



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

Case Number: CSOS 00384/KZN/17

IN THE MATTER BETWEEN

GERALD ALLAN BASSANA

APPLICANT

And

**RESPONDENTS OF COCOMO PALMS BODY CORPORATE
RESPONDENT**

ADJUDICATION ORDER

The above matter was set down for adjudication hearing on the 14th December 2017.

CSOS 00384/KZN/17


ADJUDICATION ORDER
DATE: 25/01/2018
Community Schemes Ombud Service
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Parties

- [1] The Applicant is Mr. Gerald Allan Bassana, the registered owner of Unit 22 of Cocomo Palms in Durban.
- [2] The Respondents are the Trustees of Cocomo Palms Body Corporate, being a community scheme as defined by the **Community Scheme Ombud Service Act No 9 of 2011**.

Background

[3] This matter was lodged as a dispute with the Community Scheme Ombud Services in the prescribed form. Wherein the dispute was properly set out and the relief sought.

[4] The matter was first dealt with in terms of **Section 47** that read thus:

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.

[5] The engagements with both parties during conciliation did not yield the desired result in that no agreement was reached.

[6] Thus the matter was referred for Adjudication in terms of **Section 48 (1)** of the **Community Scheme Ombud Service Act**, that provide thus;

If the conciliation contemplated in Section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator.

[7] It is therefore against this background that this matter is presently being adjudicated upon.

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SUMMARY OF EVIDENCE

[8] The Applicant submitted that the Respondents had moved him from his original parking bay.

[9] The Applicant alleges that on or around June and July 2016, the Respondent had embarked on a process of repainting and remarking the parking bays. It is during that time that the Applicant was moved from his original parking bay, which was in front of his unit and was given parking in another block. As a result he raised a formal objection to the Respondents and requested that the matter be rectified. The objection was further raised with the Managing Agent but nothing was done.

[10] Now the Applicant is seeking the following order;

Section 39(6)(f) An order declaring that an owner or occupier reasonably requires exclusive use right over a certain part of a common area, that the association has unreasonably refused to grant such and requiring the association to give exclusive use rights to the owner or occupier, on terms that may require a payment or periodic payment to the association, over a specific part of a common area.


[11] The Respondents made the following submissions:

[11.1] That the parking bay in front of the Applicant's unit does not belong to the Applicant.

[11.2] That the original parking bay for Applicant as per the original plans was located in front of another block.

[11.3] That the re-allocation was done in line with the registered plans and as per Resolution that was taken in August 2017.

[11.4] That the repainting and remarking of parking bays will ensure that each owner is allocated a correct parking bay in line with the plans at the Deeds Office.

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[12] The Respondents submitted a copy of the registered plans filed at the Deeds offices with marked parking bays for each unit. The Respondent pointed out the parking bay allocated to the Applicants unit in the original plans.

[13] The Respondent stated that the new markings would therefore be in line with the plans and such rectification is justifiable as it gives owners the parking bays according to the registered plans.

EVALUATION OF EVIDENCE

[14] The dispute arises from lack of communication and failure on the Respondents part to give the real reasons of repainting and remarking of parking bays.

[15] It is evident that the Applicant was never advised of the actual reason for the remarking of the parking bays. Thus he is justified to raise an objection and a dispute on the new allocation of the parking bays.

[16] It is further evident that at some point during the process of remarking, the Applicant was requested to swap his parking bay with another owner. The above request was clearly a misrepresentation of what was really happening. Thus one can conclude by saying that the reason that the Respondent were re-aligning the parking bays in terms of the registered plans, such was an afterthought on the part of the Respondents. Since same was only advanced during the Conciliation process. If it was not so, the Respondents could have informed the Applicant from the start.

[17] The Applicant had requested the rectification of the allocation of parking bays from the Respondents and the Managing Agent, but there is no evidence that same reason advanced by the Respondents was at any stage given to the Applicant.

[18] In terms of the Sectional Title Act, the parking bay in question as per the copy of the plans submitted by the Respondents shows that this Exclusive Use Area was created in terms of **Section 27** of the aforementioned Act. As a consequence, such

confers rights of exclusive use and enjoyment of part of the common property to owners.

[19] The Exclusive use area in question can only be transferred from one owner to another by way of a notarial deed. A holder of such right to exclusive use area can protect and enforce those rights against any person.

[20] Notwithstanding the fact that the Respondents did not advise the owners of the real reason for the remarking of the parking bays.

[21] It terms of the Sectional Title Act, Exclusive Use areas created in terms of **Section 27** can only be transferred to another owner by way of registered notarial deed. Therefore any other arrangements contrary to what is registered at the Deeds office cannot stand.

[22] Now therefore in conclusion, the order is as follows:

- (a) That the application for an order in terms of Section 39 (6) (f) is dismissed.
- (b) Accordingly the Applicant is entitled to the parking bay as per the registered plan at the Deeds office
- (c) No order to costs.



Ms. Z.P Tenza

Adjudicator

25 January 2018



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