



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

Reference Number: CSOS 1565/GP/23

In the matter between: -

**BLUE SADDLE RANCHES HOMEOWNERS ASSOCIATION**

**Applicant**

and

**CYNTHIA YVONNE MOPELI**

**1<sup>st</sup> Respondent**

**BRIAN MOSHOESHOE MOPELI**

**2<sup>nd</sup> Respondent**

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

- Relief applied for in terms of the CSOS Act:

**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 referred to adjudication:

15 June 2023.

- Date Adjudication conducted:

15 June 2023.

- Name of the Adjudicator:

Adv. M.A Mavodze.

- Order:

Order is partially granted.

## **INTRODUCTION**

1. The Applicant is Blue Saddle Ranches Homeowners Association (HOA), a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), duly represented by Whitfield Property Management (Pty) Ltd in terms of the directors' resolution dated 13<sup>th</sup> October 2022.
2. The First Respondent is Cynthia Yvonne Mopeli, the registered joint owner of portion 360 with the Second Respondent at the Applicant's scheme, which is situated at Nooitgedacht Farm Elizabeth Street Drumblade, Nooitgedacht, Gauteng.
3. The Second Respondent is Brian Moshoeshoe Mopeli, the registered joint owner of portion 360 with the First Respondent at the Applicant's scheme, which is situated at Nooitgedacht Farm Elizabeth Street Drumblade, Nooitgedacht, Gauteng.
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 (the CSOS) by way of e-mail.
5. The Applicant is seeking relief in terms of Section 39(1)(e) of the CSOS Act in respect of financial issues.
6. A letter under cover of an email was sent to the parties requesting for any final written submissions, documents, information and evidence. This matter will be

adjudicated on the papers in the file without any attendance by the parties in terms of section 48, 50, 51 read with section 53 & 54 of the CSOS Act 9 of 2011 and furthermore read with the Amended CSOS Practice Directives.

7. 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*". The parties were requested to make written submissions. The adjudication was conducted on 15<sup>th</sup> June 2023 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. In terms of Section 50-

“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”.

## **SUMMARY OF RELEVANT EVIDENCE**

### **Applicant’s submissions**

16. The Applicant submitted that:

16.1 The Respondents are the registered owners of portion 360 and are responsible for the payment of levies relating to the ownership of the unit.

- 16.2 Despite written demands the Respondents have failed and or neglected to pay the monthly levy due and owing to the HOA.
- 16.3 A statement of account of the Respondents indebtedness to the Applicant was submitted as proof thereof.

### **Relief sought by the Applicant**

17. That the Respondents pay to the Applicant the full amount of R12 060. 60 (Twelve Thousand and Sixty Rands and Sixty Cents) outstanding to it in respect of levies and ancillary amounts charged (which ancillary charges include the CSOS levies charged monthly as well as future monthly contributions and interest) within 30 days in respect of unit 360 at the Applicant's scheme, being the unit owned by the Respondents.

### **Respondents' submissions**

18. The Respondents submitted that:
- 18.1 They acknowledge and they are aware of the outstanding levy fees owed by them.
- 18.2 Their current situation is preventing them from being able pay the monthly levy fees. They previously made the office of the Applicant's managing agent aware that they both have not been working since 2021 and they started falling behind when their reserve funds / means started to run out, which is currently still the situation.
- 18.3 They were able to raise the R6 500. 00 agreement they entered into but that source subsequently stopped in April 2023, they had hope that they would be held on in the service which was going to assist them with keeping up with the arrangement.
- 18.4 They are now back to not having an income at all. They have tried to use their skills and efforts to try and raise funds to maintain the

household for their three young children and elderly mother. There are many other responsibilities which have fallen behind as well as they are now faced with the same situation as their levy account, to name a few such as school fees and the municipality account for the same property amongst other things.

### **Relief sought by the Respondents**

19. The Respondents are seeking a relief that they be allowed to pay an amount of R500. 00 every month towards their levy account while trying to find other means and ways to get it up to date.

### **EVALUATION AND FINDINGS**

20. I have perused the parties' written submissions, responses and annexures.
21. I requested parties to provide me with an updated levy statement of the Respondents in terms of Section 51 of the CSOS Act. The Applicant acceded to the request and provided the requested document.
22. 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.
23. This means that once all the evidence has been tendered, it must be weighed up and determined whether the Applicant's version is probable.
24. One of the primary objects of the HOA is to collect levies and other charges from members such as are necessary for the preservation, maintenance and upkeep of the scheme.
25. Levies are the lifeblood of a HOA, and each and every member is liable for the monthly levies payable to the HOA.

26. The Directors of the HOA cannot perform their functions and duties in the absence of funds from owners.
27. In terms of Clause 6 of the Applicant's Memorandum of Incorporation (MOI)-  
**"6. Levies**
- 6.1 The Directors may impose a levy annually upon the Members for the purpose of meeting all expenses which the company has or will incur in pursuit of the Company's aims and objectives.*
- 6.4 The levies shall be payable in equal monthly instalments, due in advance on the first day of each month, or upon receipt by the Members of a statement of account reflecting such levy amount from the Company or its duly authorised managing agent, which statement shall constitute proof of the particular Member's indebtedness to the Company.*
- 6.7 Interest on arrear levies shall be limited to the rate prescribed in terms of the National Credit Act 34 of 2005 and shall start to accrue from the date on which it became due. Should the National Credit Act be inapplicable to the Member for any reason whatsoever, interest on arrear levies shall be limited to the prime lending rate to individuals plus 2% (two percent)."*
28. The Applicant is entitled to charge interest in terms of the resolution dated 02 July 2022.
29. I am satisfied that the Applicant has proved on a balance of probabilities that the Respondents are indebted to it in respect of the amount claimed.
30. In the case under discussion the Respondents failure to pay levies negatively impacts service delivery within the HOA.

### **ADJUDICATION ORDER**

31. In the circumstances, the following order is made:
- 31.1 The Respondents, Cynthia Yvonne and Brian Moshoeshoe Mopeli, the registered joint owners of unit 360 at the Applicant's scheme, jointly and

severally owe the Applicant the amount of **R12 060. 60** (Twelve Thousand and Sixty Rands and Sixty Cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies).

- 31.2 The Respondents are ordered, to pay the amount of **R12 060. 60** (Twelve Thousand and Sixty Rands and Sixty Cents) to the Applicant in 12 (twelve) monthly instalments of **R1 005. 05** (One Thousand and Five Rands and Five Cents), with the first payment to commence within 30 days from date of receipt of this order.
- 31.3 Thereafter, payment of the further 11 (eleven) outstanding instalments must be made on the 1<sup>st</sup> day of each succeeding month.
- 31.4 No interest shall accrue to the outstanding amount within the period of 12 (twelve) months allowed for the payment as aforesaid.
- 31.5 **The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondents.**
- 31.6 In the event that the Respondents default on any 1 (one) payment as ordered above, the full amount due to the Applicant shall become immediately due and payable by the Respondents.

## **COSTS**

32. There is no order as to costs.

## **RIGHT OF APPEAL**

33. 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 15 JUNE 2023**



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**ADV. M.A MAVODZE  
(CSOS ADJUDICATOR)**