



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

Case Number: CSOS02342/KZN/18



ADJUDICATION ORDER
DATE: 22/11/2019
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IN THE MATTER BETWEEN

MANDLA NOAH KHUMALO

(Applicant)

And

THE TRUSTEES OF HARBOUR VIEW BODY CORPORATE

(1ST Respondent)

MR M DEVA

(2ND Respondent)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute S39(6): in respect of works pertaining to private areas or common areas

1. The Applicant seeks an order:

to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out or to be carried out in respect of the property by the applicant.

INTRODUCTION

2. The Applicant is Mandla Noah Khumalo an adult male and who is the owner of Unit 704, Harbour View Body Corporate.
3. The Respondents are is the Trustees of Harbour View Body Corporate, a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011("STSMA") which is situated in Durban, duly represented by Mr Van Zyl who is the Manager of the Building and second Respondent is Mr Deva who is the owner of unit 804 at Harbour View Body Corporate.
4. The Applicant is the registered owner of Unit 704 in the sectional title complex of the 1st Respondent in terms of Section 1 of the Act.
5. 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 38 must include one or more of the following orders:

In respect of financial issues—

S39(1)(e) An order for the payment or re-payment of a contribution of any other amount.



6. 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. The application includes a statement of case which sets out the relief sought by the Applicants.
7. The adjudication hearing took place on 6th November 2019 and all the parties were present.
8. The Applicant represented himself, the 1st Respondent was duly represented by Mr Van Zyl and the 2nd Respondent represented himself.

RELEVANT STATUTORY PROVISION

9. 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”.

10. Section 45(1) provides that –

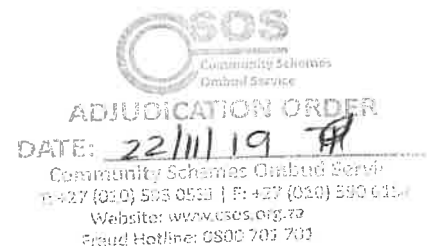
“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”

11. 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.”

12. 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”.



13. 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.

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

Applicant's Submissions

14.1 The Applicant indicated from inception that his case is reliant on two particular emails, that being, the emails dated 30 July 2018 from Mandla Khumalo sent at 8h52 to Trafalgar Property Management amongst others advising about the flooding at 704 Harbour View.

14.2 This email was responded to by Kathy Bhoosun from Trafalgar Property Management at 11h56 who indicated that the owner of Unit 804 confirmed that the leak in his unit has been repaired and provided details of the 2nd Respondent as in her view the matter was between the two owners.

14.3 The Applicant indicated that at no stage did they state that the leak came from the 2nd Respondent's unit. He stated that when the leak occurred Mr Van Zyl was called into the unit and took pictures and advised that he would inform Trafalgar of the leak.

14.4 The applicant stated that he wants to be paid an amount of R 5000.00 for the electronic appliances that were damaged due to the flooding which were as a result of the leak as well as R2500 being the excess paid to the insurance for the repairs conducted by the insurance company.

15. Respondent's submissions

15.1 The 1st Respondent was represented by Mr Van Zyl. He stated that he was called into unit 704 when the water was leaking into the unit. He stated that the water was coming out profusely, but he cannot say where the water was leaking from.

15.2 The 2nd Respondent indicated, firstly, that there was no damage to the cupboards in unit 804 which is why he doesn't believe the leak came from his flat. He contacted his tenants and they confirmed that there was no flooding in unit 804. He denied the content of the email dated 30 July 2018 from Kathy Bhoosun from Trafalgar wherein it was stated that the owner of Unit 804 confirmed that the leak in his unit has been repaired. He indicated that he denies that the leak came from his unit because he has not seen any evidence to support that that the leak came from unit 804.



16 EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

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

16.2 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 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.

16.3 It is worth mentioning that CSOS's Investigating Officer attended the premises and viewed both the units concerned and her conclusion was that she could not determine the source of the water ingress.

16.4 There is no doubt that unit 704 flooded on the evening of 25 July 2018, and this is corroborated by the evidence of Mr Van Zyl. The Applicant indicated clearly that he did not know the source of the flooding. Mr Van Zyl who is the building manager took pictures and forwarded same to Trafalgar.

16.5 I have noted that the content of the email dated 30 July 2018 from the Applicant that it makes no reference as to what the source of the flood is and wants an intervention, as they had exhausted all possible avenues within the building. The response received from Kathy Bhoosun, however, directly alerts

the Applicant that the owner of Unit 804 confirmed that the leak in his unit has been repaired.

16.6 There is a further email from Lindi Martin, I am not certain from where to Franscisca of Trafalgar dated 30 October 2018 which attaches quotations to conduct repairs in unit 704 and the content of the email states, **“The attached quotations relate to the authorised repairs, to Unit 704...repairs, to Unit 704, which were considered to be as a result of one event of water damage, from the leaking pipe in Unit 804 above, when water dripped from the kitchen ceiling, into unit 704.”**

16.5 The Applicant subsequently paid the excess in order to repair the damages in his unit . The dispute remaining is for the payment for the replacement of the electronical appliances and the recovery of excess paid. So, it actually also falls under relief sought under S39(1) in respect of financial issues.

16.6 I cannot fathom why all conclude that the flood was as a result of a leak in unit 804. Why would Kathy Bhoosun lie and say the owner of Unit 804 confirmed that the leak in his unit has been repaired? Bear in mind that the Applicant from the inception of the issue did not state this. The illustration by the Applicant of why the 2nd Respondent's flat would not be affected even if the leak came from his unit, makes logical sense as the water would be going downwards. The question would further be what leak was fixed which also resulted in the water ceasing to flood into unit 704? I undoubtedly believe that if the leak that was fixed at unit 804 and the flooding persisted in unit 704 there would have been evidence before me to that effect and unfortunately there is none, which leads one to draw one conclusion: the flooding in unit 704 was as a result of a leak in unit 804. No evidence from any witness and documents even suggests that the leak could have been from the common area.

16.7 The Applicant has not provided a quotation to fix the appliances but rather submitted a quotation for brand new appliances. The intention of dispute resolution is to seek to resolve matters amicably and as such it does not appear to be fair to the Applicant to have paid excess for damages that were

through no fault of his, but for the leak in unit 804, the insurance claim would not have been made. I cannot award the applicant the R 5000.00 prayed for brand new appliances. One must be put in the position they were in prior to suffering the loss and in the absence of the quotation for the repairs of the appliances (as per the application form) and the value of the existing damaged appliances, as the adjudicator I determine that half the amount prayed for is sufficient for the repairs to the appliances as well as the excess amount paid.

16.8 It is my considered view that the Applicant's prayer of relief be granted.

17. ADJUDICATION ORDER

In the circumstances, the following order is made:

- 17.1 That the 1st Respondent is not liable for any damages caused in Unit 704;
- 17.2 That the 2nd Respondent pays the Applicant an amount of R2 500.00 being the amount for the repairs of the damaged electrical appliances and R2500 being the excess paid to the insurance company for the repairs to the damaged property in Unit 704 within 60 days of this order being delivered.

18. RIGHT OF APPEAL

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 delivery of the adjudication order.”

DATED AT DURBAN on 22 November 2019



**T.P QWABE
ADJUDICATOR**



