



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

Ref: CSOS 10475/GP/22

IN THE MATTER BETWEEN

RAMSUNDER BHARAT

Applicant

(Owner unit 14)

and

GAUTENG MANAGING AGENT

Respondent

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Relief applied for in terms of the Community Schemes Ombud Services Act (“the CSOS Act”):

Section 39(6) In respect of financial issues— (b) an 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.

Date Adjudication conducted:

10 JUNE 2023

Name of the Adjudicator:

KAMOGELO MAPUTLA

Order:

- (a) The application is dismissed for reasons set out in paragraph 32.
- (b) No order is made as to costs.

INTRODUCTION

1. The Applicant is **MR. BHARAT RAMSUNDER**, an owner as defined in section 1 of CSOS Act of unit 14 Swallow Nest Body Corporate, which is situated at Parklands Estate, Parkland, Boksburg, Jubilee Road, Gauteng Province.
2. The Respondent is **GAUTENG MANAGING AGENT BODY CORPORATE**, a managing agent for Body Corporate, with principal address situated at 121 Soutpansberg Dr, Van Riebeeck Park, Kempton Park, Gauteng Province.
3. This is an application for dispute resolution in terms of section 38 of the CSOS Act. The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email on **8 March 2023**.
4. The CSOS Act establishes the Community Schemes Ombud Service, whose purpose is to develop and provide an expeditious and informal cost-effective dispute resolution mechanism in respect of 'community schemes'.¹
5. On **26 April 2023**, the Ombud directly referred the dispute to adjudication in terms of section 48 of the CSOS Act, read together with Clause 21.5.7 of the Practice Directive.
6. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution, 2019 as amended and more specifically the amended

¹ See section 2 of the CSOS Act and the long title.

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 on **28 April 2023**, which were due by **10 May 2023**. The adjudication was conducted on **10 June 2023** and an order is now determined.

7. The prescribed fee for adjudication was not paid owing to clause 3 of the amended practice directive dated **2 December 2021**.
8. The application seeking relief was in terms of section 39(6)(b) of the CSOS Act respectively.

PRELIMINARY ISSUES

9. None.

RELEVANT STATUTORY PROVISIONS

10. 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”.
 - **"managing agent"** as “any person who provides management services to a community scheme for reward.
 - **"owner"** as “a person who has a legally secured right to possession and occupation of a private area, including but not limited to the owner of a sectional title unit, the holder

of shares in a share block company and the holder of an occupation right in a housing scheme for retired persons.”

- **“practice directive”** as “a practice directive issued in terms of section 36”.

11. Section 38 of the CSOS Act provides that-
“Any person may make an application if such person is a party to or affected materially by a dispute”.
12. Section 45(1) of the CSOS Act provides that-
“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”.
13. Section 47 of the CSOS Act provides that-
“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”.
14. Section 48 (1) of the CSOS Act provides that-
“If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator”.
15. In terms of Section 50 of the CSOS Act provides that-
“The adjudicator must investigate an application to decide whether it would be appropriate to make an order.”
16. Section 51 of the CSOS Act provides 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”.

17. Section 54(4) of the CSOS Act provides that-
“The order must set the time- when the order takes effect; or within which the order must be complied with.”

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

18. The Applicant avers that the ceiling in his garage collapsed. He cannot park his vehicle in the garage as the ceiling poses a safety hazard.

Relief sought by the Applicant:

19. The Applicant seeks an order in the following terms:
a) that the Body Corporate and trustees must pay for the full repairs to his ceiling.

Respondent’s Submissions

20. None submitted.

Relief sought by the Respondent.

21. None submitted.

EVALUATION & FINDING

22. In the absence of further documents, and in the interest of time and progress the adjudicator adjudicates on this application on the undisputed facts.
23. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
24. 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. It involves findings of facts based on an assessment of credibility and probabilities.

25. 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.**

26. The CSOS Act was promulgated on the very same day as the STSMA and the 2016 Regulations, namely **7 October 2016**.

27. In *Durdoc Centre Body Corporate v Singh*,² a Full Court of the KZP division of the High Court has interpreted this to mean that the right to lodge a dispute "was prescribed by legislation as a right that accrued to owners of units who were materially affected by a community scheme related matter."

28. Notwithstanding the fact that Applicant has approached CSOS for intervention which is the correct process to follow, one is minded of case law which asserts confidence in this position. The Court in *Wingate Body Corporate v Pamba & Another*³, the 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*

² *Durdoc Centre Body Corporate v Singh* 2019 (6) SA 45 (KZP) para 16.

³ [2022] ZAGPPHC 46 (21 January 2022) @ para 13.

thereafter, including the Constitutional Court in Agriwire), it is accordingly entitled to decline to hear them, even if no abuse of process is involved.”

29. As regard the Applicant’s relief under section 39(6)(b) of the CSOS Act, the following observations are made.
30. Based on the documents placed before the Adjudicator, the latter was satisfied that there was proper compliance with clause 9.2 of the CSOS dispute resolution practice directive dated **1 August 2018**, dealing with exhausting internal dispute resolution.
31. In *Stenersen and Tulleken Administration CC v Linton Park Body Corporate and Another*⁴, when dealing with the onus of proof from the Applicant, the Court expressed itself in the following terms: “[14] *In terms of the Practice Directive, the applicant bears the onus of ensuring that all the relevant information necessary, to “make their case” is set out in the Application for Dispute Resolution Form, which includes the attachment of any documents pertinent to the claim. In other words, the applicant must set out the grounds to meet the legislative requirements of the relief sought.*”
32. Unfortunately the merits of this case cannot be assessed any further for the following reasons:
 - 32.1 Applicant being the master of the proceedings, in the application form cited the managing agent only, instead of citing the managing agent and the trustee of the Body Corporate, who are the accounting officers for the Body Corporate.
 - 32.2 The relief that the Applicant seeks is squarely against the trustees and not the managing agent, however no notice was given to the trustees as that was not the Applicant’s intentions in his application form.
 - 32.3 The order will be academic if the correct parties, whom enforcement can be followed through are brought before the Adjudicator.

⁴ (A3034/2018) [2019] ZAGPJHC 387; 2020 (1) SA 651 (GJ) (24 October 2019).

- 32.4 The Applicant has to thoroughly distinguish between common property and exclusive use in terms of the STSMA read in harmony with section 5(4) and 5(5) of the Sectional Titles Act⁵ (“**STA**”).
- 32.5 No order can be taken against anyone who was not given an opportunity to be heard (*audi alteram partem* rule), hence this application is misconceived and must be met with a dismissal under section 53(1)(a)⁶ of the CSOS Act.
- 32.6 The Applicant is at large to relaunch the application after cited the correct parties.

COSTS

33. No order is made as to costs.

ADJUDICATION ORDER

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

- a) The application is dismissed for reasons set out in paragraph 32.
- b) No order is made 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 ON THIS 10TH DAY OF JUNE 2023.

⁵ Act 95 of 1986.

⁶ The adjudicator may make an order dismissing the application if, after investigation —

(a) the adjudicator considers that the application is frivolous, vexatious, misconceived or without substance; or
(b) the applicant fails to comply with a requirement in terms of section 51.

KAMOGELO MAPUTLA

ADJUDICATOR

(Not signed due to electronic transmission)