



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

**Case Number: CSOS001087/GP/19**

**IN THE MATTER BETWEEN**

**ELTON PLACE BODY CORPORATE**

**APPLICANT**

**and**

**GERTZE MAURENTIA (UNIT 36)**

**RESPONDENT**

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

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

- Section 39 (6) - *in respect of works pertaining to private areas and common areas;*

The Applicant seeks an order in the following terms:

An order be made in favour of the Applicant in terms of Section 39(6) of the CSOS Act:

*An order to compel the owner to remove the enclosure.*

*The Respondent be ordered to bring the application before the Board of Trustees of the Body Corporate for a decision.*

## **FINDINGS**

The relief sought by the Applicant for the removal of the enclosure dismissed.

The relief sought by the Applicant to bring the matter before the Board of Trustees for a decision is upheld.

## **INTRODUCTION**

1. The Applicant is Elton Place Body Corporate, a body corporate as defined in Section 2 of the Sectional Title Schemes Management Act No.8 of 2011, situated at 85 Athol Oaklands Road, Elton Hill, Johannesburg, GAUTENG PROVINCE. The Applicant was represented at the adjudication hearing by Ms A De Lange. Ms De Lange confirmed that she is duly authorised to represent the Applicant at the adjudication hearing.
2. The Respondent is Gertze Maurentia, the registered owner of Unit 36, in the Applicant's scheme.
3. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Service 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 as the result 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.

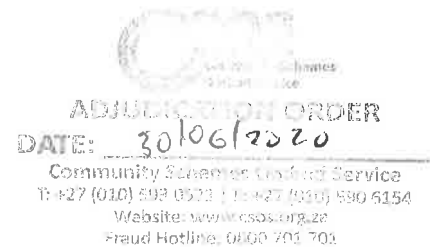
## **APPLICABLE PROVISIONS OF THE ACT**

5. 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”*

6. 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’.*
7. 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”.*
8. 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 SUBMISSION**



#### **The Applicant’s representative was sworn in and testified as follows;**

9. The Applicant is Elton Place Body Corporate, the Applicant was represented by Ms A. De Lange, the managing agent. Ms De Lange had no objection in taking the prescribed oath and was duly sworn in. She confirmed that she is duly authorised to represent the Applicant in this adjudication hearing.
10. Ms De Lange testified that she was appointed as a Portfolio Manager in the Applicant’s scheme. The dispute arose in 2017 when the Respondent enclosed the balcony without authorisation. In terms of the dispute that was lodged the enclosure would create maintenance issues. The improvements were said to be aesthetically not pleasing. There were fears that the enclosed balcony can be used as an extra bedroom. The body corporate was not aware whether the building was structurally sound or not.
11. The Applicant’s managing agent stated that the Respondent has applied retrospectively for the enclosure but did not follow due process. Although the body corporate has considered the structure and the fact that the enclosure was not aesthetically displeasing.

### **Applicant's prayers**

12. The Applicant pray for an order to compel Respondent to remove the enclosure.

13. The Applicant be ordered to bring an application and follow due process.

### **RESPONDENT'S SUBMISSION**

#### **The Respondent was duly sworn in and testified as follows:**

14. The Respondent, Gertze Maurentia had no objection in taking the prescribed oath and was duly sworn in.

15. Ms Maurentia testified that during the month of August 2017 she and erected the "Polish design" of double-glazed windows – wooden structure in order to close their balcony and provide the family with the needed security, comfort and additional utilised space.

16. The Respondent mentioned that the structure was erected without prior permission from the Body Corporate as she deemed the balcony space as her own, as it is included in the floor space indicated in the formal purchase contract and changes were for the benefit of the owners with strong consideration for an aesthetically pleasing solution to current apartments design, look and feel.

17. The Respondent mentioned that for the past 12 years she endured frustration and inconvenience caused as a result of the balcony being stipulated as "public space", and not making any sense.

18. The Respondent submitted that following the advice provided she sought approval from the members of the scheme. Members signed retrospectively, upon submission of the application, they (the Respondent and her ex-husband) were informed that the process was incorrect. The reasons that were advanced for the dispute was that the enclosure will be used as an additional bedroom and affected the aesthetics of the complex, these reasons were incorrect.

19. According to the Respondents, they now know that they should have sought approval prior to the enclosure. They did their utmost to regularise and rectify the mistake. Their attempts to resolve the matter have been hindered by procedural aspects that are not clear. The Respondents believed that the approval was being unreasonably withheld.

#### **RESPONDENT'S PRAYERS**

20. That the Body Corporate to consider the enclosure retrospectively and grant a formal approval.

#### **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

21. 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.

22. 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 on a balance of probabilities. This means that once all the evidence has been tendered, it must be weighed up to determine whether the Applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

#### **DISCUSSION**

23. I have perused all written submissions and taken into consideration all submissions stated before me at the day of the hearing.

24. The issue to be decided is whether the relief sought falls within the provisions of Section 39(6) of the CSOS Act 9 of 2011:

-in respect of works pertaining to private areas and common areas.

25. Owners in a community scheme have by virtue of the most comprehensive right, the right of ownership, the general freedom to fully exercise his/her real right in respect of their property. Similarly, these rights are extended to other owners of the scheme. The trustees of the body corporate have a responsibility to ensure that all owners receive the same treatment.

26. In terms of the section 13(1)(g) of the Sectional Title Schemes Management Act

(1) An owner must- ...

*(g) when the purpose for which a section or exclusive use area is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section or exclusive use area to be used for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for that purpose as consented to.*

27. Section 13(2) sets out the procedure to be followed in the event that an owner is of the opinion that refusal of consent is unjust may apply to the ombud.

*(2) Any owner who is of the opinion that any refusal of consent of another owner in terms of the proviso to subsection (1)(g) is unfairly prejudicial, unjust or inequitable to him or her, may, within six weeks after the date of such a refusal, make an application in terms of this subsection to an ombud.*

28. Community schemes are governed by legislation and rules that must be adhered to, in the absence of adherence the schemes will disintegrate. It is therefore incumbent upon all members of the body corporate to adhere to the rules to ensure standardisation and sustainability of the community scheme.

29. In **Body Corporate Le Chene Dór v Carim and Another (30507/2017AA) [2019] ZAGPJHC**, the Honourable Court held that: *".....It was therefore illegal to effect the changes and then seek the Applicant to ratify the wrongful act. The Conduct Rules and the various statutory provisions to which I have referred supra have been enacted for a reason and all members ought to respect them lest chaos in the scheme will flare up. The external changes were not sanctioned by the relevant legislation and Conduct Rules. Any disregard of those instruments governing the relationship cannot be countenanced."*

30. The Respondent should have sought approval prior to effecting the amendments. Legislation has catered for instances where the trustees unreasonably withhold approval. The application for the removal of the enclosure is dismissed on the basis that it is premature. The matter is yet to be placed before the trustees of the body corporate for a resolution. The relief sought to refer the matter to the trustees of the body corporate is upheld.

## POWERS AND JURISDICTION OF THE ADJUDICATOR



31. 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

32. Accordingly, the following order is made:

- (a) The relief sought by the Applicant to compel the owner to remove the enclosure is dismissed.
- (b) The Applicant is ordered to place the matter before the Board of Trustees of Elton Place Body Corporate within 30 (thirty) days of this order.
- (c) No order as to costs.

#### RIGHT OF APPEAL

33. 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 17<sup>th</sup> DAY OF JUNE 2020.



L BULO

ADJUDICATOR



ADJUDICATION ORDER  
DATE: 20/06/2020  
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