



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

Reference Number: CSOS 952/GP/17

In the matter between:

**TYGERBERG TASK COMMITTEE**

Applicant

And

**ADMINISTRATOR OF THE TYGERBERG BODY CORPORATE**

Respondent

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

This is an application by a few members of the Scheme for an Order against an administrator on transparency in dealing with financial issues and proper administration of the Scheme.

The Administrator's appointment has however lapsed and a Board of Trustees has already been appointed to perform the duties of the Body Corporate.

**THE PARTIES**

- 1 The Applicant is the Tygerberg Task Committee.
- 2 The Respondent is Jan van Den Bos, the Administrator of the Tygerberg Body Corporate situate at Berea, Johannesburg.

## PROCESS FOLLOWED

- 3 The Applicant lodged its Application Form for dispute resolution dated 11 July 2017 with the Community Schemes Ombud Service ("CSOS") in terms of Section 38 of the CSOS Act ("the Act")<sup>1</sup> in the prescribed manner.
- 4 The relief sought in the Application Form falls within the ambit of relief contemplated in Section 39 of the Act.
- 5 On 12 December 2017 the Applicant's Application Form was forwarded to the Respondent, with a request to the Respondent to make its submissions to CSOS by 22 December 2017. The date on which the Respondent had to file its submissions was extended to 15 January 2018. The Respondent filed its submissions on 18 January 2018.
- 6 The Ombud referred the matter to Conciliation in terms of Section 47 of the Act and same was set down for 20 February 2018.
- 7 The Conciliation failed and on 20 February 2018, the Ombud referred the matter to Adjudication in terms of Section 48 of the Act.
- 8 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.
- 9 The matter was then duly setdown for adjudication for 4 June 2018 at 12h00 and all parties were duly served with a notice of setdown.
- 10 On 14 March 2018, the matter was called up to be proceeded with at 12h00. The Task Committee was represented by Messrs Makhala and Kale. The Administrator appeared in person.

## ON APPOINTMENT OF TASK TEAM

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<sup>1</sup> The Community Schemes Ombud Service Act No. 9 of 2011

11 The Applicant is the Task Committee alleged to have been "elected" by the residents of the Scheme. The Task Committee is constituted by:

11.1 Mushoni Makhala;

11.2 Henry Kale;

11.3 David Rabotho; and

11.4 Isaac Phiri.

12 No minutes of the resident's meeting at which the Task Team was elected have been supplied. The mandate of the Task Team remains unverified.

13 The situation is exacerbated by an email dated 11 December 2017 from one Nonhlanhla Radebe who stated as follows:

*"How may body corporates do we have? Is this the same Body Corporate that van der Bos quotes in his correspondence? This task team, isn't it the task team that van der Bos mandated. Can someone please clarify for me."*

14 The Administrator stated as follows in his Section 43 submission:

*"The self-appointed task team lead me to believe that they would assist in helping enforce conduct rules"*

*"To sum up, the so-called task committee appointed themselves. No formal meeting of the owners was called for the election of such team."*

15 In his letter dated 6 May 2015 addressed to the Owners and Residents, the Administrator states the following:

*"In order to move to the next phase of improving the building and the owners investment, I decided to appoint a few willing owners to assist me in bringing Tygerberg to a state where owners can again be proud of their investment.*

*The following owners have volunteered their services to actively engage the owners and be the voice of the owners in order to address issues such as non-*

*payment of levies, overcrowding, security, general building maintenance, health & safety, finances and reporting of incidents.*

*The Task Team members are as follows :*

*Mr MG Makhala*

*Ms Siranda Mbebe*

*Mr Joseph Moloi*

*Mr Isaac Radebe*

*Mr Tumelo Lerole*

*I have welcomed the assistance of these concerned owners and request all owners and residents to acknowledge their appointment and give them your support." [sic]*

- 16 From the foregoing, it is clear that the Task Committee:
- 16.1 is not the Committee which was appointed by the Administrator and notified to the owners and residents of the Scheme; and
- 16.2 has no mandate to act on behalf of the owners and residents of the Scheme.
- 17 Section 38(1) of the Act allows any person who is affected materially by a dispute to bring an application to CSOS for resolution.
- 18 I therefore regard this application as one lodged by the respective members of the Task Committee in their own capacity and not as representatives of all owners and residents.

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

- 19 In its Application Form for dispute resolution dated 11 July 2017, the Applicant prays for relief in the following terms:

*"We need management to be transparent with the affairs of Tygerberg."*

- "1. Electricity: We requesting Administrator to re-route electricity back to City Power.*

2. *We requested the Administrator to stop selling the units for the Body Corporate and the deceased without the Body Corporate's concern, for example, the Binda's flat and the Body Corp 501 unit.*
3. *Our swimming pool is hazardous to the residents of the building.*
4. *The building's having crisis of water supply.*
5. *The hiring of Muzanzi Progressive Movement person to be the building manager of Tygerberg.*
6. *Tender of appointing incompetence company in our building (security and parking bay).*
7. *There is no law and order (house rules)."*

#### **THE APPLICANT'S CASE**

20 In its Application Form, the Applicant describes the dispute as follows:

*"It is high time now to have owners who can be the trustees of the building, the administrator now is running for 7 years of which way out according to the sectional scheme.*

*We don't know the books of the building of which the body corporate is not satisfied by this situation, we need transparency on our financial affairs."*

21 In her email of 11 December 2017, Nonhlanhla Radebe states the following:

*"In any case, the response to the Estate Agency Board is ready. Lawyers will have to look through it and edit it accordingly to fit in with a legal response.*

*In addition, I don't see what mediation is needed with van der Bos. He needs to be fired, it's simple as that. These are the following reasons why we do not mediation:*

- *The lifts are not working (in a flat with Elderly and Disabled People that is redundant). He took a Tygerberg lift, which was paid off by people's special levies and installed the lift in another one his buildings. There's a case number to prove this!*

- *That painting barge has been hanging on the side of the building without these people painting and it's charging daily.*
- *The buzzers are still not working.*
- *People's flats are being taken/stolen. I have proof for 511, 2107 & 509 ... there are many others ...*
- *The security guards are not registered with SIRA ... They are unprofessional and they do not patrol the floors.*
- *Sometimes rubbish is piled up at the goods lifts. - - The windows are broken and have not been replaced.*
- *The fire extinguishers are not working, therefore Tygerberg could burn down at any time and lots of lives would be lost.*

*I have taken pictures to prove all of this. My point is, we do not need to mediate with this administrator. He needs to be fired.*

*We do not need an administrator. We need a board of Trustees made up of owners, and we need a property manager that reports to the board of Trustees." [sic]*

## **RESPONDENT'S CASE**

- 22 In his Section 43 submissions, the Respondent states the following in response to each issue raised in the Application Form:

### **"BACKGROUND**

1. *This is a building of 227 sectional title units. There is a long history of disputes between various factions in the building. Disagreements between the owners about management of the body corporate dates back to the late 1990s.*
2. *As a result of this friction fighting and lack of competent trustees to handle the building's finances in a responsible manner, the building got itself into financial troubles. It resulted to have the body corporate put under administration, in the early 2000's. The first administrator was one Lesley Ingelstone of Adprop and after*

*continuous disagreements between some owners and the administrator, he was replaced as Administrator by Attorney Dube. This was also a disaster.*

3. *Application was made for his removal and eventually I was appointed in 2011. Upon my appointment I found that Johannesburg Municipality had discontinued the electricity and water services to the building. None of the lifts were working.*
4. *My first priority was to get all these services operating again. As a result of mismanagement I was given very few financial records and had to almost start from scratch. Ingelstone and Dube failed to keep proper accounting records. Dube also failed to hand over his documents and financial reports relating to the building notwithstanding an Order of Court to do so.*
5. *Since my appointment I have introduced systems and today everything is working. The financial records are up-to-date and audited every year. I have always informed owners that they are entitled to come and inspect all the records of the body corporate as specified in the Sectional Titles Act. A body corporate is no secret society. Very few owners have made use of this invitation.*
6. *As set out above the Body Corporate consists of a building on 22 floors and 227 units. To handle a financial budget of between R3-4 million, a staff complement of 17 employees, maintenance of the building, maintenance of all electrical and water installations, enforcement of conduct rules requires persons with practical management experience, legal knowledge, administrative skills, etc. Such skills have been absent amongst the owners and for that reason an administrator was appointed.*
7. *I will need more details of what issues this refers to.*
8. *As mentioned above, all transactions are transparent and can be inspected at the offices of the Managing Agent.*
  - 8.1 *Despite unlawful conduct of a number of owners pre-paid electrical meters were installed in compliance with Johannesburg Municipal policy. As the electricity account was not fully paid up, the council would not consider installing their pre-paid meters, and also that exercise was much more expensive than the ones I had installed.*
  - 8.2 *I was not involved in the sale of any of the late Mrs Binde's units. This had nothing to do with me in my personal or professional capacity. The executor*

*of her deceased estate sold the units to the purchaser/s. The body corporate does not run a rental business and because of the shortage of funds door no. 501 was sold for R191 000.00. If the unit owners had taken the trouble of coming to inspect the records they would have seen the transaction.*

*8.3 I have sent a questionnaire to all owners requesting them to advise me, whether they wanted the swimming pool repaired, or filled in and converted to a play area. Not one owner came back with a reply or response. I will have to make the decision myself.*

*8.4 Water pressure is low because of the supply of water from council. The problem was sorted by installing extra storage tanks. There is no current water problem.*

*8.5 There is no proof that the previous building manager belonged to any such organisation.*

*8.6 The security company currently employed is not perfect. We are continuously upgrading their standards and replacing them with better qualified ones. For instance, this month three guards were replaced.*

*8.7 The self-appointed task team lead me to believe that they would assist in helping to enforce conduct rules including speaking to persons found throwing rubbish out of windows, dropping refuse in passages, help controlling lift usage and preventing sabotage to body corporate property. They failed to do so, but kept on asking to give MR MAKHALA the security job of the building, alternatively appointing him as building manager.*

*8.8 To sum up, the so-called task committee appointed themselves. No formal meeting of owners was called for the election of such a team." [sic]*

23 The Applicant responded as follows to the Administrator's submissions:

- "3. When the Administrator was appointed in 2011, there was two passenger lifts working, and from the previous Administrator, owners paid special Levy of R350.00 for a period of two years, but those new components was removed by Mod Elevator to be installed to another building called Berea Tower.*
- 4. We cannot entertain the previous administrator failing to run, or manage our building properly because of incompetency and involved on money*



*laundering, the Johannesburg High Court appoint Jan Van Den Bos to fix all the problem facing the Body Corporate. Also, that duty to make you all the relevant documentation from previous management.*

5. *The allegation is nonsensical, if we recall, he only sends the owners financial report which was incomplete, since then he never convenes the AGM that he was obligated by OMBUDs to do so and report to the Body Corporate. He is using an accountants Dann House instead of competent auditors of the size of our building.*
6. *Since we send the Administrator the Conduct house rules for the Administrator to review and implement them so that the residence must have copies and comply with them, but he refuses to collaborate with the Task Committee. There was a huge mismanagement of accounts as some owner's accounts was inflated with in correct billing so that they can be summoned and threatened to auction their houses. There's case reference we reported to your office of Thaimo who lived at 701 which was sold unfairly to Albie Allant through the records of the Administrator.*
7. *Supporting document was submitted to ombudsman office for this matter.*
- 8.1 *There was a communication that was conducted with Jan Van Den Bos represented by Phumla of 1401 whereby we alert Jan Van Den Bos that as concern owners we took a decision upon ourselves to find out how municipality can provide us with prepaid electricity to remove the middleman who's costing us more money to buy electricity, provided he must settled the account which was having the outstanding of R228000.00 (Value Pre-paid Meters) over and above we are paying 24% of electricity which is very expensive.*
- 8.2 *Mr. Jan has everything to do with the sale of late Ms. Binda's flats. As an Administrator was representing the Body Corporate as the biggest creditors of the late Binda's units, thereafter an outsider came in and bought all the late Ms. Binda's flats.*
- 8.3 *Task Committee engage Mr. Jan Van Den Bos several times requesting him to convene the meeting to pertain all the problems facing the building, but he refuse to collaborate including the swimming pool as an item on the agenda.*

- 8.4 *Johannesburg water came to disconnect water supply into Tygerberg because the building was owing municipality, the care taker at that time, he did try to open the main valve, but the pressure was very low to fill-up the tank at the roof top. And the problems still escalating.*
- 8.5 *Bongani Sinoka who was member of Mzansi Progressive Movement was kicked out with others from our building by Botle Security Company because they were trying to hijack the building. Mr. Kale alerted the Task Committee which we took the matter to Jan Van Den Bos and also write a letter to Mzansi progressive Movement requesting them to refrain from holding meeting into our building.*
- 8.6 *When he terminates the contract of Botle security company Task Committee together with Henti Van Rooyen who's responsible for safety and Security submitted three quotations from different companies to choose because they were competent companies to provide us with quality services, but Jan chose to ignore us and advice Albie to organize his security company to take charge to the building. We requested him to get rid of Berea security because of poor service deliverance, but he just decided to turn the blind eye. The reason behind this, was because Albie Allant was the main Applicant to renew his contract for the third term.*
- 8.7 ***Attached please find letter of appointment Annexure 8.7 of Tygerberg Task Committee from Jan Van Den Bos office. Since being the members of the Task Committee of Tygerberg, we challenge him with several complaints regarding our building, of which he shows no interest at all to collaborate with us. The allegation raised is nonsensical and he never given the security job or building manager to Mr. Makhala." [sic]***

24 On 22 May 2018 the Respondent advised CSOS that:

24.1 he was no longer an Administrator of the Body Corporate; and

24.2 the Body Corporate was being managed by elected trustees who were elected at an AGM.

25 The Administration Order by the Gauteng Local Division of the High Court indicates that:

25.1 the order was granted on 11 January 2016; and

25.2 the appointment was for a period of 24 months.

26 The aforesaid order was transmitted to CSOS on 23 May 2018.

27 The Administrator filed the minutes of an AGM which was held on 27 February 2018. The attendance register was not attached thereto.

28 At the said AGM the following 7 (seven) individuals were appointed as Trustees:

28.1 Isaac Phiri (resides in the Scheme);

28.2 Matome Moholala (resides in the Scheme);

28.3 Pieter Cronje;

28.4 Albie Alant;

28.5 Graeme Penny;

28.6 Gareth Baars; and

28.7 Aike Baars.

29 The minutes reflect the following with regard to the stolen lift:

*"The issue of the "stolen lift" was visited with an explanation that an upgrade of one of the lifts was done at Tygerberg and as a second one was earmarked for that too; its controller has to match the recently upgraded one for compatibility purposes. The controller and its components were removed by Mr Helmut Spoerk and were to be replaced with the relevant one." [sic]*

30 When the Applicants were advised that the Administrator's appointment lapsed on 10 January 2018, they insisted going ahead with the adjudication on the following basis:

*"Good day Nthabiseng, Mr Van Den Bos was the Administrator of the building, since our matter is still pending in Johannesburg High Court to oppose his contract renewal to manage our building. At the same time he still managing our building under PAL property management as the director of the company, in essence, he is still obliged to answer all the questions or complaining raised against him at the adjudication hearing, please do me a favour and ask him who's managing Tygerberg building since he claims he's no longer the Administrator?"*

**FINDINGS**

31 The Respondent's appointment as an Administrator of the Scheme lapsed on 10 January 2018. The relief sought against him is therefore no longer competent.

32 Having said this, during the adjudication hearing, the Administrator indicated that he still has the financial information and documents required by the Task Committee and agreed to furnish them therewith.

33 As the complaints raised by the Task Committee deal with the administration of the Scheme, especially the upkeep thereof, such issues should be addressed to the Trustees of the Scheme.

34 In terms of Section 3(1) of the STSMA<sup>2</sup>, a body corporate is obliged to perform functions entrusted to it under the Act which include:

34.1 the repair, maintenance, management and administration of the common property;

34.2 the payment of rates, taxes, local municipal charges for the supply of water and electricity; and

34.3 to require the owners to pay their levies.

35 In terms of Section 7(1) of the STSMA, such functions of the body corporate must be performed by the Trustees.

36 Accordingly, the issues raised by the Task Committee should be addressed to the Trustees, ideally in a special general meeting. The Task Committee should petition such a meeting following the procedure in Management Rule 17<sup>3</sup>.

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<sup>2</sup> Sectional Titles Schemes Management Act 8 of 2011

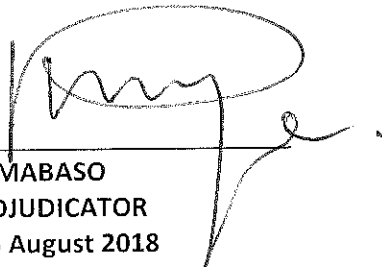
<sup>3</sup> Annexure 1 to the Sectional Titles Management Regulations, 2016 promulgated in terms of the STSMA

**I THEREFORE ORDER AS FOLLOWS:**

- 1 Mr Jan Van Den Bos is to provide the Task Committee with copies of the Audited Financial Statements of the Scheme from 2011 to 2018;
- 2 The Task Committee is to petition a special general meeting at which all their concerns are to be discussed amongst all residents and decisions taken on how such issues should be addressed.
- 3 Each party is to bear its own costs in relation to these adjudication proceedings;
- 4 This order shall take effect immediately on the date on which it is served on the parties by CSOS electronically.

**RIGHT OF APPEAL**

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  
15 August 2018