



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

Case Number: CSOS00338/KZN/17

IN THE MATTER BETWEEN

**NADIA MOOSA
(Applicant)**

and

**ALBERMARLE SHAREBLOCK and WAKEFIELDS
(Respondent)**

ADJUDICATION ORDER

PARTIES

1. The Applicant is NADIA MOOSA, hereunder to be referred to simply as “**the Applicant**”, who resides at the Albermarle Shareblock.
2. The Respondents are ALBERMARLE COURT SHAREBLOCK (Pty) LTD and WAKEFIELDS PROPERTY MANAGEMENT, hereunder to be referred to simply as “**the respondents**”.


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DATE: 22/03/2018
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3. ALBERMARLE COURT SHAREBLOCK (Pty) LTD are the owners of the Scheme, and a registered company in terms of the Companies Act.
4. WAKEFIELDS PROPERTY MANAGEMENT are the company in charge of running the operations of this Scheme.

INTRODUCTION

5. This is an application for dispute resolution in terms of Section 38 and Section 39(1)(c) of the Community Schemes 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. The application includes a statement of case which sets out the relief sought by the applicant.
6. The matter was initially set down for Conciliation, in terms of Section 47 of the Act. The Conciliation was NOT SUCCESSFUL, for whatever reasons; the matter was thus formally referred to adjudication in terms of Section 48 of the Act.
7. The adjudication hearing took place on the 23rd of February 2017. 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 to both parties.
8. Both parties were represented or 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.



APPLICABLE PROVISIONS OF THE ACT

9. 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”.

10. Section 39(1) (c) provides that –

39. An application made in terms of section 38 must include one or more of the following orders:

(1) In respect of financial issues-

(c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way.

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 Applicant alleges she was charged a special levy by the Respondents.
15. The Applicant wants this special levy to be reversed.
16. The Respondents say they are entitled to such a special levy in order to pay off an accrued tax liability incurred from 2009 to 2015.

APPLICANT'S VERSION

17. The Applicant alleges she was charged special levies for the time she did not live in the property.
18. She claims this is unreasonable.



19. She further claims the respondents have violated or breached various legislative provisions by imposing this special levy on them.
20. In particular, the applicant accuses the respondent of violating Section 180 of the Tax Administration Act.

APPLICANT'S PRAYERS

21. The Applicant wants these special levies to be reversed.
22. She wants the respondents to be found to have acted negligently and recklessly under the Companies Act.
23. She wants the Respondents to be found to have acted in violation of Section 180 of the Tax Administration Act.
24. She wants the directors of Wakefields Property Management to be held personally liable for the settlement of that accrued tax liability.

RESPONDENT'S VERSION

25. The Respondents argued that the special levy was justified and reasonable.
26. They argued that an accrued tax liability for 2009 to 2015 emerged after that period; and that it was agreed at a properly constituted meeting of all the property owners that all property owners would contribute towards its settlement.
27. They argued that it was fair and just that all property owners be expected to contribute towards this, regardless of whether they were already property owners there or not.



28. They raised their concern that the Applicant is litigating against them at different forums, for different things, all the time.

EVALUATION OF EVIDENCE SUBMITTED

29. Both parties, namely the Applicant and the Respondents, were given enough time to state their case(s).

30. The Applicant failed to prove her case:

30.1 She did not submit any substantial evidence to CSOS prove if it is in breach of any CSOS provisions to make the property owners to all share in the settlement of accrued tax liabilities.

30.2 The Applicant seemed to be relying more on the provisions of other legislation instead of basing her complaint on the CSOS provisions.

30.2.1 The Applicant alleged that the Respondents were in violation of Section 180 of the Tax Administration Act; which means they should have taken this matter to a tax adjudication forum or the Courts of Law.

30.2.2. The Applicant also alleged that the Respondents had acted negligently and recklessly, as per the provisions of the Companies Act; which means they should have taken this matter to the Companies' Tribunal or the Courts of Law.

30.2.3 Determining if the Directors of Wakefield Property Management should be personally liable is something that can only be done by the Courts of Law; CSOS does not have the legislative powers to do so.

31. It is this Adjudicator's opinion that this matter should not have been entertained by CSOS at all, as it is glaringly more of a taxation matter than the matters that fall under the CSOS Act.

POWERS AND JURISDICTION OF THE ADJUDICATOR

32. 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

33. 'In the circumstances, the following order is made in terms of Section 53 of the Act: This matter is dismissed in terms of Section 53(1)(a) on grounds that the application is both frivolous and misconceived or without substance.

RIGHT OF APPEAL (SEC 57)

34. Both 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.


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



Prof BONKE DUMISA
ADJUDICATOR
CSOS Durban, KwaZulu-Natal

22 March 2018

