



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

Case Number: CSOS0002139/GP/19

In the matter between:

DOUGLASDALE RESIDENTS SSOCIATION

APPLICANT

and

MRS N.P.R. MUJAKACHI

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

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

- Section 39 (1)(e) in respect of financial issues;
an order for the payment or re-payment of a contribution or any other amount.

The Applicant seeks an order in the following terms:

That the Respondent owes to the Applicant, and must pay:

The amount of R 8416.50 (Eight Thousand Four Hundred and Sixteen Rand and Fifty Cents) outstanding to it in respect of levies and ancillary amounts charged (which ancillary charges



include CSOS levies charged monthly) in respect of Ptn 2 at the Applicant scheme, being the Erf owned by the Respondent in the Applicant scheme, to the end of August 2020.

INTRODUCTION

1. The Applicant is the Douglasdale Residents Association NPC, a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act).
2. The Respondent is the registered owner of Erf number 2 at the Applicant scheme, which is situated at Ben Road, Douglasdale, Sandton.
3. A letter under cover of an email was sent to both parties on the 24th of July 2020, confirming that due to the current situation regarding the Covid-19 pandemic, the CSOS is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
4. The parties were given 5-business days to make further submissions.
5. Details were received of the updated levy statement for August 2020.
6. The Respondent also made submissions, the details of which are set out hereunder.

BACKGROUND

7. 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's Office, which is situated at 1st Floor, Block A, 63 Wierda Road East, Sandton.
8. The application included a statement of case which set out the relief sought by the Applicant, which relief falls within the scope of the prayers of relief contemplated in section 39 of the Act as will appear more fully from the evidence.



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9. The matter was before me as the result of a referral by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
10. The adjudication was conducted on the written submissions and evidence submitted by the parties.

APPLICABLE PROVISIONS OF THE ACT

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 conciliation hearing was not held due to the outbreak of the Covid-19 pandemic, and the matter was referred directly to adjudication.

SUMMARY OF EVIDENCE

APPLICANT’S SUBMISSIONS

15. The Applicant seeks an order in the following terms:

That the Respondent pays to the Applicant:

The amount of R 8416.50 (Eight Thousand Four Hundred and Sixteen Rand and Fifty Cents) outstanding to it in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) for Ptn 2 at the Applicant scheme, being the Erf owned by the Respondent in the Applicant scheme, to the end of August 2020.



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16. A statement of account of the Respondent's indebtedness to the Applicant was submitted as proof thereof.

RELIEF PRAYED FOR BY THE APPLICANT

17. The Applicant's prayers are as set out in the executive summary above.

RESPONDENT'S SUBMISSIONS

18. The Respondent submitted that she and her husband own Treasure trove Farms, which supplies fresh produce to the retail supermarkets.
19. In November and December 2019, they experienced hailstorms which destroyed their crops.
20. In March 2020 they were in recovery post the hailstorms, and then experienced the COVID 19 pandemic, which was bad for business. The demand for fresh produced reduced as a result of the restraint of trade of the restaurants and hotels which make up 60% of their target market.
21. The Respondent stated that by mid-September 2020 their business will have recovered 80% and they will be able to service all their debt.

RELIEF REQUESTED BY RESPONDENT

22. The Respondent pleaded for an indulgence in the matter



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 witness/es must be considered.

24. The general rule is that only evidence that is relevant should be considered. Relevance is determined with reference to the issues in dispute. The requisite standard of proof required, as in all civil matters, is a preponderance of probabilities. This means that once all the evidence has been tendered, it must be weighed up by the Adjudicator in order to determine whether the Applicant has discharged the burden of proving its case on a balance of probabilities. It involves findings of facts based on an assessment of credibility and probabilities.

25. It follows that a unit-owners like the Respondents, in this instance, who defaults on their levy payments are effectively being subsidised by the other members of the Body Corporate who pay their levies and ancillary contributions conscientiously every month.

DISCUSSION

26. I have perused the parties' written submissions.

27. A Non-Profit Company, such as the Applicant, is a company registered in terms of the Companies Act 71 of 2008.

28. It's governance documentation comprises of its Memorandum of Incorporation, which is registered at the Companies and Intellectual Properties Commission ("CIPC") upon the Company's registration (or as amended from time to time by special resolution of its members), as well as the Rules of the scheme made by the Directors from time to time.

29. One of the primary objects of the HOA is to collect levies, special levies and other charges from members such as are necessary for the preservation, maintenance and upkeep of the scheme.

30. Levies are the lifeblood of a HOA, and each and every member is liable for the monthly levies and/or special levies payable to the HOA.

31. The Directors of the HOA cannot perform their functions and duties in the absence of funds from owners.



32. I am satisfied that the Applicant has proved on a balance of probabilities that the Respondent is indebted to the Applicant in respect of amounts charged.

POWERS AND JURISDICTION OF THE ADJUDICATOR

33. 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.

34. In such matters it is common to order the Respondent to pay the outstanding debt within a matter of weeks. However, the extraordinary circumstances in which our country finds itself as a result of the Covid-19 pandemic justify a different approach. Without condoning the Respondent's non-payment, these circumstances persuade me that it is in the interests of justice and fairness to grant the Respondent more time to pay the debt, particularly due to the circumstances that she has explained, as well as her attempts to bring her account up to date on a monthly basis.

ADJUDICATION ORDER

35. Accordingly, the following order is made:

I find for the Applicant.

35.1. The Respondent, Mrs N.P.R, Mujakachi, owes to the Applicant the amount of R8416.50 (Eight Thousand Four Hundred and Sixteen Rand and Fifty Cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) for Ptn 2 at the Applicant scheme, being the Erf owned by the Respondent, to the end of August 2020.

36.1. The Respondent is ordered to pay the amount of R R8416.50 to the Applicant in 6 (six) equal monthly instalments of R1402.75, with the first payment to commence within 60 days from date of delivery of this order.



36.2. Thereafter, payment of the further 5 outstanding instalments of R1402.75 each must be made on the 1st day of each succeeding month.

36.3. No interest shall accrue to the outstanding amount within the period allowed for the payment as aforesaid.

36.4. *The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.*

36.5. In the event of the Respondent defaulting on any 1 payment as ordered above, the full amount due to the Applicant shall become immediately due and payable by the Respondent.

36.6. There is no order as to costs.

RIGHT OF APPEAL

37. 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 11TH OF AUGUST 2020.



K. BLEIJS

ADJUDICATOR


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