



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

Case Number: CSOS02689/KZN/18



**ADJUDICATION ORDER**

DATE: 06/12/19

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IN THE MATTER BETWEEN  
**PRISCILLA ANTOINETTE PARDY**

**(Applicant)**

**And**

**THE DIRECTORS OF TYZACK SHAREBLOCK t/a CROWN POINT**

**( Respondent)**

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

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

1. The Applicant seeks an order:

requiring the association to have repairs and maintenance carried out;

**INTRODUCTION**

2.The Applicant is Priscilla Antoinette Pardy an adult female and who is the owner of unit 1603, at Tyzack Shareblock T/A Crown Point.

3. The Respondent is Tyzack Shareblock T/A Crown Point, a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011("STSMA") which is situated at Durban, situated at 179 Prince Street Durban.

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:

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

requiring the association to have repairs and maintenance carried out;

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.

7. The adjudication hearing took place on 19 November 2019. Both parties attended the hearing. The Applicant represented herself and the Respondent was represented by Keith.

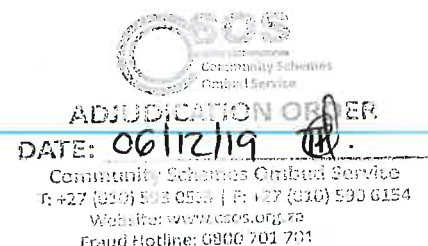
### **RELEVANT STATUTORY PROVISION**

8. 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".

9. 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”

10. 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.”



11. 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”.

12. 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.

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

**Applicant’s Submissions**

14.1 The Applicant submitted that she has had two cases before CSOS prior to the one at hand. All her cases relate to the same issue of the leaking roof. Settlement agreements were signed and were not fully adhered to.

14.2 She indicated that her first issue revolved around her furniture that was destroyed due to the leaking roof. The Respondent attempted to repair it but

the repair is not to her satisfaction as in her opinion it was done by people who are not professionals in the furniture field hence the colour was not the same as before it was damaged. She wants the furniture to be repaired to its original colour by the company that she has elected.

14.3 The Applicant also raised an issue of her blinds which were damaged whilst repairs were being conducted in her unit. The repairs in her flat were by a service provider who was appointed by the Respondent.

14.5 She alerted the manager of the building about the damaged blinds. The manager gave her blinds for the one room to replace her damaged blinds. She still wants her blinds to be replaced and does not accept the response that she was given that the blinds were old, and she should have ensured that the windows were closed when work was done in her unit.

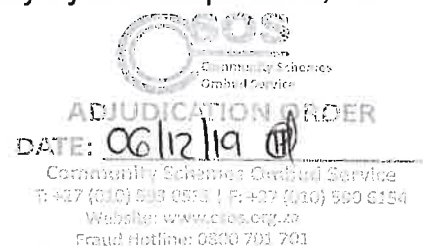
14.6 The third and biggest issue which is the re-prical of all that has been explained above is the leaking roof. The Respondent has attempted over the years to fix the leaking roof in the scheme, but the attempts made have not worked in preventing water from entering the applicant's unit. She indicated that the living environment in her unit has become unbearable and she is of the view that the Respondent is not doing enough to assist her. She indicated that the roof leaks are becoming worse.

14.7 The Applicant wants the roof to be fixed with urgency by the Respondent, her blinds replaced, and her damaged furniture fixed.

## 15. **RESPONDENTS SUBMISSIONS**

15.1 The Respondent indicated that it was not disputed that the roof is leaking and is causing damage to the property. There are other units which are adversely affected; however, the Applicants unit is worse affected.

15.2 Attempts have been made to repair the roof, but they have not worked. The Respondent is in the process of obtaining quotations to fix the roof with new

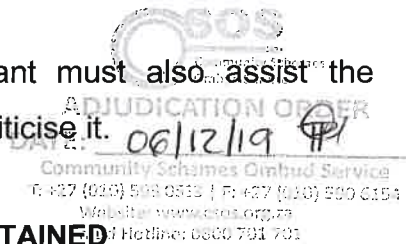


technology ways. It was indicated that the Applicant also contributes in delaying matters when service providers are called in to attempt to fix the roof.

15.3 It is the submission of the Respondent that the Applicant must also take some responsibility regarding the damaged blinds as she was in the unit when the service provider was conducting work and should have ensured that the windows were closed to prevent damage in the unit.

15.4 The Respondent conceded that they will pay for the costs of repairing the furniture (pedestals). It was further placed on record that the Respondent will not take any responsibility if the repairs are not done to the satisfaction of the Applicant.

15.5 The Respondent also submitted that the Applicant must also assist the Respondent in improving it and stop to constantly criticise it.



16. **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

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 Both sides were heard, and the Applicant is clearly affected by this on-going problem. The circumstances that she lives under are unacceptable as the leak from the roof is destroying her assets. It is my view that whilst the Respondent might have other pressing issues to attend to within the scheme, they must prioritise the leaking roof in particular the Applicants area. If the Respondent

does not attend to the problem and it persists the Respondent will have to find accommodation for the Applicant at its own cost until the roof is sorted out as they have failed to address the issue for over two years and I believe that the Applicant has been more than tolerant given the damage that the leak is doing. It is, therefore, imperative that the Respondent attends to the leaking roof especially the area that affects the Applicant immediately.

16.4 The Respondent believes that the Applicant should have ensured that the windows were closed, and the blinds don't get destroyed. The Applicant indicated that she was not in the room and the door was closed while the work was being conducted. It is my view that it is not fair that the service provider had little regard for damage that occurred to the blinds. Surely, they saw that the blinds were being destroyed and should have attempted to prevent the damage. The Respondent has to follow up with the service provider to ensure that the blinds are repaired as the contract of employment was between the service provider and the Respondent failing which the Respondent must replace the blinds.

16.5 The Respondent must pay the costs of repairs to the pedestals and must pay a service provider appointed by the Applicant as agreed to in the adjudication hearing.

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

### **ADJUDICATION ORDER**

17 In the circumstances, the following order is made:

17.1. The Respondent must repair the leaking roof within 30 days of receipt of this order especially the area that leaks into the Applicant's unit;

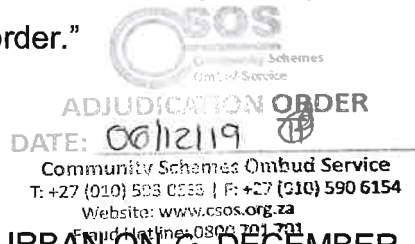
17.2 That the Respondent must replace the damaged blinds within 30 days of receipt of this order;

  
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- 17.3 That the Respondent must pay the cost of repairing the Applicants' pedestals by a service provider chosen by the Applicant. This payment must be made within 30 days of the Respondent being provided the details of the service provider and the cost of repair.

**RIGHT OF APPEAL**

18. 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 6 DECEMBER 2019

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ADJUDICATOR  
MS T.P QWABE

