



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

Ref: **CSOS-11132/GP/23**

In the matter between:

JOAN ZIZIPHO NDUDE

APPLICANT

and

TRUSTEES OF EAGLES GROVE BODY CORPORATE

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for:

This is an application brought by the Applicant against the Respondent in terms of:

Section 39 (7) (b) of the CSOS Act – any other order proposed by the Chief Ombud

That the Adjudicator make an order in the following terms:

A handwritten signature in black ink, appearing to be 'K. B. J.', is located at the bottom right of the page.

That the Respondent be ordered and compelled to restore the electricity supply to the Applicant's section in the Respondent scheme. .

- Date matter considered:

19 December 2023.

- Name of the Adjudicator:

Karen Bleijs

- Outcome:

Dismissed

INTRODUCTION

1. The Applicant is **JOAN ZIZIPHO NDUDE** (" the Applicant"), who is the registered owner of unit number 29 in the Respondent scheme, which is situated at Zeiss Road, Honeydew, Gauteng.
2. The Respondent, which is cited as the "**TRUSTEES OF EAGLES GROVE BODY CORPORATE**" ("the Respondent"), which is a sectional scheme as contemplated in section 2 of the Sectional Titles Schemes Management Act 8 of 2011 (the STSMA), and a community scheme defined as such in terms of the Community Schemes Ombud Services Act 9 of 2011 ("CSOS Act").
3. This is an urgent application for dispute resolution brought 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.
4. After careful assessment of the application, the Community Schemes Ombud Service was of the opinion that the application warrants an intervention. The Respondent was requested to furnish us with written submissions regarding the



application, to reach our office before 09H00 on **MONDAY, 18 DECEMBER 2023**.

5. The application seeking relief is in terms of section 39 of the CSOS Act.
6. This urgent adjudication was referred to me on the afternoon of the 19th of December 2023, and the adjudication was conducted by me on the same day.
7. An order is now determined.

PRELIMINARY ISSUES

8. No preliminary issues were submitted.

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”.

16. The CSOS Practice Directive No 2 of 2018, Part 5 clause 21.2. published on the 1st of August 2018, and signed by the Chief Ombud, permits the Ombud to refer a matter directly to adjudication if he or she considers the dispute inappropriate for conciliation.



17. The Practice Directive sets out some of the factors which the Ombud may consider in deciding whether a matter is not appropriate for conciliation, and should be referred directly to adjudication, and includes but is not limited to any aspect of urgency associated with an issue or issues in dispute and includes the termination of electricity supply to a section, *which includes any form of restriction of access to electricity supply.*
18. The dispute was referred directly to adjudication in terms of section 48 of the CSOS Act read with Clause 21.5.7 of the Practice Directive on Dispute Resolution.

SUMMARY OF RELEVANT EVIDENCE

Applicant's Submissions

19. The Applicant submitted the following:
 - 19.1. The Respondent has signed an agreement with a metering company called Alpha Meter reading, allegedly without providing the Applicant with the appropriate notice, and no additional information regarding the matter.
 - 19.2. The Respondent presented the matter at the AGM, and according to the minutes of the meeting they only stipulated a R40 admin fee will be applied for Alpha Meter Reading.
 - 19.3. Upon the adoption of the contract Alpha Meter reading has now requested each owner and/or tenant occupying the unit should sign a terms and condition contract (which the Applicant and other owners do not agree to) and pay a deposit of R1000 Rands otherwise their power will be cut-off.
 - 19.4. The Applicant states that none of this was mentioned at the AGM.
 - 19.5. Since she did not agree with the terms and condition, she is unwilling to sign and pay a 1000 Rand deposit, that she was allegedly not aware of. Her power was cut-off on the 11th of December.

- 19.6. The Applicant states further that she has also not paid November as she had a few concerns which she sent to the managing agent, and she also has not paid December as the Respondent's managing agent allegedly refuses to give her an invoice with signing the contract and paying a 1000Rand deposit.
- 19.7. The Applicant alleges that some of her fellow owners have spoken to lawyers to determine what their legal recourse is, and the Applicant herself has reservations about Impact Meter Readers.

Relief sought by the Applicant:

20. That the Respondent be ordered and compelled to reconnect the electricity supply to the section that she owns and occupies immediately.

Respondents' Submissions

21. The Respondent failed to answer to the Applicant's Statement of Claim, **however, a fellow unit-owner of the Applicant's at the Respondent scheme, CELESTE VAN EIJSBERGEN, brought an application to the CSOS with exactly the same facts as the Applicant, which the Respondent answered as follows:**

- 21.1. A 30-day AGM notice was sent on the 11th of August 2023 for the 12th of September 2023; whereby the agenda point and documentation for Alpha Metering were attached for owners to vote on.
- 21.2. At the AGM on the 12th of September there was no quorum reached and thus, as per the STSMA the AGM was reconvened to the 19th of September 2023; which notice was sent out on the 13th of September 2023.



- 21.3. As per the STSMA; owners present at a reconvened meeting form a quorum – *which in this case was done*.
- 21.4. The Respondent had 21 owners present together physically and by way of proxy. There were 20 owners who voted in favour to move over to Alpha Metering and 1 owner not in favour.
- 21.5. The AGM continued as per usual, the agenda item of Alpha metering was then reached, whereby Isabel from Alpha Metering had introduced herself and her company.
- 21.6. She advises the meeting that there is a monthly fee of R40 per unit per month.
- 21.7. As per the AGM Minutes, Alpha Metering did NOT stipulate that there would be a R1000 deposit paid by each unit.
- 21.8. The purpose of their company is that they take over the monthly readings for electricity and water as well as sewerage; they bill the units directly as per their usage and these fees are no longer billed through the levy statements.
- 21.9. Further to the above, Alpha Metering did explain that they are allowed to disconnect utilities as they are resellers of electricity and registered with the correct authorities.
- 21.10. Nevertheless, multiple communications were sent to the owners advising them of the change-over from Reacomp to Alpha Metering.
- 21.11. Forms were sent and all information as well. There were a number of owners who did not respond or show dismay to the appointment of their services, a notice was then sent out by WRMA, being the Managing Agent, on behalf of Alpha Metering on the 27th of November 2023, advising that should utilities and forms not be paid and completed by the 11th of December 2023, utilities would be disconnected.
- 21.12 This was then done by Alpha Metering on the 11th of December 2023 – only then did the Respondent's Managing Agent receive more responses from owners as their utilities were disconnected.
- 21.13. The Applicant's the current outstanding levy is R363 934.03; this is inclusive of utilities and sewerage which was billed before Alpha Metering took over (as they now bill directly to the unit's occupant).

- 21.14. The Respondent has been subsidising the usage and levies for this unit for many years now.
- 21.15. Further to that, it has been brought to the Applicant's attention a number of times the water usage is exceptionally high and not normal for a unit of that size.
- 21.16. It was also offered to have the maintenance team assess the inside of the section for any leaks to stop the high-water bill, however the Applicant never granted permission.
- 21.17 Alpha Metering had called the Respondent's Managing Agent on their first meter reading to advise that the water amount from the Applicant's unit was high, and the Respondent's managing agent confirmed that it had been high for a long time now.
- 21.18. Further to the above, the Respondent believes the necessary steps and correct procedures were followed for the AGM to take place and for the owners present to vote.
- 21.19. The Trustees signed the contract with Alpha Metering on behalf of the Body Corporate (as mandated to) as per the voting that took place at the AGM.

Relief sought by the Respondent

22. No specific relief was requested by the Respondent, but from reading the submission, it is clear that the Respondent requests the dismissal of the Applicant's claim.

EVALUATION & FINDING

23. I have taken the Applicant's written submission into account, as well as that of the Respondent, since the facts of the matter mirror exactly those of the Applicant's fellow member, under case number **CSOS1132/GP/23** have been duly considered.



24. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses (*if any*) must be considered.
25. The general rule is that only evidence, which is relevant, should be considered.
26. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is on a 'preponderance 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.
27. It involves findings of facts based on an assessment of credibility and probabilities.
28. It is clear in this matter that Impact Meter Readers and not the Respondent gave notice to the Respondent that it would disconnect the electricity supply to her section, and that Impact Meter Readers and not the Respondent disconnected the electricity supply to her section for the reasons as set out above.
29. I have independently confirmed the Respondent's submission regarding Impact Meter Readers position and status as an On-Seller of Electricity, and that it is a registered member of the Electricity/Utilities Resellers Association of South Africa (ERASA).¹
30. I have also read through the minutes of the Annual General Meeting of the Respondent held on the 19th of September 2023 (*minutes supplied by the Respondent*), where the members voted overwhelmingly in favour of concluding a contract with Impact Meter Readers in terms of which each unit-owner/occupier would enter into an agreement with Impact Meter Readers as the on-seller of electricity on behalf of City Power (the Municipality) to supply water and electricity to such unit-owner or occupier.

¹ erasa.org.za - membership



The Applicant ought to be aware that in a Body Corporate the vote of the majority of members is the deciding factor on issues such as this.

The Applicant must take into account that in a democratic organisation such as a Body Corporate the vote of the majority of members prevails.

31. Impact Meter Readers will read the sub-meters every month, collect monies due from unit-owners/occupiers and if payments aren't made then it will have the power/authority in terms of the contract to disconnect services.
32. **The Respondent is completely excluded from the contractual relationship to supply electricity between the Impact Meter Readers as an On-seller of electricity on behalf of the local Municipality and the individual unit owner/occupier.**
33. Further to the above, I independently confirmed that Impact Meter Readers is a registered electricity on-seller, and have seen their certificate of registration with ERASA, which was furnished by the Respondent.
34. The resale of electricity is valid in terms of section 17 of the **GREATER JOHANNESBURG METROPOLITAN COUNCIL STANDARDISATION OF ELECTRICITY BY-LAWS**, as well as the proposed draft By-Laws of 2022.
35. Impact Meter Services sets out its services on the ERASA (Electricity Resellers Association of South Africa) Website as follows, which clearly explains its position *vis á vis* the Applicant and other unit-owners/occupants of units in the scheme:

"Impact Meter Services provides a utilities management service to multi-tenanted premises where the City Council only provides a bulk electricity/water supply to the perimeter. A developer / landlord / body corporate contracts our services in this regard, whereupon we register with the City Council as the bulk consumer of electricity / water at those premises. Impact therefore becomes responsible for monthly payment of the bulk supply account to the Council.

In turn, Impact measures the individual tenant's consumption within the premises, and bills them accordingly. Companies such as ours are referred to as "re-sellers", as well



as the municipal electricity by-laws. The National Energy Regulator and the City Council prescribe the tariffs that must be charged by re-sellers to consumers, and no "mark-up" of any kind may be made on electricity / water consumption.

As Impact Meter Services pays the bulk-supply account to the Council on a monthly basis, we essentially become the electricity supplier to the consumer within the premises. This means that we are entitled to discontinue the electricity / water supply of any consumer whose account falls into arrears or who has no written agreement with us for the supply of electricity/water.

Impact Meter Services supplies and maintains the electricity meters within a complex free of charge, and these meters are physically read on a monthly basis (no estimates are done if at all possible). These readings together with the meter numbers are reflected on the monthly invoice that is issued to every consumer within the premises. The electricity meters remain the property of Impact Meter Services at all times."

My Emphasis

36. The aforesaid is in terms of the Electricity Act, No. 41 of 1987, and permissible in terms of the provisions of the National Energy Regulator of South Africa (NERSA).
37. Consequently, taking all of the above facts and circumstances into consideration, I am satisfied that the Applicant has failed to discharge the onus of proving her case on a balance of probabilities, and her claim falls to be dismissed.
38. Thus, the Applicant will have no alternative but to pay her arrear services account, pay the requisite deposit, and enter into an agreement with Impact Meter Reading Services in order for it to supply services to her section.

COSTS

39. There is no order as to costs.

ADJUDICATION ORDER



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

The Application is dismissed in terms of section 53(1)(a) of the CSOS Act, No. 8 of 2011, as it is misconceived and without substance.

RIGHT OF APPEAL

42 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 ON THE 19th OF DECEMBER 2023



**KAREN BLEIJS
ADJUDICATOR**

