

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

CSOS 6975/GP/23

IN THE MATTER BETWEEN

**YULANDRAN CHETTY**

**APPLICANT**

and

**TRUSTEES OF WILLOW GLEN  
BODY CORPORATE**

**RESPONDENT**

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

- Relief applied for in terms of the CSOS Act:  
**Section 39 (6)** in respect of works pertaining to private and common areas - (a) an order requiring the association to have repairs and maintenance carried out;  
**Section 39 (1)** in respect of financial issues - (e) an order for the payment or repayment of a contribution or any other amount.  
**Section 39 (7) (b)-** any order proposed by the chief ombud.
- Date Adjudication conducted:  
11 DECEMBER 2023

- Name of the Adjudicator:

MENZI SIMELANE

- Order:

The application in terms of section 39(6) (a) of the CSOS Act is not upheld and the relief sought is not granted.

The relief sought by the applicant against the respondent in terms of section 39 (6) (a) is not granted.

In terms of section 39 (7) (b), the respondent is ordered to, within thirty (30) days of this order, carry out regular maintenance of the common areas of the complex of the Willow Glen Body Corporate.

In terms of section 39 (7) (b), the respondent is ordered to enforce the conduct rules of the body corporate relating to the behaviour of pets.

The relief sought in terms of section 39 (1) (e ) is not granted.

The relief sought in terms of section 39 (3) is not granted.

No order as to costs.

## **INTRODUCTION**

1. The applicant is **YULANDRAN CHETTY**, the registered owner of unit number 4A, Willow Glen, Wlison Street, Fairlands, Johannesburg Gauteng.
2. The respondent is the **TRUSTEES OF WILLOW GLEN BODY CORPORATE**, a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), and to which it would be convenient to refer as the "Willow Glen BC". It has as its address on 274 Wilson Street, Fairlands, Gauteng.

3. The respondent is assisted in bringing this application by Proximity Property Management (Pty) Ltd, a duly authorised managing agent.
4. The CSOS issued a section 43 notice to the respondent informing it of the application and inviting their comments by 03 October 2023. The respondent filed submissions as well and they were forwarded to the applicant for comment. The matter was also referred to conciliation but it could not be conciliated. The dispute was then referred to adjudication on 31 October 2023. The parties were also invited to file final written submission, if any, by 31 October 2023.
5. 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 (CSOS) by way of email.
6. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of  
Section 39(6)(b): **In respect of works to private areas and common areas.**  
Section 39(1)(e): **In respect of financial issues.**  
Section 39 (7) (b): **any other order proposed by the chief ombud**
7. 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 adjudication was conducted on the 11 December 2023.

### **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 that -

"Any person may make an application if such person is a party to or affected materially by a dispute".

11. Section 45(1) 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".

12. Section 47 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".

13. Section 48 (1) 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".

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 submits that he bought in the complex and then effected repairs and maintenance to the unit, which is on common property. He informed the respondent and requested it to repair the drainage in his backyard. The applicant submits that the respondent is delaying carrying out the repairs which has resulted in the backyard flooding again.
17. The applicant also complains about the cat of one of the trustees which goes into his side of the property. He submits that nothing has been done to address the cat problem and that it is causing a nuisance.

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

18. The applicant seeks an order that the respondent carry out repairs to the draining system. In addition, that he be re-imbursed the costs that he incurred for the repairs that he carried out. Further, that the warnings sent to him be rescinded and that the trustees be warned by the CSOS regarding their failure to implement the conduct rules. Lastly, that the trustees be fined personally for their conduct. .

### **Submissions by the Respondent**

19. The respondent also filed detailed submissions indicating that the matter has been discussed with the applicant. The respondent submits that the area that is affected is the backyard of the applicant which is an exclusive use area and accordingly, he is responsible for conducting the repairs. Further, that the applicant was supported by the respondent so much so that the respondent voted in the Special General Meeting, in favour of the changes that the applicant requested. The applicant however did not proceed with his plans but sought an alternative. In that respect, he sought expertise externally and proceeded to effect the repairs at his own cost like the other owners in similar situations. The respondent further submits that it is waiting for the applicant to complete the repairs and to advise on the costs once done.
20. In the final submissions, the respondent sent email indicating the comments made at the AGM relating to the dog of the applicant about which there were complaints. These related to the dog not being on a leash when the applicant takes it on a walk and that it causes a nuisance by being aggressive towards other dogs. The respondent submits that the dog is not socialised and leaves a mess in the park which the applicant does not pick up.

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

21. The respondent seeks an order that the application by the applicant be not upheld.

### **EVALUATION & FINDING**

22. I have perused the written submissions by the parties. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
23. 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 and determined whether the Applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

24. The dispute between the parties appears from the facts to arise from disagreements between the applicant and one of the members of the respondent. This is caused by a number of issues. The first relates to the applicant's dog about which a complaint has been filed. It is alleged that the dog is not socialised and causes a nuisance by barking and charging at other dogs in the park. In some instances, it has left a mess which the applicant never cleaned up. The second relates to the applicant's own complaint about the cat of one of the members of the respondent. It is alleged the cat wanders into the exclusive use area of the applicant and causes a nuisance there. The applicant is aggrieved that despite his complaint, nothing has been done about the cat which continues to wander into his area. The third relates to the applicant's complaint about the respondent failing to conduct repairs on a drainage pipe as part of maintenance.

25. The law regarding nuisance is clear and common course. The principle is that, not every nuisance is actionable. In other words, it is accepted that nuisance is part of living between and amongst other people and that nuisance will occur from time to time. When it does, it is expected that the parties involved will exercise tolerance of each other and attempt to find a solution to the problem that is acceptable for both of them, without resorting to external remedies. This case falls well within such a case. The problem between the parties relating to the dog and the cat can be resolved if the parties exercised more tolerance and if the rules of the body corporate applied consistently and in a transparent manner.

26. The above legal position was well supported in ***Allacias Investments (Pty) Ltd and Another v Milnerton Gold Club and Others 2008 (3)SA 134 (SCA)***.

27. With regard to the repairs and the reimbursement, the legal position is also clear. An owner is responsible for all repairs within his or her exclusive use area. The body corporate is responsible for repairs and maintenance of the common property. The common property will include all water pipes serving the common areas. If the leak on exclusive use area of the applicant originates from a pipe serving the common area, the responsible would be responsible for its repair. The respondent has indicated that when the applicant sought authorisation for his plans, the respondent supported him and voted in favour thereof, hence he could continue with those plans. As far as the respondent knows, such plans are yet completed and it is waiting for the applicant to finish.

28. The legal position is thus as follows regarding the owners duty for maintenance in terms section 13(1) of the Sectional Titles Schemes Management Act (STSMA).

**“forthwith carry out all work that may be ordered by any competent authority in respect of his or her section, other than such work as may be required for the benefit of the building generally, and pay all charges, expenses and assessment that may be payable in respect of his or her section”.**

29. In additions , the following must also be noted. Section 13 of the STSMA provides that;

*(1) An owner must –*

*(c) repair and maintain his or her section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition.*

30. In light of the arrangement between the applicant and the respondent, it only makes sense for the parties to meet and assess the situation. The applicant, who has been working on the site with service providers, must provide a report to the respondent on progress being made or completed work so that the respondent can then reimburse the applicant or costs incurred. This would require proof of such costs. There is none currently provided on file. The respondent can also conduct an inspection of the common pipe and assess its source of the leak. As indicated, where the source is identified as from the common property, the respondent would be required to attend to it.



31. Accordingly, I am satisfied that the applicant has not proven on a balance of probabilities that he is entitled to the relief sought against the respondent as provided for in Section 39(3) and 39 (6) of the CSOS Act.
32. The applicant has not established that he is entitled to the other prayers for relief. This is because, in respect of the repairs, he has not provided the evidence of the costs that he has incurred. In this regard, the applicant has not provided the invoices and the receipts of the payments made.
33. As regards the warnings issued to him, it can be accepted that the warnings were issued for the transgressions identified by the respondent to constitute a contravention of the rules. In such cases, warnings are appropriate. In a case where the warnings are challenged and there is no internal mechanism for that purpose, the applicant then ought to provide a detailed account of the events complained about. This would include details of how the disciplinary process was conducted and what was said during that process. The respondent has also not provided the details of how it considered the complaint and whether the applicant was given an opportunity to respond to it. None of this relevant information has been provided by both parties. I am thus unable to properly assess the allegations against levelled at the respondent. In light thereof, I am not persuaded that the applicant has established that the warnings were issued without justification so as to justify interference therewith.
34. In respect of the problem of the cat, the applicant has not provided information regarding what specific behaviour of the cat he is aggrieved about. It can be accepted that a part of being a cat involves prowling around and about the property. It is also possible that the cat wandered into the exclusive use area of the applicant. That, in and of itself, does not constitute a nuisance. If it does, it is unlikely that, on its own, it is actionable. More will have to be provided indicating the behaviour of the cat that is considered actionable nuisance.
35. As regards the fines to be imposed on the trustees personally, the ombud is not empowered to issue such fines. The conduct of the trustees is considered in the context of their fiduciary duties. In order for that consideration to take place,

information and evidence must be provided. In that regard, the applicant has not complained about this aspect and has not alleged that the trustees have breached their fiduciary duties. It follows therefore that any consideration of any relief on this aspect is not justified.

36. The applicant further seeks an order for the conduct rules to be amended. As an owner, he is entitled to call for such a change and make his own suggestions on such changes if he so wishes. In order for that to happen, the applicant must however follow the prescribed procedure. There is nothing provided on file that demonstrates that such a procedure was taken.

37. Having regard to the above, I conclude that, save for the applicant's complaint about the maintenance of the common property, the rest of the complaints have not been established.

### **ADJUDICATION ORDER**

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

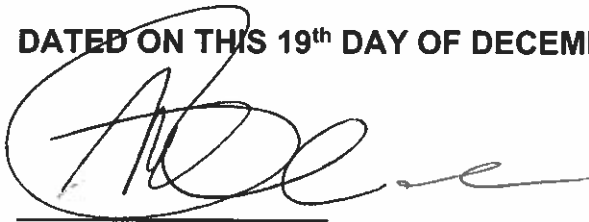
- (a) the application in terms of section 39 (6) (a) of the CSOS Act is not upheld.
- (b) The relief sought by the applicant against the respondent is not granted.
- (c) In terms of section 39 (7) (b), the respondent is ordered to carry out repairs and maintenance on the common property, including attending to the damp on the property of the applicant, within sixty (60) days of this order.
- (d) The relief sought in terms of section 39 (1) (e) is not granted.
- (e) The relief sought in terms of section 39 (3) is not granted.
- (f) No order as to costs.

**RIGHT OF APPEAL**

39. 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 19<sup>th</sup> DAY OF DECEMBER 2023.**

A handwritten signature in black ink, appearing to read 'Menzi Simelane', written over a horizontal line.

**MENZI SIMELANE  
ADJUDICATOR**