



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

Ref: CSOS 649/GP/23

IN THE MATTER BETWEEN

**THE EXECUTIVE COMMITTEE OF MOTAGANENG PROPERTY OWNERS  
ASSOCIATION**

**Applicant**

and

**C MATHEBULA**

**Respondent**

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**ADJUDICATION ORDER**

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**EXECUTIVE INTRODUCTION**

- Relief applied for in terms of the CSOS Act: Section 39(1)(e) - in respect of financial issues (levy contributions).
- Date Adjudication conducted: 6 March 2024.
- Name of the Adjudicator: Adv. AS du Toit.
- Order: Granted.
- Costs: No order is made as to costs.

## INTRODUCTION

1. The applicant is Motaganeng Property Association, a registered company with Memorandum of Incorporation (“MOI”) - registered on 8 June 2006. The association is represented by Willem Johannes Louw from Mamre Property Management (managing agent), lodging this application on behalf of the Executive Committee of Motaganeng Property Association (“MPOA”). The scheme is situated at Burgersford, Gauteng.
2. The respondent is cited as C Mathebula, the registered owner of Erf 2634 in the scheme.
3. MPOA qualifies as a community scheme, described as a scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings in terms of the Community Schemes Ombud Service Act No. 9 of 2011 (“CSOS Act”).<sup>1</sup>
4. The respondent is a member of the scheme by virtue of his ownership of property in the scheme.<sup>2</sup>
5. This is an application for dispute resolution in terms of section 38 of the CSOS Act, whereas applicant is defined as a legal person in terms of the CSOS Act and therefor authorised to bring this application.<sup>3</sup> This application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email on 17 April 2023.
6. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of sub section 1(e): requiring “*an order for the payment of a contribution....*”
7. Jurisdiction is confirmed in terms of the provisions of section 39 of the CSOS Act, authorising the Community Schemes Ombud Service to determine this dispute.

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<sup>1</sup> In terms of the definitions – section 1 of the CSOS Act.

<sup>2</sup> In terms of the MOI of the scheme – clause 8.1.5.

<sup>3</sup> In terms of the definitions – section 1 of the CSOS Act.

8. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution of 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 papers filed by the parties and any further written submissions, documents and information as requested by the appointed Adjudicator”*. The parties were requested to make written submissions. The adjudication was conducted on 6 March 2024 resulting in the drafting of this order.

## **RELEVANT STATUTORY PROVISIONS**

9. 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.”
10. Section 38 of the CSOS Act provides that;
- “Any person may make an application if such person is a party to or affected materially by a dispute.”
11. 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.”

12. Section 48 provides-
- “If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator.”
13. In terms of Section 50-
- “The adjudicator must investigate an application to decide whether it would be appropriate to make an order.”
14. 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. In case the dispute has not been resolved through conciliation, the matter may be referred to an adjudicator. Accordingly, a certificate of Non-Resolution was issued in terms of section 48(1) of the CSOS Act dated 30 May 2023. This application together with any submissions and responses thereto was subsequently referred to an adjudicator by the Ombud.

## **SUMMARY OF RELEVANT EVIDENCE**

### **Submissions from both parties**

16. Both parties’ submissions will be dealt with simultaneously for convenience sake. The applicant contends that respondent has failed to make regular

payments in respect of levies imposed in terms of the MOI<sup>4</sup> upon the members, amounting to R11 478.20 (eleven thousand, four hundred and seventy-eight rand and 20 cent), which outstanding levies became payable and is deemed recoverable costs. All internal remedies have further been exhausted and the trustees have resolved to proceed with legal action via CSOS to recover the outstanding contributions owed by respondent. A breakdown of the contribution statement was submitted in support of this application.

17. Respondent has failed/neglected to respond to the allegations, as directed in terms of section 43 of the CSOS Act (dated 22 May 2023) to respond by 29 May 2023, as well as subsequent opportunity provided.

**Relief sought by the Applicant:**

18. An order for the payment of the outstanding levies in the amount of R11 478.20 (eleven thousand, four hundred and seventy-eight rand and 20 cent).

**EVALUATION & FINDING**

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 based on a balance of probabilities.
20. The Supreme Court of Appeal confirmed the contractual relationship between an association and its members in the Mount Edgecombe Country Club Estate Management Association<sup>1</sup> matter, where it is stated that *“the Constitution and rules create a contractual relationship between the association and its members.”*
21. The main objective of the association is to *inter alia* promote and advance the

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<sup>4</sup> Clauses 9.1; 9.2; 9.3; 9.5; 9.6; 9.9 & 9.10 of the MOI.

estate and to protect the communal interest of its members. The enforcement of levies is authorised by the provisions of the MOI (clause 9),

22. It is well known that the non-payment of a levy can seriously de-stabilise a scheme. Levies are the lifeblood of shared living schemes. The costs of attending to the maintenance, repair, and upkeep (insurance, security etc.) are shared between members and the failure to pay could negatively affect the collective interests and investment of all owners in the scheme. It is therefore essential that members make regular levy payments that are due.
23. The evidence submitted by applicant is regarded as sufficient in all material aspects to justify the order granted in terms of section 39(1)(e) of the CSOS Act in the circumstances.

## **COSTS**

24. Parties are generally expected to cover their own costs in respect of the resolution of disputes determined in terms of section 54 of the CSOS Act, whereas cost orders are more readily issued in terms of section 53 orders providing for the dismissal of applications considered to be frivolous, vexatious, misconceived or without substance (sub section 1(a)) or 1(b) – where applicant fails to comply with a requirement in terms of section 51. This scenario is however not applicable here. The circumstances in this matter do not justify a cost order – the parties therefore bear their own costs in the matter.

## **ADJUDICATION ORDER**

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

- 25.1 Applicant's relief sought is granted for the payment of arrear levy

contributions by respondent in the amount of R11 478.20 (eleven thousand, four hundred and seventy-eight rand and 20 cent), payable in full on/before 30 April 2024.

25.2 No order is made as to costs.

## **RIGHT OF APPEAL**

26. 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 AT CAPE TOWN ON 6 MARCH 2024.**

*Andries du Toit*

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**Adv. AS du Toit**

**ADJUDICATOR**