



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54  
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS00444/KZN/17

IN THE MATTER BETWEEN

**DUDUZILE MQADI  
(Applicant)**

and

**S NGCAMU  
(First Respondent)**

and

**TRUSTEES OF MOORLANDS BODY CORPORATE  
(Second Respondent)**

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**ADJUDICATION ORDER**

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**PARTIES**

1. The Applicant is **Duduzile Mqadi**, hereunder to be referred to simply as “**the Applicant**”, who resides at Unit 17, Moorlands, situated at 158 Che Guevara Road, Glenwood, Durban, in the Province of KwaZulu-Natal.

  
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2. The First Respondent is **S Ngcamu**, hereunder to be referred to simply as “**the First Respondent**”, who resides at Unit 26, Moorlands, situated at 158 Che Guevara, Glenwood, Durban, in the Province of KwaZulu-Natal.
3. The Second Respondent are **The Trustees of Moorlands Body Corporate**, hereunder to be simply referred to as “**the Second Respondent**”, who are an elected body of unit owners at the Moorlands, situated at 158 Che Guevara, Glenwood, Durban, in the Province of KwaZulu-Natal
4. Moorlands is a registered community scheme, as per Sectional Plan, in respect of the land and buildings situate at Glenwood, Durban, in the Ethekwini Municipality.

## **INTRODUCTION**

5. 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. The application includes a statement of case which sets out the relief sought by the applicant.
6. This dispute dates as far back as the year 2013.
7. The matter was initially set down for Conciliation, in terms of Section 47 of the Act. The Conciliation was however not successful; It is not clear from the records whether the actual conciliation meeting did take place, suffice to mention that bringing the parties together was continuously problematic for a number of reasons; and hence, the matter was finally referred to adjudication in terms of Section 48 of the Act.

  
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8. The adjudication hearing was initially scheduled for 21 September 2017; but the Adjudicator, upon perusing the papers and after talking to the two parties initially cited, namely the Applicant and the Second Respondent, decided that this matter could not appropriately be adjudicated without the First Respondent being directly enjoined as one of the Respondents. Hence, a new set down date had to be decided, where two Respondents would be cited, namely, the owner of Unit 26 being the First Respondent and The Trustees of Moorlands Body Corporate being the Second Respondents.
9. The adjudication hearing finally took place on the 30<sup>th</sup> of November 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 all three parties.
10. Only two of the parties, namely the Applicant and the First Respondent, were personally in attendance at the adjudication hearing, as per the Notice of Set Down which was sent out to them on the 30<sup>th</sup> of October 2017 as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.
11. The hearing proceeded despite the absence of the Second Respondent, mainly on grounds that he Second Respondent had already made substantial written submissions on this matter and also made substantial verbal submissions at the earlier hearing which could not formally proceed on the 21<sup>st</sup> of September 2017.

  
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## APPLICABLE PROVISIONS OF THE ACT

12. 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”.*

13. 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”*

14. 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”.*

15. 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**

16. The problem of the Applicant’s leaking roof started in mid-2013.
17. The previous owner of the flat above, Unit 26, was immediately notified.
18. The managing agents for the building, Maxprop, as well as the Second Respondents were notified as soon as this started in mid-2013.
19. The owner of Unit 26 subsequently sold the property to the First Respondent in the year 2016.
20. The Applicant alleges that all these parties have done nothing to correct the problem, hence she reported the matter to the CSOS.

## **APPLICANT’S VERSION**

21. In the year 2013 her bathroom and bedroom ceiling started leaking water from the First Respondent’s unit above.
22. Her daughter went to check and informed the previous owner of Unit 26 about this.
23. The previous owner conceded there was a problem, purportedly starting from the roof of the unit.
24. The Applicant later verified this directly with the previous owner.
25. The Applicant reported this matter to one Mr Grenville William who was the Chairperson of the Moorlands Trustees and Body Corporate, hence the Second Respondent.

  
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26. They later followed these verbal discussions with the first email, on this matter, dated 09 July 2013.
27. The Applicant laments that she was given repeated assurances that something was going to be done to resolve this matter; but nothing was done since the year 2013.
28. The Applicant alleges that since 2013 she attended many meetings and addressed the issue with Mr William, trustees and the body corporate, hence the Second Respondent, but nothing was done to fix the problem.
29. She claims things worsened in August 2016 when the First Respondent moved in, as more water started leaking which affected the geyser and the electricity.
30. The Applicant's submissions are effectively that the Second Respondent (Chairperson, the Trustees, and the Body Corporate of Moorlands) all mismanaged this matter from 2013 to-date.
31. In October 2016 the body corporate issued a letter to the First Respondent to fix his bathroom by the 24<sup>th</sup> of the same month; this letter was apparently not heeded or alternatively the problem was incorrectly attended to.
32. The damage caused by these water leaks includes
  - 32.1 Bathroom wall tiles falling off and damaged walls and ceiling;
  - 32.2 Electricity and geyser affected by this water all over the place;
  - 32.3 Wooden floors tiles had to be removed from the whole house due to the water damage caused by the water leaks from the First Respondent's unit 26 above;
  - 32.4 Bedroom walls and ceiling equally damaged;
  - 32.5 The new water pipes installed by Maxprop, the managing agents, hence the Second Respondent, did not make things any better; but instead worsened the situation.

32.6 The Applicant ended up fixing some of the problems at her own cost.

32.7 The new unit owner, the First Respondent also became a big problem and he was just not cooperative; and unwilling to engage with the Applicants.

33. The Applicant is disappointed that the Second Respondent issued the previous owner of Unit 26 with a levy clearance certificate despite knowing that the previous owner had not attended to the leaks reported to both the Second Respondent and the previous owner.

### **APPLICANT'S PRAYERS**

34. The Applicant seeks an order from CSOS instructing the Respondents to fix the problem of the leaking roof:

34.1 Ordering the First Respondent to appropriately fix the leaking roof;

34.2 Ordering both the First Respondent and the Second Respondent to appropriately take joint and several responsibility for the electrical faults and / or challenges that resulted from such a leaking roof, that were ultimately attended to by the Applicant entirely at her own cost;

34.3 Ordering the First Respondent to appropriately repair and repaint the walls and roof that got damaged due to this leaking roof; and other repairs incidental hereto.

### **FIRST RESPONDENT'S VERSION**

35. The First Respondent purchased this Unit 26 from an unnamed previous owner in mid-2016.

36. He alleges that the previous owner did not mention anything to him with regards to these structural defects.

37. He believed that if there is any case to answer, it the previous owner of Unit 26 who must be called to account.
38. It must be stated, on record, that the First Respondent's demeanour at the adjudication hearing was very positive and cooperative.

## **SECOND RESPONDENT'S VERSION**

39. The Second Respondent places the blame for these continuing problems squarely on the door of the First Respondent, blaming him of being uncooperative. An email, dated Thursday 1 December 2016, from Gaylene Donaldson of Maxprop, the Second Respondent's managing agents, to the Applicant details the following:

39.1 The Second Respondent had on numerous occasions tried to contact the First Respondent " *the owner of Unit 26 in order that we may liaise with him to have the plumbers attend to the leak in the bathroom area of his unit which in turn has caused resultant damage to Unit 17*" ;

39.2 The First Respondent was just not responding to any communication with him, in the form of sms's, letters, and emails;

39.3 This lack of cooperation by the First Respondent had frustrated the Second Respondent's efforts to fix this problem, as they required access to Unit 26 in order to attend to the problem.

39.4 There were other emails from Grenville Williams, who was the Chairperson of the Second Respondent's Body Corporate, which support the Second Respondent's contention that it was the lack of cooperation by the First Respondent that frustrated the resolution of this problem.



40. Some of the emails from the Second Respondent, including their verbal submissions at an earlier adjudication hearing that had to be abandoned, explained the water leak problem as follows:

40.1 *“On inspecting unit 26 bathroom with a fellow trustee we found that the source of the problem is the plastic fibre bath (previously a cast iron enamel bath), where the top outside plastic fibre rim of the bath had not been adequately supported to form a rigid water proof connection to the brick wall. This interface was very flexible when depressed by a weight in the bath allowing water to seep through the crack to form a puddle of bath water under the bath, hence the source of the dampness.*

40.2 A report, dated 09 August 2016, by Glenwood Plumbers CC, who are resident plumbers to the Second Respondent, stated the following:  
*“Investigated report about a water leak into Flat 17. Inspected below bath in Flat 26 and found that water is leaking badly through seal between the bath and the tiles. The bath has not been installed correctly with support battens and the side of the bath is sagging causing a gap. The bath needs to be removed and re-installed correctly”.*

40.3 The Second Respondent’s written submissions, under the signature of their Chairperson, Grenville Williams, ended thus *“This leads me to draw a conclusion that the previous owner was aware of the dampness flowing to the below unit as unit no 17 must have at some previous time approached unit 26 regarding the damage to their unit. The sales agreement between the previous owner and the current owner of unit 26 should have declared this defect.*

  
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40.4 The Second Respondent concluded thus *“There is no Moorlands Plumbing defect that the levy account is responsible for, this is a matter between the units which needs to be settled accordingly”*.

### **EVALUATION OF EVIDENCE SUBMITTED**

41. The Applicant is correct in asserting that the Second Respondent could have done more in pushing the previous owner of Unit 26 to attend to this problem, as the Second Respondent does have the legal power to access the premises of any unit if the circumstances dictate; the three year delay in attending to this problem is not acceptable. An email, dated 12 December 2016, from the Second Respondent’s own Grenville William confirms this point when he indicated to one of his staff members, Yosheen, to get a locksmith to open Unit 26 when the First Respondent was no co-operative. Why was this not done as early as mid-2013 when the previous owner was not cooperative?
42. The Second Respondent is correct in saying the previous owner of Unit 26 was legally bound to declare these material defects to the First Respondent. This is therefore a case of material non-disclosure on the part of the previous owner.
43. The legal question is whether the Applicant must go after the previous owner to make good of this problem:
- 43.1 Under the circumstances, the Applicant has a claim against Unit 26, as this has been a continuing problem from mid-2013 to-date.
- 43.2 It is the First Respondent’s own prerogative to recoup whatever costs due to the Applicant from the previously owner through another platform.



## **POWERS AND JURISDICTION OF THE ADJUDICATOR**

44. 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.
45. Having considered the written and oral submissions of the parties; it is clear that the Applicant has a right to be granted an Order that grants her appropriate redress under the circumstances.

## **ADJUDICATION ORDER**

46. The Applicant's prayer for redress is granted in terms of Section 54 of the Act, in the following manner:

46.1 The First Respondent to fix all the sources of water leaks that seep into the Applicant's Unit 17, within 90 days of the issuing of this judgement.

46.2 The First Respondent must use the Second Respondent's own resident plumbers in attending to this problem, in order to ensure that all the sources of this leakage problem, as previously identified and as it now persists, are appropriately attended to.

46.3 The First and the Second Respondent must AGREE on mutually acceptable service providers to attend to the following resultant problems:

46.3.1 Geyser replacement;

46.3.2 Other electrical problems;

46.3.3 Replacement of wall tiles affected by this problem;



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46.3.4 Replacement of the wooden tiles removed because of the this problem;

46.3.5 Repairs to the walls and ceilings and the repainting of the walls and ceilings must be effected, where such were as a result of this problem.

46.4 Where such repairs and / or replacements have already been effected by the Applicant, ALL three parties must negotiate if the costs being claimed by the Applicant are reasonable; and where the parties' positions on this are irreconcilable, expert advice may be sought at the cost of ALL the parties.

#### **RIGHT OF APPEAL (SEC 57)**

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



48. 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 29 January 2018**



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