



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

Ref: CSOS06275/KZN/22

In the matter between:

TRUSTEES OF ZULWINI GARDENS BODY CORPORATE **Applicant**

and

MILDRED GABISILE ZULU **Respondent**

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
Section 39(1)(e): (1) In respect of financial issue- (e) an order for the payment or re-payment of a contribution or any other amount.
- Date Adjudication conducted:
26 DECEMBER 2022.
- Name of the Adjudicator:
HOWARD FELIX.
- Order:

The application is granted in terms of Section 39(1)(e) of the CSOS Act.

The respondent is directed in terms of Section 54(4) of the CSOS Act to pay the applicant (R11,180.57) eleven thousand one hundred and eighty rand fifty-seven cents in twelve equal instalments of (R931.71) nine hundred and thirty-one, seventy-one cents starting from 1 February 2023 until the debt is paid in full and final settlement.

No order as to costs.

INTRODUCTION

1. The applicant is the **TRUSTEES OF ZULWINI GARDENS BODY GARDENS**, a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011 (hereinafter referred to as the “ST SMA”), which is situated at 285 Wanda Cele Road, Amanzimtoti, Durban, KwaZulu-Natal.
2. The respondent is **MILDRED GABISILE ZULU**, the registered owner of unit 52 Zulwini Gardens, 285 Wanda Cele Road, Amanzimtoti, Durban, KwaZulu-Natal.
3. The community scheme is a Body Corporate which is duly constituted in terms of Section 2 of the Sectional Titles Schemes Management Act No.8 of 2011 (“the ST SMA”) for a sectional scheme known as Zulwini Gardens, which is situated at 285 Wanda Cele Road, Amanzimtoti, Durban, KwaZulu-Natal.
4. 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.

5. The applicant seeks the following relief in terms of Section 39 of the CSOS Act:

*“Section 39(1)(e): (1) In respect of financial issue-
(e) an order for the payment or re-payment of a contribution or
any other amount.”*

6. On the 7th of November 2022, the notice in terms of Section 43 of CSOS Act was served on the respondent. The respondent or affected person failed to provide a response to the CSOS notice in terms of section 43 of the Act.
7. On the 17th of November 2022, the CSOS referred the dispute directly to adjudication in terms of section 48 of the CSOS Act read with the Practice Directive on Dispute Resolution, 2019.
8. On the 22nd of November 2022, the requests for any final written submissions was served on parties.
9. 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 the 27th of November 2022. The adjudication was conducted on the 26th of December 2022, and an order is now determined.

PRELIMINARY ISSUES

10. There are no preliminary issues raised.

RELEVANT STATUTORY PROVISIONS

11. 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 title's 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."

12. 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."

13. Section 45(1) of CSOS Act 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."

14. Section 47 of CSOS Act 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."

15. Section 48(1) of CSOS Act 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”.

16. Section 50 of CSOS Act provides-

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

17. 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

18. The application was lodged on the 9th of November 2022, by Deon Van De Venter of Wakefield’s Property Management (Pty) Ltd, authorized by the trustee’s resolution dated 3rd of November 2021, on behalf of the Zulwini Gardens body corporate.

19. The applicant submits that since unit 52 has been registered in the name of the respondent, she has never paid her levies, as a result the respondent is in arrears with her levies from June 2022 to October 2022.

20. The applicant submits that the respondent has never paid her arrear levies, despite sending numerous reminders to the respondent requesting the payment of outstanding levies, namely:
 - 20.1. 8/7/2022 SMS sent
 - 20.2. 14/7/2022 letter of Demand generated
 - 20.3. 10/8/2022 SMS sent
 - 20.4. 22/8/2022 Letter of Demand generated
 - 20.5. 9/9/2022 SMS sent
 - 20.6. 14/9/2022 Letter of Demand generated
 - 20.7. 22/9/2022 Letter of Demand generated
 - 20.8. 10/10/2022 SMS sent
 - 20.9. 11/10/2022 Letter of Demand generating
 - 20.10. 13/10/2022 Handed over the matter to J Sayed Attorneys

21. The applicant submits that the body corporate relies on monthly levies that is contributed by the owners/ members to run the day-to-day business of the community scheme.

22. The applicant submits a letter dated 11th of October 2022, reflecting that the respondent is indebted to the applicant in the sum of R11,180.57 in respect of arrear levies.

Relief sought by the Applicant

23. The applicant seeks an order in terms of 39(1)(e) of the CSOS Act, directing the respondent to pay the sum of R12,050.57 in respect of arrear levies.

Respondent's Submissions

24. The respondent has not made any written submissions.

Relief sought by the Respondent

25. None.

EVALUATION & FINDING

26. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
27. 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 weighted up and determined whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
28. The applicant seeks an order in terms of 39(1)(e) of the CSOS Act, directing the respondent to pay the sum of R12,050.57 in respect of arrear levies.
29. Section 39(1)(e) of the CSOS Act states:
- “(1) In respect of financial issue-
(e) an order for the payment or re-payment of a contribution or any other amount.”*
30. The applicant submits a statement printed and dated 27th of October 2022, reflecting that the respondent is indebted to the applicant in the sum of R12,050.57 in support of this application.

31. The adjudicator refers to Section 2(1) of the STSMA states that:

“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.”

32. The adjudicator finds that in terms of Section 2(1) of the STSMA the respondent became a member of the body corporate on purchasing her unit.

33. The adjudicator refers to section 3(1) of the STSMA, which provides the following:

“3. (1) 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)”

34. Section 3(2) of the STSMA provides as follows:

“(2) Liability for contributions levied under any provision of subsection (1), save for special contributions contemplated by subsection (4), accrues from the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by an application to an ombud from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.”

35. The adjudicator finds that in terms of section 3(1) and (2) of the STSMA, contributions and special contributions are due and payable on the passing of a resolution to that effect by the trustees of the body corporate and may be recovered from the persons who were the owners of the unit at the time when the resolution authorising contributions due and payable was passed by application to the Ombud.

36. The adjudicator refers to Prescribed Management Rule 25(1)(a) which states:

*“25 (1) the body corporate must.....give each member written notice of the contributions and charges due and payable by that member to the body corporate, which must –
(a) state that the member has an obligation to pay the specified contributions and charges.”*

37. The adjudicator refers to Regulation 21(3) (h) of the STSMA under the Management Rules, stating that:

“The body corporate may, on the authority of a written trustee resolution approach the Community Scheme Ombud Service for relief.”

38. The adjudicator finds that the applicant has submitted into evidence a resolution signed by the trustees, authorizing them to act on behalf of the body corporate.

39. The case of **Body Corporate of Central Park v Makhalemele Mosa** case No: A3064/2021: Gauteng local division, Johannesburg, judgement handed down on the 6 December 2021 in which the court held that:

“Section 3(2) of the Sectional Title Schemes Management Act means that liability for normal levies/contributions accrues from date of the passing of a resolution to that effect by the trustees and can be recovered by the body corporate.

In other words, the body corporate's right to claim payment of contributions/normal levies vests on passing of a resolution by the trustees and becomes due and payable by an owner of a unit in the sectional titles scheme in each consecutive month thereafter."

40. The adjudicator finds that the statement printed on the 27th of October 2022 is adequate proof that the applicant complied with PMR 25(1)(a), and the respondent is in arrears with his levy.

41. The adjudicator submits that the respondent bought into a community scheme and committed herself to paying levies and should abide to that commitment.

42. The adjudicator refers to the Prescribed Management Rule 21(3)(c) which states:

"(3) The body corporate may, on the authority of written trustee resolution, - (c) charge interest on any overdue amount payable by a member to the body corporate, provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005, compounded monthly in arrears."

43. The adjudicator finds that the applicant has complied with PMR 21(3)(c), by passing a trustees' resolution to charge interest of 10,5% per annum on the arrears levy which is within the legally prescribed percentage of 24% per annum.

44. The adjudicator notes that the applicant signed this application on the 27 October 2022 and before lodging this application handed the arrears levy claim to attorneys on the 13 October 2022 for collection (ten working days before lodging this application).

45. The adjudicator notes that the applicant has included the hand over fee of R870.00 on the respondents levy accordingly.

46. Prescribed Management Rule 25(4) states:

“(4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.”

47. The adjudicator finds that the handover is not agreed or taxed.

48. The adjudicator finds that the applicant has breached PMR 25(4) by charging the respondent the handover fee.

49. Prescribed Management Rule 25(5) states:

“(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.”

50. The adjudicator notes that the handover fee is not a contribution or authorised by a judgement, the adjudicator finds that in terms of rule 25(5) the applicant cannot debit the respondents levy account, and the handover fee must be removed from the respondents levy statement in the circumstance.

51. The adjudicator finds that once the handover fee is accounted for and removed from the balance on the statement printed 27 October 2022, the respondent is indebted to the applicant in the sum of (R11,180.57) eleven thousand one hundred and eighty rand fifty-seven cents.

52. The adjudicator refers to section 38(3)(c) of the CSOS Act:

*“(3) The application must include statements setting out-
(c)the grounds on which the relief is sought.”*

53. The adjudicator refers to the case of **Pillay v Krishna 1946 AD 946** at para 952- 955, where the following was held: -

“The standard of proof in a civil case is the well-known Preponderance (balance) of probabilities. This requires of the party on whom the onus lies, in order to be successful, to satisfy the court that he is entitled to succeed on his claim or defence, as the case may be.

Similarly, if evidence is led but the court cannot decide whether the cause of action has been established or not, the plaintiff again must fail because one of the facts essential to the cause of action would remain unproved.”

54. The adjudicator finds that the applicant has proved its case on the balance of probabilities in terms of the legal principle set out in the case of **Pillay v Krishna** above, that the respondent is in arrears with his levy in the sum of (R11,180.57) eleven thousand one hundred and eighty rand fifty-seven cents and therefore, the application is granted in terms of section 39(1)(e) of the CSOS Act.

55. The application is granted in terms of Section 39(1)(e) of the CSOS Act.

COSTS

56. No order as to costs.

ADJUDICATION ORDER

57. The application is granted in terms of Section 39(1)(e) of the CSOS Act.

The respondent is directed in terms of Section 54(4) of the CSOS Act to pay the applicant (R11,180.57) eleven thousand one hundred and eighty rand fifty-seven cents in twelve equal instalments of (R931.71) nine hundred and thirty-one, seventy-one cents starting from 1 February 2023 until the debt is paid in full and final settlement.

RIGHT OF APPEAL

58. 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 ON THIS 26 DECEMBER 2022.

Howard Felix

HOWARD FELIX