



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54  
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS970/GP/17

IN THE MATTER BETWEEN

**MARTHA BEZUIDENHOUT**

**(Applicant)**

and

**ANJEPARK BODY CORPORATE**

**(First Respondent)**

**PRO ADMIN**

**(Second Respondent)**

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**ADJUDICATION ORDER**

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**THE PARTIES**

1. The applicant is the registered owner of Unit 60 Anjepark which is situated at 791 Highwood Avenue, Faerie Glen, Pretoria, Gauteng.
2. The first respondent is the Anjepark Body Corporate. Anjepark Body Corporate is a body corporate as contemplated in Section 2 of the Sectional Title Scheme Management Act No.8 of 2011 and to which it would be convenient to refer as “the body corporate”.

3. The second respondent is ProAdmin, who are the body corporate's managing agent, and to which it would be convenient to refer as "the managing agents".

## **INTRODUCTION**

4. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
5. The adjudication hearing took place on 26 June 2018. This application is before me as a result of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
6. On 26 June 2018, all the parties entered an appearance in terms of the Notice of Set Down which was sent out to them on 14 June 2018 as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011. The first respondent was represented by the Chairperson of the Body Corporate, Ms Emma-Jayne Ackermann (Ackermann) and the second respondent was represented by Ms Sandra Swan (Swan), the managing agent from Pro Admin.

## **APPLICABLE PROVISIONS OF THE ACT**

7. The hearing was conducted in terms of section 38 of the CSOS Act No,9 of 2011 which provides that –

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

8. 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”*

9. 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’.*

10. Section 48 provides that –

*“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.*

11. Accordingly, this matter proceeded to conciliation on 13 February 2018 but the dispute could not be resolved between the parties and a certificate of Non Resolution was issued dated 13 February 2018, in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of that Act.

## **SUMMARY OF EVIDENCE**

### **Applicant’s Submissions**

The applicant was sworn in and testified as follows –

12. The applicant stated that on or about February 2016, she bought a unit in Anjepark. The applicant stated that from the first day she took occupation of her unit, she

experienced difficulties in parking her car in her garage due to a pillar that makes it difficult for her to manoeuvre her car into the garage.

13. The applicant stated that as from February 2017 she has written numerous email correspondence to the Trustees of the Body Corporate requesting to remove the middle pillar in order to easily access her garage but her requests have been ignored by the Trustees. The applicant stated that she has engaged the services of engineers and they all indicated that the best solution will be to remove the middle pillar and insert a double motorized garage door.
14. The applicant stated that due to the inaccessibility of her garage she is using the parking in the common property. The applicant stated that she suffered a stroke in December 2015 which has left her with a lifelong disability and the stress of not knowing where to park her car whenever she goes home, is affecting her stress levels.
15. The applicant stated when she bought her unit the selling agent and the previous owner withheld information regarding the difficulty to access the garage.
16. The applicant stated that she has been deprived a meeting with the Trustees in order to be given the opportunity to state her case and submit her request to remove the pillar.
17. The applicant stated that she was verbally informed that her request would require 100% of all the homeowners approval.

#### **APPLICANT'S PRAYERS**

18. The applicant's prayers were listed as follows:
  - An order directing that she is given permission to remove the pillar in the garage in order to access her garage without a difficulty.

## **Respondent's Submissions**

The first and second respondents' representatives were sworn in and testified as follows -

19. Swan stated that the development was built about eighteen (18) years ago and comprises of 72 residential sectional title units. Swan stated that, as a managing agent, she acts on the instruction of the trustees of the body corporate. Swan stated that she is not aware of a meeting request from the applicant that was declined. Swan stated that for a meeting to be called, there must be a 25% of the total quotas of all sections or the holder of mortgage bonds over not less than 25% in number of all the primary sections.
20. Swan stated that the body corporate was registered in 2001 and prior to 2001 there was no body governing or regulating sectional title schemes and body corporates and owners did as they pleased by erecting illegal structures. Swan stated that as soon as the Sectional Titles Schemes Management Act of 2011 (STSMA) and its Regulations were promulgated in October 2016 owners are not allowed to erect illegal structures or make any improvements or alterations to common property without a unanimous resolution taken by the body corporate.
21. Ackermann echoed Swan's submissions and stated that those units with illegal structures have been identified and action is being taken against them. She further stated that those owners with illegal structures have also been advised that any maintenance of the illegal structures is not the responsibility of the body corporate and owners are required to maintain the illegal structures themselves.
22. Ackermann further stated that since the promulgation of the STSMA and its Regulations no owner has been given the permission to erect an illegal structure, improve or make alterations to common property. Ackermann stated that the applicant bought into the scheme after she suffered the stroke and should have acquainted herself with the pros and cons of buying into a sectional title scheme.

23. Ackermann stated that there are other units in the same section as the applicant's that are built exactly like the applicant's and they have not complained about any difficulties to access their parking.
24. Ackermann disputed that the Trustees refused to give the applicant an audience for the applicant to state her case and request for the alteration of her garage.
25. Ackermann submitted the body corporate's conduct rules and brought to the attention of section 21 clauses 21.1, 21.3, 21.7 and 21.8 which read as follows:

*"APPEARANCE FROM OUTSIDE"*

*"The owner or occupier of a section used for residential purposes shall not place or do anything on any part of the common property, including patios and gardens which, in the discretion of the trustees, is aesthetically displeasing or undesirable when viewed from the outside of the section";*

*"Applications for permission in terms of paragraph 21.2 must be submitted to the Trustees in writing and must include full details of work envisaged. No work shall commence before the Trustees have given approval thereof in writing";*

*"To make any changes to the walls of units or on the common property or exclusive use areas shall be approved by a Special Resolution only"; and*

*"Any changes to a unit shall require a unanimous resolution by all owners".*

26. Ackermann stated that the occupant was informed that her request to alter her garage by removing the pillar will require a unanimous resolution. Ackermann further

stated all the owners have a copy of the conduct rules and these are the rules that govern the body corporate.

27. Ackermann stated that the Trustees of the body corporate did attempt to assist the applicant by availing one of the common property's parking bays for her exclusive use and transform it into a disabled parking but the applicant withdrew her request as per "Annexure D" of the bundle of documents.

### **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

28. The Adjudicator only has the version of the applicant and the first respondent.
29. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
30. 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 weighted up as a whole and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
31. Having listened to all the submissions from the parties present at the hearing, and also read all written submissions, emails and photographs I am persuaded that the applicant's request must be tabled at the body corporate's next Annual General Meeting and a resolution must be taken by the members of the body corporate.
32. Rule 29 (1) and (2) of the Regulations made under the STSMA of 2011 provides that –  
  
*"The body corporate may on the authority of a unanimous resolution make alterations or improvements to the common property that is not reasonably necessary".*

*“The body corporate may propose to make alterations or improvements to the common property that are reasonably necessary; provided that no such proposal may be implemented until all members are given at least 30 days written notice ..... and if during this notice period any member in writing to the body corporate requests a general meeting to discuss the proposal, the proposal must not be implemented unless approved, with or without amendment, by a special resolution adopted at a general meeting”.*

33. Annexure 2, Rule 5(1) of the STSMA Regulations provides that –

*“The owner or occupier of a section must not, without the trustee’s written consent, make a change to the external appearance of the section or any exclusive use area allocated to it unless the change is minor and does not detract from the appearance of the section or the common property”.*

34. Having perused the letter from JK Draughting and Fanie Lombaard Engineering Services cc, I am persuaded that the applicant must present her case to the body corporate at its next AGM and the body corporate must apply its mind and take a resolution. The Regulations, made under the STSMA, as outlined in paragraph 32 and 33 of this order, grants the powers to the body corporate and the trustees and such decisions lie with the body corporate and the trustees.

### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

35. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

## **ADJUDICATION ORDER**

Accordingly, the following order is made –

36. That the applicants request to remove the garage pillar must be tabled at the next body corporate's AGM;
37. That a resolution must be taken by the body corporate on whether permission to remove the garage pillar is granted to the applicant or not;
38. That the decision and or resolution taken by the body corporate shall be final.

## **RIGHT OF APPEAL**

The parties' attention is drawn to –

39. Section 57(1) of the CSOS Act of 2011 refers –  
*“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”*

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**DOMBOLO MAKGOMO MASILELA**

**ADJUDICATOR**