



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

**Case Number: CSOS0001343/GP/19**

**IN THE MATTER BETWEEN**

**GUGU KHUBEKA**

**(APPLICANT)**

**and**

**EARTHZONE PROPERTIES**

**(FIRST RESPONDENT)**

**TRUSTEES OF CHELSEA BODY CORPORATE**

**(SECOND 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:

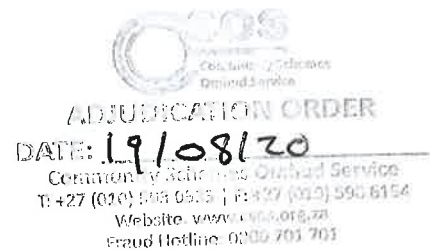
- Section 39 (1) in respect of financial issues;

Applicant seeks an order in the following terms:

- (a) Immediate intervention regarding the way they are being treated and extorted of hard-earned money;
- (b) Legal fees dating back to 2017 must be reversed.

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 GUGU KHUBEKA the registered owner of Unit 30, 4940 Tsebebe Street, Dawnpark Ext 42, Boksburg, GAUTENG PROVINCE. The Applicant made written submissions.
2. The First Respondent is Earthzone Properties, the managing agent of the Second Respondent. The First Respondent failed to make written submissions.
3. The Second Respondent are the Trustees of the Chelsea Body Corporate, 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 Second Respondent failed to make written submissions.
4. 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.
5. 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.
6. 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

7. 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"*
8. 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".*

  
ADJUDICATION ORDER  
DATE: 19/08/20  
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Fraud Hotline: 0800 701 701

9. 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”*.

10. 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

11. The Applicant made written submission, stating she has on several occasions sent correspondence to the First Respondent and their legal representatives relating to the Judgement which was obtained by the First Respondent attorneys.

12. According to the Applicant she has requested the First Respondent to have the Judgement rescinded but has to date not received a favourable response regarding said request.

13. The submission from the Applicant further confirmed that the Judgement was obtained on the 12<sup>th</sup> of February 2018.

### APPLICANT’S PRAYERS

(c) Immediate intervention regarding the way they are being treated and extorted of hard-earned money;

(d) Legal fees dating back to 2017 must be reversed.

### Respondent’s Submissions

14. The Respondent failed to make submissions when requested to provide same to the Adjudicator on or before the 29<sup>th</sup> of July 2020.

15. 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

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

17. 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

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

19. **Section 39 (1) (c) of the CSOS Act 9 of 2011** makes provision for the following order:  
“an order declaring that a contribution levied on owners or occupiers, or the way it is to be levied, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way”.

20. It is common cause that one of the causes of the dispute that gave rise to the complaint before the adjudicator dates back to 2017. The Applicant lodged the complaint with CSOS on the 30<sup>th</sup> of July 2019, approximately 2 (two) years after the cause of action arose.

21. In law, legislation does not operate retrospectively unless the law shows a clear intention to do so. Section 21 of the Act further provides for transitional arrangements prior to the promulgation of Regulations by the Ombud.

22. Section 41(1) of the CSOS act 9 of 2011 states as follows: “An application for an order declaring a decision of an association or an executive committee to be void, may not be made later than 60 days after such a decision has been taken.”

23. Section 41(2) states as follows:

**“An ombud may, on good cause shown, condone the late submission of an application contemplated in sub section (1).”**

24. It is clear from the application that the dispute was lodged by the Applicant more than 60 days after decisions were taken as provided for in Section 41(1) of the Act, and that condonation for the late submission was not sought from the Chief Ombud.

25. The Adjudicator has no doubt about the bona fides of the Applicant in pursuing this complaint against the Respondent. CSOS is however a creature of statute and the adjudicator is bound to make orders that are competent and enforceable in terms of the Act.

26. The Application of the Applicant is therefore out of time and there is no evidence before the adjudicator that the Ombud has condoned the late submission of the Applicant’s application.

27. Further, amongst the relief sought by the Applicant is that the legal fees, be removed from her levy account.

28. A payment arrangement dated (5<sup>th</sup> of June 2018) and signed by the Applicant and the legal representatives of the Respondents. Makes provision for the following at paragraph (7), “The debtor agrees and acknowledges that the debtor will be held liable for legal fees, on the scale as between attorney and client, incurred in relation to the recovery of the arrear levies and/or breach of this agreement on unit 30 Chelsea situated at Chelsea, 4940 Tsessebe Street, Dawn Park, Ext 42”.

29. In email correspondence addressed by the Applicant to the First Respondent dated the 24<sup>th</sup> of July 2019, the Applicant disputes that she had consented to the legal fees being added to the levy statement, “Kindly clarify why I was not made aware of the previous year’s legal fees as my main focus is to reduce my levies and these legal fees popping up out of nowhere are really making my life difficult”.

30. Contracts create legal rights and duties between parties.



31. It is the Adjudicator's finding that the Applicant's prayer for the Judgement obtained by the legal representatives of the Respondents to be rescinded, falls outside the ambit of Section 39 of the CSOS Act.
32. In terms of section 3(2) and (3) of the Sectional Titles Schemes Management 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.
33. It is the Adjudicator's finding that the Respondents are lawfully entitled to enforce compliance with the aforementioned provisions against members of the Body Corporate such as the Applicant.
34. For all the reasons which have been set out above, it is the Adjudicator's finding that the Respondent complied with the provisions of the applicable legislative framework.
35. Accordingly, the Applicant's complaint against the Respondent is dismissed.

#### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

36. 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**

37. Accordingly, the following order is made;

- (a) The relief sought by the Applicant against the Respondents is dismissed.
- (b) The Applicant has failed to comply with the provisions of Section 41 (2) of the CSOS Act 9 of 2011.



(c) The relief sought by the Applicant relating to the rescinding of the judgement obtained on the 12<sup>th</sup> of February 2018, is dismissed, since the relief sought falls outside the ambit of Section 39 of the CSOS Act.

(d) No order is made as to costs.

## RIGHT OF APPEAL

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

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

40. 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.



AJ ANDREAS

ADJUDICATOR

