



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

Case Number: CSOS00654/GP/19

IN THE MATTER BETWEEN

ZIMASA SILEVU

(APPLICANT)

and

TRAFALGAR PROPERTIES

(FIRST RESPONDENT)

ELMWOOD BODY CORPORATE

(SECOND 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:

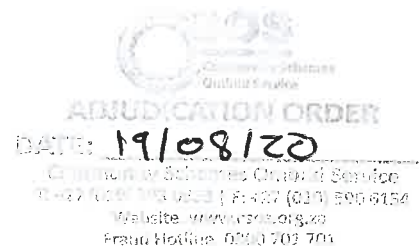
- Section 39 (1) in respect of financial issues;

Applicant seeks an order in the following terms:

- (a) Applicant's seeks an order directing the First Respondent to justify the excess payment of R3000.00 as opposed to an excess payment of R1500.00.
- (b) The Applicant further seeks an order directing the First Respondent to reverse the R1500.00, interest and penalties, that was imposed onto his levy statement for not paying the excess.

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 ZIMASA SILEVU the registered owner of Unit 79, Edison Crescent, Sunninghill, Sandton, GAUTENG PROVINCE.
2. The First Respondent is Trafalgar, the managing agent of the Second Respondent.
3. The Second Respondent is the ELMWOOD 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.
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"*.

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 sought the managing agent to justify why the Applicant had to make an excess payment in the amount of R3000.00 as opposed to an amount of R1500.00 as requested by the insurance company.

12. According to the Applicant the reasons provided by the managing agent for payment of the R3000.00, were not true as was confirmed by the insurance company.

13. As a result, the Applicant seeks an order directing the First Respondent to reverse the R1500.00 payment which was made as well as the interest and penalties that were charged to his levy statement for non-payment of the excess amount.

APPLICANT’S PRAYERS

(a) Applicant’s seeks an order directing the First Respondent to justify the excess payment of R3000.00 instead of an excess payment of R1500.00.

(b) The Applicant further seeks an order directing the First Respondent to reverse the R1500.00, interest and penalties, that was added to his levy statement for not paying the excess.

Respondent’s Submissions

14. The Respondent failed to make submissions when requested to provide same to the Adjudicator on or before the 29th of July 2020. The Respondent’s version is therefore not before the Adjudicator.



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 (6) (b) of the CSOS Act provides as follows;
“an order requiring the relevant person (i) to carry out specific repairs, or have specified repairs made; (ii) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out or to be carried out in respect of the property by the applicant;
20. The Sectional Titles Schemes Management Act section 13 (1) (c) Duties of owner's states:
“repair and maintain his or her section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition”.
21. Prescribed Management Rule 31 (2) Obligation to Maintain states:
“if despite written demand by the body corporate, a member refuses or fails to (a) carry out work in respect of that member's section ordered by a competent authority as required by section 13 (1) (b) of the Act; or (b) repair or maintain a section owned by that member in a good state of good repair as required by section 13 (1) (c) of the Act; and that failure

threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the body corporate, its members or the occupiers of sections generally, **the body corporate must remedy the member's failure and recover the reasonable cost of doing so from the member**; provided that in the case of any emergency, no demand or notice need be given to the member concerned. **(writer's emphasis)**

22. The relief sought by the Applicant is that an amount of R1500.00 be reversed, and that all penalties and interest charged to his levy account be reversed.
23. Email correspondence dated 21st of February 2019, which was sent to the Applicant by the First Respondent confirmed the following, "Please note that an excess on a 150L geyser is R1500.00 but your geyser is a 200L, so the excess amount is more".
24. In further email correspondence the First Respondent once again advises as follows, "When you called me on Monday you informed me that we must **proceed to replace the geyser** and load the excess on your levy account". **(writer's emphasis)**
25. The Applicant in his response highlighted the following, "Trafalgar decided to send a contractor without a quotation. I will not pay for the shortfall. I told you that the contractor who came said you will get 3 quotations and select the best. Trafalgar decided to send that one without comparing the prices".
26. The First Respondent in concluding send the following email correspondence dated the 21st of February 2019 at 11:57am, "We only get quotations for the resulting damages. But the geyser we attend to immediately as it is usually an urgent matter".
27. Prescribed Management Rule 31 (2), referenced above, states that "the body corporate must remedy the member's failure and recover the reasonable cost of doing so from the member".
28. There is therefore an obligation on the Respondents to remedy the failure of the Applicant or any other owner for that matter to ensure that they attend to the reasonable maintenance and upkeep of their units.
29. Looking at the evidence as a whole, the Adjudicator finds that the Respondent acted reasonably within their powers.

30. For all the reasons which have been set out above, it is the Adjudicators finding that the Respondent complied with the provisions of the applicable legislative framework.

31. Accordingly, the Applicant's complaint against the Respondent is dismissed.

POWERS AND JURISDICTION OF THE ADJUDICATOR

32. 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

33. Accordingly, the following order is made;

- (a) The relief sought by the Applicant against the Respondent is dismissed.
- (b) The Respondents have not acted outside of their powers as conferred on the Respondents by the applicable legislative framework.
- (c) No order is made as to costs.

RIGHT OF APPEAL

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

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

36. 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 7th DAY OF AUGUST 2020.



AJ ANDREAS

ADJUDICATOR



ADJUDICATION ORDER
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