



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

Case Number: CSOS1113/GP/17

IN THE MATTER BETWEEN

**RUI DOS SANTOS**

**(Applicant)**

and

**DIRECTORS OF WIERDA GLEN ESTATES HOMEOWNERS ASSOCIATION**

**(Respondent)**

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**ADJUDICATION ORDER**

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**INTRODUCTION**

1. The applicant is the registered owner of No.53 Woodpecker, Wierada Glen Estate, Stand 1231 which is situated in Rooihuiskraal North, Centurion, Gauteng.
2. The respondents are the Directors of the Wierda Glen Estate Home Owners Association. The Wierda Glen Estate Home Owners Association is a community scheme as contemplated in the CSOS Act, 2011. The definition of “community

scheme” means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings.

3. 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.
4. The adjudication hearing took place on 28 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.
5. On 28 June 2018, all the parties entered an appearance. The respondent was represented by the Chairman of the HOA Mr Andries Dieppenaar and Mr Hannes van Rensburg. This was in terms of the Notice of Set Down which was sent out to the parties on 14 June 2018 as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

#### **ISSUES AND POWERS**

6. 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”.*

7. 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”*

8. 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’.*
9. 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”.*
10. Accordingly, this matter was conciliated upon on 30 January 2018 and the dispute remained not resolved. Therefore the Ombud issued a certificate of Non Resolution dated 30 January in terms of Section 48(4) of the CSOS Act No.9 of 2011 and 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 –

11. The applicant stated that Wierda Glen Estate is a development that comprises of 748 independent homes and the estate is managed by a home owners association.
12. The applicant stated that he has been an owner of his house in the estate for the past eighteen (18) years and in all the years as a resident he has not misplaced or lost his access card. The applicant stated that he was one of the residents that voted for the

new biometric system unbeknown to him that this system would not accommodate his needs. The applicant stated that the system is not able to accept his fingerprints and therefore he uses an access card to access the estate.

13. The applicant stated that the problem with the access card is that only one access card was issued to him and this poses a problem because he has to make sure that he has the card in the vehicle he is using at any given day.
14. The applicant stated that the frustration is that when he gets to gate without the access card he is not allowed to enter or leave the estate. The applicant said he believes this is a huge inconvenience because it restricts his movements in and out of his place of residence.
15. The applicant stated that his situation cannot be compared to those residents whose fingerprints are readable by the system because they may leave in any vehicle without being inconvenienced.
16. The applicant stated that the HOA is refusing to sell him an access card which is in contravention with the HOA's Rule 2.4.1 which states that –  
  
*“The following access control systems are in use and all residents shall abide by the rules regulating the use of these systems: An electronic card system that allows vehicles and motorbikes access to/from the Estate.....”*
17. The applicant stated that he wants to purchase a card for each of his three vehicles.

**APPLICANT'S PRAYERS**

18. The applicant's prayers were listed as follows:
  - An order directing the HOA to allow the applicant to purchase two more access cards for his other two cars.

**Respondent's Submissions**

The respondent was sworn in and testified as follows –

19. The respondent represented by Dieppenaar stated that due to the challenges of the access control the owners took a resolution to convert to the biometrics system. Dieppenaar stated that the Memorandum of Incorporation was adopted and the clause 2.4.1 referred to by the applicant was redundant and the applicant is aware that the Articles of Association were replaced by the MOI.
20. Dieppenaar further submitted that the new system can also read bar coded Identity Documents e.g. Drivers Licence, which can be used by a resident to access the estate.
21. Dieppenaar stated that one card is sufficient for the applicant and if he does not have the access card with him, due to forgetting it in one of his cars, the applicant can use his drivers license to access the estate.

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

22. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witness 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 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.
24. Having listened to all the submissions from the parties and also read all the written submissions and documents submitted to me, I am persuaded that this application is frivolous, vexatious, misconceived and without substance.

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

25. 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 –

26. Section 53 (1)(a) of the CSOS Act No.9 of 2011 provides that –

*“The adjudicator may make an order dismissing the application if, after investigation the adjudicator considers that the application is frivolous, vexatious, misconceived or without substance.*

27. This application is dismissed.

28. No order as to costs.

### **RIGHT OF APPEAL**

The parties’ attention is drawn to –

29. 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**