



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

Ref: CSOS 2968/WC/23

IN THE MATTER BETWEEN

**STEPHANUS PETRUS DE WIT**

**APPLICANT**

and

**THE DIRECTORS OF DE VELDE ESTATE  
HOME OWNERS ASSOCIATION**

**RESPONDENT**

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**ADJUDICATION ORDER**

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**EXECUTIVE SUMMARY**

- Relief applied for in terms of the CSOS Act:

**Section 39(3)** In respect of Scheme Governance Issues (a) an order requiring the association to record a new scheme governance provision consistent with a provision approved by the association.(b) an order requiring the association to approve and record a new scheme governance provision (d) an order declaring that a scheme governance provision, having regard to the interest of all owners and occupiers and in the community scheme, is unreasonable and requiring the association to approve and record a new scheme governance provision, (i) to

remove the provision, (ii) if appropriate, to restore an earlier provision, (iii) to amend the provision, or (iv) to substitute a new provision.

**Section 39 (4)** In respect of meetings (b) an order declaring that a purported meeting of the executive committee, or a purported general meeting of the association, was not validly convened (c) an order declaring that a resolution purportedly passed at a general meeting of the executive committee, or at a general meeting of the association - (i) was void; or (ii) is invalid (e) an order declaring that a particular resolution passed at a meeting at a meeting is void on the grounds that it unreasonably interferes with the rights of an individual.

**Section 39 (7) (a)** In respect of general and other issues — (a) an order declaring that the applicant has been wrongfully denied access to information or documents, and requiring the association to make such information or documents available within a prescribed time; (b) any other order proposed by the Chief Ombud.

- Date Adjudication conducted:

06 SEPTEMBER 2023

- Name of the Adjudicator:

MALUSI MBULI

- Order:

The relief sought in terms of section 39 (3) (a) (b) (d) and 39 (4) (b) (c) (e) & (7) (a) (b) of the CSOS Act is dismissed.

The applicant avers that the respondent has unreasonable denied her permission to keep an animal at the scheme and seek an order that the decision must be declared void and unreasonable and that a new provision must be approved.

The relief sought by the applicant is dismissed, for the reasons provided add paragraphs 39 to 62.

No order as to costs.

## **INTRODUCTION**

1. The Applicant is **STEPHANUS PETRUS DE WIT**, the registered owner of unit no 799 De Velde Home Owners Association De Beers Avenue Somerset West Cape Town Western Cape 7130.
2. The respondent is **THE DIRECTORS OF DE VELDE ESTATE HOME OWNERS ASSOCIATION** a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), and to which it would be convenient to refer to as the “Home Owners Association”.
3. A letter requesting final submissions was sent to the parties on the 17<sup>th</sup> of August 2023, confirming that due to the current situation regarding the Covid-19 pandemic, the CSOS is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
4. The parties were given 5-business days to make further submissions until the Thursday, 25<sup>th</sup> of August 2023. This is an application for dispute resolution in terms of section 38 of the Community Schemes Ombud Service Act 9 of 2011 (“the CSOS Act”). The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email.
5. **Section 39(3)** In respect of Scheme Governance Issues (a) an order requiring the association to record a new scheme governance provision consistent with a provision approved by the association.(b) an order requiring the association to approve and record a new scheme governance provision (d) an order declaring that a scheme governance provision, having regard to the interest of all owners and occupiers and in the community scheme, is unreasonable and requiring the association to approve and record a new scheme governance provision, (i) to remove the provision, (ii) if appropriate, to restore an earlier provision, (iii) to amend the provision, or (iv) to substitute a new provision.

6. **Section 39 (4)** In respect of meetings (b) an order declaring that a purported meeting of the executive committee, or a purported general meeting of the association, was not validly convened (c) an order declaring that a resolution purportedly passed at a general meeting of the executive committee, or at a general meeting of the association - (i) was void; or (ii) is invalid (e) an order declaring that a particular resolution passed at a meeting at a meeting is void on the grounds that it unreasonably interferes with the rights of an individual.
7. **Section 39 (7) (a)** In respect of general and other issues — (a) an order declaring that the applicant has been wrongfully denied access to information or documents, and requiring the association to make such information or documents available within a prescribed time; (b) any other order proposed by the Chief Ombud.
8. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution, 2019 as amended and more specifically the amended Practice Directive dated 23 June 2020 which provides under paragraph 8.2 “Adjudications will be conducted on the papers filed by the parties and any further written submissions, documents and information as requested by the appointed Adjudicator”.
9. The parties were requested to make written submissions not later than the 25<sup>th</sup> of August 2023. The adjudication was conducted on the 06<sup>th</sup> of September 2023 and an order is now determined.

### **PRELIMINARY ISSUES**

10. No preliminary issues were raised.

### **RELEVANT STATUTORY PROVISIONS**

11. Section 1 of the CSOS Act defines-
  - "community scheme" as “any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing cooperative and "scheme" has the same meaning”.

- "dispute" as "a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly".

12. Section 38 of the CSOS Act provides-

"Any person may make an application if such person is a party to or affected materially by a dispute".

Section 45(1) provides –

"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".

13. Section 47 provides-

"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".

14. In terms of Section 50-

"The adjudicator must investigate an application to decide whether it would be appropriate to make an order." Section 51 provides for the investigative powers of the Adjudicator:

"(1) When considering the application, the adjudicator may-

(a) require the applicant, managing agent or relevant person-

(i) to give to the adjudicator further information or documentation;

(ii) to give information in the form of an affidavit or statement; or

(iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview;

(b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and

(c) enter and inspect-

(i) an association asset, record or other document;

(ii) any private area; and

(iii) any common area, including a common area subject to an exclusive use arrangement".

15. Accordingly, a certificate of Non- resolution was issued in terms of Section 48(1) of the CSOS Act.

16. The Ombud referred the application together with any submissions and responses to an adjudicator on the 28<sup>th</sup> of August 2023.

**SUMMARY OF RELEVANT EVIDENCE****Applicant's Submissions**

17. The Applicant submitted that prior moving into De Velde in June 2022 with his partner they were involved in fostering dogs and during the end of their stay in the previous occupation they fostered a puppy called beast.
18. Since 2021 he developed serious mental problems, including anxiety, panic disorder, mood disorders and depression and he has been in therapy since late 2021. During the foster period for the Beast, it became evident that Beast was one foster puppy that had significant impact in his mental and emotional health. The improvement in both his mental and emotional health was noticed by his psychologist Doreen Hofmeyer.
19. Due to this examination Doreen Hofmeyer wrote a motivation for him to keep Beast at De Velde HOA as he grew over the height limit as per De Velde Conduct Rules. He states that he wrote numerous requests to the respondent asking them to rescind their decision but those attempts were unsuccessful.
20. Applicant states that around the time of filling out the forms, it was rumoured that he would be forced to go back to their work offices in Bellville after having worked remotely for two years prior since he was struggling to drive long distances due to his diagnosed panic disorder.
21. He states that he would not deem the registration of Beast necessary at the time, as he would only be visiting for a few days a week and would not be staying in De Velde permanently for the time being.
22. He confirmed that Louis Minnaar did indeed meet with them to discuss their circumstances in person, and told them that he would take all the information from their discussion to the trustees and revert back to them with a decision. He averred that they never heard from Mr Minnaar again.
23. He said they also raised to Mr. Minnaar that their plan was to temporarily stay in De Velde and eventually put the apartment up for rent, sometime early in January 2023

but the attempt to put the apartment up for rent was thwarted, as they had issues regarding their apartment roof which becomes unbearably noisy when it's windy.

24. He states that he fails to understand how allowing him to keep an emotional support animal would cause an "enormous ripple effect" within the estate, as emotional support animals are not prescribed to everyone and anyone. He added that there are certain criteria to be met when an emotional support animal is prescribed/motivated by a registered mental health practitioner and/or a licensed doctor.
25. He stated that they are not asking the trustees of De Velde to amend the rules to allow everyone to keep pets above the current height limit, but rather to apply the conduct rules equally, and to not discriminate against people like myself who have prescribed emotional support animals that assist them in disorders/disabilities that are not just physical in nature.
26. He stated that it is evident that rules are not being applied equally, as there are numerous dogs that reside in De Velde who are (i) bigger than beast, and (ii) above the prescribed limit. These dogs are not service dogs, yet, no action is taken by the trustees of De Velde against these owners.
27. He states that in his case it is clear that his psychologist took all his diagnosed conditions and circumstances into consideration, as seen in her prescription/motivation attached to the initial application and deemed Beast a valuable aid to help him battle and recover from multiple mental health conditions that make everyday life difficult for him.
28. He humbly asked the CSOS to request the trustees to re-consider their definition of a service dog, to include emotional support animals in order to be more inclusive towards people struggling with mental health issues who have been prescribed emotional support animals.
29. He argued that taking the trustees' response into consideration, it is evident that they have not properly applied themselves to their case and did not take all the factors and circumstances into consideration when making their decision. He asks that the relief, as requested be granted, with cost, against the respondents because he has incurred considerable costs in order to obtain advice regarding this matter.

### **Relief sought by the applicant**

30. The applicant seek an order declaring that the respondent has unreasonable denied her permission to keep an animal at the scheme and seek an order that the decision must be declared void and unreasonable and that a new provision must be approved.

### **Respondents' Submissions**

31. The Respondent responded to the applicants application and stated that Mr. Stephanus de Wit is the boyfriend of the owner Ms. Tasnim Padayachee. At the time of occupation, both the owner and applicant signed the Conduct Rules and indicated that they had no pets. Respondent states that in respect of the points raised by the applicant the applicant was not resident at De Velde and was staying with his parents at Kuilsrivier. He indicates that he regularly visited his girlfriend together with his dog 'the Beast' bringing the dog onto the estate which was in violation of the rules.

32. Mr. Louis Minnaar visited the complainant and informed him of the Board's decision and their maintenance staff visited the applicant's apartment to try and resolve the issue related to noise caused by the strong wind on the estate.

33. He says no problem was evident, but they continue to see how best they can minimize the wind noise and as regards the Trustee meeting minutes these are available to any registered owner on the De Velde website normally 7 days after the meeting took place. He says selected minutes indicate that the matter was discussed by the Board of Trustees.

34. Although the Applicant contests that he thought he bought a Dashund the Beast (as the name might suggest) it turned out to be a large dog and the applicant is well aware of the rules of dogs exceeding 30cm but nonetheless insists on his right for the dog to be registered.

35. He averred that the microchip certificate of microchip no 900141000230037 indicates dog date of birth as 11/4/2020 although applicant maintains date of birth be between February and March 2022. He states that at the time of occupation the dog would have been 20 months old.

36. He reiterated that De Velde is one of the largest high-density estates in Somerset West consisting of 1210 apartments spread across 134 blocks and there is a limited recreational area for dogs to be exercised given that their rules permit each apartment to have 2 animals within the prescribed height limits.

37. He said their rules permit service dogs typical of guide dogs to be permitted on the estate for obvious reasons and emotional dogs within the height restraint are accepted, but no other exceptions are permitted. Respondent request that CSOS adjudicate in their favor given the size of the estate and their rules which residents sign on occupation.

### **Relief sought by the Respondents.**

38. That the applicant's application be dismissed.

### **EVALUATION & FINDING**

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

40. 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.

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

42. The relief sought by the applicant is an order declaring that the respondent has unreasonable denied her permission to keep an animal at the scheme and seek an order that the decision must be declared void and unreasonable and that a new provision must be approved.

43. **Section 39(3)** In respect of Scheme Governance Issues (a) an order requiring the association to record a new scheme governance provision consistent with a provision approved by the association.(b) an order requiring the association to approve and record a new scheme governance provision (d) an order declaring that a scheme

governance provision, having regard to the interest of all owners and occupiers and in the community scheme, is unreasonable and requiring the association to approve and record a new scheme governance provision, (i) to remove the provision, (ii) if appropriate, to restore an earlier provision, (iii) to amend the provision, or (iv) to substitute a new provision.

44. **Section 39 (4)** In respect of meetings (b) an order declaring that a purported meeting of the executive committee, or a purported general meeting of the association, was not validly convened (c) an order declaring that a resolution purportedly passed at a general meeting of the executive committee, or at a general meeting of the association - (i) was void; or (ii) is invalid (e) an order declaring that a particular resolution passed at a meeting at a meeting is void on the grounds that it unreasonably interferes with the rights of an individual.
45. **Section 39 (7) (a)** In respect of general and other issues — (a) an order declaring that the applicant has been wrongfully denied access to information or documents, and requiring the association to make such information or documents available within a prescribed time; (b) any other order proposed by the Chief Ombud.
46. The issue here is whether the decision of the trustees was objectively reasonable in the circumstance as directed by the court in ***North Global Properties (pty) Ltd v Body Corporate of Sunrise Beach Scheme and others [2013] jol 30400 (kzd)***, where Pillay J. held as follows at para (9), “Trustees decisions must be objectively reasonable when they are not, they are reviewable under the common law read consistently with, in my respectful opinion, the STA, Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) and section 33 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).
47. The Courts in numerous cases, the latest being: ***BAE Estates and Escapes (Pty) Ltd v Trustees for the Time Being of the Legacy Body Corporate and Another (9728/2019) [2020] ZAWCHC 82; 2020 (4) SA 514 (WCC) (4 February 2020)***: *“Although the subjection of owners and occupiers in a sectional title scheme to conduct or management rules, as well as the decisions flowing from their application, can be seen as contractual in nature, these arrangements flow from the statutory authority granted to homeowners’ association by the relevant legislation. Furthermore, apart perhaps from those original owners of units who participate directly in the formulation*

*or approval of the management or conduct rules, the vast majority of owners and occupiers of sections in such schemes have no choice but to accept this regime if they wish to reside in a sectional title scheme.”*

48. In the above matter, the Court referred to the 2019 Supreme Court of Appeal Decision in ***Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh and Others (323/2018) [2019] ZASCA 30; 2019 (4) SA 471 (SCA) (28 March 2019)***, the following was stated with regard to the nature of the Rules of Homeowners Associations (which are regarded as similar, if not the same, as bodies corporates established in terms of the STSMA): *“When the respondents chose to purchase property within the estate and become members of the Association, they agreed to be bound by its rules. The relationship between the Association and the respondents is thus contractual in nature. The conduct rules, and the restrictions imposed by them, are private ones, entered into voluntarily when an owner elects to buy property within the estate.”*
49. It is clear from the submissions that the applicant in these proceedings is not the owner of the unit but have a love relationship with the owner. This owner has contracted with all the other members of the scheme through De Velde Home Owners Association. Applicant states “I was struggling to drive long distances due to my diagnosed panic disorder, I thought it would be easier if Beast and I temporarily moved in with my parents, who live in Kuils River, which is significantly closer to Bellville. This would help me ease into driving to the office and potentially save on e-hailing costs on the days that I felt I could not drive myself”.
50. “The plan at the time was that I would visit my partner on my work-from-home days hence, the registration of both our vehicles to make visiting the estate less of a hassle with entry codes and parking, as it is common for unregistered vehicles to be clamped.
51. “We did not deem the registration of Beast necessary at the time, as I would only be visiting for a few days a week and would not be staying in De Velde permanently for the time being. As things progressed, and living with my parents became less viable due to various reasons, I opted to join my partner in De Velde permanently, as I had nowhere else to go”.

52. The De Verde Home Owners Association Conduct rules under the heading **ANIMALS, REPTILES & BIRDS** - Rule 1.1.1 provides that an owner or occupier of a section shall not, without consent of the board of trustees in writing, which may not be unreasonably be withheld, keep any animal, reptile or bird in a section or on the common property. The housing of any animal, reptile or bird must be within the municipal by – laws boundaries.
53. Rule 1.5 of the same rules provides that the Board of Trustees decision regarding any matter with regards to animals, reptiles and birds shall be final and binding.
54. The respondent has argued that that the microchip certificate of microchip no 900141000230037 of the applicants dog indicates that the dog date of birth as 11/4/2020 although applicant maintains date of birth be between February and March 2022. He states that at the time of occupation the dog would have been 20 months old.
55. He reiterated that De Velde is one of the largest high-density estates in Somerset West consisting of 1210 apartments spread across 134 blocks and there is a limited recreational area for dogs to be exercised given that their rules permit each apartment to have 2 animals within the prescribed height limits. He said their rules permit service dogs typical of guide dogs to be permitted on the estate for obvious reasons and emotional dogs within the height restraint are accepted, but no other exceptions are permitted.
56. It is clear from these submissions that the respondent has applied its mind when deciding whether the applicant can keep his dog and considered the applicants interest, those of other owners and the rules relating to animal keeping. There is therefore no justification for interfering with the respondent's decision as it is reasonable.
57. The applicant has also argued that during the foster period for the Beast, it became evident that Beast was one foster puppy that had significant impact in his mental and emotional health and that the improvement in both his mental and emotional health was noticed by his psychologist Doreen Hofmeyer. There is however no proof that the applicant's health is dependent on his dog and this issue has to be balanced with the other factors.

58. Applicant referred me to the case of ***Body Corporate of the Laguna Ridge Scheme No 152/1987 v Dorse: Case number: 2014 (4) SA 387 (WCC)***, where the woman had a diagnosis of ***anxiety and panic disorders***, and she had been prescribed an emotional support dog by her doctor. The trustees of the sectional title scheme refused her permission to keep the dog, but the Western Cape High Court found that the trustees had unreasonably withheld their consent. The court found that the trustees had not considered the woman's need for the dog, and that they had failed to provide any evidence that the dog would cause a nuisance to other residents. Further, the court in this case pointed out that trustees are not entitled to refuse an application on the basis that they are afraid of creating a precedent.
59. Similar to the above, in the case of ***Body Corporate of Parkwood Park Lifestyle Estate v Nel: Case number: 2016 (4) SA 103 (GSJ)***, the applicant had a diagnosis of ***depression and anxiety***, and he had been prescribed an emotional support dog by his doctor. The trustees of the sectional title scheme refused the applicant's permission to keep the dog, but the Gauteng High Court found that the trustees had not adequately considered the man's need for the dog. The court found that the trustees had simply assumed that the dog would cause a nuisance to other residents, without any evidence to support this assumption.
60. To enable the writer to make a finding relating to the relief sought by the applicant against the respondent, it is also prudent to establish whether there is a lawful or alternatively a reasonable basis on which the relief prayed for by the applicant may be granted.
61. It is evident from the applicant and respondents submissions that the applicant has not succeeded to prove that the respondent for whatever reason has not acted in the best interest of the scheme and its members.
62. Accordingly, the applicant's complaint against the respondent is upheld.

### **COSTS**

63. There is no order as to costs.

**ADJUDICATION ORDER**

64. In the circumstances, the following order is made:

- (a) The relief sought by the applicant against the respondent is dismissed for the reasons provided in paragraph 39 to 62.
- (b) The decision by the respondent to deny permission to the applicant to keep his dog in the scheme is valid and not unreasonable in the circumstances.
- (c) The respondent is required to enforce its rules in terms of the Conduct Rules of the respondent from the date of receipt of this order.
- (d) No order is made as to costs.

**RIGHT OF APPEAL**

65. Section 57 of the CSOS Act, provides for the right of appeal-

- (1) 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.
- (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

**DATED ON THIS 06<sup>th</sup> DAY OF SEPTEMBER 2023.**



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**ADV. MALUSI MBULI**  
**ADJUDICATOR**