



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

Reference Number: CSOS 2581/GP/23

In the matter between: -

**DIRECTORS OF ALBERTDAL LEOPARDS'
REST HOMEOWNERS ASSOCIATION**

Applicant

and

**FS NTUNGWANA
VL SHABANGU**

1st Respondent

2nd Respondent

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:

1. Section 39(1) (e)

(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:

27 June 2023

- Date Adjudication conducted:

22 July 2023.

- Name of the Adjudicator:

P MPAPELE.

- Order:

Order is granted.

INTRODUCTION

1. The applicants are Directors Albertsdal Leopards Rest Homeowners Association (HOA) NPC (the Applicant Scheme), a community scheme as defined in the Community Schemes Ombud Services Act No.9 of 2011(CSOS Act) duly represented by Chloe Gelante of CSI Management, the Applicant's appointed managing agent, as defined in section 1 of the CSOS Act (hereinafter "managing agent"), duly appointed in terms of an undated directors' resolution, situated at Wolly Bugger Street, Alberton, Johannesburg, Gauteng.
2. The first respondent is SF Ntungwana the registered co-owner of unit 5996 with the applicants' scheme situated at Wolly Bugger Street, Alberton, Johannesburg, Gauteng.
3. The second respondent is VL Shabangu, the registered co-owner with the first respondent of unit 5996 situated at Wolly Bugger Street, Alberton, Johannesburg, 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 Applicants are seeking relief in terms of Section 39(1)(e) of the CSOS Act in respect of financial issues.
6. 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 adjudication was conducted on 22 July 2023, and an order is now determined.

PRELIMINARY ISSUES

7. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

8. 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.”
9. 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.”
10. 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.”
11. 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.”

12. 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”.

13. In terms of Section 50-

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

14. 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

Applicants' Submissions

15. The managing agent is mandated to collect overdue levies in terms of a Management Agreement it concluded with the Applicants.

16. The Applicants require homeowners to pay their levies in order to effectively manage the scheme.

17. The failure of some owners to contribute to the monthly expenses of the estate has had serious financial implications on the effective management of the estate.
18. The respondents are some of the owners who have defaulted on their levy payment.
19. Notwithstanding reminders in the form of SMSs, reminder notices, letters of demand and phone-calls, the account remains in arrears.

Relief sought by the Applicants

20. That the respondents pay to the Applicant the full amount of R7,912.10 (Seven Thousand Nine Hundred and Twelve Rand and Ten Cents) outstanding to it in respect of levies and ancillary amounts charged (which ancillary charges include the CSOS levies charged monthly) in respect of Unit 5996 at the Applicants' scheme, being the Erf co-owned by the first and second respondents (hereafter the "respondents"), in the Applicants' scheme, as at 04 July 2023.
21. An order for payment of the outstanding full amount due by the owners to the applicants.
22. A payment order for payment of future monthly contributions.

Submissions by the Respondent

23. None.

Relief sought by the Respondent

24. None.

EVALUATION AND FINDINGS

25. I have perused the parties' written submissions.

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.
28. This means that once all the evidence has been tendered, it must be weighed up and determined whether the Applicants' version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
29. Article 8 of Chapter 1.5 of the applicants' Memorandum of Incorporation (MOI) provides as follows:

“(a) The members shall be responsible for the payment of levies once a residential dwelling has been erected on a residential stand and a Certificate of Occupation issued by the municipality. No levies shall be payable in respect of unimproved residential stands.

(b) The directors shall from time to time but will annually be obliged to establish and maintain a levy fund for the purposes of meeting all the expenses the company has incurred, or which the directors reasonably anticipate that the Company will incur (which may include reasonable provision for contingencies) for the ensuing financial year in the furtherance of the Company's stated objects and business. The proportioned contribution of each member shall be calculated for each year and shall be payable in equal monthly instalments as calculated by the directors into the bank account of the Company or its nominated agent.

(g) As soon as possible after the establishment of the contribution of each member through the procedures described in sub-article 8(a) and (b) above, the directors shall notify each member of the amount thereof, indicating the date from which the levy will be payable, Levies shall be payable in advance on or before the 1st day of each month into the bank account of the Company or its nominated agent.

(h) The directors are authorised despite the procedures described in sub-articles 8(a) and (b) above, to introduce proportionate temporary special levies all members at their discretion in circumstances where unusual and unforeseen and expenses and disbursements arises for the Company. The directors are authorised to establish the procedures for the introduction of such special levies.”

- (i) *Any amount due by a member by way of a levy or a special levy is a debt due to the Company....*
- (l) *A member shall be liable and pay all legal costs, including costs as between attorney and client, collection commission, expenses and other charges incurred by the Company in obtaining the recovery of contributions, arrear levies or any other amounts due and owing by the member to the Company or in enforcing compliance with any of the other provisions of the Memorandum of Incorporation, the Act, or these Rules.*
- (m) *All payment made by a Member and received by the Company shall be allocated first towards interest, legal costs and thereafter capital. The board reserves the right to allocate payment as they deem fit in the absence of an express allocation by a member.*
- (o) *All levies shall be due and payable in advance on the (1st) first day of each month”.*

30. Rule 10 of the Association’s Conduct Rules provide as follows:

“10.1 Levies become due and payable upon taking occupation and are payable in advance monthly on the first day of each and every month.

10.8 The LRHOA reserves the right to take legal action on any overdue account. Legal action may be taken on all overdue accounts after 30 days and thereafter further action as may be determined from time to time.

- 31. The respondents have not been keeping up with payments of their levies.
- 32. The respondents have thus acted contrary to the Applicants’ Memorandum of Incorporation.
- 33. The respondents have also acted contrary to the Conduct Rules of the Applicant’s scheme.
- 34. It is trite to state that upon becoming the registered owner of an erf in a community scheme, an owner such the Respondents becomes irrevocably bound by the provisions of the Conduct **Rules of the Community Scheme.**
- 35. Where persons bind themselves voluntarily to the rules of associations when becoming owners, a contract comes into existence to which they are bound.

36. See **Abraham and Another vs Mount Edgecombe Country Club Estate Management Association Two (RF) NPC (7124/12 [2014] ZAKZDHC 36 (17 September 2014)**, where the court stated in paragraph 34 line 4 of the judgement as follows:

“34...In my view what is conveyed in the introduction to the rules is that, whatever opinions one may have as to whether the rules are too invasive, it should be recognised that they have been agreed upon by the contracting parties to maintain a structure within which residents can feel secure as regards the environment into which they have bought, and as regards the conduct reasonably expected of their neighbours, and of the respondent in its capacity as the enforcement authority with respect to the rules.”,

37. And in paragraph 47, line 3 as follows:

“47...If the parties’ contract upon the basis that these relationships will be best served, if the keeping of dogs on the estate is to be controlled, and the size restrictions imposed by the rules should exist, then it is fair to assume that the contractual provision has been agreed upon for the purposes of maintaining such proper relationships. That is reasonable.”

38. In this regard, the adjudicator notes further the judgement in the **Mount Edgecombe Country Club Estate Management Association vs Singh & others (323/2018) [2019] ZASCA 30 (29 March 2019) [19]** of Ponnann JA at paragraph as follows:

“[19] *When the respondents chose to purchase property within the estate and become members of the Association, they agreed to be bound by its rules. The relationship between the respondents and the association is therefore contractual in nature. The conduct rules, and the restrictions imposed by them are private one, entered into voluntarily when an owner elects to purchase property within an estate. By agreement, the owners of property within the estate acknowledges that they and their invitees are entitled to use the roads laid out within the estate subject to the conduct rules.*”

39. A Non-Profit Company, such as the applicants’, is a company registered in terms of the Companies Act 71 of 2008.

40. Its governance documentation comprises of its Memorandum of Incorporation, which is registered at the Companies and Intellectual Properties Commission (“CIPC”) upon the Company’s registration (or as amended from time to time by special resolution of its members), as well as the Rules of the applicants’ scheme made by the Directors from time to time.
41. One of the primary objects of the HOA is to collect levies, special levies, and other charges from members such as are necessary for the preservation, maintenance, and upkeep of the scheme.
42. Levies are the lifeblood of a HOA, and each and every member is liable for the monthly levies and or special levies payable to the HOA.
43. The Directors of the HOA cannot perform their functions and duties in the absence of funds from owners.
44. The Directors of the HOA requires the owners to pay their contributions in order to effectively manage the scheme.
45. The failure of the respondents to pay its monthly contributions has had serious financial implications for the effective management of the Applicant’s scheme.
46. Accordingly, the adjudicator is satisfied that the applicants have proved on a balance of probabilities that the respondents is indebted to it the amount R7,912.10 as claimed in the application.
47. Exercising his powers under section 51 of the CSOS Act, 2011 on 24 July 2023 the adjudicator requested the parties to furnish him with final written submissions.
48. Only the applicants have responded to the request as at the time of this order.

Ad applicants’ right to charge interest on arrears

49. In their levy statement dated 24 July 2023, the applicants have debited interest on the arrear levies.

50. It is also noted in this regard that paragraph 9 of Article 1.5 provides for the applicants to charge interest as follows:
- “9. Interest at the rate of 15% or as established from time to time by the directors shall be levied on all outstanding payments, compounded, and calculated monthly on arrears”.
51. Accordingly, the adjudicator is satisfied that the Applicants are entitled to recover interest in terms of paragraph 10.3 of the conduct rules and paragraph (9) of Article 1.5 of the MOI.
52. Accordingly, the interest charged to the respondents account was validly and lawfully charged by the applicants.
53. However, the relief the applicants seek for a payment order for future monthly contribution does not fall within the ambit of section 39 of the CSOS Act. Accordingly, the relief is refused.

Ad administration costs charged and incurred as per Annexure B of the Debt Collectors Act

54. The adjudicator notes in this regard that as per the updated respondents' statement of levy dated 24 July 2023, the applicants have also debited the respondent's account with administration costs and charges per annexure B of the Debt collectors Act.
55. The adjudicator notes in this regard the provisions of the applicants' directors legal and collections' resolution 6 as follows:
- “6. In the absence of a clear allocation instruction by a member, any payment received from a member will be allocated to the following charges in the order listed below from the most recently charged to the longest overdue:
- 6.3 to any penalties and administrative charges levied to a member's account, which penalties include collection commission”.

56. The adjudicator notes further the provisions of section 8 of the Debt Collectors Act, 1998 provides as follows:

“(1) As from the date fixed by the minister in the Gazette, no person, excluding an attorney or an employee of an attorneys, shall act as a debt collector unless he or she is registered in terms of this Act, and in the case of a company or close corporation registered as a debt collector, unless in addition to the company or close corporation itself, every director of the company or member of the corporation, and every officer of such company or close corporation, not being himself or herself a director or a member, but who is concerned with debt collection as the case may be, is registered.”

57. The applicants have furnished the adjudicator with confirmation of registration by its managing agent as a debtor collector.

58. The applicants have further furnished the adjudicator with confirmation of registration of its employees that are charged with debt collection on its behalf, as required in terms of the Debt Collectors Act.

59. The applicants are therefore entitled to debit the respondents' account with administrative costs and collection charges.

60. Accordingly, the administrative costs and charges debited by the applicants to the respondents account were validly and lawfully charged.

COSTS

61. There is no order as to costs.

ADJUDICATION ORDER

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

I find for the Applicant.

62.1 The respondents, SF NTUNGWANA and VL SHABANGU, the

registered co-owners of Unit 5996 at the Applicants' scheme situated at Wolly Bugger Street, Alberton Johannesburg, Gauteng owes the Applicants the amount of R7,912.10 (Seven Thousand Nine Hundred and Twelve Rand and Ten Cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) until end of 04 July 2023.

- 62.2 The respondents are ordered to pay the amount of R7,912.10 (Seven Thousand Nine Hundred and Twelve Rand and Ten Cents) to the applicants in Six (06) equal monthly instalments of R659.34 (Six Hundred and Fifty-Nine and Thirty-Four cents) the first of the Six consecutive monthly instalments to be paid within 30 days from the date of delivery of this order.
- 62.3 Thereafter, the payment of the five further instalments of R659.34 must be made on the 1st day of each succeeding month.
- 62.4 No interest shall accrue on the outstanding amount within the period of three months allowed for the payment as aforesaid.
- 62.5 ***The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.***
- 62.6 In the event that the respondents' defaults on payment within the period as ordered above, the full amount due to the applicants shall become immediately due and payable by the respondents.

COSTS

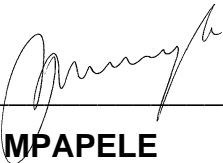
63. There is no order as to costs.

RIGHT OF APPEAL

64. 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 22 JULY 2023.



P MPAPELE

(CSOS PART-TIME ADJUDICATOR)