



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

Ref: CSOS001972/GP/23

IN THE MATTER BETWEEN

**DIRECTORS OF AVALON ESTATE
HOMEOWNER ASSOCIATION**

Applicant

and

K MOLEMA

Respondent

ADJUDICATION ORDER

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 Adjudication conducted:
19 July 2023.
- Name of the Adjudicator:
Lindiwe Bulu.
- Order:
Relief sought by the Applicant in terms of section 39(1)(e) of the CSOS Act.

INTRODUCTION

1. The Applicant is the Directors of Avalon Estate Homeowners Association (HOA). A Non-Profit Company, registered in terms of the Companies Act, No. 71 of 2008, as amended. The Applicant is a community scheme as defined in section 1 of the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act). The scheme is situated at Avalon Estate, 1 Vita Road, Terenure, GAUTENG.
2. The Applicant is represented by Paul Connell from De Lucia Group, the managing agent of the HOA. A managing agent as defined in section 1 of the CSOS Act. A resolution authorising the managing agent to act on behalf of the Applicant is attached to the application.
3. The Respondent is K Molema, the registered owner of unit 13 at the Applicant's scheme.
4. A letter under cover of an email was sent to the parties on 3 July 2023, confirming that due to the current situation regarding the Covid-19 pandemic, the Community Schemes Ombud Service (CSOS) is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
5. The parties were afforded until 11 July 2023 to make further submissions.
6. The parties did not provide any final written submissions.
7. 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.
8. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of- Section 39(1)(e): **In respect of financial issues:**
"an order for the payment or re-payment of a contribution or any other amount."

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 that 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 19 July 2023 and an order is now determined.

PRELIMINARY ISSUES

10. No preliminary issues were 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 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."

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) 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 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) 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 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.”

18. The Ombud was of the view that there was no reasonable prospect of a negotiated settlement of the dispute as set in section 47 of the CSOS Act and referred the matter to adjudication on 30 June 2023.

19. Accordingly, the Ombud referred the application to adjudication in terms of section 48 of the CSOS Act, read with clause 21.5.7 of the Practice Directive on Dispute Resolution thereto to an adjudicator on 12 July 2023.

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

20. The Applicant stated that despite numerous written letters of demand the Respondent has failed and/or neglected to pay the monthly levy and ancillary charges due and owing to it in terms of the Memorandum of Incorporation.

21. The Respondent is in arrears of R6 664.80 (six thousand six hundred and sixty-four rand and eighty cents). A statement of account of the Respondent's indebtedness to the Applicant was submitted as proof thereof.
22. The Respondent failed to honour their obligation as contained in section 11 of the MOI thus seeking to damage the good credit record of the HOA.

Relief sought by the Applicant:

23. That the Respondent pay to the Applicant the full amount outstanding in respect of levies and ancillary amounts charged (which ancillary charges include the CSOS levies charged monthly) in respect of unit 13, at the Applicant's scheme, being the unit owned by the Respondent, up till and including 22 May 2023, which amounts to R6 664.80 (six thousand six hundred and sixty-four rand and eighty cents).

Respondent's Submission

24. The Respondents did not reply to any correspondences received from the CSOS.

Relief sought by the Respondent

25. None submitted.

EVALUATION & FINDING

26. I have perused the Applicant's written submissions and evidential documents attached thereto.
27. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
28. 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.

29. The gravamen of the Applicant's dispute relates to outstanding levies due and payable by the Respondent. The Applicant attached the necessary resolution authorising the managing agent on behalf of the Applicant. The Applicant included charges in support of the charges included in the levy statement, and in accordance with the prayers for relief.
30. The Applicant submitted that the Respondent is in arrears with monthly levy payments. The Applicant attached a levy statement according to the levy statement, the Respondent is indebted to the Applicant for an amount in the sum of R6 664.80 (six thousand six hundred and sixty-four rand and eighty cents).
31. The Respondent did not reply to any of the correspondence from the CSOS, therefore the Respondent's version is not before me.
32. The Applicant is a Non-Profit Company, registered in terms of the Companies Act 71 of 2008.
33. The Applicant's 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 scheme made by the Directors from time to time.
34. Members of the community scheme are bound by the rules, which are applied by the Board. In the Supreme Court of Appeal decision of **Mount Edgecombe Country Club Estate Management Association Two (RF) NPC v Singh and Others (32/2018) [2019] ZASCA 30 (28 MARCH 2019) add para (19)**, the court held that "When the respondents chose to purchase property within the estate and became members of the Association, they agreed to be bound by its rules. The relationship between the Association and the respondents is thus contractual in nature. The conduct rules, and the restrictions imposed by them, are private ones, entered into voluntarily when an owner

elects to buy property within the estate.” Members of the community scheme are therefore dutybound to contribute towards levies as stipulated in the MOI.

35. 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.

36. Levies are the lifeblood of an HOA, and each and every owner is liable for the monthly levies and/or special levies payable to the HOA.

37. The Directors of the HOA cannot perform their functions and duties in the absence of funds from owners. It follows that unit-owners like the Respondents, in this instance, who defaults on levy payments are effectively being subsidised by the other owners of the HOA who pay their levies and ancillary contributions conscientiously every month.

38. I am satisfied that the Applicant has proved on a balance of probabilities that the Respondent is indebted to the Applicant in respect of amounts charged.

COSTS

39. There is no order as to costs.

ADJUDICATION ORDER

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

40.1. The Respondent, K Molema, the registered owner of unit 13 at the Applicant's scheme, is indebted to the Applicant for the amount of R6 664.80 (six thousand six hundred and sixty-four rand and eighty cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) as of 22 May 2023.

40.2. The Respondent is ordered to pay the amount of R6 664.80 (six thousand six hundred and sixty-four rand and eighty cents), in 4 (four) equal monthly instalments of R1 666.20 (one thousand six hundred and sixty-six rand and twenty cents), the first payment to commence on or before 1 September 2023.

40.3. Thereafter, payment of the further 3 (three) outstanding instalments of R1 666.20 (one thousand six hundred and sixty-six rand and twenty cents) must be made on the 1st day of each succeeding month.

40.4. No interest shall accrue to the outstanding amount within the period of 4 (four) months allowed for the payment as aforesaid.

40.5. The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondents.

40.6. In the event of the Respondent defaulting on any payment as ordered above, the full amount due to the Applicant shall become immediately due and payable.

40.7. There is no order as to costs.

RIGHT OF APPEAL

41. 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 CENTURION this 19th DAY OF JULY 2023.



**L BULO
ADJUDICATOR**