



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

Case Number: CSOS 198/WC/17

IN THE MATTER BETWEEN

**PRISCILLA EWERT  
(Applicant)**

and

**PIERRE RADEMEYER  
(Respondent)**

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**ADJUDICATION ORDER**

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**PARTIES**

1. The applicant is the owner of dwelling unit 43, 7 Osprey Close in L'Afrique Eco Village, 28 Gie Road, Table View, Cape Town.
2. The respondent is the chairman of the trustees of the L'Afrique Home Owners' Association, the property known as L'Afrique Eco Village, Gie Road, Table View, Cape Town. Respondent is represented by duly appointed Managing Agent Mr Clarence van Vuuren.
3. L'Afrique Eco Village is a "community scheme" as contemplated in the CSOS Act of 2011. The 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**

4. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Western Cape Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
5. The adjudication hearing took place on 4 October 2017. This application is before me as a result of a referral sent by the Western Cape Provincial Ombud in terms of section 48 of the Act, which 'Notice of Referral' was communicated to both parties.

## **APPLICABLE PROVISIONS OF THE ACT**

6. The application was submitted 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".*
7. Section 39 provides that –  

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

*(6) In respect of works pertaining to private areas and common areas –*

- (a) an order requiring the association to have repairs and maintenance carried out;*
- (b) an order requiring the relevant person – (i) to carry out specified repairs, or have specified repairs made.*
- (d) an order declaring that the association’s decision to reject a Proposal to make improvements on or alterations to common areas is unreasonable, and requiring the association –*
  - (i) to agree to the proposal; or*
  - (ii) to ratify the proposal on specified terms.*

*(2) In respect of behavioural issues –*

- (a) an order that particular behaviour or default constitutes a nuisance and requiring the relevant person to act, or refrain from acting, in a specified way.*

*(7) In respect of general and other issues –*

- (b) any other order proposed by the chief ombud.*

8. 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'.*

9. 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**

10. Applicant and owner of unit 43 replaced a large section of her front yard with paving (on the common property) without prior written consent from the trustees. The trustees of L'Afrique Home Owners' Association have subsequently rejected to grant permission *post facto* in this regard and avers that the paving is in contrast with certain provisions of their Constitution and Conduct Rules.

### **APPLICANT'S VERSION**

11. Applicant avers that she (and her husband) moved into unit 43 at Osprey Close L'Afrique Eco Village in October 2014. In March 2016 they bought about 1000 second hand bricks to pave at the side of their unit. She perused the Conduct Rules and could not find anywhere a prescriptive requirement that written permission is required. She enquired and got verbal permission from the respondent (also the chairman) that she may proceed with the paving in front of her unit, after which the paving was done in February 2017, due to the continued draught and the effects thereof. Thereafter she received a letter from Clarence van Vuuren Properties (the Managing Agents) stating that no paving will be allowed without prior written permission, consent not to be withheld unreasonably. She responded per e-mail (of 24 February 2017) stating

that the respondent is "fine" with the paving. Respondent then subsequently denied giving verbal permission to applicant in the first place. Respondent requested a Trustee Meeting to be held on 15 March 2017 to discuss *inter alia* the paving issue. Applicant (also recently appointed trustee) feels that she was ambushed in that she was under the impression that the purpose of the meeting was to discuss the standard of paving for other owners as well, instead she was told that her paving had to be removed. Mr Clarence van Vuuren also stated that respondent had no right or authority to grant permission and that she should have known that in her capacity as trustee. Applicant also requested that other owners then also have to remove their 'illegal' paving and pebbles if she had to remove hers as a precedent was established in this regard already. She requested permission at the meeting, which was denied. An argument followed after which applicant left the meeting. This ordeal caused anxiety and stress to applicant.

Applicant subsequently proposed to cover the relevant area with succulents to also restore the 'ECO' feeling they had apparently defaced, as a compromise. A letter (dated 23 March 2017) from the Managing Agent stated that she had to remove the paving within thirty days. Applicant then requested a portion (pathway) to remain and was asked to submit a diagram to the trustees in this regard. The request (inclusive of the portion marked on the photo copy to remain) was however rejected.

#### **APPLICANT'S PRAYERS**

12. That the paving installed be allowed to remain due to the precedent set and the verbal permission granted.

## **RESPONDENT'S VERSION**

13. Mr Clarence van Vuuren (Managing Agent) duly representing L'Afrique Home Owners' Association and the trustees stated that the respondent is the chairman (and one of five trustees) in the Village consisting of 82 units. Respondent further denied granting applicant verbal permission to proceed with the paving nor does respondent have the authority to do so (as per respondent's affidavit submitted). A trustee meeting was held on 15 March 2017, the agenda and minutes clearly indicating that the paving was not the only matter addressed at such meeting.
14. Mr van Vuuren testified that no prior written consent was granted as required. The trustees applied their minds in the matter before the decision to refuse permission was taken. The paving in question is further an "eyesore" and in contravention of the village's Constitution and Conduct Rules. He has been involved with the village for the past fifteen years and that the other "illegal" paving was done prior to his arrival and that he could not do anything about that. No other paving was also done or permitted in the Village.
15. Respondent is of the opinion that applicant's request is not in the spirit of the Eco Village's character and style and the trustees refusal in the circumstances was not unreasonable.

## **EVALUATION OF EVIDENCE SUBMITTED**

16. It is common cause that applicant did not seek prior written permission from the trustees before she proceeded to pave the area in front of her unit as prescribed in the Constitution (clause 8.2.2 with reference to the 'character and style of L'Afrique') and Conduct Rules (rules 12.1 & 13.1) of the Village. Applicant's claim of ignorance concerning these provisions

and the Constitution whilst she was a trustee at the time in question is not convincing.

17. The Village's Rules are further in accordance with the Sectional Titles Schemes Management Regulations, 2016, which determines; section 5(1) *"The owner or occupier of a section must not, without the trustee's written consent, make a change to the external appearance of the section or any exclusive use area allocated to it unless the change is minor and does not detract from the appearance of the section or the common property."*

18. The trustees' *post facto* refusal to grant permission herein is found not to be unreasonable nor unfair in the circumstances.

19. The determination of 'reasonableness and equal application to owners' for rules entails a rule in circumstances of a particular scheme to be;

19.1 "Necessary,

19.2 Not to be excessively wide in its scope,

19.3 Based on good reason, i.e. sensible in the circumstances, and

Operate so as to promote the best interest of the sectional community, for example in preserving the quality of life in the scheme or the value of the units as investments." (Sectional Title Survival Manual Paddocks 8<sup>th</sup> Ed January 2017 Graham Paddock P80).

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

20. 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 Service 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**

21. In the circumstances, the following order is made in terms of Section 54 of the Community Schemes Ombud Service Act No.9 of 2011;
- Applicant is ordered to remove the paving in question at their own cost and restore the relevant area to its original state or any other state which is acceptable to the trustees – on or before 30 November 2017.

No order is further made as to costs herein.

#### **Sections 56 (1) of the CSOS Act, 2011**

22. The parties' attention is drawn to-
- Section 56 (1) of the Act provides that-
- 'If an adjudicator's order is for the payment of an amount of money or any other relief which is within the jurisdiction of a magistrate's court, the order must be enforced as if it were a judgement of such Court and a clerk of such Court must, on lodgement of a copy of the order, register it as order in such Court'.



## RIGHT TO APPEAL

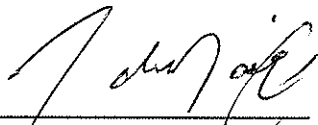
23. Section 57 of the CSOS Act of 2011, also determines that;

- (1) 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.
- (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.



### ADJUDICATION ORDER

DATE: 2017/10/9  
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ADV DRIES DUTOIT  
ADJUDICATOR  
09 October 2017