

2ND CSOS INDABA 2024



www.csosindaba.com

**12-13
SEPTEMBER 2024**

 **BOLIVIA LODGE,
POLOKWANE, LIMPOPO**



Affordable Reliable Justice

www.csos.org.za



**Promoting Well Governed,
Empowered And Transformed
Community Schemes.**





BREAKAWAY SESSION TOPIC:

The Role of CSOS in regulating community schemes: Navigating disputes and ensuring compliance

Problem statement

- The CSOS faces a significant influx of disputes within community schemes. This session will explore the rights and obligations of stakeholders, the critical importance of compliance, and the processes for approaching the CSOS and/or the courts. Additionally, we will examine the application of the Rule of Law in resolving these disputes.
- Alternate Dispute Resolution
- CSOS or Court – Pick your battleground
- CSOS versus Court Rulings



MR. ABE MASILO

ALTERNATIVE DISPUTE RESOLUTION



1. Case Management Process

- The relief sought must fall within section 39 the CSOS Act.
- Section 42 sets out the grounds for rejecting an application
- Accept the dispute
- Manage exchange of documents between parties
- Refer the matter to conciliation or adjudication.
- Settlement agreement or Adjudication order issued

MR. ABE MASILO



URGENT MATTERS

1. Turnaround time on urgent matters is hours - 48 hours

Section S39 (7) (b) provides for urgent matters

The same case management process is applicable however with shorter turnaround times

Adjudication order issued with enforcement order



CONCILIATIONS

- Conciliator assess the matter
- Invite parties to either virtual or physical hearing
- Assist parties to reach a settlement
- If parties are unable to settle refer the matter to adjudication

PRESENTER NAME





ADJUDICATIONS

- Adjudications are inquisitorial and not adversarial
- Parties may still attempt to settle the dispute
- Matter may be finalized on papers or parties may request a face-to-face hearing.
- An order will be issued

PRESENTER NAME



CSOS OR COURT? PICK YOUR BATTLEGROUND

WHAT DOES CASE LAW SAY?

Manhattan Place Case (urgent application): cases within the CSOS mandate must be referred to CSOS first.

- CSOS has legal standing to deal with urgent matters, and has additional powers compared to courts like making an agreement, *albeit*, the courts have inherent jurisdiction.

Sorrento Case: There may be exceptional circumstances that require direct access to the courts.

- Convenience is not an exceptional circumstance – cases to be assessed individually.

Port O'Call Case – the court heard the case concerning permanent alterations and urgency – and held that the demolition order would not benefit and cause undue delay



CSOS VS COURT RULING

Cases considered involve S57 appeals, two of which were reviewed:

Stone River Management Association NPA v Mashoko (23 August 2024)

- Imposition of late building penalties by the HOA and CSOS adjudication order for the recovery of such penalties on the basis that notice had not been given before penalty – case highlights the importance of a proper understanding of an associations’ governance document (substantive and processes) Court held – adjudicator was wrong to disallow claim for penalties, referred to CSOS to determine the matter afresh.

CSOS VS COURT RULING ... CONT.

Montrose Mews Body Corporate v Moela (7 March 2024)

- Review decision BC aggrieved by CSOS decision to order access to bank statements – member had to make PAIA application - court referred to PMR 26 (2), there is a pre-existing legal right by member/requester
- The case highlights the importance of understanding legal rights and obligations.

CSOS VS COURT RULING ... CONT.

Reddy and Another v Cedar Lakes Homeowners Association NPC (17 May 2024)

- Appeal from a CSOS order – mirrored garage. HOA refusal to approve a garage door and ordering its removal
- CSOS ordered the removal of the garage door. The court held that the adjudicator erred in not considering all the facts/evidence of inconsistent application of rules by HOA. The Adjudicator should have found HOA to have acted unreasonably and consistently.

CSOS VS COURT RULING ... CONT.

Eagle Canyon Golf Estate Homeowners and Another v Groenveld (12 May 2023)

- Review of a CSOS order to accept an application for a dispute resolution for an apology from HOA.
- The court confirmed that S42 provisions are preemptory once the requirements of S39 are not met despite CSOS being motivated by a general approach to reconcile disputes between the scheme and their members.
- Highlights the importance of correct relief.
- Consistency in the application of processes/rules.

CSOS VS COURT RULING ...CONT.

KEY TAKEAWAYS:

- Understand the legal framework – contractual versus statutory. Governance documents to be considered, understood, and applied.
- Follow correct processes and act consistently.
- Present and consider all relevant evidence.
- Be clear regarding the correct relief sought – Section 39
- Avoiding CSOS may give rise to a cost order
- Differences in adjudicatory decisions demonstrate a healthy working legal order

Key Takeaways.....Cont



- Access to affordable justice and efficient administration
- CSOS reduces financial and judiciary burden associated with court processes
- Alleviate pressure in the normal court system
- Requisite skill and knowledge



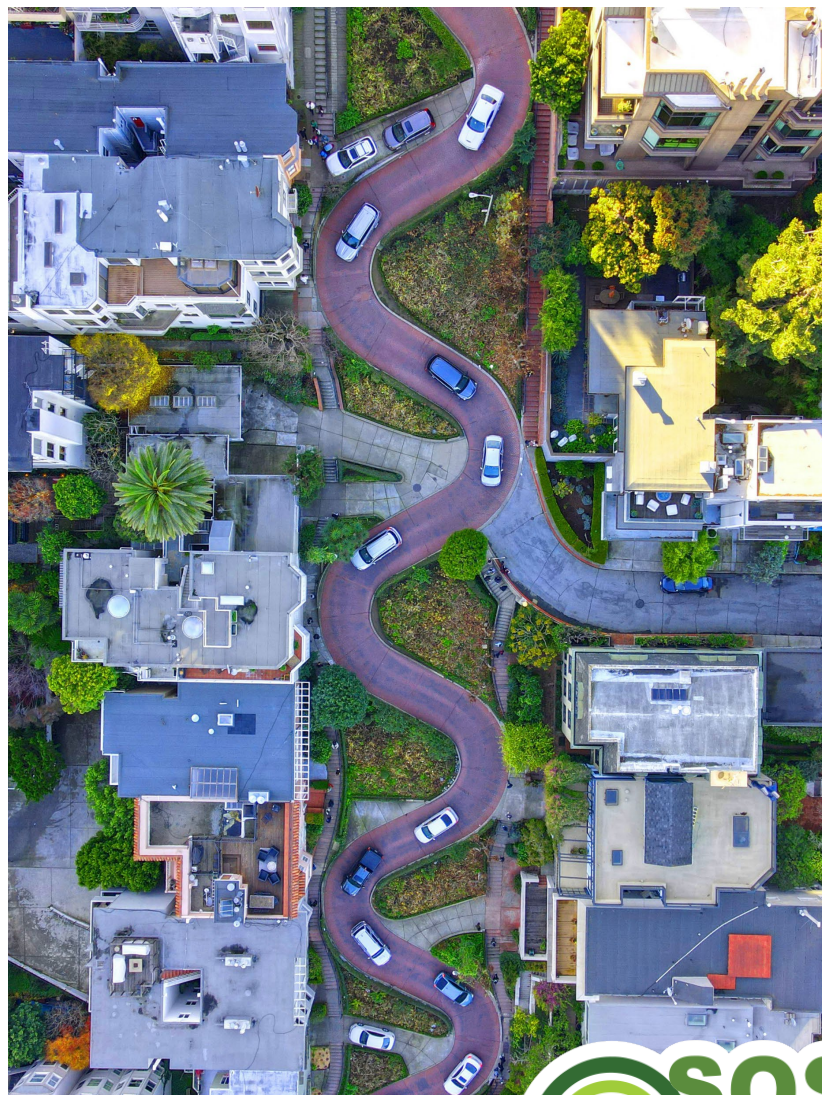
Community Schemes
Ombud Service

Affordable Reliable Justice



MR. ABE MASILO

THANK YOU



MR. ABE MASILO