



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

Case Number: CSOS00305/KZN/17

IN THE MATTER BETWEEN

**JOHN TREVOR and GALANA ANN EVANS
(Applicants)**

And

**TRUSTEES OF CARRIGANS COUNTRY ESTATE BODY CORPORATE
(Respondents)**



ADJUDICATION ORDER
DATE: 12/06/2018
Community Schemes Ombud Service
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ADJUDICATION ORDER

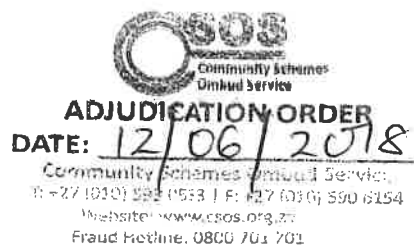
PARTIES

1. The Applicants are **JOHN TREVOR EVANS** and **GALANA ANN EVANS**, hereunder to be referred to simply as "**the Applicants**", who are resident at Unit 1, Carrigans Country Estate, Kiepersol, Hazeyview, in the MPUMALANGA Province.
2. The Respondents are **THE TRUSTEES OF SEAPOINT BODY CORPORATE**, hereunder to be simply referred to as "**the Respondents**", who are an elected body of unit owners at the Carrigan Country Estate, Kiepersol, Hazeyview, in the MPUMALANGA Province.

3. Carrigan Country Estate is a registered community scheme, as per Sectional Plan, in respect of the land and buildings situate in Kiepersol, Hazeyview, in the MPUMALANGA Province.

INTRODUCTION

4. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011 (**the Act**). The application was made in the prescribed form and lodged with the KwaZulu-Natal Provincial Ombud Office (As the official location for the Provincial Ombud responsible for three provinces, namely KwaZulu-Natal, Mpumalanga, and the Frees State). The application includes a statement of case which sets out the relief sought by the applicants.
5. This dispute relates to complaints by the Applicants about, mainly, the alleged flouting of the Scheme Rules by the Respondents.
6. The matter was initially set down for Conciliation, in terms of Section 47 of the Act. The records show that there was purportedly a Settlement Agreement signed either on the 29th of January 2018 or the 7th of February 2018. There was a dispute on this point with the Applicants arguing there was no Settlement Agreement signed despite their signatures appearing on what is purported to be the settlement agreement.

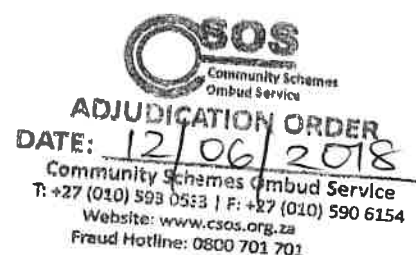


7. The Office of the Chief Ombud was brought in to pronounce on the status of this matter; and the Chief Ombud concluded that the Conciliation was not successful; hence this matter was formally referred to adjudication in terms of Section 48 of the Act.
8. The adjudication hearing took place in Nelspruit, in the MPUMALANGA Province, on the 15th of May 2018. This application is before me as a result of a referral sent by the KwaZulu-Natal Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated both parties.
9. Both parties, namely the Applicant and the Respondents, were in attendance at the adjudication hearing, as per the Notice of Set Down which was sent out to them as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011. Mr D.A. Ingram, a friend of the Applicants, formally represented the John Evans (who was not well to attend) at the hearing, with the full approval of the Respondents; and such approval was sought and granted before the date of the adjudication hearing.

APPLICABLE PROVISIONS OF THE ACT

10. The hearing was conducted in terms of section 38 of the CSOS Act No,9 of 2011 which provides that –

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



11. Section 45(1) 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”

12. Section 47 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”.

13. Section 48 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”.

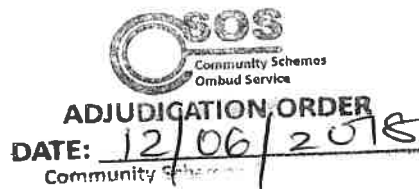


SUMMARY OF EVIDENCE

14. The Applicants had many complaints about the Respondents; and the Respondents, in turn, had many complaints about the Applicants.

APPLICANT'S VERSION

15. The Applicants lodged their official complaint against the Respondents, alleging:
16. They used to run the Carrigan Country Estate efficiently with everything running smoothly.
17. The other property owners later, years later, started ganging up against them.
18. One of the Applicants, John Evans was not re-elected as a trustee at the last AGM, allegedly despite the general practice that all owners should be trustees.
19. They alleged that, since the removal of the Applicant from being a trustee, the Respondents changed many things, including changing the Rules, without full consultations.
20. They alleged that the Respondents changed the manner in which the laundry is run at the estate.
21. The Applicants there is now lack of transparency in the running of the estate; for example they allege there was a 19 percent increase on levies imposed which had not been approved by the Annual General Meeting (AGM).
22. They allege that the Respondents have been refusing to give the Applicants access to the bank statements.



THE APPLICANT'S PRAYERS

23. The Applicants want the Respondents to revert back to the Rules which were applicable before the 2016 AGM.
24. All members / owners in the estate must be automatically Trustees of the Body Corporate.

THE RESPONDENTS' VERSION



25. The Respondents addressed the issues raised by the Applicants, disputing most of the allegations by the Applicants, and instead coming up with their own counter-allegations against the Applicants.
26. The laundry operations had to be changed because they suited on the Applicants, with the Applicants doing all their laundry there, as they live there permanently, yet expecting all the other property owners who don't spend much time there to contribute equally towards the costs of running that laundry. The Applicants had been asked to provide their laundry requirements, like everyone else, but had chosen not to co-operate with the Respondents.
27. The Respondents did not change any management rules; they argued instead that it was the Applicants who were being obstructionist.
28. The Respondents contended that the legislation does allow for special resolutions to be approved by 80 percent of the AGM or property owners; and

that some of the things that the Applicants complained of had been properly changed and approved by such an 80 percent majority.

29. The Respondents actually accused the Applicants of serious wrong doing, alleging the Applicants were harassing the Respondents; and that the Applicants had actually fraudulently obtained the body corporate bank statements.

EVALUATION OF EVIDENCE SUBMITTED



30. The submissions made by the Applicants seemed to be based on their unhappiness that the Applicant had not been re-elected to the body corporate.
31. The submissions made by the Respondents on why it was not fair for all the property owners to contribute equally towards the running of the laundry, when in fact the laundry was mainly used by the Applicants, sounded well-reasoned and sensible.
32. None of the allegations made by the Applicants were not effectively challenged and found wanting when the Respondents countered them.
33. Whilst it may seem like a good idea for all the property owners to serve as Trustees of the body corporate in a small estate like this one, Carrigan Country Estate; the Applicants cannot insist on this if this is not covered by the scheme rules. The Applicants failed to produce any rule which entitles all property owners to automatically become trustees of the body corporate.

POWERS AND JURISDICTION OF THE ADJUDICATOR

31 The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

ADJUDICATION ORDER

32 The Applicant's application is dismissed in terms of Section 53(1)(a) on grounds that it was without substance.

RIGHT OF APPEAL (SEC 57)

33 All parties are hereby informed about their Right of Appeal in terms of Section 57 of the Act, which says –

“(1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to High Court, but only on question of law.

(2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.

(3) A person who appeals against an order, may also apply to the High Court to stay the



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*operation of the order appealed against to
secure the effectiveness of the appeal.”*

- 34 All parties are warned of the legal consequences that may follow in case any of them, consciously and/ or unconsciously, do not adhere to the spirit and letter of this adjudication order.



Prof BONKE DUMISA
ADJUDICATOR
CSOS Durban, KwaZulu-Natal



Dated 17 May 2018