

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

Case Number: CSOS001822/GP/19

IN THE MATTER BETWEEN

KG CENTRE BODY CORPORATE

(APPLICANT)

and

PI MHLONGO

(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 R42 555.18.

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

FINDINGS


The adjudicator finds that the Respondent is indebted to the Applicant in the amount of R42 555.18 in respect of arrear levies.

INTRODUCTION

1. The Applicant is the KG CENTRE 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 PI MHLONGO the registered owner of Unit 407, KG CENTRE, 50 Van Riebeeck Avenue, Alberton, GAUTENG PROVINCE. The Respondent did not 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”*.


ADJUDICATOR'S ORDER
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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 written submissions that the Respondent is indebted to the Applicant in the amount of R42 555.18.
11. According to the Applicant the Respondent last payment towards his levy account, was on the 2nd of August 2019, in the amount of R1000.00.
12. The Applicant testified that the Respondent’s monthly levy is in the amount of R1 134.59.
13. The Applicant submitted a statement of account as proof of the Respondent’s indebtedness to the Applicant.
14. Accordingly, the Applicant seeks an order that the full arrear amount of R42 555.18 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 R42 555.18.

Respondent’s Submissions

15. The Respondent failed to make submissions when requested to provide same to the Adjudicator on or before the 6th of July 2020.



16. The Respondent for whatever reason failed to make submissions despite the notice calling upon parties to make final submissions.
17. The Respondent further failed to attend the Conciliation hearing which was scheduled on the 27th of February 2020.

RESPONDENT'S PRAYERS

None submitted.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED



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

20. I have perused all written submissions and taken into consideration all submissions made by the parties.
21. 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."
22. In law therefore every owner in a sectional title scheme, such as the Respondent, is a member of the body corporate.
23. 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...”*

24. 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.

25. **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”.

26. 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.

27. In such matters it is common to order the Respondent to settle the outstanding levies within a matter of weeks, so as not to prejudice the Applicant. However, the extraordinary circumstances in which our country finds itself as a result of the Covid-19 pandemic justify a different approach.

28. Without condoning the Respondent’s non-payment as has been submitted by the Applicant, these circumstances persuade me that it is in the interests of justice and fairness to grant the Respondent additional time to settle the arrear levies.

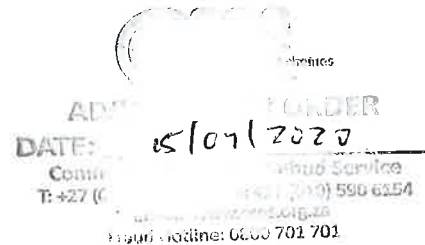
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29. It is the Adjudicator's finding that the Respondent is indebted to the Applicant in the amount of R42 555.18, in respect of arrear levies.

POWERS AND JURISDICTION OF THE ADJUDICATOR

30. 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



31. Accordingly, the following order is made;

- (a) The Respondent is indebted to the Applicant in the amount of R42 555.18 in respect of arrear levies.
- (b) The Respondent is ordered to pay R5000.00 monthly from the end of September 2020, until the outstanding levies is settled in full.
- (c) No interest shall accrue to the outstanding amount within this period allowed for the payment.
- (d) The above amount includes the Respondent's monthly levy.
- (e) Should the Respondent fail to pay any instalment due to the Applicant on the due date, the full outstanding balance of R42 555.18 shall immediately become due and payable and the Respondent must also pay the Applicant the applicable interest on the full outstanding balance of R42 555.18 calculated from the date that the full outstanding balance becomes due and payable to date of payment.
- (f) No order is made as to costs.

RIGHT OF APPEAL

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

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


34. 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 17th of July 2020.



AJ ANDREAS

ADJUDICATOR



ADJUDICATION ORDER
DATE: 16/07/2020
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