



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

Case Number: CSOS02165/KZN/18

IN THE MATTER BETWEEN

TRUSTEES OF LOGRO MEWS BODY CORPORATE

(APPLICANT)

AND

SHIREEN WIEBE

(RESPONDENT)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute S39(2): in respect of behavioural issues.

1. The Applicant seeks an order:

That a particular behaviour or default constitutes a nuisance and requiring the relevant person to act, or refrain from acting, in a specified way.

INTRODUCTION

2. The Applicant is the Trustees of Logro Mews Body Corporate a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011("ST SMA") which is situated at the Reservoir Hills, duly



represented by Mr Wendel Naidoo who is the Chairperson of the Body Corporate, situated at 575 Mount Batton Drive, Reservoir Hills.

3. The Respondent is Shireen Wiebe, an owner of unit 9 in Logro Mews Body Corporate, the owner was duly represented by the occupier of the unit, Mr Ragoonandhan.
4. The application was brought in terms of s 39 of the Community Schemes Ombud Service Act No 9 of 2011 ("the CSOS Act") which provides that:

"An application made in terms of section 39 must include one or more of the following orders:

39(2) In respect of behavioural issues –

That a particular behaviour or default constitutes a nuisance and requiring the relevant person to act, or refrain from acting, in a specified way.

5. This is an application for dispute resolution in terms of the CSOS Act. The application was made in the prescribed form and lodged with CSOS.
6. The adjudication hearing took place on 14 November 2019. Both parties attended the hearing. The parties were duly represented.

RELEVANT STATUTORY PROVISION

7. The hearing was conducted in terms of section 38 of the CSOS Act which provides that –

"Any person may make an application if such person is a party to or affected materially by a dispute".

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. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud therefore, referred the matter to adjudication, in terms of Section 48.

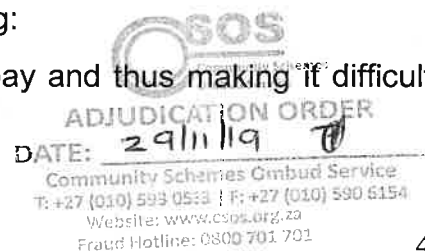
12.SUMMARY OF RELEVANT EVIDENCE (That relating to the issues in dispute)

Applicant’s Submissions

12.1 The Applicant indicated that there were three issues that he wanted to bring to my attention. The issues were as follows: the installation of the water meter, the removal of the security gate and lastly fines imposed on the owner of unit



- 9 which were imposed as a result of the occupier failing to adhere to the Body Corporate Rules.
- 12.2 Mr Naidoo submitted that the occupier of unit 9 installed a prepaid water meter without the approval of the Body Corporate. He further refused to remove it when instructed to do so. The Body Corporate incurred costs to remove the water meter. The issue of the water meter was subsequently resolved but a fine was imposed for failure to adhere to Body Corporate rules.
- 12.3 The Body Corporate received a letter from the Ethekwini Municipality Safety and Security Cluster, Fire and Emergency Unit which advised that the inspection conducted at the scheme revealed that the building did not comply with SANS 10400 Part T Section 4.16.2(d) which provides that any building of height of more than three storey shall be provided with not less than two escape route. Once the Body Corporate received the letter, they informed the owner that it was necessary to remove the gate that was installed by their unit which could give access to the stair way. This was not done instantly; the gate was eventually repositioned. This issue was resolved but a fine was imposed for failure to adhere to Body Corporate rules
- 12.4 The occupier also interfered with the service providers who are appointed to provide a service to the scheme, and this has since been addressed. It was further submitted that he also interfered with the distribution of the plastic bags in the scheme, however, this has been resolved as well in a court.
- 12.5 The Applicant indicated that all correspondence affecting Unit 9 have at all times been communicated with the owner of the unit who is the occupier's daughter. It was also submitted that the relationship between the occupier and the Trustees has become so sour that the matter ended up in court and a restraining order was issued that the parties do not communicate verbally but in writing.
- 12.6 The Respondent has been fined for the following:
- Failing to park in his allocated parking bay and thus making it difficult for other vehicles to pass or park;



- Illegally installing a prepaid water meter on the exterior walls resulting in the Body Corporate instructing a plumber to attend to the removal thereof given your failure to rectify the aforesaid;
- Taking unauthorised photographs of the Chairperson and others, thus invading their privacy;
- Using obscene language in the common property, which conduct is wholly unacceptable and will not be tolerated;
- Continuously harass the Chairperson and the management of the Body Corporate, insinuate and make false accusations such as falsely accusing Mr Naidoo of disconnecting your electricity, stealing your copper pipe and allegedly assaulting the janitor;
- Continuously interacting with service providers hired by the Trustees of the Body Corporate.

12.6 The Applicant indicated that the Respondent and occupier were furnished with correspondence relating to the fines and Attorneys letter advising of the transgressions.

12.7 The Respondent is expected to pay an amount of R 8 285.52 in respect of fines and legal fees.

13. **Respondent's Submissions**

13.1 It was agreed that most of the issues raised by the Applicant were resolved and the remaining issue in contention is the issue of the fines and legal costs.

13.2 The Respondent also indicated that he has lodged an application with CSOS in respect of issues that he is concerned about. His submission regarding the fines are that:

13.2.1 The proof to have the overflow plumbing done which is a fine of R 1000.00 is disputed because Section 12 of the Body Corporate rules provides that the gyser, fitted by the developer above the ceiling area below the roof is common property and therefore the responsibility of the Body Corporate to engage in any alterations therefore. This fine should be cancelled.

13.2.2 Failing to remove the security gate thus breaking the conduct rules 14.2 and 16(1) which fine is R1000.00, the gate was installed prior to his occupation of flat 9 in 2012. The gate was repositioned to comply with the Fire and Safety Regulations. This fine should be cancelled.

13.2.3 Failing to remove the prepaid water meter fine of R500 and removal of cost of pre-paid water meter R 464.75. The prepaid water meter was removed by a plumber engaged by the Respondent. The outer cover attached to the wall was left in place to house the stop tap. The invoice does not reflect that the prepaid meter was removed by the plumbers engaged by the Body Corporate and therefore, the fine must be removed.

13.2.4 The legal costs should not have been incurred by the Body Corporate as they should not have appointed an Attorney but rather referred the matter to CSOS to deal with the matter that affect the Respondent. The Trustees of the Body Corporate instructed Attorneys to represent the Ferozo's family (Unit 3) whom the Respondent had a private issue with which was a civil claim. One of the members of the family is the Chairperson of the Body Corporate but the issue was not in his capacity as the Chairperson and they utilised an Attorney which was paid for by the Body Corporate. The occupants of unit 3 used the funds for personal benefit and no order was issued by a Magistrate that the Respondent must pay the legal costs of the application. The protection order was granted against the occupants of unit 3. The Respondent submitted that he should not be liable for the legal costs.

13.2.5 The Respondent submits that the fines should be removed, and the Body Corporate must release the levy clearance certificate to facilitate transfer of flat to the owners' mother.

14. EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

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



14.2 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 on a balance of probabilities. This means that once all the evidence has been tendered, it must be weighed up and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

14.3 Section 3 of STSMA provides that the management and conduct rules contemplated in subsection (2) must be reasonable and apply equally to all owners of units. The Conduct Rules of Body Corporate of Logro Mews was submitted to me and state that failure to abide by the **Conduct Rules** will result in the Owner or Tenant being called in by the Body Corporate to furnish an explanation. If the Owner or Tenant is found negligent, a fine will be charged and/or legal action will be instituted against him by our Attorney.

14.4 The Conduct rules reads at clause 20 that, "Unit holders letting out units must ensure that they sensitize tenants of Body Corp rules."

14.5 The Body Corporate and its Trustees will have the right to impose fines wherever it deems necessary in order to get some order in the block of flats. The Trustees are empowered to act in the best interest of its members and therefore will have the right to make decisions whereby it will be for the benefit of the owner /owners. Note that fines will vary from R 100 to R 1000 and is subject to the severity of the transgression. The above conduct rules have been set in accordance with the Sectional Titles Act and have been agreed to by all present.

14.6 The conduct rules clearly state that once a breach of the rule has been identified as was the case *in casu*, the Body Corporate calls the owner or tenant and they must provide an explanation it is only once the person is found negligent that a fine will be imposed and/or legal action be instituted. I commend the scheme for this rule as it encourages the basic principles of law that all sides must be heard prior to imposing a sanction but unfortunately this

was not followed by the Body Corporate. In fact, the documents before me do not indicate a meeting or written submission by the Body Corporate to the owner or occupier of the unit to present their case in order to determine their negligence and thereafter take the necessary steps, if any. An opportunity to present one's case allows the deciding person to make an informed decision. In the instance of the 'overflow' it is correctly submitted that anything that is between the roof and median line of the ceiling is common property however Section 31 of the Regulations on Sectional Titles Schemes Management states, "Notwithstanding that a water-heating installation forms part of the common property and is insured by the body corporate, a member must maintain, repair and, when necessary, replace such an installation which serves that member's section or exclusive use area...." So, it stands to reason that the owner is responsible for the overflow and is in breach of the Body Corporate Rules.

- 14.7 The invoice from Zipp Plumbers dated 15 August 2018 reflects that the work done for R465.75 which the Respondent is liable for is to rectify the cold water feed on driveway, a driveway that is common property and the work done was not for the removal of an "illegally" installed water meter, so the question bears why he must be liable for the removal of the water meter when he removed it himself. However, this does not take away the fact that the prepaid water meter was installed illegally. The Respondent is liable for the costs incurred in calling in the service provider. Unfortunately, she cannot be held liable for the fine because the Body Corporate did not follow their own procedure.
- 14.8 The Respondent failed to remove the secondary gate and removed it in his own time and not the time stipulated by the Body Corporate despite extensions .He should have been called in by the Body Corporate and if found negligent impose the fine, unfortunately the Body Corporate did not follow their own procedure and the Respondent cannot be compelled to pay the fine.
- 14.9 The dispute that was in court appears to be around the issue of the bin bags which the Applicant raised. The interim protection order application seems

relate to an issue that affects the scheme which was the bin bags .Reference is made in the application of Chairperson, former Chairperson and supervisor of the Scheme so in actual fact on the Respondents own application the application was against them in the capacity of the role they play in the Body Corporate save for the former chairperson and in my view the legal costs of R721,63 was due and payable by the Body Corporate as they had to act in the best interest of the Body Corporate but the Respondent cannot be required to pay back as no order was made regarding costs and he was exercising his rights Afterall.

14.10 Handing the matter of the outstanding fines over to the Attorneys in my view was premature as the Body Corporate had not followed their own Conduct Rules prior to imposing a fine on the Respondent and it is my view that the Respondent does show little regard for the Body Corporate rules in that he does things when he wants to instead of when he is requested. His conduct is unacceptable, and he should refrain from taking matters into his own hands and approach CSOS when his issues are not attended to internally. It is my view that the Respondent should have been fined because the Respondent did not follow the conduct rules but because the Body Corporate did not follow their own rule such funds must be cancelled. He is, however, liable for the cost incurred for the plumber which is R465.75.

ADJUDICATION ORDER

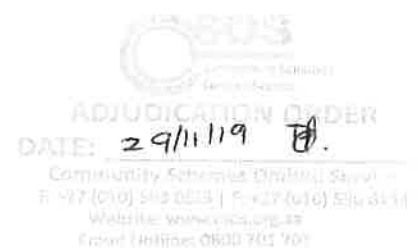
15 In the circumstances, the following order is made:

15.1 that the application is granted, and the Respondent must pay the Applicant an amount of R 465.75 for the costs incurred within 30 days from receipt of this order.

15.2 The fines imposed on the Respondent must be cancelled and henceforth not be reflected on any levy statement of the Respondent.

RIGHT OF APPEAL

16. The parties' attention is drawn to –



Section 57(1) of the CSOS Act of 2011 which provides –
“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 within 30 days from date of
issuing of order.”

DATED AT DURBAN on ~~27~~⁴ November 2019



ADJUDICATOR
MS T.P QWABE

