



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

Reference Number: CSOS 1386/GP/17

In the matter between:

ULANDY CHERYLIZE CHAMILLA WILLEMSE

First Applicant

ROSA COURT BODY CORPORATE

Second Applicant

And

DUMISILE MGAGA

Respondent

ADJUDICATION ORDER

THE PARTIES

- 1 The First Applicant is an owner of Unit 6 in the Rosa Court Sectional Title Scheme situated at Kenilworth, Johannesburg. The First Applicant brought this application in her capacity as the Chairperson of the Board of Trustees in the Scheme.
- 2 The Second Applicant is the Rosa Court Body Corporate. The Scheme is managed by the Applicant. Previously, the Scheme was managed by the previous Chairperson of the Board of Trustees, Ms Dumisile Mgaga, who is cited herein as the Respondent.
- 3 The Respondent is Dumisile Mgaga, an owner of a unit in the Scheme. As stated above, Ms Mgaga was the Chairperson of the Board of Trustees and managed the Scheme from February 2012 to September 2017.

PROCESS FOLLOWED

- 4 On 30 October 2017 the Applicant lodged her Application Form for dispute resolution with the Community Schemes Ombud Service ("CSOS") in terms of Section 38 of the CSOS Act 9 of 2011 ("the Act") in the prescribed manner.
- 5 The relief sought in the Application Form falls within the ambit of relief contemplated in Section 39 of the Act.
- 6 On 15 February 2018 the Applicant's Application Form and supporting documents were forwarded to the Respondent, with a request to the Respondent to make its submissions within 7 (seven). On 19 February 2018, the Respondent filed its submissions.
- 7 The matter was then set down for Conciliation in terms of Section 47 of the Act for 9 March 2018. The parties could not reach a settlement.
- 8 As a result, on 9 March 2018, the Ombud issued a notice of non-resolution and referred the matter to adjudication in terms of Section 48 of the Act. The said notice was duly issued and served on the Applicant and the Respondent. 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 09h00 and all parties were duly served with a notice of setdown. All the parties were in attendance and duly represented.

RELIEF SOUGHT

- 10 The Applicant prays for the following relief:

"We want our books audited and if there is any money missing they must take responsibility for it. If we sort our books out then we can go ahead and elect new Chairperson and trustees for Rosa Court."

- 11 From the relief sought, it is clear that the Applicant seeks an order for the audit of the books of the Scheme. There is also a suggestion that the audit is required because of a suspicion that monies may be "missing".

APPLICANT'S CASE

- 12 In her Application Form for Dispute Resolution dated 30 October 2017, the Applicant describes the dispute as follows:

"In April 2012 Dumisile Mgaga and Willie Ramaru decided to take over from Dalvos agent and run Rosa Court by themselves. We nominated Dumisile as the chairperson and Willie the trustee was also the Caretaker of Rosa Court. Dumisile she don't want any payment for the running of Rosa Court. As long as Willie Ramaru get paid for doing maintenance of our building. We had many complains regarding our building but nothing has been done. In 2013 some of us as owners decided to stop paying levies. There was no transparency regarding our income and expenses."

"We had 4 (four) meetings from September until October 2017 but nothing was finalized. The chairperson and trustee decided to step down but we as the Body Corporate said we need to sort our books out before we can elect new members. One of the owners suggested that we start fresh by opening a new bank account and close the old one. But Dumisile our chairperson refuses. We then decided to seek help."

"They made decisions without consulting us as owners. In February 2017 City Power switch our electricity off. There was no explanation when we went to our Chairperson. City Power switch our electricity on, on the 2nd of February but the Chairperson decided to switch the electricity off for those who didn't pay their levies. The owners went to the police, but she still refused to switch it on. We buy our electricity every month. End of August 2017 City Power remove the circuit breaker of our building. We were without electricity for a few days. Then we as owners decided to do an investigation regarding our electricity. We went to City Power and requested statements from 2012 till October 2017. We asked Dumisile for our bank statements together with Netvondor statements but she refuse to give it to us unless we give her a copy of our ID together with our title deed but we refuse. Then one of the owners decided to give his title deed to Dumisile so we can have the bank statements."

"She decided to give us financial statements instead of bank statements. This is the first financial statements received in 5 years time. We went through the financial statements but it didn't add up. We went to the chairperson regarding the financial statement. We asked her who was the auditor to sign the financial statement. Her reply was that there is no money for the auditor. On Friday the 13th of October 2017 we received the bank statements and receipts, but we did not receive our Netvondor Statements. We as owners went through the bank statements and the statements of City Power. We compare the financial statements and bank statements with City Power statements but it did not balance."

We had a meeting on the 14th of October 2017 but half of the owner's did not pitch. Some postponed the meeting for the 15th October 2017 but our chairperson didn't let the other owners know about the meeting. On the 15th of October at around 7pm (19h00) we went to our chairperson we ask her what is the way forward because we are worried about City Power account. And we suggested that she needs to sort our electricity out and that we must make sure each and every one must pay our levies. But instead of sorting the problem out she ask do we want to take over from her.

We also discover during our investigation that there are some units that does not pay electricity we ask her to fix the problem because it is not right for them not to pay for their electricity. But we are still waiting. She said she will go and seek help from the legal Department regarding the situation. We as owners decided to seek help from the Community Schemes Ombud Service regarding our situation. There is also mismanagement of our building.

Thank you"

13 The Applicant also provided us with an invoice dated 5 October 2017 from the City of Johannesburg's electricity department which shows that the Scheme:

13.1 owes R346 000.00 for electricity;

13.2 consumes about R14 300.00 worth of electricity per month; and

13.3 can pay only R23 000.00 per month.

RESPONDENT'S CASE

14 On 19 February 2018, the Respondent responded as follows to the Applicant's case:

"Good Morning

Thank you for this opportunity that I am able to respond to these allegations put before me.

Firstly I would like to state that I have attached the minutes of the meeting that took place on the 5th Feb 2012 when I was nominated. When I took over we were owing the municipality an amount of R246 500 for services, which are electricity, water and sewer on one combined account. Rosa Court has one main meter for electricity, water and sewer which combines all residents usage of services. It was difficult for us to

clearly determine the use of services for each owner and bill them accordingly because of the inconsistency of billing at the City of Joburg. For that reason, the body corporate which was myself, the late Willie Ramaru and Mr Manuel who was also the owner at that time agreed to source the services of a prepaid electricity administrator so that each unit owner will have control of the use of electricity. We approached Netvendo to assist us after having researched their service and agreed that they were the ones to give us a solution on the issue of electricity. The owners agreed and even paid the installation fees that Netvendo requested. Quotation from Netvendo and the letter that was sent to residents is attached. Signatures of people who attended a meeting discussing Netvendo on the 28th October is attached.

The purpose was just to administer the use of electricity for each individual owner and use that money generated through prepaid electricity to pay it back to COJ. It has been 5 years now, we are still using the same service provider. The complainant was not happy with that because her friend from City Power advised her that Netvendo is overcharging us for prepaid on kilowatts apparently City Power is charging much lesser from what we are paying them. The complainant does not want to understand that Netvendo does not supply electricity, they just administer the use thereof and obviously their costs and charges will differ from City Power.

It is true that our electricity was cut off because the account is in arrears. The account in question comprises of the other CoJ services which is water and sewer. Those services are even higher than what we are paying for electricity. The complainant chooses to concentrate on electricity billing only which is to me not even a measure issue in terms of control because it is already administered. The issue of City Power cutting off electricity was because of the arrears on the account as a whole not electricity alone as she mentions. When the electricity was cut off the last time, she mentioned that she wanted the owners to come to the meeting that was her reason for arranging for the electricity to be cut off. That is even after the arrangement was done with CoJ. It is possible that she did that even the first time of disconnection so that she could find a way of taking over the management of the building. I am saying that because there was no notice given by CoJ to cut off services as they normally do. They cannot cut services after the arrangement is done if there was no default on the arrangement. Even so, they notify you first before cutting off services. The only thing we received was a disconnection card and was very strange. She knows people at City Power who assisted her with these arrangements. She has used her friendship with City Power staff to manipulate the system to her advantage. She proudly states that she last paid her levies and water in 2013 because she does not see the improvement in the building. She forgot to tell you that she runs an after care in the building without the agreement with the owners of which she uses even more water and sewer for free while generating income for her family. Arranging for electricity to be cut off for selfish and personal reasons on its own is illegal considering the losses that were suffered by the residents.

Attached is the survey report that was done by our previous insurer Absa bank regarding the state of the building in January 2013. The complainant mentioned that her reason for non- payment is because she does not see the improvement in the building. I request that she appoints the same surveyor to do another assessment on the building to see if there has not been any improvement from the last time the survey was done. The complainant deliberately left out the receipts for paving, water proofing, wall fencing, palisades in order to accuse me of stealing money from the building. She made sure that she demands all the files from me with receipts and statements so that I don't have any evidence to prove my case when she accuses me, hence I say that this is very personal. She made sure that she frustrates me and the deceased until the point of his death. She even came to my house and threatened me to give her all the files and write off her debt. She said because I also have not been paying I must write off her debt and everything must start afresh. Yes I did say that I will have to seek a legal opinion on that because that is not legal. She was blackmailing and threatening me to the point when she said she will "make me" give her the bank statements. I therefore wrote an indemnity form to sign for the docs but she refused. I explained that I cannot give the bank statements to just anyone without protecting myself and the bank from fraudulent activities. Also since she has not been paying, she had no legal right to take over the finances of the building. Another owner then volunteered to sign the indemnity form for the sake of peace. That indemnity is attached.

I even asked for the intervention of my Pastor because we attend the same church but after that she started sending her accomplice to me so that she can safely say it's not her. She has since took over as chairperson in the building bullying people around demanding money every month from those that have not paid threatening to switch off their lights. Please advise if that is acceptable and legal considering the fact that she does not even issue them with statements. She has since sent the owners a letter to increase the levies without discussing it with the owners. Her reason is that the previous levy amount does not cover the required monthly payment required by CoJ. I cannot understand how suddenly the money is not enough while she has accused me of stealing the money. The money that we used for maintenance was obtained from Dalvos, the previous agent through the attorneys that we appointed. It was the clearance figures for one of the units. That letter is attached with the receipt of another clearance for unit 25.

She was very infuriated by the fact that I provided financial statements for the five years since I took over. She even pointed out that I should not have provided financial statements, I should have only given them the bank statements. According to my little financial knowledge, I needed to account for the funds that have been used at Rosa Court, bank statement does not give detailed information on what the money was used for. The money that we used for renovations specifically was about R135 000, which consisted of R80 000 + R35 000 clearance figures and R20 000 paid by one of the owners to cover his debt. It is unfortunate that the financial statements are

unaudited as required by law because of lack of funds. I would suggest that since she has taken over, she should appoint the auditors for the building recommended by yourselves as Ombuds for the sake of transparency and fairness. Also a survey or inspection must be done in the building considering the previous survey, to determine the improvement if any done and determine the cost of the work that was done.

She mentioned that I said I do not want to be paid for the services I rendered to Rosa Court. She must please provide the minutes for such meeting. According to my knowledge, I cannot be paid to be a trustee because I am also an owner. All the other schemes that are managed by the Body Corporates like Rosa Court have managing agents as well that offer the services of account management, cleaning and maintenance. When Rosa Court was administered by Tupa, there were trustees who were owners in the building and they were not paid. I never asked for payment but if she insists that was supposed to pay while working for free, then I have a problem with that. All that I was doing was just in good faith. Mr Willie was supposed to be getting paid for cleaning and maintenance. He was initially asked to assist as caretaker and cleaner because he was a long standing resident in the building. He was a qualified and retired artisan, with welding, boiler-making and general maintenance skills as he was previously working for the dept of health. He did a lot of work for the building including the entire fencing, palisade and gates. We paid him only when the money was available and that is outlined in the financial statement. The services of accounts and financial management was done by myself. I have a National Diploma in Marketing Management from DUT and a marketing certificate from UJ. I had previously worked for Absa bank as a sales consultant. I have background of finance and accounts management, I work for Pikitup at Revenue and Customer Services dept as a Business Consultant. I work with city accounts and understand CoJ billing therefore I did not have a problem assisting at Rosa Court. I am also on level 2 studying Business Administration degree in Marketing so I understand finance and revenue management. I had no reason to jeopardise the investment that I am trying to build. I have a bond with Nedbank and therefore understand the issue of maximising profits for myself and the other shareholders. I feel that anyone with good intentions and with a bond in his/her name would allow experienced and skilled people to run the scheme so that we all benefit as shareholders. All that I have seen so far since she took over as chairperson is intimidation, bullying and hostility in the building. Her tactics of debt collection are not sustainable and bullish which is illegal and a risk for the shareholders if not addressed. I have attached one of the emails that she sent to credit intel (debt collectors) informing them that I am no longer a member of the scheme. The tone of that email alone attests to the hostility that she has against me and the deceased hence I mentioned that this is personal.

Please feel free to contact me for further information if required.

*Yours Faithfully
Dumisile Mgaga"*

- 15 From the documents provided by the Respondent, it would appear that:
- 15.1 the Scheme was previously managed by Dalvos, a managing agent;
- 15.2 at a general meeting held on 5 February 2012, the Respondent, together with 5 others, were elected as Trustees;
- 15.3 the Trustees took over the management of the Scheme with the Respondent being in charge of financial management;
- 15.4 when the new board of Trustees was elected, the Applicant, being the Chairperson demanded all the Scheme's financial records and documents from the Respondent and these were given to her, including financial statements prepared by the Respondent and receipts;
- 15.5 as of January 2018, the Applicant circulated an email to the residents advising of an increase on the levies.

FINDINGS

- 16 At the hearing, the Applicant furnished me with a "*Fact Finding Report*" prepared by one J O Gbenle, an Accountant based in Nelspruit. When asked how a Nelspruit accountant was engaged, the Applicant said she found him on the internet and was the cheapest. He charged the Scheme R10 000.00 for his report.
- 17 In the report the accountant states, *inter alia*, that:
- 17.1 he was appointed to do an internal audit of the Scheme and to make recommendations to the Trustees;
- 17.2 he had to use testing (sampling);
- 17.3 most of the audit evidence was persuasive rather than conclusive;

- 17.4 he had to rely on his judgment;
- 17.5 he was only given the financial statements and the bank statements. Invoices relating to expenses were not given;
- 17.6 the only expense item he could decipher are the payments made to the City of Johannesburg.
- 18 It is unclear why the comparison of the financial statements and the bank statements is even called an internal audit.
- 19 I find the report not to be useful at all.
- 20 When I asked the Applicant what relief she still seeks considering that she has already obtained an auditor's report, she stated that she now wants to know what happened to the money identified as "*missing*" by the auditor.
- 21 The Applicant admitted that the auditor's report was not furnished to the Respondent prior to the hearing although she had been in possession thereof for two weeks prior to the hearing.
- 22 The Applicant further failed to explain why the auditor was only given the bank statements and the unaudited financial statements. The receipts and quotations which were handed over to her by the Respondent were never given to the auditor. As the bank statements indicated that expenses were paid in cheques, such cheques were not handed over to the auditor and the auditor excluded all such expenses when he reviewed the books of the Scheme.
- 23 The worst part is that the Respondent is now being confronted to explain missing funds when:
- 23.1 all the Scheme's documents were demanded and taken by the Applicant from her;
- 23.2 the auditor himself states that the evidence is inconclusive; and
- 23.3 this case was never put before her or the CSOS prior to the hearing.

- 24 I find that the Applicant has already granted herself the relief she seeks in the application for dispute resolution and that the matter stands to be dismissed.
- 25 I do however want to caution the Applicant against utilising the resources of the Scheme in pursuance of accusations which seem to be baseless against the Respondent.
- 26 The Applicant is fully aware of the renovations and improvements effects at the Scheme which would have required funds to carry out. These facts were never communicated to the auditor. No attempts were made to contact the service providers to verify how much they were paid either.
- 27 The Scheme is clearly operating under serious financial constraints, exacerbated by the Applicant's failure to pay the levies herself over a number of years.
- 28 The Applicant is urged to get on with the work of bringing back financial stability of the Scheme to protect her own, and her neighbours', investments.

I THEREFORE ORDER AS FOLLOWS:

- 1 The Applicant's application is dismissed.
- 2 Each party is to bear its own costs in relation to these adjudication proceedings;
- 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**