



ADJUDICATION ORDER
DATE: 31/12/2019
Community Schemes Ombud Service
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Website: www.csos.org.za
Fraud Hotline: 0800 701 701

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

Case Number: CSOS001699/GP/19

IN THE MATTER BETWEEN

IRENE MOCK

APPLICANT

and

MR MARRIOTT (UNIT 20) SADDLEBROOK PLACE

1st RESPONDENT

MR & MRS KATWALA (TENANTS OF UNIT 20) SADDLEBROOK PLACE

2nd RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

This is an application for dispute resolution in terms of the following sections of the Community Schemes Ombud Service (CSOS) Act:

- Section 39 (2)(a) – 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;

Applicant seeks an order in the following terms:

- *Mr Marriot owner of no. 20 to soundproof my bedroom as nobody can get his tenant to keep to the rules. See attached copy quote. I have lived in Saddlebrook for 30 years and 8 months*

and for 30 years I could sleep in my room whenever I wanted but not anymore when I have been so unwell like I have never been in my whole life of 69 years.

- *I want the ombudsman to fine Mr. Marriott heavily because of how they have affected my health.*
- *I tried to move my heavy king size bed away from the wall on the 18 August at about 22h30 as they were still making noise and wanted to move my bed to the other side of the room, breaking the wall to wall mirror behind my bed escaping being cut by the glass.*

The order is in line with Section 39 (2) (a) of the CSOS Act No.9 of 2011 (the CSOS Act).

FINDINGS

The order sought by the Applicant is dismissed.

INTRODUCTION

1. The Applicant, Ms Irene Mock is the owner of Unit 21, Saddlebrook Place, Meadowbrook Lane, Epsom Down, Bryanston, GAUTENG.
2. The 1st Respondent is Mr Michael Marriott, the owner of Unit 20, Saddlebrook Place, Meadowbrook Lane, Epsom Down, Bryanston, GAUTENG.
3. The 2nd Respondent is Mr and Mrs Katwala Malido, the tenants at Unit 20, Saddlebrook Place, Meadowbrook Lane, Epsom Down, Bryanston, GAUTENG.
4. 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 Gauteng 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 18 December 2019. This application is before me as a result of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
6. The parties were duly served as contemplated section 48 of the Community Schemes Ombud Service Act No.9 of 2011.



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7. The 2nd Respondent did not attend the adjudication hearing. The 1st Respondent, Mr Michael Marriott indicated that his tenant was unable to attend. The parties were not legally represented.

APPLICABLE PROVISIONS OF THE ACT

8. 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”*
9. 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”*.
10. 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”*.
11. Section 50 provides that - *“The adjudicator must investigate an application to decide whether it would be appropriate to make an order, and in this process the adjudicator –*
- (a) Must observe the principles of due process of law; and*
 - (b) Must act quickly, and with as little formality and technicality as is consistent with a proper consideration of the application; and*
 - (c) Must consider the relevance of all evidence but is not obliged to apply the exclusionary rules of evidence as they are applied in civil courts.”*

SUMMARY OF EVIDENCE

APPLICANT’S SUBMISSIONS

The Applicant was duly sworn in and testified as follows;

12. Ms Irene Mock, the Applicant had no objection in taking the prescribed oath and was duly sworn in.



13. The Applicant testified that she is the owner at Unit 21, Saddlebrook Place, Meadowbrook Lane, Epsom Downs, Bryanston, GAUTENG. She has been an owner and occupant for 31 (thirty-one) years. A year ago, Mr and Mrs Katwala moved in as tenants of Mr Marriott. The tenants have made it impossible for her to sleep in her bedroom. She lodged a complaint with the managing agent, who tried to resolve the matter with the tenants to no avail.
14. The Applicant indicated that in terms of the rules of Saddlebrook Place, silence must be maintained between 22h00 and 7h00. According to the Applicant, the definition of 'silence' is such that noise in any section, or any portion of the common area cannot be heard within the walls of any other section. The tenants make noise in their kitchen banging pots and pans around. The kitchen is adjacent to the Applicant's bedroom, the noise is intolerable she had to call the managing agent. Mr Bodewyn Sponk, the managing agent made the tenant stand in the Applicant's bedroom whilst the Applicant banged pots and pans in the kitchen to illustrate the noise levels.
15. According to the Applicant the tenants undertook to stop making a noise at 21h30, save for Fridays where the noise should stop at 22h00. The tenants did not stick to the arrangements, she recorded the noise which was 49 (forty-nine) times since the end of February 2019. She is being accused of harassing and intimidating tenants. The Applicant stated that she bangs on the wall when the tenants exceed the agreed time. The Applicant once banged on a drum at the unit 20, which conducted led to neighbours coming to stop her. She indicated she wanted to draw enough attention with the believe that it will prevent the tenants from continuously making a noise.
16. The Applicant stated that she had breast cancer, broke her pelvis and had five operations. According to the Applicant her health is affected by the noise from unit 20. She submitted that her heart problem was affected, and her arrhythmia was so bad that she had to consult Dr Steenkamp twice. The doctor wrote two letters which she sent to both the managing agent and Mr Marriott to inform and address it with his tenants. She stated that she will need another operation to repair her hernia which she had developed due to all the stress from unit 20.
17. The Applicant further submitted that Mr Marriott was defaming her and the alleged that she is bipolar and racist. She intends suing him for defaming her character. She stated that Mr Marriott can afford to pay because he owned two properties at Saddlebrook Place and an airplane.



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18. The Applicant lodged a complaint with CSOS after failed attempts to remedy the impasse.

APPLICANT'S PRAYERS

19. That Mr Marriot pay for soundproofing the wall that separates unit 20 and unit 21.

RESPONDENTS' SUBMISSIONS

The Respondent was duly sworn in and testified as follows;



20. The 1st Respondent, Mr Marriott had no objection in taking the prescribed oath and was duly sworn in.

21. The 1st Respondent testified that his response to CSOS was based on his observation of the Applicant's long-standing pattern of behaviour. Mr Marriott explained that Saddlebrook Place consist of 52 (fifty-two) apartments. There are children, cats and dogs in the scheme thus expecting complete silence will be impossible. Ms Mock complained about the previous tenant's dog, he had to cover the front gate to satisfy Ms Mock.

22. Mr Marriott suggested that CSOS must interview the neighbours and trustees to decide on the veracity of the allegations. The tenants feel intimidated, the same sentiments were shared by the previous tenant. Before the new tenant moved in, Ms Mock commented that 'they better not be black'. He viewed the comment as racist but denied calling her a racist.

23. The 1st Respondent stated that he takes exception to the unfounded and unsubstantiated allegations of woman abuse. He stated that the Applicant was accusatorial and vexatious. The tenants feel intimated and have tendered a notice to vacate his unit due to Ms Mock's conduct. Mr Marriott's conduct has resulted in loss of income. The tenants have been complaining and their daughter is terrified because of Ms Mock. The tenants have formulated a believe that the Applicant is racist. She banged the walls and the doors to intimidate the tenants. The harassment by Ms Mock continues unabated.

RESPONDENTS PRAYERS

24. The Respondent appealed to Ms Mock to be reasonable and the managing agent and the body corporate have a duty to address this matter.

25. Ms Mock be advised that the conduct is unreasonable.



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EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

26. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.

27. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighted up and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

DISCUSSION

28. I have perused all written submissions and taken into consideration all submissions stated before me on 18 December 2019.

29. The Applicant submitted email correspondence between herself and the managing agent. The crux of the complaint relates to noise from the 2nd Respondents and the fact that the 1st Respondent is protecting the tenants according to the Applicant.

30. The Applicant brought a recorder, empty pans and pots to demonstrate the level of the noise from the tenant at unit 20. I did not allow the recorder to be part of the evidence solely because I cannot confirm the veracity of the audio. The empty pots and pans were also denied as evidence on the basis that the venue is different, the decibel of the noise cannot be measured.

31. The Applicant has listed illnesses which date as far back as 15 (fifteen) years. She bangs on the walls doors and drums to silence the tenants who are washing dishes or cooking. She broke her bedroom mirror trying to move her king-sized bed to avoid the noise.

32. The 1st Respondent in his submission stated that Ms Marriott's behaviour is a longstanding conduct and requested CSOS to interview the neighbours. The Applicant commented that she hoped that the tenant was not black. The tenants and their children have resorted to leaving the complex due to the Applicant's conduct.

33. The list of illnesses listed by the Applicant pre-dates the tenants. The demand for wall soundproofing to be paid for by Mr Marriott is without basis. Taking into consideration that the tenant has tendered a notice to vacate the premises. The Applicant's comment that Mr Marriot owns two properties in Saddlebrook Place and an airplane thus can afford to pay for a soundproof does not demonstrate any bona fide claim the 1st Respondent is liable to pay for any soundproofing. She further wanted the Respondent to be fined heavily for affecting her health.
34. The Applicant's submission is that the noise decibel is such that it interferes with her enjoyment of the unit.
35. The relief sought by the Applicant falls within the provisions of Section 39 (2)(a) of the CSOS Act. The Applicant is seeking an order that the behaviour of some residents of the scheme constitutes a nuisance and requires such residents to refrain from the conduct.
36. The Court held in *PGB Boerdery Beleggings (Edms) Bpk v Somerville 62 (Edms) Bpk 2008 (2) SA 428 SCA para 9*, that *'An interference with the property rights of another is not actionable as a nuisance unless it is unreasonable. An interference will be unreasonable when it ceases to be a "to-be-expected-in-the-circumstances" interference and is of a type which does not have to be tolerated under the principle of "give and take, live and let live". (own emphasis) The determination of when an interference so exceeds the limits of expected toleration is achieved by invoking the test of what, in the given circumstances, is reasonable. The criterion used is not that of the reasonable man but rather involves an objective evaluation of the circumstances and milieu in which the alleged nuisance has occurred.'*
37. The Applicant is an occupant in a scheme of 52 units, where there are young children, dogs and cats. An objective evaluation of the circumstances requires that a consideration of the Applicant's surroundings.
38. In the matter of *Prinsloo v Shaw 1938 (AD) 570 at 575*, the court held that "the complaint of the applicant must be measured against the standard of a normal person of sound and liberal tastes and habits. That is the test to be employed".
39. In the evidence led by the Applicant, the Adjudicator is not convinced that the 2nd Respondent's conduct constitutes a nuisance as provided for in Section 39 (2) (a) of the CSOS Act.



40. The application is therefore dismissed in terms of section 53(1) of the CSOS Act on the basis that the application is frivolous, vexatious, misconceived or without substance.

POWERS AND JURISDICTION OF THE ADJUDICATOR

41. 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

42. Accordingly, the following order is made;

- (a) The Applicant's complaint against the Respondent is dismissed.
- (b) No order is made as to costs.

RIGHT OF APPEAL

43. 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 SANDTON on this 31ST DAY OF DECEMBER 2019.



ML BULO
ADJUDICATOR

