



**ADJUDICATION ORDER IN TERMS OF SECTION 52 AND 53  
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

**Case Number: CSOS 001133/KZN/18**

**IN THE MATTER BETWEEN**

**THOKOZA SOVIA SOKHELA**

**APPLICANT**

**And**

**JENNY NAIDOO**

**RESPONDENT**

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**ADJUDICATION ORDER**

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The logo for CSOS (Community Schemes Ombud Service) is repeated at the bottom right of the page. It features a stylized circular emblem on the left, composed of concentric lines. To the right of the emblem, the letters "CSOS" are written in a bold, sans-serif font. Below "CSOS", the words "Community Schemes" and "Ombud Service" are stacked in a smaller, regular sans-serif font.

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The above matter was set down for the adjudication hearing scheduled on the 28<sup>th</sup> March 2018.

## PARTIES

[1] The Applicant is Thokoza Sovia Sokhela, the registered owner of Unit 94 at Somerset Park Home Owners, Somerset Park in Durban.

[2] The Respondent is Jenny Naidoo, the registered owner of unit 49 at Somerset Park Home owners, Somerset Park in Durban.

## SUMMARY OF DISPUTE

[3] The Community Scheme Ombud Service is in receipt of an application for dispute resolution from Thokoza Sovia Sokhela regarding allegations pertaining to the contravention of:

- Section 39 (6) (b) of the Community Scheme Ombud Service Act No. 9 of 2011 in respect of private areas and common areas.

## INTRODUCTION

[4] The Applicant is the owner of unit 94 at Somerset Park Home Owners, being a community scheme as defined by the Act, whilst the Respondent is the owner of unit 49 of Somerset Park Home Owners; this being the same scheme as the Applicant. The said dispute emanated from a heavy storm that occurred in October 2017, resulting in serious



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damage to the Applicant's wall and resultant damage to the inside walls of the house and cupboards.

#### APPLICANT'S VERSION

[5] The Applicant alleges that she had originally built a boundary wall separating her property and that of the Respondent. She further contends that when the Respondent built her house, the driveway was built on an artificial ground as it was filled with soil causing too much pressure on the Applicant's boundary wall. As a consequence, the boundary wall separating the two properties now serves as a retaining wall.

[6] The Applicant further alleges that due to a heavy storm the top part of the wall which was built with bricks collapsed. The soil and bricks then fell on the Applicant's yard causing blockage to her drains and the water ended up flooding the inside of her house.

[7] The Applicant states that she reported this incident to the Municipality and a building inspector was sent to inspect the property. She says that after her property was inspected, a notice was sent to the Respondent requesting that the soil be removed and that the slope on her soil bank be reduced to 26 degrees. The notice further requested the Respondent to make provision for additional storm for the water drainage system at the bottom of the slope.

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[8] The Applicant submitted that the aforesaid notice from the Municipality was disregarded by the Respondent. Further to that, the Applicant had requested the Respondent to assist in clearing out the soil and brick after the wall had collapsed. In this regard, the Applicant had to hire a company to remove all the rubble in her yard and she had to bear all the costs. The Applicant stated that she did request the Respondent to contribute, but she refused.

[9] The Applicant further submitted that she lodged a claim with her insurance so that she be assisted with rebuilding the collapsed wall. The Applicant said that the insurance at first turned her down and told her to claim from the Respondent. However, she persisted until they paid her the money to rebuild the wall, but insisted that the wall should be built after the Respondent had sorted out the issues that were raised by the building inspector from the Municipality.

#### RESPONDENT'S VERSION

[10] The Respondent denies that she had built part of her property on an artificial ground and that this contributed to the wall to collapse. The Respondent claims that the property was built as per the approved plans from the Municipality. Consequently, she is not responsible for the damaged caused by the collapsed wall. The Respondent



contends that the Applicant should use the money she got from her insurance claim to re-build the collapsed wall.

[12] Furthermore, the Respondent avers that her property was built with adequate drainage system thus there is no need for additional drainage system.

### EVALUATION OF EVIDENCE

[13] The whole purpose of appointing a building inspector to inspect both properties and to submit the report on the findings was in the main to obtain a report from someone who was independent from the Municipality. This is because both the plans for the properties in question were approved by the Municipality and the parties had the same inspector from the Municipality who had certified that the buildings were done according to the approved plans, standards and building regulations.

[14] The matter being highly contested by the Respondent and further thereto, her having obtained an approval from the Municipality confirming that the building was built according to the approved plans. If the findings of the building inspector who inspected the property after the incident were to be tested, it was only prudent to request an independent building engineer to investigate this dispute and thereafter compile a report based on his findings. The matter was therefore adjourned for the report and it was agreed between the parties that they will contribute towards the fees for services rendered by the building engineer.

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[15] The aforesaid interim order was in writing and was communicated to both parties. It was however unfortunate that the parties failed to agree on a building engineer to be appointed. To avoid any further delay in the matter, parties were instructed to each acquire a building engineer of their choice to investigate the dispute and then send a report based on the findings.

[16] The Applicant in this matter submitted a report from the building engineer dated the 25<sup>th</sup> May 2018 from SAH Consulting Engineering. The Respondent failed and/or disregarded the request made, in this regard she opted to forward an email responding to the issues that the inspector had to attend to, her email in the main was to place in dispute the averments submitted by the Applicant.

[17] The Respondent did not give any reasons as to why she disregarded the interim order. Nonetheless, her non-compliance will not debar me from taking a decision in this matter. It follows that the Respondent did not take this matter seriously enough judging from her actions.

[18] At this juncture, I am left with no option but to consider the oral submission made on the date of the hearing, the documentation submitted by both parties, the engineering report submitted by the Applicant and the email received from the Respondent.

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[19] I will now turn to briefly highlight the issues raised and the findings thereof in each report submitted. The first report is an email from Mr. Bonggi Msomi, a building inspector from the Municipality. Wherein the following is noted from the said report:

- That the wall had collapsed due to heavy storms;
- That the top part built with bricks was the only part that had collapsed, the remaining wall was still stable with no movement;
- That the top part of the wall was filled with soil in order to be elevated and that this soil was causing pressure on the Applicant's boundary wall;
- That based on the aforesaid findings, a notice was sent to the Respondent requesting her to rectify this by removing the soil in his property and to slope the soil bank to be at least 26 degrees;
- That the Respondent was to provide additional storm water drainage at the bottom of her slope wall;

[20] The second report submitted was that of Shabbir Habib dated the 25<sup>th</sup> May 2017. In this report the following is noted:

- That the driveway built by the Respondent was built above natural ground on fill material with the freestanding approximately 1m high 230mm thick brick wall retaining the fill material;

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- The lateral earth pressure and build-up of hydrostatic ground water pressure created by the fill material caused the free standing 1m high portion of the boundary retaining wall to collapse;
- The collapse of the 0.5m retaining wall is the direct result of the piped or diverted storm water being directed to this section of the wall;
- That the existing 230mm thick brick wall is adequate to support lateral earth pressure exerted by 0,5m of cut but not the 1,5m of fill as had been created by the neighbour;
- The development on 49 Hambridge Drive had been irresponsible and perhaps illegal and should be investigated by the Municipal authorities on whether the building plans had been prepared accurately and approved and whether the development had been certified by the appointed structural engineer.
- That there was a need for the Municipality to verify whether the retaining wall that had collapsed was indeed specified in the building plans. He further suggested that the plans should be checked as to whether the fill material placement next to the wall was approved and further that the retained earth was also approved by the appointed structural engineer.

[21] I will now turn to deal with the responses given by the Respondent in her email dated the 31<sup>st</sup> May 2018, wherein she alleges the following;

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- That the water drainage system is 100% according to the municipal rules and regulations;
- That as per the Assessor's report the Applicant's wall was not built according to specification;
- The plans sent to the Municipality covered all areas;
- That she is prepared to add another drainage system at the end of her driveway;
- That there was no soil that was filled against the wall and that the level of the land was done as per the approved plans;
- That the Applicant must re-build the wall using the money that she had received from her insurance claim;
- That the Applicant must urgently sort out the wall as it is now becoming too risky to park on her driveway as the soil is being eroded and the driveway is starting to sink;

[22] I will now deal with the issues placed in dispute by the Respondent following from her abovementioned email. The Respondent is disputing that she had build the parking area above the natural ground and that a fill material was used. The pictures submitted by the Applicant show that the top part of the wall had collapsed. This is in the main the part that was built using bricks; this was shown on the picture submitted by the Applicant. The Applicant alleges that this part was built by the Respondent and it is in

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the main, the part that collapsed during the heavy storm. Further, in these pictures one can see the soil underneath the concrete of the driveway.

[23] The Respondent having failed to submit any report that supports her averments in this dispute, in the absence of same. There is therefore, no substance in the Respondent's argument that her property was built 100% according to the approved plan, this is in view of the findings from the building engineers reports. In my view the building inspector that certified the building should not have issued the certificate considering the said findings.

[24] Finally, it is clear from the reports submitted that the wall had collapsed due to heavy storm. It is further clear that the Respondent's driveway was not built according to the building regulations and that the filling of soil to elevate it had caused so much pressure on the existing boundary wall. It is also clear that there is a need for the Respondent to provide additional storm water drainage at the bottom of her slope wall. In conclusion the call for investigation on how all of this was certified is reasonable and valid.

[25] In the circumstance, I accordingly make the following order:

That the Respondent is liable and ordered to pay the following costs:

[25.1] the amount of R6 800 for the removal of the rubble from the Applicant's yard;

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[25.2] the amount of R2 875.00 for fees paid to the SAH Consulting Engineer to compile the report;

[25.3] the amount of R15 650-00 being the reasonable cost of repair to the resultant damages to Applicant's walls and wardrobes.

[26] That the said payments in terms of 25.1 to 25.3 in total of **R25 325.00** shall be made to the Applicant's following bank account:

**Account Holder:** Ms. Thokoza Sokhela

**Bank Name:** First National Bank

**Account Number:** 50791790080

**Branch Name:** Gateway

**Branch Code:** 250108

[27] That the Respondent is ordered to make the said payment within 7 days from the date of this order.

[28] That the Respondent is ordered to slope the soil bank to 26 degrees and provide for additional storm water drainage at the bottom of her slope wall.

[29] That the Respondent is ordered to comply with 25.3 within 14 days from the date of this order.

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[30] That the Applicant is accordingly ordered to re-build the wall after the Respondent has complied with paragraph 25.1 of this order.

No order to cost

**RIGHT OF APPEAL (SEC 57)**



**MS Z. P. TENZA-ZONDI**

**ADJUDICATOR**

  
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