



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

CASE NO: CSOS1065/WC/18

In the matter between:

HENRI LOUIS PFISTER

Applicant

And

KOENSPRAG BODY CORPORATE

Respondent

(Represented by Joy Leibach of Trafalgar Managing Agent)

ADJUDICATION ORDER

BEFORE ADJUDICATOR: ZAMA MATAYI

EXECUTIVE SUMMARY AS PER THE CERTIFICATE OF NON-RESOLUTION

Category (ies) of disputes (financial, behavioural, scheme governance, meetings, management services, private and common areas, general and other.

In terms of the summary of dispute the Applicant seeks an order to compel the Respondent to improve and or better communication.

Finding:

1. *No order is made.*
2. *No order as to costs*

PARTIES

1. The matter before me, is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Services Act No. 9 of 2011.
2. The Applicant in this matter is the owner of Unit 10 at Koensprag in a sectional title scheme situated at Gardiner Circle, Southend Port Elizabeth
3. The Respondent is the Koensprag Body Corporate, a Sectional Title Scheme duly registered previously in terms of the Sectional Titles Act, and now in terms of the Sectional Titles Management Schemes Act. The scheme is situated in South End in Port Elizabeth.

INTRODUCTION

4. The object of the Act is to provide a service and the mechanism for the expeditious, informal and cost-effective resolution of disputes in Community Schemes. "Community Schemes" are, by definition, "any scheme in terms of which there is a shared use of and responsibility for parts of land and buildings, including but not limited to a sectional title development scheme, a share block company, a home or property owner's association, however constituted, established to

administer a property development, a housing scheme for retired persons and a housing co-operative as contemplated in the South African Co-operative Act. During the hearing scheduled to take place at the Community Scheme Ombud Service offices in Port Elizabeth, parties indicated that they had no objection to me Adjudicating the matter.

5. The matter was set down for hearing on the 03 October 2019 at the Community Scheme Ombud Services offices in Port Elizabeth. According to the submissions made the Applicant seeks an order compelling the Respondent the Respondent to improve or better communication.

APPLICABLE PROVISIONS

6. The application was submitted in terms of section 38 of the CSOS Act No 9, of 2011 which provides that '[a]ny person may make an application for dispute resolution if such person is a party to or affected materially by a dispute'. Section 38(2)(a) provides that such an application falls to be 'made in the prescribed manner and as may be required by practice directive'. Those provisions fall to be construed with regard to the specially defined meanings of the words 'dispute' and 'prescribe'. 'Dispute' is defined in s 1 to mean 'a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly' and 'prescribe' is defined to mean 'prescribe by regulation made under this Act'. It is only in respect of 'disputes', as defined, that the Ombud Service may entertain applications.
7. 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 dispute set out in the application, the ombud must refer the matter to conciliation”*
8. Section 48 provides that -

“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submission and responses thereto to an adjudicator”

SUMMARY OF FACTS

9. The scheme Annual General Meeting was scheduled for the 19 December 2018 and notices were duly sent and received by members of the Body Corporate. On the scheduled the meeting was inquorate and in terms of Prescribed Management Rule 19(4) the meeting was adjourned to the same day the following week at the same time and place. The adjournment date would have been the 26 December 2018 and because of the timing of this date, it being the day after Christmas, on the 20 December 2018 the trustees sent out new notice to reconvene the meeting on the 24 January 2019. The Applicant received this notice however was not available to attend on that date and forwarded an apology without any proxy form. Once again. The notice for the meeting of the 24 January 2019 stated that if no quorum was achieved in this meeting, the meeting will be adjourned without further notice to the 31 January 2019. No quorum was achieved in the meeting scheduled for 24 January and meeting stood adjourned without notice to the 31 January 2019. The trustees did not advise members that the meeting of 24 Jan was inquorate. The Applicant did not attend the meeting of the 31 January 2019 because he was not aware that the meeting of 24 January was inquorate. The minutes of the meeting of 24 January 2019 were only distributed to members on the 04 February 2019 and Applicant only knew then that the meeting of 24 January 2019 was inquorate.

10. The meeting of the 31 January 2019 proceeded, and the budget was approved effectively reducing the levy. The Applicant does not seek an order to set aside the meeting of the 31 January 2019, instead Applicant is hoping that the trustees to improve on the communication in the running of the scheme.

EVALUATION OF EVIDENCE

11. A well-run scheme is always a result of good management. The Board of trustees is the custodian of values and principles of good governance in a scheme. The trustees are responsible for the management, control, proper administration and enforcement of the rules in the scheme. The power to enforce rules lies squarely with the trustees and failure to enforce same could lead to a lawless scheme which will ultimately collapse. The submissions made and sequence of events is common cause. All that the Applicant seeks is that the trustees improve on communication. Applicant argued that had he received notice that the meeting of 24 January was inquorate he would have attended the meeting of 31 January. The Respondent conceded that notices should

have been sent out advising the meeting was inquorate. It is therefore impressed upon the trustees to improve communication and ensure that minutes of meetings are sent out within the prescribed time. The Applicant seeks an order that the trustees should communicate better in future. This prayer by the Applicant falls outside of my powers granted in section 39 of the CSOS Act. This nature of the prayer by the Applicant seems to request our office to manage communication between the parties. That is not the role of this office, we do not manage communication between the parties, however parties are encouraged to improve communication and ensure that Prescribed Management Rules are complied with.

12. As far as costs are concerned parties to a dispute are generally required to meet their own costs. This includes the application fee, the fee for inspecting and obtaining copies of any submission or reply, any personal costs incurred to attend the adjudication and any legal costs incurred in making and responding to an application.

POWERS AND JURISDICTION OF THE ADJUDICATOR

13. The adjudicator is empowered to investigate, adjudicate and issue adjudication orders in terms of section 50, 51, 53, 54 and 55 of the Community Schemes Ombud Services Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service.

SECTION 56(1) OF THE CSOS ACT, 2011

14. The party's attention is drawn to -

Section 56 (1) provides that –

If an adjudicator's order is for the payment of an amount of money or any other relief which is within the jurisdiction of a magistrate's court, the order must be enforced as if it were a judgment of such Court and a clerk of such a Court must, on lodgement of a copy of the order, register it as an order in such Court.

Section 56 (2) provides that-

If an adjudicator's order is for the payment of an amount of money or any other relief which is beyond the jurisdiction of the magistrate's court, the order may be enforced as if it were a judgment of the High Court, and a registrar of such a Court must, on lodgement of a copy of the order, register it as an order in such Court.

RIGHT TO APPEAL

15. Section 57 of the CSOS Act of 2011 states that –

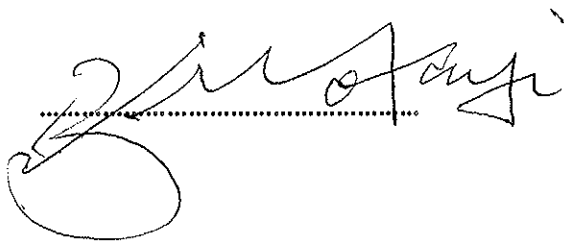
- (1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order may appeal to the High Court, but only on a question of law.
- (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

16. In the circumstances and for the reasons stated above the following order is made:

ORDER

IT IS ORDERED THAT

1. No order is made.
2. No order as to costs



NAME OF ADJUDICATOR

ZAMA MATAYI



ADJUDICATION ORDER
DATE: 15.11.2019
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15 November 2019