



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

Case Number: CSOS 535/GP/18

IN THE MATTER BETWEEN

**SONNEVELD ATLANTIS CITY HOME OWNERS ASSOCIATION NPC
(Applicant)**

and

**MZIKAYISE MASHABA
(Respondent)**

ADJUDICATION ORDER

EXECUTIVE SUMMARY

In this dispute the applicant seeks an order concerning financial issues for payment of arrear levies and other charges under the provisions of section 39 (1) (e) of the Community Schemes Ombud Service Act, 2011, which empowers an applicant to seek an order for the payment or re-payment of a contribution or any other amount.

The respondent failed to attend both the conciliation and adjudication hearings despite having been given notice to do so. The adjudication therefore proceeded in the respondent's absence. The

applicant produced evidence, which was uncontroverted, to support its claim that the respondent is currently indebted to it for R13 227.24 concerning arrear levies and other charges.

An adjudication order was therefore made ordering the respondent to pay the applicant R13 227.24 by not later than 1 October 2018 together with interest thereon calculated at the rate of 2% per month from 1 October 2018 to the date of payment and costs on the Magistrate's Court scale calculated from 1 October 2018.

INTRODUCTION

Details of the parties and representation

1. The applicant is Sonneveld Atlantis City Home Owners Association NPC (the applicant), which is duly incorporated as a non-profit company in accordance with the company laws of the Republic of South Africa.
2. The applicant was represented at the adjudication by Gregory Scott (Scott), who is the sole member of the applicant's duly authorised managing agent, Selection Estates cc.
3. The respondent is Mzikayise Mashaba, an adult male, who is the registered owner of Erf 390 Sonneveld Atlantis City, which is situated at 3 Titicaca Road, Sonneveld Atlantis City, Sonneveld Extension 12, Brakpan, Ekurhuleni, Gauteng.
4. The respondent did not attend the adjudication and was not represented at the adjudication.

Details of Hearing

5. The adjudication was held on 20 September 2018 in the absence of the respondent under the auspices of the Community Schemes Ombud Service (the CSOS) at its Johannesburg office.

RELEVANT STATUTORY PROVISIONS AND BACKGROUND TO THE ADJUDICATION

Statutory provisions

6. Section 38 of the Community Schemes Ombud Service Act, 2011 (the Act) deals with

applications. More specifically, section 38 (1) provides that-

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

7. Section 45 of the Act deals with the amendment or withdrawal of applications. More specifically, section 45 (1) deals with an ombud’s discretionary powers concerning amendments to applications and 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 of the Act deals with conciliations. It 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 of the Act deals with the referral of a dispute to adjudication. More specifically, section 48 (1) 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”.

Background to the adjudication

10. The dispute was originally set down for conciliation on 22 August 2018 in terms of section 47 of the Act. The applicant attended the conciliation but the respondent did not. On or about 22 August 2018 the office of the Gauteng Provincial Ombud (the ombud) therefore issued a certificate of non-resolution and referral to adjudication in terms of section 48 (4) of the Act. The ombud also gave the applicant and the respondent timeous notice that the adjudication had been set down for hearing at 13:00 on 20 September 2018.

APPLICATION TYPE

11. This is an application made in terms of section 38 (1) of the Act for payment of a contribution or any other amount in terms of section 39 (1) (e) of the Act.

POWERS AND JURISDICTION OF THE ADJUDICATOR

12. I am empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Act. I am specifically empowered by section 54 (3) of the Act to make an order that may contain such ancillary and ensuing provisions as I consider necessary or appropriate. The Act enables residents of community schemes as well as home owners' associations and sectional title schemes to lodge disputes with the CSOS, which is a statutory dispute resolution service, instead of having their disputes determined by a private arbitrator or the courts. The purpose of this order is to bring finality to the dispute that the applicant lodged with the CSOS against the respondent.

SUMMARY OF EVIDENCE

Applicant

13. Scott stated that the respondent is the registered owner of Erf 390 Sonneveld Atlantis City, which is situated at 3 Titicaca Road, Sonneveld Atlantis City, Sonneveld Extension 12, Brakpan, Ekurhuleni, Gauteng. According to Scott, as at 19 September 2018 the respondent's levy account is in arrears in the amount of R13 227.24. The levy account is made up of arrear home owners association levies and CSOS levies, and interest of 2% per month on the outstanding balance. The current monthly levy is R550.00. The respondent last paid his monthly levy account in full in April 2017 and has not made a payment since then.
14. Scott added that before making the April 2017 payment the respondent had made sporadic payments. The applicant sends the respondent monthly levy invoices to the respondent's chosen email address.
15. Scott also produced a bundle of documents, which included the respondent's history card and levy statement for September 2018, and the applicant's accounting system notes to support the applicant's claim that the respondent was indebted to the applicant for R13 227.24.

APPLICANT'S PRAYER

16. Scott requests an order that the respondent pay the applicant the outstanding amount of R13 227.24 together with interest thereon of 2% per month.

EVALUATION OF THE EVIDENCE

The general rule

17. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
18. 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 weighed up and determined whether the applicant's version is probable. It involves findings of fact based on assessing the credibility of witnesses and the probabilities.

Analysis

19. I have considered all the evidence placed before me. The respondent is the author of his own demise. The respondent failed to attend both the conciliation and adjudication hearings and I therefore only have the applicant's version before me. Scott came across as a good witness. I have no reason to doubt his version of events, which shows that the respondent has a history of making sporadic payments and is currently indebted to the applicant for R13 227.24. In my view, the respondent's conduct is made worse by not having made a single payment since May 2017.
20. Consequently, I am satisfied that it would be just and equitable to order the respondent to pay the applicant the amount of R13 227.24.

ADJUDICATION ORDER

21. Accordingly, I order that the respondent must pay the applicant-
 - 21.1. The amount of R13 227.24 by not later than 1 October 2018;

- 21.2. Interest on the amount of R13 227.24 calculated at the rate of 2% per month from 1 October 2018 to the date of payment; and
- 21.3. Costs on the Magistrate's Court scale calculated from 1 October 2018.

ENFORCEMENT OF ORDERS

22. The parties' attention is drawn to Section 56 of the Act, which deals with the enforcement of orders. More specifically-

- 22.1. Section 56 (1) 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 a Court must, on lodgement of a copy of the order, register it as an order in such Court".

and

- 22.2. Section 56 (2) provides that-

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

RIGHT OF APPEAL

23. The parties' attention is also drawn to section 57(1) of the Act, which deals with the right of appeal. It provides that-

"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".

DATED AT JOHANNESBURG ON 21 SEPTEMBER 2018

A handwritten signature in black ink, appearing to read 'Trevor Bailey', enclosed within a hand-drawn oval shape.

TREVOR BAILEY
ADJUDICATOR

SonneveldHOA.Mashaba.535.18