



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

Ref: CSOS 2317/GP/23

IN THE MATTER BETWEEN

TRUSTEES OF TULBACH BODY CORPORATE

Applicant

and

VEZASIE TROY

Respondent

(Owner unit 102)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

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

8 DECEMBER 2023

Name of the Adjudicator:

KAMOGELO MAPUTLA

Order:

- (a) The application is dismissed for reasons set out in paragraph 12.
- (b) No order is made as to costs.

INTRODUCTION

1. The Applicant is **TRUSTEES OF TULBACH BODY CORPORATE**, as contemplated in section 7 of the Sectional Titles Schemes Management Act¹ ("**the STSMA**"). Tulbach Body Corporate ("**Tulbach**") is duly registered and constituted as such in accordance with the provisions of section 36 of the Sectional Titles Act² ("**the STA**"), read in harmony with section 2(1) of the STSMA. Tulbach is a community scheme as defined in the CSOS Act, a body corporate as defined in terms of the STSMA, situated at 22st Joseph Street, Symhurst Primrose, Gemiston, Gauteng Province. Where convenience permits, Tulbach will be referred to as "**the Body Corporate**".
2. The Respondent is **MR. TROY VEZASIE**, the owner as defined in the section 1 of CSOS Act of unit 102 at Genesis Park, situated at 22st Joseph Street, Symhurst Primrose, Gemiston, 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 **29 May 2023**.
4. In terms of clause 5.9 of the CSOS dispute resolution practice directive dated **1 August 2018**, dealing with applications states that: "*Where the applicant is a community scheme, a copy of a resolution by Executive Committee of the scheme **must** be attached to the application authorising the lodgement of the application*". [Own bolding and underlining]
5. The Applicant has not complied with the above-mentioned requirements.
6. The Applicant seeks relief in terms of section 39 of the CSOS Act, in respect of Section 39(1)(e) of the CSOS Act, in respect of financial issues.

¹ Act 8 of 2011.

² Act 95 of 1986.

7. Accordingly, a certificate of Non- resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud referred the application together with any submissions and responses thereto to an adjudicator on **27 November 2023**.
8. 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 **“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 **8 December 2023** and an order is now determined.
9. The prescribed fee for adjudication was not paid owing to clause 3 of the amended practice directive dated **2 December 2021**.
10. In properly considering these aspects a section 51 request was necessary thus, on **8 December 2023**, the Adjudicator in terms of section 51(1)(a)(i) of the CSOS Act read together with clause 26.6.4 of the CSOS dispute resolution practice directive dated **1 August 2018**, requested further information to assist in finalising the adjudication with a specific due date.

11. The request was worded as follows: *“Might I ask that you favour me with:*

Applicant

- 1.1 *Please provide evidence or prove the following:*
 - 1.1.1 *A revised itemized levy statement;*
 - 1.1.2 *How many trustees does the scheme have and what are their respective names and unit numbers?*
 - 1.1.3 *A signed resolution by the trustees.*
 - 1.1.4 *A trustee’s resolution to charge interest on outstanding amounts.*
 - 1.1.5 *Conduct Rules duly approved by CSOS.*
 - 1.1.6 *Confirmation that no legal proceedings have commenced.*
 - 1.1.7 *A copy of the managing agent service level agreement.*

Respondent

- 1.2 *Reason for not paying levies.*
2. *I require this information by no later than 08H00 Tuesday (12 December 2023).”*

PRELIMINARY ISSUES

12. Time came and passed without any response from both parties, which attracts a dismissal under section 53(1)(b) of the CSOS Act. Thus, this application is dismissed in terms of section 53(1)(b)³ of the CSOS Act.

RELEVANT STATUTORY PROVISIONS

13. Section 1 of the Sectional Titles Schemes Management Act 8 of 2011 (“**the STSMA**”) defines-
- “**body corporate**” as “in relation to building and the land in a sectional title scheme, means the body corporate of that building referred to in section 2(1);
14. Regulation 1 of the Sectional Titles Schemes Management Regulations (“**the STSM Regulations**”) defines-
- “**managing agent**” as “any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services”
 - “**scheme management service**” as “any financial secretarial, administrative or other service relating to the administration of a scheme”
15. 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”.

³ **Order dismissing application**

53. (1) 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.

- **“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”.

16. 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”.

17. 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”.

18. 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”.

19. 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”.

20. 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.”

21. 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”.

COSTS

22. No order is made as to costs.

ADJUDICATION ORDER

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

- a) The application is dismissed for reasons set out in paragraph 12.
- b) No order is made as to costs.

RIGHT OF APPEAL

24. 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 8TH DAY OF DECEMBER 2023.

KAMOGELO MAPUTLA
ADJUDICATOR

(Not signed due to electronic transmission)