



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

Case Number: CSOS02850/KZN/18

**IN THE MATTER BETWEEN
ADELAIDE KHOLISWA NORRIS
(Applicants)**



And

**TRUSTEES OF STRETTON BAY BODY CORPORATE
(Respondent)**

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute: in respect of behavioural issues and general and other issues

1. The Applicant seeks the following orders:
 - 1.1 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,
 - 1.2 an order for the removal of all articles placed on or attached illegally to parts of a common area or a private area,
 - 1.3 an order declaring that the applicant has been wrongfully denied access to information or documents and requiring the association to make information or documents available within a specified time.

2. Such relief sought is in line with the provision of section 39 of the CSOS Act¹ which provides that an application made in terms of section 38 must include one or more of the orders listed; in this case section 39 (2)(a) & (d), and section 39 (7)(a).

INTRODUCTION

3. The Applicant is the adult female who is the owner of unit 25 at Stretten Bay Body Corporate which is situated at 11 St Andrews Street, Durban, KwaZulu-Natal.
4. The Respondent are the Trustees of Stretten Bay Body Corporate, which is situated at 502 Stretten Bay, 11 St Andrews Street, Durban, KwZulu-Natal.
5. The application was brought in terms of s 39 of the CSOS Act, which provides that:

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

- (2) ...
 - (a) 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,
 - (d) an order for the removal of all articles placed on or attached illegally to parts of a common area or a private area,
- (7)
 - (a) an order declaring that the applicant has been wrongfully denied access to information or documents and requiring the association to make information or documents available within a specified time.



¹ Community Schemes Ombud Service Act No. 9 of 2011

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 the Kwazulu-Natal Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
7. It must be noted that the that as per the amended Practice Directive, which is dated 01 June 2020, no face-to-face Adjudications will be conducted
8. It must be further noted that the parties were afforded an opportunity to make their final written submission within a period of 5 days as stipulated by the aforesaid Practice Directive.
9. I would therefore like to bring to the attention of the parties that this manner of adjudication is provided for in terms of sections 50 and 51 of the CSOS Act, No. 9 of 2011 read in conjunction with the said Practice Directive.

RELEVANT STATUTORY PROVISION

10. The hearing was conducted in terms of section 38(1) 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”.
11. 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”
12. 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.”



13. 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”.
14. A certificate of Non- Resolution was issued. The Ombud therefore, referred the matter to adjudication, in terms of Section 48 of the Act.

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

Applicant’s Submissions

15. The Applicant submits that they (owners) were not given the choice to make a collective decision on implementing prepaid water meters.
16. The Applicant states that as owners they do not have access discs, as they should have access to their properties i.e. the building entrance.
17. The Applicant alleges that they do not have Annual General Meetings (AGM) which is imperative to discuss important decisions affecting the building.
18. The Applicant alleges that they do not receive letters (statement) concerning their levies which is very concerning as we do not all have access to emails.

19. The Applicant submits that as the owners they feel it is important to receive minutes of meetings held, as the Body Corporate should be transparent.



ADJUDICATION ORDER
DATE: Johannesburg 31/7/20
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Fraud Hotline: 0800 701 701

Respondent's submissions

22. The Respondent addresses each of the issues raised by the Applicant through the official of their duly appointed Management Agent as follows:

22.1 Although not being cited as one of the parties in this application, as the managing agent for the scheme I have perused the attached application for dispute resolution and respond for and on behalf of the trustees of Stretten bay body corporate.

22.2 It is the opinion of the trustees that a dispute resolution on the matters raised by the applicant are baseless and the trustees believe there is no merit in holding a dispute resolution, as will be further expounded with reason.

22.2.1 **Access into the building**

Access into the scheme has always been via a security guard at the entrance who physically opens and closes for residents and visitors. No access discs are provided to any residents in the scheme.

22.1.2 **Municipality Meters**

The Applicant, when she was in the position of Chairperson of the scheme, was instrumental in having private water meters installed to recover costs for water used. This has been in place since 2007. The amount charged to owners for water use is fully aligned to what the municipality charge. There is no free water provided any longer and all water use is charged for from the first litre used.

The prohibitive costs involved to install municipal meters far outweigh the need to for change, given the fact that the current longstanding meters adequately fulfil their function.

22.1.3

Meetings

Owners may view any, and all meetings of trustees on request and are sent minutes of all general and special meetings held. The trustees are optimistic that the responses provided to the Applicant's complaint are sufficient to answer the concerns which are baseless. If the applicant still feels aggrieved, trustees are willing to meet at a date and time suitable to both parties to confer, however they will not attend a dispute resolution where clearly it would be a waste of time for all parties. (My underlining)

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

23. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
24. 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.
25. I note that the Respondent in their response stated that "If the applicant still feels aggrieved, trustees are willing to meet at a date and time suitable to both parties to confer, however they will not attend a dispute resolution where clearly it would be a waste of time for all parties. (My underlining)". However the aforesaid statement is contradictory in that I do not comprehend as to why the Respondent is not willing to attend the dispute resolution, but is willing to attend the mediation which in itself did not attend hence the matter was referred for adjudication.



ADJUDICATION ORDER
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26. It is Respondent's submission that the Applicant was a chairman of the Scheme when the private water meters were installed and was instrumental in having them installed. This according to the Respondent was done in 2007. I observe that this Application was lodge with CSOS on 03 March 2019. It therefore means that these private water meters were installed 12 years ago and there is no evidence that was led by the Applicant indicating that she has been consistently raised this issue with the Trustees. Moreover, in her response she did not challenge this submission of the Respondent.
27. The Applicant states that she does not want these private meters but want the municipal meters. The Applicant further alleges that meetings and AGM's are not held by the Trustees to discuss the issues concerning the building. The Applicant further states that they do not receive statement as some of them have no access to emails.
28. The Respondent deny that the access into the building is through access discs as alleged by the Applicant, however the Respondent submits that access into the building has been always via a security guard at the entrance who physically opens and closes for residents and visitors. The Respondent vehemently deny the use of access discs.
29. It has been Respondent's case that the owners may view any, and all meetings of the trustees on request, and are sent minutes of all general and special meetings held. I think the challenge here might the manner or form that those minutes are sent e.g. when they sent via email then the Applicant and other owners who does not have access to email, they cannot access such minutes

30. I observe that the Respondent states that it is prohibitive costs involved to install municipal meters far outweigh the need for change, given the fact that the current longstanding meters adequately fulfil their function. However, this has not been substantiated by any evidence in the form of quotations that has been sourced except that there are prohibitive costs.

31. Be that as it may be, it seems as if the Applicant did direct all her concerns to the Trustees. This is so because in one section of the application form headed "Exhaustion of internal remedies", the following is asked, "*what has been done to resolve this application? Please describe what you have done, who you have talked to and what they offered to do?*" The Applicant's reply reads as follows, "*I have spoken to the supervisor, Adam is in charge of that section.*"

ADJUDICATION ORDER



31. In the circumstances, the following order is made:

31.1 In respect of prayer 1.1 that is 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 (provision of access discs instead of waiting for the Security guard of officer to open the gate), in respect of prayer 1.2 that is an order for the removal of all articles placed on or attached illegally to parts of a common area or private area (private water meter installed to the various units in the building) and lastly in respect of prayer 1.3 that is an order declaring that the Applicant has been wrongfully denied access to information or documents and requiring the association to make information or documents available within a specified time (Minutes of the special meetings, AGM and statement of levies) must be distributed in the manner that is accessible to the Applicant which is her physical address, same will apply to all other owners who do not have access to email,

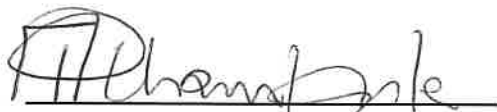
31.2 The Respondent is hereby ordered to convene a Special General Meeting in respect of prayers 1.1 and 1.2 above in order to afford the Applicant an opportunity to air her concerns and thereby give her written reason(s), such meeting should be convened with 30 days from the date of delivery of this order. Other occupiers are likewise entitled to participate in such Special General Meeting.

31.3 The Respondent is hereby ordered to distribute the minutes of the Special Meetings, AGM and statement of levies in respect of prayer 1.3 in the manner that is accessible to the Applicant which is her physical address or by affixing same to the door of the Applicant's property, same will apply to all other owners who do not have access to email.

RIGHT OF APPEAL

32. 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 thirty (30) days after the date of delivery of the order of the adjudicator”

DATED AT DURBAN on 31 July 2020



ADJUDICATOR: T KHAMBULE

