



**ADJUDICATION ORDER IN TERMS OF SECTIONS 53 AND 54 OF THE
COMMUNITY SCHEMES OMBUD SERVICE ACT 9/2011**

Reference Number: CSOS 435/GP/17

In the matter between:

PAMELA JEAN PROWSE

Applicant

And

SILVERBERG BODY CORPORATE

Respondent

ADJUDICATION ORDER

THE PARTIES

- 1 The Applicant is an owner of Unit 26, Silverberg Flats, Silverton, Pretoria.
- 2 The Respondent is the Silverberg Body Corporate. The complex is managed by Trafalgar ("the Managing Agent").

PROCESS FOLLOWED

- 3 The Applicant lodged her Application Form for dispute resolution dated 28 April 2017 with the Community Schemes Ombud Service ("**CSOS**") in terms of Section 38 of the CSOS Act ("**the Act**")¹ in the prescribed manner.

¹ The Community Schemes Ombud Service Act No. 9 of 2011

- 4 The relief sought in the Application Form falls within the ambit of relief contemplated in Section 39 of the Act.
- 5 On 22 November 2017 the Applicant's Application Form was forwarded to the Respondent, with a request to the Respondent to make its submissions to CSOS within 7 (seven) days. On 8 December 2017, the Respondent filed its submissions.
- 6 On 22 December 2017, the Ombud issued a certificate of non-resolution and referred the matter to Adjudication in terms of Section 48 of the Act.
- 7 The notice of set down was duly issued and served on the Applicant and the Respondent, and the fee prescribed in terms of Section 49 read with Regulation 3(2) was duly paid by the Applicant.
- 8 The matter was initially setdown for adjudication for 7 March 2018 at 12h00. The matter was again setdown for adjudication for 14 March at 14h00.
- 9 On 14 March 2018, the matter was called up to be proceeded with at 14h00. The Respondent was represented by Robert Greyling, a Trustee and Michelle van der Walt of the Managing Agent.

RELIEF SOUGHT

- 10 In her application form for dispute resolution dated 28 April 2017, the Applicant prays for relief in the following terms:

"Please could the padlock be taken off the locked gate, as those who like to go up on the hill, like I used to sometimes 3 times a day & have the keys to locked gates but caretaker is the only one to have the key to padlock."

THE APPLICANT'S CASE

- 11 In her application form, the Applicant states that the dispute is as described in an attorney's letter dated 8 June 2015. This letter was however not attached to the form.

12 The Applicant states further as follows on the application form:

"Spoke to the Caretaker at the time & phoned Chairman Robert Greyling and the rest of the Trustees on January 2015. The chairman and Trustees knew nothing about the gate in question having a padlock on top of a locked gate. Gerda Grabe could not give a reason either. Asked again and was told she would not discuss it with me."

13 The Applicant submitted a petition signed in the period 19 March 2015 to 3 June 2015 by 24 (twenty-four) residents.

13.1 Two residents signed in respect of Unit 202 and 403, and three residents signed in respect of Unit 302.

13.2 The caption of the petition reads as follows:

"We request that the nearest gate to the lapa be open for the use of all residents."

14 On 12 September 2015, the Applicant wrote a letter to the Caretaker stating that:

"Dear Gerda

Having seen how Elias (68 years of age) and Maria (60 years of age) and Sylvester struggle to cope with climbing over rocks, or having to take the long way, taking extra time to cope with their work instead of being able to make use of the gate directly in front of my car.

I am willing to declare that no legal action will be taken against anyone for damages to my car while they are using the gate, then perhaps you could find it in your heart to open the gate for them to use, not depriving them access to their tea room and store room."

RESPONDENT'S CASE

15 On 8 December 2017, the Managing Agent addressed a letter to CSOS wherein they advise that this matter was discussed at two AGM's and the owners passed a resolution not to remove the padlock from the gate. The Respondent provided a copy of the Minutes of the AGM of 30 July 2016.

16 The Minutes read as follows in connection with this issue:

"a) **Gates**

Ms Prowse again raised the issue of the gates giving access to the koppie and the lapa and the locked gate, as per a decision taken in 2015. The decision to keep the two gates in front of the motor ports permanently locked was again confirmed with a majority vote.

As stated in the Chairperson's report it was already decided that in the coming year attention will be given to the improvement of the steps leading up to the children's play area and the lapa. It was also decided to keep the old wood from the carports in order to repurpose it for railings next to the mentioned steps. The lighting along the pathway to the Lapa will also be improved."

17 The Respondent provided a copy of the minutes of the AGM of 29 August 2015. The following is minuted:

"14. GATES PROVIDING ACCESS TO THE KOPPIE AND LAPA

The meeting was informed that Mrs Prowse raised the issue of the two gates in front of the southern facing carport, with specific reference to the one on the eastern side of Elias' room with the Trustees. The problem is that last December Ms Prowse found out that the gate was locked with a chain and padlock. However this was done earlier in 2014 after the Caretaker found out that the gate was left open after residents went to the lapa for a braai. Due to the security risk this posed, especially because the gate cannot be seen from the higher floor of the building the Caretaker decided to lock that gate permanently as there were enough other gates to get access to the Koppie and the Lapa.

The meeting was also informed that some of the owners whose cars are parked close to that gate raised concern about people using that gate moving past their cars with all their braai equipment and bags, and the risk of their cars being damaged. In view of both these issues the Trustees decided to keep that gate shut to also protect the property of owners.

The meeting was reminded that it was the duty of the Trustees to ensure the safety of all residents and that of their property.

The meeting was informed that Mrs Prowse had a lawyer write a letter in this regard and the reply was that this matter would be brought to the AGM so that the owners can make a final decision in this regard.

The solution proposed by the Trustees is that both the gates in front of the motors be locked permanently because there are still two other gates that will provide access to the koppie and the Lapa.

The meeting resolved, by a majority vote, that the two gates in front of the motors will be kept locked permanently and that the residents at all times that must have access through the other two gates.

It was also resolved that the stairs at the eastern gate be made more accessible and improve the lighting on the path."

FINDINGS

- 18 The Applicant's complaint arises from a decision taken at an AGM in 2015 (and confirmed at the 2016 AGM) to keep the two middle gates leading to the koppie and the lapa area permanently shut.
- 19 All residents of the Scheme had keys to these gates since the Scheme was established in 2010 and they all had a responsibility to lock the gates behind themselves at all times. Both the documentary and *viva voce* evidence given was to the effect that the Caretaker, one Gerda, decided to lock the gates by inserting a padlock as she found that one of these gates had been

left unlocked overnight on one occasion. The AGM took a decision to keep the two gates locked permanently in the interests of safety.

- 20 Prior to the referral of the matter to the AGM, the Applicant discovered that the gates were locked and approached the Trustees and Gerda requesting access to the koppie through these gates because they are the only gates which provide easy access thereto. A pathway with steps and railing was created leading from one of these gates because the koppie lies in an uneven and rocky terrain which makes access thereto from the other two gates difficult, if not impossible, to the elderly.
- 21 Such difficulties seem to have been acknowledged by the two aforesaid AGM's as each decision was taken (and confirmed) with an undertaking to effect improvements to the terrain leading from the two alternative gates to be user-friendly and provide easy access.
- 22 Had such improvements been done in 2015, or even 2016, the Applicant would have had no cause to complain. The Body Corporate's implementation of one half of the resolution (the locking of the gates), leaving out the second half thereof (improvements to the terrain) has resulted in the Applicant, and the elderly residing in the Scheme, being deprived of use of the common property.
- 23 Having heard both parties at the hearing of this matter, it was agreed that Mr Robert Greyling will approach Ms Lizelle van der Walt with a view to secure her agreement to swop parking bays with the Applicant so that the middle gate closest to her parking bay can be reopened.
- 24 Ms van der Walt is one of the persons referred to in the minutes of the AGM of 2015, quoted at paragraph 17 above, as having raised a concern that her car could be damaged by people heading to the koppie with braai equipment using one of the two now shut middle gates closest to her car.
- 25 The agreement was that the said gate would then be opened pending the finalisation of the terrain improvement works.
- 26 I have not received any feedback from Mr Greyling since the hearing, this despite having sent him a reminder recently, hence this order.

I THEREFORE ORDER AS FOLLOWS:

- 1 Access to the lapa area through the two middle gates should be reinstated to what it was prior to the AGM of 2015 until the suitable works on the terrain leading from one of the two side gates have been finalized;
- 2 Each party is to bear its own costs in relation to these adjudication proceedings; and
- 3 This order shall take effect immediately on the date on which it is served on the parties by CSOS electronically.

KINDLY TAKE NOTE that any party who is dissatisfied with this order has a right to lodge an Appeal on a question of law with the High Court within 30 (thirty) days after the date of delivery of this order.

K MABASO
ADJUDICATOR
03 August 2018