



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

Case Number: CSOS00589/KZN/17

IN THE MATTER BETWEEN

**MBANGI FRANK CHILIZA
(Applicant)**

and

**TRUSTEES OF HASLER HOUSE BODY CORPORATE
(Respondent)**

ADJUDICATION ORDER

PARTIES

1. The Applicant is Mbangi Frank Chiliza, a resident of Unit 504 Hasler House, 22 Winder Street, Durban, hereunder referred to as "**the Applicant**".
2. The Respondents are the Trustees of Hasler House Body Corporate, responsible for Hasler House, which is physically located on 22 Winder Street, Durban, hereunder referred to as "**the Respondents**". The Hasler House Body Corporate is community scheme as contemplated in the CSOS Act, 2011. The



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DATE: 09/01/2018

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definition of “community scheme” means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings.

INTRODUCTION

3. 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.
4. The Applicant’s application can be summarised as follows:
 - 4.1 Allegations of financial impropriety of various sorts
 - 4.2 Allegations of poor maintenance etc.
5. This matter was initially set down for a conciliation hearing on 27 September 2017; and that conciliation did not succeed, for whatever reason(s), hence it was referred to adjudication.
6. The adjudication hearing took place on 03 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 both parties.
7. Both parties attended the adjudication hearing, as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

APPLICABLE PROVISIONS OF THE ACT

8. 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”.

9. 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”

10. 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’.



11. 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

12. The Applicant and the Respondents attended the adjudication hearing; and the Applicant’s submissions seemed to be all over, making many allegations about various things many of which were quickly responded to by the Respondents at the hearing and / or through later written submissions made by, or documents supplied by the Respondents to CSOS Offices in Durban, KwaZulu-Natal.

APPLICANT’S VERSION

13. The Applicant alleges they have requested a variety of documents from the Body Corporate Trustees; but that they are being ignored.

14. It may not be necessary to list ALL of the allegations of impropriety made by the Applicant against the Respondent; but we will try to summarise them as follows:

14.1 Allegations that NOT ALL the finances were disclosed with regards to the renovation and / or rebuilding of the fire escape;

14.2 Allegations that NOT ALL the finances were disclosed with regards to roof renovations.

14.3 Special levies were collected for the gate but the gate is not functioning.

14.4 There are no records for the R50.00 paid by the visitors.

14.5 Flat no. 605 has no owner “but the trustees are collecting rentals and putting it in their own pockets”.

14.6 There is poor maintenance in the building e.g. plumbing and electricity.

14.7 The books of the scheme are not audited.

APPLICANT’S PRAYERS

15. They wanted CSOS to order the Trustees to provide the Applicant with all the various documents; and

16. The financial books of the Body Corporate had to be audited.

RESPONDENT’S VERSION

17. The Respondents substantively responded to most if not all the allegations made by the Applicant:

17.1 The Fire Escape matter was substantially explained:

17.1.1 The contract had been awarded to Mr Adam, who was one of the trustees; his quote was the lowest at R289 000.

17.1.2 This contract had to be cancelled for a number of reasons, including intra-trustee mistrust and non-cooperation.

17.1.3 There is a court case pending on this matter between Mr Adam and the Body Corporate of which he is also one of the trustees.

17.2 There were substantial explanations with regards to roof renovations:

17.2.1 Feedback was given on roof repairs done; with most work said to

have been done to an acceptable standard

17.2.2 Some areas of re-work were identified

17.2.3 The contractor was not fully paid as he did not attend to the issues raised by the roofing expert.

17.3 Answers were given on the Special Levies for the turnstile / gate:

17.3.1 The turnstile / gate worked well for at least 2 years.

17.3.2 This installation of the turnstile had a significant positive impact on over-crowding in the building.

17.4 Answers were given on R50 records by Visitors:

17.4.1 The receipt book was made available for inspection at one of the AGMs.

17.4.2 The allegation of trustees pocketing money from this could not be sustained.

17.5 The issue of Flat 605 was explained as well; that rentals from the flat were used to offset outstanding arrear levies; and the amounts were paid directly into the Body Corporate bank account.

17.6 The issue on poor building maintenance was equally addressed:

17.6.1 They fully explained the various building maintenance tasks undertaken, including painting and lighting.

17.6.2 They however complained about the challenge posed by the levy defaulters, including the Applicant himself who is said to owe nearly R39000 in levies. They say this negatively impacts the extent of maintenance and repairs each year.

17.7 The Respondents specifically identified the Applicant as one of the people who pose problems that may be perceived as leading to "poor building maintenance":

17.7.1 The Applicant is owing nearly R39 000 in levies; this impacts negatively on funds available for building maintenance.

17.7.2 The Applicant is also contributing to the fire risk in the building by supplying electricity to other units by way of illegal cabling.

17.8 The Body Corporate books are audited each year.

EVALUATION OF EVIDENCE SUBMITTED

18. The Respondents either gave substantial responses at the adjudication hearing or later submitted thorough written responses later, with adequate supporting documents.

19. The impression observed at the adjudication hearing was that the Applicant was simply part of factional fights within the trustees; and this application was lodged without first reading existing body corporate documents nor exhausting internal remedies.

20. All the information the Applicant complained of has been provided in writing; and the adjudicator was assured of such when copies of such were delivered to the CSOS Durban, KwaZulu-Natal, offices.

POWERS AND JURISDICTION OF THE ADJUDICATOR

21. 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

22. Having considered all the circumstances, the following order is made in terms of Section 53(1) (a): The application is dismissed on grounds that it was either misconceived or was without substance.

RIGHT OF APPEAL (SEC 57)

23. 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.

(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



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