



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

**Case Number: CSOS001127/GP/19**

**IN THE MATTER BETWEEN**

**CARTER HALL BODY CORPORATE**

**(APPLICANT)**

**and**

**NOMFUNDO FILTANE**

**(RESPONDENT)**

---

**ADJUDICATION ORDER**

---

**EXECUTIVE SUMMARY**

This is an application for dispute resolution in terms of the following section of the Community Schemes Ombud Service Act:

- Section 39 (1) in respect of financial issues;

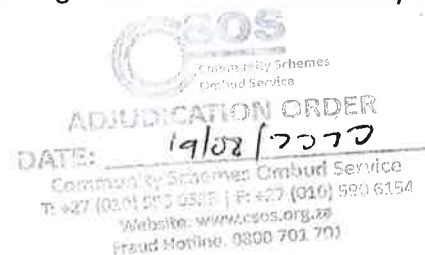
Applicant seeks an order in the following terms:

- Applicant's requests an order that the adjudicator finds that the Respondent is indebted to the Applicant in the amount of R179 336.39, which includes interest.

The order is in line with Section 39 (1) of the CSOS Act No.9 of 2011 (the CSOS Act).

**FINDINGS**

The relief sought by the Applicant against the Respondent is dismissed.



## INTRODUCTION

1. The Applicant is the CARTER HALL BODY CORPORATE, a community scheme as defined in the CSOS Act No.9 of 2011 and to which it would be convenient to refer to as the "Body Corporate". The Applicant made written submissions.
2. The Respondent is NOMFUNDO FILTANE the registered owners of Unit 31, 78 Tudhope Street, Berea, JOHANNESBURG, GAUTENG PROVINCE. The Respondent failed to make written submissions.
3. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
4. This application is before me because of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
5. A Notice of Set Down was sent to the parties as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

## APPLICABLE PROVISIONS OF THE ACT

6. 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"*
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 disputes 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 submissions and responses thereto to an adjudicator"*.

9. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of the Act.

## **SUMMARY OF EVIDENCE**

### **Applicant's Submissions**

10. The Applicant made submissions that the Respondent is indebted to the Applicant in the amount of R179 336.39 including interest.
11. According to the Applicant the Respondent has not made payment in respect of levies for the past 15 years.
12. The Applicant submitted that the Respondent's monthly levy is approximately R2 609.65.
13. The Applicant submitted a statement of account as proof of the Respondent's indebtedness to the Applicant, which had only three entries.
14. The levy statement sent by the Applicant had three the total amount of R179 337.36, the levy for August 2020 in the amount of R2609.65, and the interest for July 2020 in the amount of R3586.75.
15. The Applicant forwarded by email several pictures which depicted the general state of disrepair that the complex find itself in.
16. Accordingly, the Applicant submits that the full arrear amount of R179 336.39 in respect of arrear levies, is due and payable by the Respondent.

### **APPLICANT'S PRAYERS**

Applicant's requests an order that the adjudicator finds that the Respondent is indebted to the Applicant in the amount of R179 336.39.

### **Respondent's Submissions**

17. The Respondent failed to make submissions when requested to provide same to the Adjudicator on or before the 13<sup>th</sup> of July 2020.
18. The Respondent for whatever reason failed to make submissions despite the notice calling upon parties to make final submissions.

### RESPONDENT'S PRAYERS

None submitted.

### EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

19. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
20. 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.

### DISCUSSION

21. I have perused all written submissions and taken into consideration all submissions made by the parties.
22. Section 2 of the of the Sectional Titles Scheme Management Act 8 of 2011 states as follows:  
*"with effect from any date upon which a person other than a developer becomes an owner of a unit in a scheme, there shall be deemed to have been established for that scheme a body corporate of which the developer and such person are members, and any person who thereafter becomes an owner of a unit in that scheme, is a member of that body corporate."*
23. In law therefore every owner in a sectional title scheme, such as the Respondent, is a member of the body corporate.

24. Section 3 of the Act provides as follows:

3(1) A body corporate must perform the functions by or entrusted to it under this Act or the rules, and such functions include-

(a) *To establish and maintain an administrative fund which is reasonably sufficient to cover the estimated and annual operating costs-*

(i) *For the repair, maintenance .... of the common property;”*

(ii) *For the payment of rates and taxes and other local municipality charges for the supply of gas, water...;*

(iii) *For the payment of any insurance premiums...;*

(iv) *For the discharge of any duty or the fulfilment of any other obligation of the body corporate.”*

(b) *To establish and maintain a reserve fund.*

(c) *To require the owners wherever necessary, to make such contributions to such funds...”*

25. In terms of section 3(2) and (3) of the Act, contributions and special contributions are due and payable on the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered from the persons who were owners of units at the time when the resolution making the contributions due and payable was passed by application to the Ombud.

26. **Prescribed Management Rule 21 (3) (c) Financial year, functions and powers** states that;

(3) The Body Corporate may, on the authority of a written trustee resolution -

*“charge interest on any overdue amount payable by any member to the Body Corporate, provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005, compounded monthly in arrear”.*

27. It is clear from above prescribed management rule that Trustees must pass a resolution as to the interest rate that will be charged on overdue contributions. The determination of the applicable interest rate is a discretion reserved for the Trustees.

28. The Applicant has not provided the Adjudicator with a copy of a Trustees resolution as made provision in the abovementioned Prescribed Management Rule, despite repeated request by the Adjudicator to provide same.

29. Nor has the Applicant provided the Adjudicator with a detailed breakdown of the Respondent's levy statement, from the date of lodgement. Clearly depicting the interest, legal fees if any, and the total amount of indebtedness of the Respondent.
30. On the 29<sup>th</sup> of July 2020, the Adjudicator addressed correspondence to the Applicant highlighting the following, "I hereby acknowledge receipt of the levy statement in respect of abovementioned unit. The aforementioned levy statement has three entries the total amount R179 337.36, the levy for August 2020 in the amount of R2609.65, and the interest for July 2020 in the amount of R3586,75".
31. The above email correspondence further states that, "The writer refers the Applicant to my email correspondence dated the **10<sup>th</sup> of July 2020, the 14<sup>th</sup> of July 2020 and the 20<sup>th</sup> of July 2020, in which I request for a breakdown of the total indebtedness of the Respondent from date of lodgement i.e. July 2019, I'm unfortunately not in a position to finalize an Adjudication Order, on the submissions made by the Applicant to date**".
32. The Applicant has forwarded a number of email correspondence and pictures which depicts the general state of disrepair of the complex, minutes of a General Meeting, and a resolution of Trustees requesting members to enter into payment arrangements. The pictures further highlights the need for urgent repairs and maintenance to be undertaken.
33. However, what the email correspondence of the Applicant lacks as requested by the Adjudicator in email correspondence to the Applicant. Is a detailed breakdown of the Respondent's indebtedness to the Applicant.
34. The Applicant has not made out a case to support a finding that the Respondent is indebted to the Applicant in the amount of R179 336.39 including interest.
35. The Adjudicator finds that a prima facie case has not been made by the Applicant against the Respondent.
36. It follows that the Applicant has not succeeded in the Applicant's case against the Respondent and is not entitled to the relief sought.
37. For all the reasons which have been set out above, I can find no justification for the relief sought by the Applicant. Accordingly, the Applicant's complaint against the Respondent is hereby dismissed.

CSOS  
Community Schemes Ombud Service  
ADJUDICATION ORDER  
DATE: 19/07/2020  
Community Schemes Ombud Service  
T: +27 (0)21 434 0500 | F: +27 (0)21 590 6154  
Website: www.csos.org.za  
P.O. Box 10001, Durban, 4001, 4001, 4001

## POWERS AND JURISDICTION OF THE ADJUDICATOR

38. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

## ADJUDICATION ORDER

39. Accordingly, the following order is made;

- (a) The relief sought by the Applicant against the Respondent is dismissed.
- (b) The Applicant has failed to provide evidence to support a finding that the Respondent is indebted to the Applicant in the amount of R179 336.39 which includes interest.
- (c) No order is made as to costs.

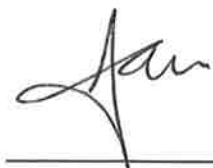
## RIGHT OF APPEAL

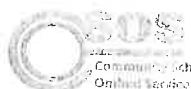
40. Section 56 (1) – *“If an adjudicator’s order is .....within the jurisdiction of the Magistrates Court, the order must be enforced as if it were a judgment of such Court....”*

41. Section 56(2) – *“If an adjudicator’s order is .....beyond the jurisdiction of the Magistrates Court, the order must be enforced as if it were a judgment of the High Court....”*

42. The parties’ attention is drawn to – Section 57(1) of the CSOS Act of 2011 refers – *“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”.*

SIGNED at SANDTON on this 7<sup>TH</sup> DAY OF AUGUST 2020.

  
\_\_\_\_\_

  
Community Schemes Ombud Service  
**ADJUDICATION ORDER**  
DATE: 19/08/2020  
Community Schemes Ombud Service  
T 427 (010) 553 0100 F 427 (010) 553 0150  
Website: www.csos.org.za  
Fraud Hotline: 011 235 101

AJ ANDREAS  
ADJUDICATOR



**ADJUDICATION ORDER**

DATE: 19/08/2020

Community Schemes Ombud Service  
T: +27 (0)10 598 0502 / 5982 / (0)10 598 0500  
Website: [www.csos.org.za](http://www.csos.org.za)  
Fraud Hotline: 0800 701 700