



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

**Case Number: CSOS002876/GP/19**

IN THE MATTER BETWEEN

**TSHELETJI JOHANNES RASELOMANE**

**(APPLICANT)**

and

**DELUCIA PROPERTIES**

**(FIRST RESPONDENT)**

**BUNKU HEIGHTS 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:

Applicant seeks an order in the following terms:

- (a) The play area to be marked according to the Town Plan, with restrictions clearly marked;
- (b) Penalties to be levied, for failure to comply with rules.

The order is in line with Section 39 (2) of the CSOS Act No.9 of 2011 (the CSOS Act).

**FINDINGS**

The relief sought by the Applicant is denied.

**INTRODUCTION**

  
**ADJUDICATION ORDER**  
DATE: 19/08/2020  
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1. The Applicant TJ RASELOMANE is the registered owner of Unit Number 66, BUNKU HEIGHTS, Brombeer, Terenure, Kempton Park, GAUTENG PROVINCE. The Applicant made written submissions.
2. The First Respondent is Delucia Property Manager, the managing agent of the Second Respondent.
3. The Second Respondent is the BUNKU HEIGHTS 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".
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.

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. The parties entered an appearance in terms of the Notice of Set Down 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"*.
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 submitted that he has on several occasions but more specifically on the 18<sup>th</sup> of August 2018, informed the First and Second Respondents about children creating a disturbance, by kicking soccer balls against the walls of other units, and against the garage doors.
12. Regarding a complaint he submitted to the Respondents on the 7<sup>th</sup> of October 2018, the children in the complex kept on greeting him and his spouse. Despite him having requested these particular group of children not to greet him nor his wife.
13. According to the Applicant, there are children who play soccer daily, directly underneath his unit, which he has raised with the managing agent, and is yet to receive a positive response.
14. The Applicant further testified that the children playing soccer causes a disturbance due to the noise levels created by the children playing and as a result of the soccer ball being kicked against the wall.
15. On the 4<sup>th</sup> of March 2018, the children while playing on the common property with the soccer ball caused the ball to land on his balcony damaging his washing line in the process.
16. The Applicant further submitted that there is no designated playing area for children. And that children are left to play without being supervised by their parents.
17. According to the Applicant the open area adjacent to unit 65 was neither earmarked nor designated a play area. Only the area between unit 44 and 45 was designated as a play area.
18. The Applicant submitted that the play area was erected in the beginning of February 2020.

19. The Applicant further submitted that there is no demarcation, nor restriction signs as to what time the play area opens and closes, which has resulted in children in the complex causing a disturbance throughout the day.

20. The Applicant objects to the second play area being erected next to his unit and requests the enforcement of the Conduct Rules. And further that children play under direct adult supervision, and that the kicking of soccer balls be forbidden.

#### **PRAYER APPLICANT**

- (a) The play area to be marked according to the Town Plan, with restrictions clearly marked;
- (b) Penalties to be levied, for failure to comply with rules.

#### **RESPONDENT**

##### **Respondent's submissions**

- 21. 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.
- 22. The Respondent for whatever reason failed to make submissions despite the notice calling upon parties to make final submissions.

#### **RESPONDENT PRAYER**

None submitted.



#### **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 witnesses must be considered.
- 24. 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

25. I have perused all written submissions and taken into consideration all submissions made by the parties.
26. The issue to be decided is whether the conduct of members of the Second Respondent constituted a nuisance as per the provisions of Section 39 (2) (a) of the CSOS Act 9 of 2011:  
*(a) An order that particular behaviour or default constitutes a nuisance and requiring the relevant person to act, or refrain from acting, in a specified way”.*
27. **Wikipedia** defines nuisance, *“as any form of interference or encroachment on a person’s right to the use and enjoyment of their property, particularly immovable property”.*
28. Members 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 members who live within the scheme.
29. There’s a duty on members to tolerate and to endure to a certain extent each other’s reasonable exercise of his/her ownership rights. And a further duty on members to exercise their powers and rights within the normal and acceptable limits of reasonableness.
30. The abovementioned duty restricts an owner’s right to fully exercise his powers and rights of ownership or the exploitation of his property. Should a member cross the dividing line, he or she exceeds the regulatory demarcation of tolerance.
31. Therefore, when a member’s conduct causes intolerable annoyance and discomfort towards other members in a scheme such conduct should also be considered to constitute a nuisance, as per the provisions of Section 39 (2) (a).
32. Ultimately the yardstick which should be used to measure whether the conduct of a member in a scheme constitutes a nuisance, is in establishing whether other members in the scheme consider the owner’s conduct substantially invasive.
33. The Applicant in highlighting why he believed conduct of members of the Respondent, should be considered substantially invasive, did not refer to any email correspondence or written complaint received by the Respondent from other owners within the scheme.

34. In the matter of **Prinsloo v Shaw 1938 (AD) 570 at 575**, the court held that “the complaint of the applicant must be measured against the standard of a normal person of sound and liberal tastes and habits. That is the test to be employed”.
35. No evidence was led by the Applicant to substantiate his complaint against the Respondent, which could have included amongst other’s letters of complaints or records of telephone calls made by other members within the scheme complaining about the conduct of members of the Body Corporate’s conduct or that their conduct constituted a nuisance.
36. Based on the evidence submitted by the Applicant, the Adjudicator is not convinced that the conduct of the members of the Second Respondent constitutes a nuisance as provided for in Section 39 (2) (a) of the CSOS Act.
37. Accordingly, on the facts before the adjudicator, the adjudicator cannot make a finding in the favour of the Applicant.
38. The Applicant’s complaint against the Respondent is therefore dismissed.

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

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 Applicant’s complaint against the Respondent is dismissed, for the reasons set out add paragraph (26) to (38) of this order.
- (b) No order is made as to costs.



**RIGHT OF APPEAL**

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.**



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**AJ ANDREAS**

**ADJUDICATOR**

  
Community Schemes  
Ordnance Services  
**ADJUDICATION ORDER**  
DATE: \_\_\_\_\_  
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