



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

Case Number: CSOS901/KZN/17

IN THE MATTER BETWEEN

JOHN KENNY

and

THE DIRECTORS OF FENLAND HOME OWNERS ASSOCIATION

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Categories of dispute - schemes governance, meetings.

Applicant seeking an order for , as set out in the application, namely:

1. *"to resurrect Fenland Homeowners Association.*
2. *To mediate with the present members for them to understand that the Homeowners Association is there to perform of an administration function.*
3. *For the Fenland Homeowners Association to carry out its functions.*
4. *Fenland Home Owners Association, once functional, to issue clearance certificates for transfer, collect levies and carry our maintenance".*



I was unable to order in terms of relief 2 as the matter was set down for adjudication and not conciliation.

The other reliefs are in line in the provision of section 39 of the CSOS Act which provides that

“ In respect of meetings,

S39(4) (a) – an order requiring the association to call a general meeting of its members to deal with specific business;”

There are problems with the general functioning and running of the scheme. It appears that there is little to no management of the schemes finances. Nobody present could confirm when the last audit of the schemes finances were done. The Applicant is ultimately seeking relief to help form an executive committee, board of directors, who could commence with the management of the scheme as a whole, make decisions in this regard and also to issue levy clearance certificate for the transfer of properties within the scheme.

The facts that are in common cause are:

1. The scheme needs to be managed in all facets of the scheme including financial and physical. Currently there is very little management taking place.
2. There is uncertainty as to who forms part of the executive committee.
3. An urgent meeting of its members must be convened as soon as possible to establish an executive committee who will then be formally be given tasks in respect of the management of the scheme.
4. That levy clearance certificates need to be issued where necessary.

Facts in dispute:

There were, strangely, no facts in dispute. This matter should have been settled from the outset. Mrs Henriques, a member, did raise a dispute that she had with the Applicant. I did not entertain this dispute for the reason that it had nothing to do with this adjudication. The dispute appears to have been a personal issue relating to a contractual dispute relating to the sale of property.



INTRODUCTION

The Applicant is John Kenny.

The Respondent is The Directors of Fenland Home Owners Association.

This application was brought in terms of s 39 (4)(a) of the CSOS Act No.9 2011

“ seeking an order requiring the association to call a general meeting of it’s members to deal with specified business”

This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. 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.

The adjudication hearing took place on 18 July 2018 and an order by consent is hereby ordered. This application is before me because 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.

On 18 July 2018, the applicant and the Respondent were present at the hearing. The parties entered an appearance in terms of 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/ RELEVANT STATUTORY PROVISION

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”.

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”



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”.

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”.

Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 48 of the Act.



SUMMARY OF EVIDENCE

The Applicant and Respondent both agreed that the Scheme is in urgent need of management. There appeared however to be some confusion as to who exactly was part of the executive Committee, i.e. Directors. I was not in a position to advise the parties and referred them to study the Memorandum of Incorporation (“MOI”).

The parties agreed however that as there had been an absence of meetings for many years, the Applicant would be responsible for convening such meeting, in accordance with the provisions of the Memorandum of Incorporation (“MOI”), within 30 day from date of this order being granted.

I am of the view that the scheme needs to convene this meeting to help the members resolve important issues, including that of forming a board of directors and appointing certain powers in

terms of the MOI upon them, issuing levy clearance certificates and of course proper financial and physical management of the common property. Once the Directors have been appointed, they should arrange an Annual General Meeting to be convened as soon as reasonably possible thereafter. This may well require an audit of the schemes finances to be prepared.

POWERS AND JURISDICTION OF THE ADJUDICATOR

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

Accordingly, the following order is made by consent, i.e. all parties agreed to the terms of this order being granted, as follows:

1. Within 30 days from date of this order, the Applicant shall convene an urgent meeting of all members of the Fenland Homeowners Association in accordance with the provisions of the MOI wherein the following items will be resolved:

1.1 Appointment of a board of Directors.

1.2 The newly appointed directors shall as soon as reasonably possible arrange for and convene an Annual General Meeting, in accordance with the provisions of the MOI.

1.3 The newly appointed Directors shall issue any outstanding levy clearance certificates, without delay, and where such certificates are justified to be issued.

 **CSOS**
Community Schemes
Ombud Service
ADJUDICATION ORDER
DATE: 14/08/2018
Community Schemes Ombud Service
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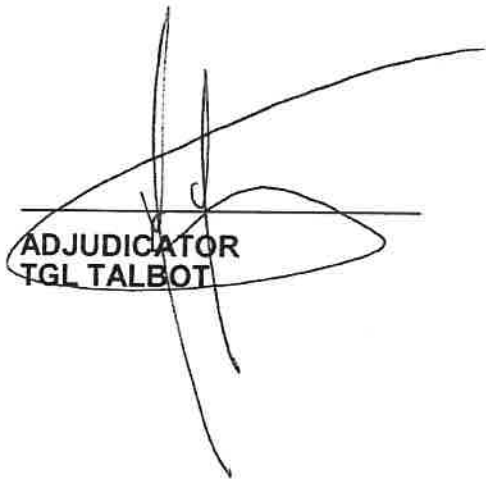
RIGHT OF APPEAL

Notwithstanding that this order is by consent, the parties' attention is drawn to –

Section 57(1) of the CSOS Act of 2011 refers –

*“An applicant, the association or any affected person
who is dissatisfied by an adjudicator’s order, may appeal
to the High Court, but only on a question of law”*

SIGNED AT PIETERMARITZBURG ON THIS THE 31ST DAY OF JULY 2018


ADJUDICATOR
TGL TALBOT


Community Schemes
Ombud Service
ADJUDICATION ORDER
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