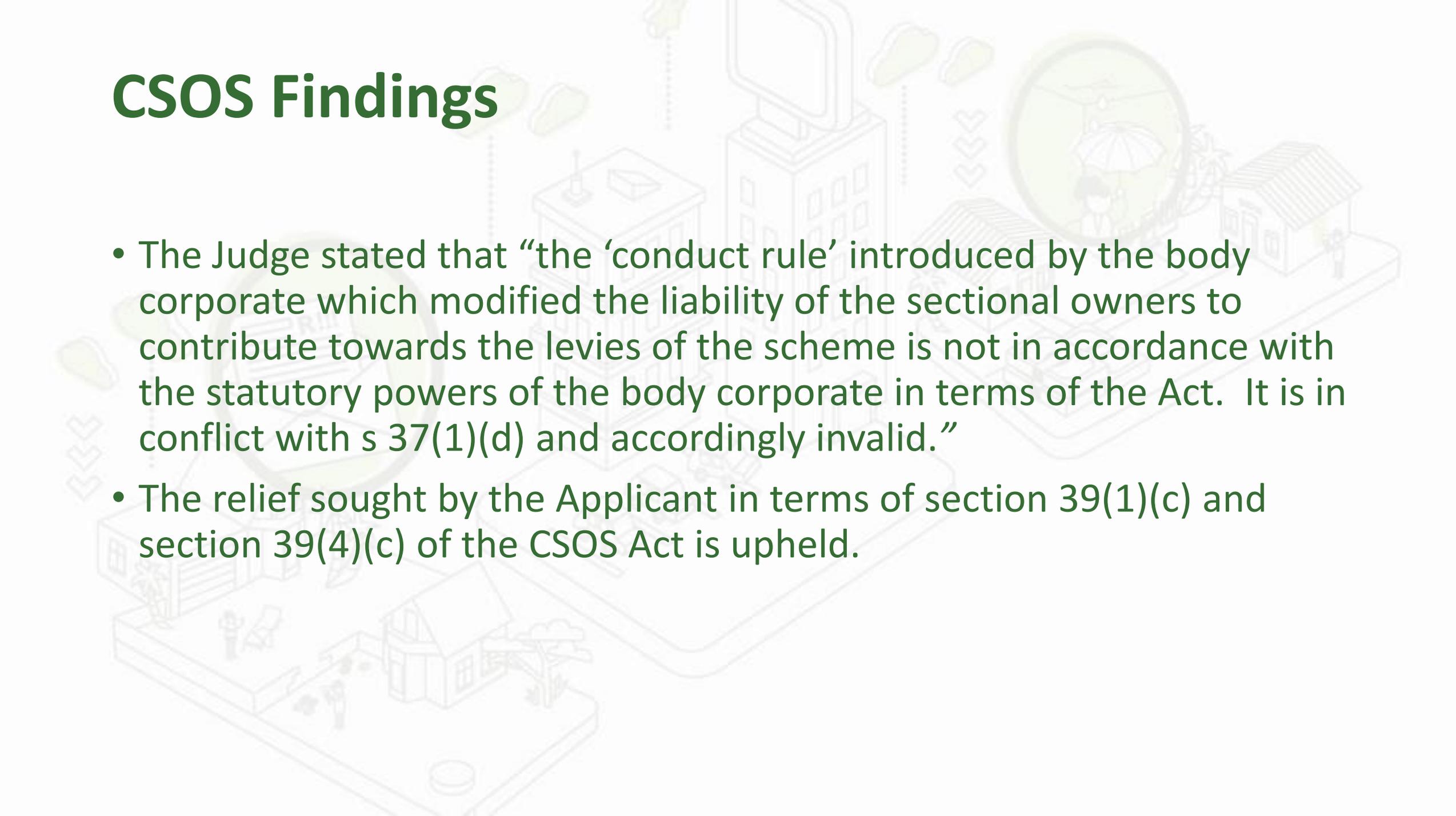
CSOS Findings

- The Applicant as a member of the body corporate is liable for monthly levy contributions and ancillary charges thereto. However, such contributions must be in line with the provisions of the Sectional Title Schemes Management Act, 8 of 2011 and the Prescribed Management Rules thereto.
- Legal fees must be taxed prior to inclusion to the levy statement or agreed upon with the owner. The Respondent submitted that the legal fees were reversed. It is impossible to confirm if the fees were indeed reversed without a detailed statement confirming the reversal.

CSOS Findings

- The dispute relating to the interest resolution is that the resolution does not contain the date of the meeting and is not signed by one of the trustees. In terms of PMR 14(4), a trustee resolution must be adopted by a majority vote, at a trustee meeting or by notice, which notice will contain the return date for the signatures. It is unclear whether the resolution was reached at a meeting and if so, the date of that meeting should have been included. If the resolution was by notice, the return date for submissions should have been included.
- In the case of **Extra Dimensions 121 (Pty) Limited v Body Corporate of Marine Sands and Another (AR121/2017) [2018] ZAKZPHC 69 (24 August 2018)**, where the appellant sought an order declaring a resolution passed by the Body Corporate, which changed the way in which levies are imposed on the members of the scheme, invalid.

CSOS Findings



- The Judge stated that “the ‘conduct rule’ introduced by the body corporate which modified the liability of the sectional owners to contribute towards the levies of the scheme is not in accordance with the statutory powers of the body corporate in terms of the Act. It is in conflict with s 37(1)(d) and accordingly invalid.”
- The relief sought by the Applicant in terms of section 39(1)(c) and section 39(4)(c) of the CSOS Act is upheld.

ADJUDICATION ORDER

- The relief sought by the Applicant in terms of sections 39(1)(c) and 39(4)(c) of the Community Schemes Ombud Service Act, No.9 of 2011 is upheld.
- The Respondent was ordered and compelled to reverse legal fees and interest charges that were not taxed, within 30 (thirty) days of receipt of this order.

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 and a small antenna is on another platform. To the right, a residential area with several houses and a person holding an umbrella is shown on a platform. In the foreground, a road with cars and a bus is on a platform. The background features stylized clouds and dotted lines with arrows pointing downwards, suggesting a digital or networked environment. The text 'CSOS JURISDICTION' is overlaid in the center in a bold, green font.

CSOS JURISDICTION

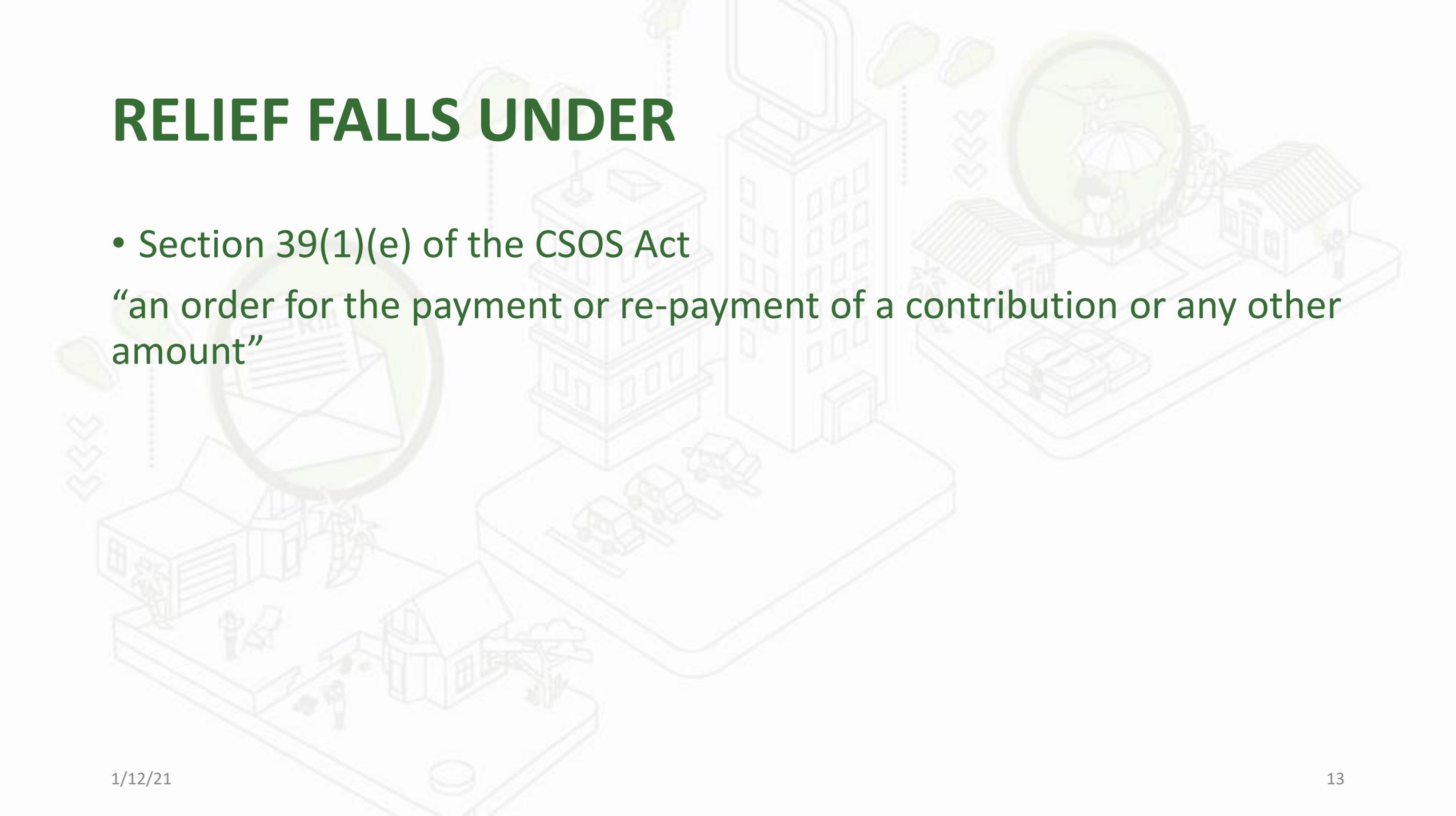
FACTS

- The Applicant avers that at a trustees meeting, under repairs and maintenance, item 5 stated that: “Compensate unit 13 for the Balcony or build a lift for everyone moving in or out the complex. Everyone is using the balcony as a form of moving furniture”
- The Applicant goes on to aver that the building design is such that on the stairs the goods purchased by a unit owner don't fit. If one wants to use the stairs to move in or out of a unit or even access the roof. The only option is to use the balcony of unit 13
- The Body Corporate knows about this. The members of the trustees don't stay at the building. The balcony of unit 13 is used as a passage because it is not like other balconies in that it is a public balcony and everyone in the building uses it, especially the top floors

FACTS

- The Applicant decided to charge R 2000.00 (Two Thousand Rands, Zero Cents) for the use of the balcony because he is paying for it as part of his levy contribution. The Applicant had a meeting and the Body Corporate and trustees agreed that they will remove the cost from unit 13 levy and refund him and this has not been done.
- The Applicant further avers that he is sitting with a debt of more than R60 000.00 (Sixty Thousand Rands, Zero Cents) as a result of unfair practice from the Body Corporate.

RELIEF FALLS UNDER

The background features a light green isometric illustration of a city. It includes several buildings of varying heights, some with windows. A magnifying glass is positioned over a person standing under an umbrella, suggesting a focus on a specific individual or situation. Another magnifying glass is placed over a document or envelope, indicating a focus on legal or official matters. The overall style is clean and modern, with a focus on architectural and human elements.

- Section 39(1)(e) of the CSOS Act
“an order for the payment or re-payment of a contribution or any other amount”

CSOS Findings

- The Applicant has not complied with his duty to exhaust all internal remedies to no avail from the Respondent
- It is trite that the objective of the CSOS Act is to provide a mechanism for the informal, expeditious and cost-effective resolution of a dispute between owners of units in a sectional title scheme and its administrator via the Ombud, who is given wide powers to resolve such disputes by way of qualified conciliators and adjudicators respectively
- 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

CSOS Findings

- Section 11(1)(c) of the STSMA provides that: “Effect of quotas and variation thereof (1) Subject to subsection (2), the quota of a section must determine- subject to section 3(1)(b), the proportion in which the owner of the section must make contributions for the purpose of section 3(1)(a) or may in terms of section 14(1) be held liable for the payment of a judgment debt of the body corporate of which he or she is a member.”
- The Application failed for the following reasons:
 - At a trustees meeting, the Applicant was a trustee, the compensation to unit 13 was an item in the meeting but no resolution was passed for compensation. Had this been done, then the Applicant would have attached such resolution together with the minutes

CSOS Findings

- The Applicant gallantly requests repayment of the levies charged to him for the balcony, but does not make out case for such, simply because he does not demonstrate how much must be repaid and for what duration
- There is neither a special resolution that has been passed by the owners of the Body Corporate at an Annual General Meeting or at a Special General Meeting, nor consensus from the Body Corporate owners to pass a special resolution to remove the square meters of the balcony from the registered unit size in order to reduce the levy contributions and register the balcony as common property
- The Applicant has failed to make out a proper case for the relief sought against the Respondent in terms of section 39(1)(e) of the CSOS Act
- The Applicant further requires delictual compensation from the Respondent in the sum of R500 000 (Five Hundred Thousand Rands).

CSOS Findings

- In *Prag N.O and Another v Trustees for the time being of the Mitchell's Plain Industrial Enterprises Sectional Title Scheme Body Corporate and Others A260/2020* [2021] ZAWCHC 132 (16 July 2021) at paragraph 28, the Court neatly stated that, “If one considers the terms of the CSOS Act as a whole, and the kinds of matters in respect of which an adjudicator can make orders in terms of s39 of the Act, they either concern regulatory/governance issues, pertaining to the administration of a sectional title scheme, or behavioural issues, pertaining to the conduct of members of the scheme inter se (which commonly would cover so-called nuisance or neighbour disputes)

CSOS Findings

- *In Body Corporate of Central Park v Makhalele Mosa* Case No. A3064/2021 , The full bench, when dealing with regulation 25(4) of the STSM Regulations, expressed itself in the following manner: “[38] The appellant is entitled to costs on the scale as between attorney and client in the application for default judgment as well as in the appeal
- CSOS cannot force a managing agent to account to the Applicant for running scheme management issues, which exclude CSOS. Thus such request is inept and cannot be assessed

An isometric illustration of a city scene. In the foreground, there are several buildings of varying heights and styles, some with trees and a small car. In the background, more buildings and trees are visible. A circular inset in the upper right shows a person holding an umbrella. The overall style is clean and modern, with a light green and grey color palette. The text is centered in a bold, dark green font.

CSOS JURISDICTION AND URGENCY OF APPLICATIONS

FACTS

- The Applicant avers that on the Respondent changed the landscape for Estate Agents who wish to perform business with it
- REGISTRATION ADJUDICATION: “The HOA reserves the right to approve and/or not approve an application for registration. The non-approval of an application could inter alia be a result of non-compliance with the registration criteria, previous continuous breach of the agreement and/or other related matters.”
- REGISTRATION PROCEDURE-AGENCIES/AGENTS: “The HOA reserves the right to approve, withdraw and/or decline any application for registration.

APPLICANT'S PRAYER FOR RELIEF

- That the scheme governance provisions, found in the Estate Agents Policy is invalid, undesirable, unenforceable and against public policy; and
- That the Respondent's Estate Agent's Registration Agreement is invalid, undesirable, unenforceable and against public policy.

Respondent's Submissions

- Firstly- the Respondent avers that this application is time barred under section 41 of the CSOS Act.
- Secondly- CSOS does not have the requisite jurisdiction to entertain the kind of challenge brought by the Applicant.

CSOS FINDINGS ON JURISDICTION

- 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.**
- On **21 April 2022**, the Applicant approached the Gauteng Division of the High Court (Johannesburg), for a similar relief. A draft order was prepared by agreement with the following terms.
- There is no narration from the papers for opting to approach Court as the Applicant did. Notwithstanding the fact that Applicant has approached CSOS for intervention which is the correct process to follow provided, when dealing with scheme issues, one is minded of case law which asserts confidence in this position.

CSOS FINDINGS ON JURISDICTION

- The Court in *Wingate Body Corporate v Pamba & Another*, the [2022] ZAGPPHC 46 (21 January 2022) at para 13.
- Court eloquently stated that: “[13] *In the Heathrow matter, the Court set out the position thus: ‘by establishing the CSOS whose personnel is required to consist of suitably qualified adjudicators, the legislature had intended that the CSOS be the primary forum for the adjudication and resolution of disputes in matters such as the present’. The court went on to state that: ‘a court is not only entitled to decline to entertain such matters as a forum of first instance, but may in fact be obliged to do so, save in exceptional circumstances. Such matters will not be matters which are properly before the High Court, and on the strength of the principle in Standard Credit (and a number of courts thereafter, including the Constitutional Court in Agriwire), it is accordingly entitled to decline to hear them, even if no abuse of process is involved.’*”

CSOS FINDINGS ON URGENCY

- **POINT IN LIMINE**
- Time limit on certain applications
- Firstly - section 41 of the CSOS Act provides that: “(1) An application for an order declaring any decision of an association or an executive committee to be void, may not be made later than 60 days after such a decision has been taken.
- (2) An Ombud may, on good cause shown, condone the late submission of an application contemplated in subsection (1).”

CSOS FINDINGS ON URGENCY

- The Applicant requires to challenge something that was effectuated on **19 June 2021**, without presenting any condonation application explaining the delay, let alone seek relaxation of time limit from the Ombud. This offends the provision of the section in quote above in the event that the issues are scheme related and not Estate Agent related. This aspect has to be tied in with the issue of urgency and costs, which are briefly discussed below.

CSOS FINDINGS ON URGENCY

- In terms of clause 33 of the CSOS practice directive dated **1 August 2018**, dealing with urgent matters, it is abundantly clear that the grounds for an urgent application under clause 33.3 are that:
 1. there has to be an immediate and serious health or safety risk;
 2. deprivation of essential services, not limited to disconnection of water and electricity;
 3. access to the scheme by unit owners or occupiers.

CSOS FINDINGS ON URGENCY

- Notwithstanding the fact that on **2 December 2021** the CSOS practice directive was amended, such amendment in terms of clause 10.6 dealing with urgent matters states that: *“Urgency shall be determined on the basis of imminent harm, loss of life, damage or loss that may occur if the dispute is not handled on an urgent basis.”*
- Properly construed, this matter falls short of meeting the requisite threshold of urgency.
- It is for these reasons that the this point is upheld

CSOS FINDINGS ON JURISDICTION

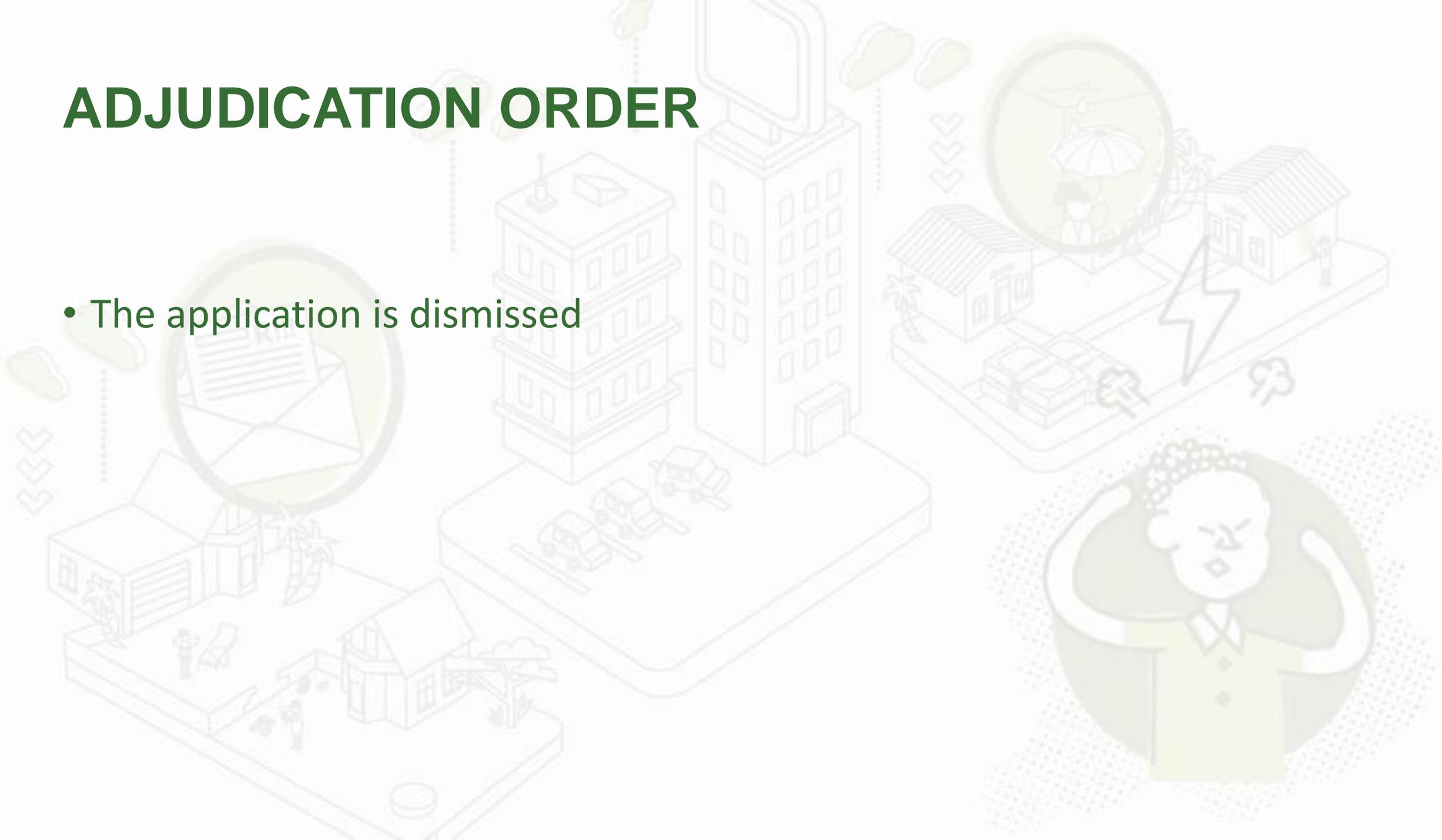
- The CSOS Act does not define word Estate Agent, purely because the legislature never intended CSOS to deal with issues related to Estate Agent affairs. That squarely falls within the competent jurisdiction of the Property Practitioners Regulatory Authority, duly established in terms of section 5 of the Property Practitioners Act 22 of 2019. (“**the PPA**”).
- In terms of the PPA, “**property practitioner**” has various definitional meanings *inter alia*— (b) includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development; (c) **includes any person who for remuneration manages a property on behalf of another.**

CSOS FINDINGS ON JURISDICTION

- The purpose of this legislation is to provide for the regulation of property practitioners; to provide for the continuation of the Estate Agency Affairs Board as the Property Practitioners Regulatory Authority; Looking at the relief sought, and based on the provisions in paragraph 18 above that are the pith of the Applicant's challenge, there is no way that those can be deemed to be community scheme issues.
- In light of the foregoing, the application is dismissed in terms of section 53(1)(a) of the CSOS Act as it has no merits to place it within the CSOS forum.
- It is for this reason that this point in law is also upheld.

ADJUDICATION ORDER

- The application is dismissed



THANK YOU

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