



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

Ref: CSOS 8163/KZN/23

IN THE MATTER BETWEEN

KILDARE BODY CORPORATE

Applicant

and

GABRIELLAH PRETTY NDABA

Respondent

ADJUDICATION ORDER

EXECUTIVE INTRODUCTION

- Relief applied for in terms of the CSOS Act: Section 39(1)(e) - in respect of financial issues (levy contributions).
- Date Adjudication conducted: 22 March 2024.
- Name of the Adjudicator: Adv. AS du Toit.
- Order: Granted.
- Costs: No order is made as to costs.

INTRODUCTION

1. The applicant is cited as Kildare Body Corporate, herein assisted by its trustees. This residential sectional title scheme development (SS 203/1984) is situated at 81 Botanic Gardens, Durban, Kwazulu-Natal.
2. The respondent is Gabriellah Pretty Ndaba, the registered owner of unit 14 in the scheme and member of the scheme by virtue of her ownership of property in the scheme.¹
3. Kildare Body Corporate qualifies as a community scheme, described as a scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings in terms of the Community Schemes Ombud Service Act No. 9 of 2011("CSOS Act").²
4. This is an application for dispute resolution in terms of section 38 of the CSOS Act, whereas applicant is defined as a legal person in terms of the CSOS Act and therefor authorised to bring this application.³ This application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email dated 5 October 2023.
5. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of sub section 1(e): requiring "*an order for the payment of a contribution....*"
6. Jurisdiction is confirmed in terms of the provisions of section 39 of the CSOS Act, authorising the Community Schemes Ombud Service to determine this dispute.
7. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution of 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 papers filed by the parties and any further written*

¹ In terms of the provisions of section 2(1) of the STSMA 8 of 2011.

² In terms of the definitions – section 1 of the CSOS Act.

³ Section 2(7) of the STSMA 8 of 2011.

submissions, documents and information as requested by the appointed Adjudicator". The parties were requested to make written submissions. The adjudication was conducted on 22 March 2024 resulting in the drafting of this order.

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 that;

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

10. 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."

11. Section 48 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."

12. In terms of Section 50-

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

13. 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.”

14. In case the dispute has not been resolved through conciliation, the matter may be referred to an adjudicator. Accordingly, a certificate of Non-Resolution was issued in terms of section 48(1) of the CSOS Act on 16 December 2023. This application together with any submissions and responses thereto was subsequently referred to an adjudicator by the Ombud.

SUMMARY OF RELEVANT EVIDENCE

Submissions from both parties

15. Both parties’ submissions will be dealt with simultaneously for convenience sake. The applicant contends that respondent has failed to make regular payments in respect of levies pertaining to his unit 14 over a period of time, which outstanding levies are deemed recoverable costs. The outstanding levy contribution amounts to R5903.30 (five thousand, nine hundred and three

rand and 30 cents), inclusive of interest calculated at 15.5% per annum, as per October 2023 statement.

16. Respondent has, despite requests to do so, failed to settle the outstanding account to date. All internal remedies have further been exhausted and the trustees have resolved to proceed with legal action via CSOS to recover the outstanding contributions owed by respondent.
17. The respondent has failed/neglected to provide a valid defense to the issue in Dispute.

Relief sought by the applicant:

18. An order for the payment of the outstanding levies in the total amount of R5903.30 (five thousand, nine hundred and three rand and 30 cents).

EVALUATION & FINDING

19. 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 based on a balance of probabilities.
20. The body corporate is obliged to perform the functions entrusted to it by the Sectional Titles Schemes Management Act 8 of 2011 ("ST SMA) and Rules, amongst others, the authority to raise levies accrues from the passing of a trustee resolution to that effect, which levies may be recovered by the body corporate by way of an application to the ombud from the owner(s) of the respective units at the time when such resolutions were passed. This determination is envisaged in section 3(2) of said Act.
21. It is well known that the non-payment of a levy can seriously de-stabilise a scheme. Levies are the lifeblood of shared living schemes. The costs of attending to the maintenance, repair and upkeep (insurance, security etc.) are shared between members and the failure to pay could negatively affect the

collective interests and investment of all owners in the scheme. It is therefore essential that members make regular levy payments that are due.

22. Cognisance is further taken of the provisions of Management Rule 21(3)(c) (“MR”) determining that the body corporate may, based on a written trustee resolution, charge interest on any overdue amount payable to a body corporate, as prescribed by the National Credit Act, 34 of 2005.
23. It should also be noted for completeness sake that in the matter of *The Body Corporate of Fish Eagle v Group Twelve Investments (PTY)Ltd* it was held that a member cannot withhold levies on the grounds that a member disputes the necessity or financial wisdom of the decision to impose such levies.
24. Applicant provided a breakdown of the contribution statement, nature and reasons for the levies raised. The evidence submitted by applicant is regarded as sufficient in all material aspects to justify the order granted in terms of section 39(1)(e) of the CSOS Act in the circumstances. Respondent, on the other hand, has failed/neglected to respond or dispute the facts. I am satisfied that applicant has discharged the onus of proof on a balance of probabilities in the circumstances in order for the relief sought to be granted.

COSTS

25. Parties are generally expected to cover their own costs in respect of the resolution of disputes determined in terms of section 54 of the CSOS Act, whereas cost orders are more readily issued in terms of section 53 orders providing for the dismissal of applications considered to be frivolous, vexatious, misconceived or without substance (sub section 1(a)) or 1(b) – where applicant fails to comply with a requirement in terms of section 51. This scenario is however not applicable here. The circumstances in this matter do not justify a cost order – the parties therefore bear their own costs in the matter.

ADJUDICATION ORDER

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

26.1 Applicant's order is granted for the payment of arrear levy contributions by respondent in the amount of R5903.30 (five thousand, nine hundred and three rand and 30 cents), payable in full on/before 30 April 2024.

26.2 No order is made as to costs.

RIGHT OF APPEAL

27. 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 CAPE TOWN ON 22 MARCH 2024.

Andries du Toit

Adv. AS du Toit

ADJUDICATOR