



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

Case Number: CSOS575/GP/17

IN THE MATTER BETWEEN

DAVID IZUNA OKAFOR

(Applicant)

and

ELYON BODY CORPORATE

(Respondent)

ADJUDICATION ORDER

PARTIES

1. The applicant David Izuna Okafor is the registered owner of Unit 32 Elyon which is situated at 21 Scrooby Street, Willowbrooke, Ruimsig, Rooderpoort, Gauteng.
2. The Respondent is Elyon Body Corporate. Elyon 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 Body Corporate is represented by Simamkele Makaula who is the Trustee of the Elyon Body Corporate and Dianne Hill who is the managing agent from Earthzone Properties and to which it would be convenient to refer as “the managing agent”.
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 first took place, on an urgent basis, on 8 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 8 June 2018, both parties entered an appearance in terms of the Notice of Set Down which was sent out to them on 1 March 2018 as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011. An interim order was issued on 8 June 2018 and the matter was subsequently postponed to 26 June 2018.

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. This matter sat on an urgent basis because of the disconnection of electricity. Therefore, the Ombud took the decision to refer 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 sometime in 2013 he fell into arrears with his monthly levies and the body corporate took the matter to the magistrate court where a settlement was entered into between the parties for the applicant to pay off his outstanding arrears in instalments of R5000.00 (five thousand rand) per month.

13. The applicant stated that, subsequent to the magistrate court order, he realised that he could not keep up with the R5000.00 instalments and engaged Angor Properties, who were the managing agents, at the time. The applicant stated that a new arrangement was entered into on or about September 2013 whereby the parties agreed that the applicant would pay the outstanding levies in instalments of R3000.00 (three thousand rand) per month. The applicant submitted the email, dated 17 September 2013, whereby the parties agreed to the instalment of R3000.00 per month over and above his current levy statement.
14. The applicant stated that he has been honouring his payments from September 2013 to date. The applicant stated that when the new Trustees took office they overlooked the arrangement already entered into with the previous Trustees and demanded that the applicant pays the outstanding levies in full.
15. The applicant stated that this led to the respondent interrupting the electricity supply to his unit and refusal to effect maintenance to his unit.

APPLICANT'S PRAYERS

16. The applicant's prayers were listed as follows:
 - An order directing that the respondent agrees to an arrangement for settling the arrear levies.

 - An order directing the respondent to effect maintenance to the applicant's unit.

Respondent's Submissions

The respondent was sworn in and testified as follows –

17. The respondent was represented by Mr Neo Modisakeng, Ms Sima Makaula and the representative from the managing agent, Ms Dianne Hill.

18. The respondent stated that when the new trustees took office a resolution was taken that all owners must settle their outstanding levies because the body corporate was in dire need for finances. The respondent stated that all arrangements with the previous trustees were cancelled.
19. The respondent stated that the applicant is in arrears with his levy account in the amount of R24425.44 (twenty-four thousand four hundred and twenty five rand and forty four cents. The respondent stated that this amount includes a DMS and legal fees in the amount of R9000.00 (nine thousand rand).
20. The respondent further submitted that the body corporate, at its AGM, raised a special levy in order to paint the complex. The respondent stated that the special levy was collected over a period of twelve (12) months.
21. The respondent stated that it was further resolved that those owners who are in arrears with their levy account will not have their units painted or maintained.

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 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 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. I have listened to all the applicant's submissions and read all written submissions and evidence presented by way of emails and levy statements. It is evident that the applicant is in arrears with his levy account and it is evident that the applicant entered

into an arrangement with the previous trustees and has kept to this arrangement. It is also evident that though there was an arrangement in place, the respondent has been charging the applicant DMS charges and legal costs. Having deducted the DMS charges and legal costs in the amount of R9000.00 there was a balance of R15425.44 (fifteen thousand four hundred and twenty-five rand and forty four cents).

25. The applicant undertook to liquidate the amount of R15425.44 in three (3) equal instalments over and above his current levy statement commencing 7 July 2018 until the full amount of R15425.44 is liquidated.
26. Section 3(1) (a)(i) and (b) of the Sectional Titles Management Act No.8, 2011 (the Act) which provides that -

“A body corporate must perform the functions entrusted to it by or under this Act or the rules, and such functions include to establish and maintain an administrative fund which is reasonably sufficient to cover the estimated annual operating costs for the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs; for the payment of rates and taxes and other local municipality charges for the supply of electricity, water and other services to the building or land; for the payment of any insurance premiums relating to the building or land and for the discharge of any duty or fulfilment of any obligation of the body corporate”

(b) to establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property but not less than such amounts as may be prescribed by the Minister”.

27. Accordingly, the applicant must pay his monthly levy in order to ensure that the body corporate fulfils its fiduciary responsibilities as prescribed by the Act. The applicant is a member of a scheme and as a collective or a community scheme non payment of the levy is a burden to other owners or members of the body corporate.

POWERS AND JURISDICTION OF THE ADJUDICATOR

28. 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 –

29. The applicant must pay to the respondent the outstanding levy amount in the amount of R15425.44 (fifteen thousand four hundred and twenty-five rand and forty four cents) in three equal instalments of R5141.81 (five thousand one hundred and forty one rand and eighty one cents) commencing 7 July 2018 until the full outstanding amount is liquidated.
30. The applicant shall pay the arrangement of R5141.81 over and above his current levy as stipulated in his monthly levy statement.
31. If the applicant does not pay any of the instalments as stipulated in paragraph 29 of this order, then full outstanding amount shall become due and payable immediately and the applicant must also pay to the respondent -

31.1 Interest of 10.25% per annum on the outstanding amount calculated from the date it becomes due and payable to the date of payment; and

31.2 Costs on the Magistrate's Court scale calculated from the date the outstanding amount becomes due and payable.

32. The respondent must repair the burst sewer pipe at the applicant's unit by no later than 31 July 2018.

33. The respondent must paint the applicant's unit by no later than 30 November 2018.

Sections 56 (1) of the CSOS Act, 2011

34. The parties' attention is drawn to-

Section 56 (1) of the Act provides that-

'If an adjudicator's order is for the payment of an amount of money or any other relief which is within the jurisdiction of a magistrate's court, the order must be enforced as if it were a judgement of such Court and a clerk of such Court must, on lodgement of a copy of the order, register it as order in such Court '.

RIGHT OF APPEAL

The parties' attention is drawn to –

35. 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"

DOMBOLO MAKGOMO MASILELA
ADJUDICATOR