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Issue 26

Jul - Sept 2024



TACKLING THE DISPUTE BACKLOG



CSOS INDABA

HIGHLIGHTS FROM
THE 2ND ANNUAL
INDABA

CASE CLOSED

AN UNWANTED
GUEST ORDERED
TO LEAVE THE
PREMISES WITHIN
14 DAYS



Accountability, Excellence,
Independence, Integrity

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Gedeelde Lewe Ukuhlalisana Tsamisana Ho Dulisana Mmoho



VISION: To be a reliable and transparent regulatory authority for community schemes in South Africa

MISSION: To regulate community schemes to ensure good governance by providing education and training to all stakeholders and an accessible dispute resolution service

VALUES: Service Excellence, Independence, Integrity and Accountability.

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CHIEF OMBUD'S FOREWORD



Dear stakeholders,

As we have concluded our 2nd CSOS Indaba and the second quarter of our financial year, it is not business as usual at the CSOS. During the Minister's keynote address at our annual Indaba in Polokwane, she emphasized that for the CSOS to build confidence as the adjudicator and dispute resolution authority of choice for community schemes, it must act on matters based on facts and in accordance with the law. This must be done without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason.

This means that the CSOS must internally become a well-governed institution, both in terms of capacity and reputation, to promote the principles of good governance in the sector. Simply put at CSOS, justice must not only be done but must also be seen to be done. Community schemes will become more

compliant and regard CSOS as an adjudicator of choice if they believe it is capable of discharging its responsibilities fairly and is well-governed.

With that being said, we are aware of the dissatisfaction expressed by community schemes through various social media platforms regarding our services. Issues such as non-responsiveness, backlog in adjudication, levy allocation, and other matters indicate that our services are below par.

Earlier in August, when I assumed my role as the Acting Chief Ombud, I released a statement acknowledging the current backlog and outlining the measures we have put in place. While this might not seem reassuring and may appear as lip service, I promise you that we are swiftly working on these issues. One of the questions the Minister asked us at the Indaba was whether CSOS has built sufficient capacity to promote good governance of community schemes. A significant takeaway from the conference, based on the feedback we continue to receive, is that the capacity we have built is not adequate.

Today, I come to you not with strategies we are currently implementing, but rather to show you, our actions. To the Sectional Title Members group on Facebook, we acknowledge you. To those who have lodged

complaints on Hello Peter, we hear you. Change is coming.

We have conducted a thorough introspection as an organisation and listened to our stakeholders, and we promise to do better.

Let me introduce myself. I am Kedibone Phetla, the Acting Chief Ombud of the CSOS. I assumed my role on August 1st, following the acting assignment of our now Chief Financial Officer, Ms. Thembelihle Mbatha, who has returned to her role. I hope you will afford me the same support you gave her, so I can pick up where she left off and continue to steer this ship in a better direction.

We welcome your feedback, and my door, along with those of the Executives, is open to you. We are accountable to you as our stakeholders, and if you are not happy with our services, it means something needs to change. As usual, we have insightful information specifically packaged for you. Please go through our newsletter and enjoy the read. I also encourage you to let us know what you would prefer to see in this publication to cater to your needs and better improve our services. Please utilize our call center and our info mailbox at info@csos.org.za.

Sincerely,
Kedibone Phetla
Acting Chief Ombud



REGISTER YOUR RESIDENTIAL ESTATE WITH CSOS NOW.

The Community Schemes Ombud Service, CSOS, is calling on all managers of body corporates, home-owners associations, retirement villages, estates and sectional titles in general, who are yet to register their community schemes with CSOS to do so immediately.

Comply with the law and register your community scheme with CSOS now. Avoid being penalised.

To register, visit our website: www.csos.org.za, or call us on our toll-free number: 0800-000-653.

INTRODUCING KEDIBONE PHETLA: THE NEW ACTING CHIEF OMBUD

We are delighted to introduce Ms. Kedibone Phetla, who has recently been appointed as the Acting Chief Ombud of the Community

Schemes Ombud Service (CSOS). With a robust background in public administration and a passion for transformative governance, Kedibone brings a wealth of experience and dedication to her new role.

Kedibone Phetla currently serves as the CSOS Executive for Organisational Strategy and Performance. Her journey to this pivotal position is marked by a series of significant roles in various government departments. Before joining CSOS, she was the Assistant Director of Strategy Monitoring at the Department of Justice and Constitutional Development. Her career also includes impactful tenures at the Department of Home Affairs and the Department of Agriculture, Forestry and Fisheries.

Kedibone's academic credentials are equally impressive. She holds a Master of Public Administration degree from the University of South Africa (UNISA), which she earned in 2017. Her dissertation, titled "Monitoring and Evaluation in the National Department of Agriculture, Forestry and Fisheries," delved into the effectiveness of monitoring and evaluation as a management tool in the public sector. This academic pursuit underscores her commitment to evidence-based decision-making and enhancing public sector

performance.

Her expertise spans a wide array of areas including monitoring and evaluation, public administration, public policy, strategic planning, performance management, service delivery, accountability, and transparency. Kedibone's professional interests align perfectly with the core values of CSOS, making her an ideal leader to steer the organization towards greater efficiency and effectiveness.

Kedibone is deeply passionate about transformation and improving the quality of life for South Africans. She believes in the power of good governance and evidence-based decision-making to drive positive change. As the Acting Chief Ombud, she is committed to fostering a culture of accountability and transparency within community schemes, ensuring that they serve the best interests of all stakeholders.

We are confident that under Kedibone Phetla's leadership, CSOS will continue to thrive and make significant strides in enhancing service delivery and governance in community schemes across South Africa.

Please join us in welcoming Kedibone to her new role and supporting her in this exciting journey.



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IT'S A WRAP: 2ND ANNUAL CSOS INDABA

The 2nd Annual Community Schemes Ombud Service (CSOS) Indaba, held from 12-13 September 2024 in Polokwane, Limpopo, has concluded with resounding success. Building on the momentum from last year's inaugural event in Gauteng, this year's Indaba continued the mission to engage with trustees, community scheme homeowners, managing agents, and other property stakeholders across South Africa. The goal: to foster a deeper understanding of CSOS's role, ensure compliance with community scheme legislation, and address common issues within community schemes.

The Indaba provided a crucial platform for stakeholders to delve into the complexities of community scheme governance and regulations. "This dialogue offers an opportunity for stakeholders to get to grips with community scheme governance and regulations, and share their challenges and lessons learned," said CSOS Acting Chief Ombud, Ms. Kedibone Phetla. The event's theme, "Promoting Well-Governed,

Empowered, and Transformed Schemes," highlighted the CSOS's commitment to addressing a myriad of issues plaguing community schemes, such as unregistered schemes, inadequate governance, non-payment of levies, and lack of transparency in financial management.

Phetla emphasised several recurring problems reported in community schemes, including the enforcement of rules without CSOS approval, improper handover of records to new trustees or managing agents, imposition of special levies without appropriate Special General Meeting (SGM) resolutions, and disputes arising from Annual General Meeting (AGM) resolutions. These issues, she noted, are critical areas where CSOS aims to make significant improvements through ongoing stakeholder engagement and education.

The Indaba was graced by the presence of the Minister of Human Settlements, Ms. Mamoloko Kubayi (MP), who delivered a compelling keynote address. Minister Kubayi emphasized



the importance of the theme, "Promoting Well-Governed, Empowered, and Transformed Community Schemes," and reiterated the fundamental principle of judicial independence. "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, pressures, threats or interferences, direct or indirect, from any quarter or for any reason," she stated.

Kubayi stressed that for CSOS to build confidence as a dispute resolution authority, it must operate transparently and impartially. "CSOS has to sort itself out internally to be a well-governed institution both in terms of capacity and reputation so that it can promote the principles of good governance in the sector. Simply put at CSOS, justice must not only be done but must be seen to be done," she added.

The Indaba also featured addresses from the various industry bodies experts, as well as representatives from CSOS sister entities such as the Property Practitioners Regulatory Authority (PPRA), Social Housing Regulatory Authority



(SHRA), Housing Development Agency (HDA), National Housing Finance Corporation (NHFC), and the National Home Builders Registration Council (NHBC). These collaborative efforts are critical in driving the transformation and improvement of community schemes across the country.

Minister Kubayi urged CSOS to continue promoting good governance, which lies at the heart of its mandate. This involves regulating, monitoring, and quality-assuring scheme governance documentation to ensure compliance and transparency.

As the 2nd Annual CSOS Indaba wraps up, the focus now shifts to implementing the insights and strategies discussed during the event. The CSOS remains dedicated to its mission of affordable, reliable justice.

For more details on the conference and to view photos from the event, please visit our website or the CSOS YouTube channel. Don't forget to follow us on social media for the latest updates and insights!

TACKLING UNETHICAL PRACTICES AND RESOLVING DISPUTE BACKLOG

The Acting Chief Ombud, Kedibone Phetla has expressed concerns about unethical practices by some individuals, including former employees, who are exploiting CSOS processes for personal financial gain. In a statement to stakeholders earlier this month, she noted that these actions have exacerbated financial strain on some schemes and undermined CSOS's integrity. "CSOS is taking measures to safeguard its processes and prevent further exploitation. Stakeholders are advised to approach CSOS directly for any dispute-related services, as these are freely available, and there is no need to pay intermediaries," she stated.



She also addressed the significant backlog in dispute resolution cases, which has emerged due to an influx of disputes in the financial year 2023/2024. Over 3,000 cases are currently awaiting resolution, causing concern among stakeholders. The CSOS assures the community that it is taking decisive steps to manage and resolve these issues, emphasizing its commitment to improving service delivery and maintaining the integrity of the dispute resolution process.

Several key factors have contributed to the increased volume of disputes lodged with

CSOS, leading to the current backlog. Financial challenges faced by many owners and schemes have resulted in a rise in the use of CSOS's free dispute resolution services. Additionally, recent court rulings mandating that all disputes within CSOS's jurisdiction be referred to the service have further contributed to the surge in cases.

Manual processes, particularly within the dispute resolution process, have created bottlenecks at the assessment and adjudication stages. CSOS is preparing to deploy a new automated system, CSOS Connect, set to go live by

October 31, 2024. This platform will streamline the process, reduce turnaround times, and improve overall efficiency in handling disputes.

To address the backlog, CSOS has taken significant steps to enhance its adjudication capacity. While disputes are managed by both internal and external adjudicators, the previous panel of external adjudicators ended their term in December 2023. To compensate, CSOS has appointed additional part-time adjudicators and increased allocations to all adjudicators. This move aims to expedite the resolution of arrear

levies and other urgent disputes, as identified in the CSOS Practice Directive on Disputes.

Acting Chief Ombud Ms. Kedibone Phetla, in collaboration with the newly appointed Acting Adjudicator General, Abe Masilo, is working to expand adjudication capacity by bringing in more part-time adjudicators and optimizing processes to ensure quicker resolution of cases.

"The CSOS is still dedicated to clearing the backlog as quickly and effectively as it can. One of the long-term strategies being used to effectively manage the rising demand for services is the implementation of the dispute resolution module on CSOS Connect, along with continued engagement with stakeholders, according to

Phetla. She went on to say that she asks for patience during this time of change and reassures stakeholders that the organisation is committed to offering an efficient dispute resolution procedure.

To maintain transparency and ensure stakeholders are kept informed, CSOS has set clear standards for responding to inquiries. Stakeholders can expect acknowledgment of their queries within two working days and progress updates within five working days. For telephonic inquiries about pending disputes, feedback will be provided within 24 hours.

CSOS appreciates the continued support and understanding of its stakeholders as it navigates these challenges.

For any updates or concerns regarding disputes lodged, stakeholders are encouraged to contact the CSOS Senior Managers for Dispute Resolution or reach out to the CSOS call center for further assistance. By taking these proactive steps, CSOS is reaffirming its commitment to providing timely and effective dispute resolution services, enhancing transparency, and building trust within the community schemes sector.

For more information or to raise any concerns, please visit the CSOS website at (<https://csos.org.za>) or contact the call center at 0800 000 653.

“A NATION’S GREATNESS IS MEASURED BY HOW IT TREATS ITS WEAKEST MEMBERS.” -MAHATMA GHANDI



in the contract that was signed between the Developer (the seller of the Life-Right) and the purchaser when the purchaser bought the Life-Right.

Often, the heirs will receive the amount originally paid for the Life-Right less an amount retained by the Developer for what is known as the levy stabilisation fund - this was agreed to in the original purchase agreement. Sometimes, a pre-agreed percentage of any profit on the resale less the restoration costs of the unit is paid to the Developer. The Life-Right is then sold to another retired person, and hopefully the price has increased substantially, because the Developer must make enough money to continue running the scheme.

Do we, as South Africans, care sufficiently for our aged? Let me leave this question to every reader to answer him/herself.

We are dealing with the sale of “Life-Rights”, which is regulated by the Housing Development Schemes for Retirement Persons Act 65 of 1988 (“the Retirement Schemes Act”).

In terms of the Act, a Life-Right

can only be sold to a person over 50-years of age, who is considered to be a ‘retired person’. As the name implies, when sold to a retired person, a Life-Right gives the purchaser the right to “LIVE” in the house/ flat/unit until the purchaser dies or until the purchaser’s spouse dies.

When the longest-living spouse dies, the heirs of the purchaser inherit the amount agreed to

As you have realised, a Life-Right is a right created in terms of a contract, which is endorsed against the title deed of the property. A Life-Right is not ‘ownership’ of a property, but rather ownership of a “right”. If you buy a Life-Right, you do enjoy protection in terms of the Retirement Schemes Act though. Any Erf that is subject to Life-Rights, in other words there are retired persons living on the property with Life-Rights



endorsed on the title deed, can never be sold unless 75% of the Life-Right holders have agreed to the sale.

You will also have to pay a monthly levy and the monthly electricity and water consumed in the unit! Please ensure that you have read and understood the contract conditions relating to this issue, because they all differ!

There are a multitude of benefits to pensioners in purchasing and owning a Life-Right in a Life-Right scheme. It is generally cheaper than buying a property, and there are no transfer and bond costs (remember you are buying a right and not a property).

A further advantage is that the Developer must provide a

realistic estimate of what the levies will be for the next 2 years, giving the Life-Right holder peace of mind that there will not suddenly be huge jump in costs! An added benefit is that the Developer is still responsible for the maintenance of the unit, gardening services, and security. Regrettably, Life-Right schemes are not cheap, but they certainly have their advantages.

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MUST A BODY CORPORATE EMPLOY CONTRACTORS WITH LICENSED AND PROFESSIONAL AFFILIATIONS?

Being elected as a Trustee of a Body Corporate is not all 'moonlight and roses' - this is definitely written 'tongue in cheek!', since we constantly hear Trustees' commenting that they have a 'thankless task', and in many respects this is true.

From a governance perspective, however, the Trustees' actions ought rightly to be under scrutiny from their constituent body corporate members, particularly when it comes to dealing with contractor appointments.

Until fairly recently, and even now in many body corporates, it is the Trustees with the assistance of the managing agent that decisions are taken as to which contractor to appoint to attend to necessary repair and maintenance work within the scheme. Even decisions relating to larger projects such as waterproofing the roof of a building or repainting the entire building fall in the lap of the members, who are called on to consider comparative quotes without calling in professional assistance.

In many cases, this has led to the appointment of unsuitable contractors with no professional

accreditation and no professional oversight, which frequently results in severe financial loss to the members of the scheme when the contractor either doesn't perform to expectation or simply disappears.

With the advent of ongoing education and many schemes appointing professional Facilities Managers in addition to managing agents, we hope that this practice is nearing an end. Ultimately, the "buck stops" with the Trustees. It is ultimately their duty to ensure that the correct legal and procedural steps are followed to appoint/employ suitable, properly qualified contractors with the requisite professional affiliations and registrations to complete whatever job is required to acceptable and required standards.

The fiduciary position that Trustees occupy vis à vis members of the body corporate and all the implications attached to this obligation, which include inter alia – to act honestly and in good faith, not to exceed their powers, to exercise their powers in terms of the STSMA in the interest and for the benefit of the body corporate, to avoid any

conflict between their personal interest and that of the body corporate, and not to receive any personal economic benefit – must be adhered to.

If a Trustee acts in breach of his fiduciary obligation, he is liable to the body corporate for any economic loss suffered by it, or economic benefit received by the Trustee - unless, of course, the prior written consent of all the owners has been obtained.

According to the Occupational Health and Safety Act of 1993 ("OHS"), if the Trustees hire a contractor themselves, they are subject to the same OHS requirements as any other employer and they may, in certain circumscribed circumstances, be held criminally liable in terms of section 37 of the OHS if they contravene the provisions of the Act.

Simplistically, and herein lies the rub, this is why it is absolutely critical that when employing a contractor to do any work on the common property, the contractor is properly qualified, and affiliated to the relevant professional organisation, and in addition, has its own public liability insurance for its employees, failing which the body corporate will be responsible for taking out public liability insurance.

Trustees must acquaint themselves with the OHS and maintain health and safety requirements for all common areas in the scheme.



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CAN TRUSTEES MAKE DECISIONS WITHOUT OWNERS' APPROVAL?

Duties of Trustees and Processes to Be Followed When Making Decisions



The Sectional Titles Scheme Management Act assign the functions and powers of the body corporate to the trustees of the body corporate holding office in terms of the rules. The functions and powers must be exercised subject to the provisions of the Act, the rules and any restriction imposed, or direction given at a general meeting of the owners of sections.

Each trustee stands in a fiduciary relationship to the body corporate, this implies that a trustee must in relation to the body corporate act honestly and in good faith and exercise his or her powers in terms of this Act in the interests and for the benefit of the body corporate; and not act without or exceed those

powers. A trustee must avoid any material conflict between his or her own interests and those of the body corporate, and in particular not receive any personal economic benefit, direct or indirect, from the body corporate or from any other person. Trustee has a duty to notify every other trustee of the nature and extent of any direct or indirect material interest which he or she may have in any contract of the body corporate, as soon as such trustee becomes aware of such interest.

The exception to the requirements above is that a conduct of a trustee does not constitute a breach of a duty arising from his or her fiduciary relationship to the body corporate if such conduct

was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognisant of all the material facts.

The quorum at a trustees' meeting fifty per cent of the trustees by number, but not less than two. If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only to appoint replacement trustees to make up a quorum; or call a general meeting.

Where in a trustees' meeting a quorum is not present within thirty minutes of the appointed time for the meeting, the trustees present, but not less

than two, must adopt interim resolutions in respect of each item on the agenda. An interim resolution adopted by trustees as afore stated does not take effect unless it is confirmed at the next trustees' meeting at which a quorum is present; or by written resolution signed by all the trustees.

It is important to note that a motion at a trustee meeting does not have to be seconded; and must be determined by resolution adopted by the majority of the trustees present and voting. Each trustee is entitled to one vote; provided that if the deliberative votes of the trustees, including that of the chairperson, are tied, the chairperson has a casting vote, unless there are only two trustees.

In terms of Prescribed Management Rules (PMR 23 (3), trustees may perform certain functions without owners' approval. The functions are: raising a special contribution, increase the contribution by up to 10% for the period between the end of the financial year and when the new contribution becomes payable, charging interest on overdue amounts, investing reserve fund money, entering contracts, joining organisations and subscribing to services, delegating trustee duties, approaching the Ombud for relief and setting the dates for future trustee meetings with a standard agenda.

Trustees' decisions may be made

through a trustee resolution made by simple majority in number at a trustee meeting or in writing. Trustees may decide in this fashion regarding the following decisions: change the service address of the body corporate, determine amounts other than prescribed to be paid into the reserve fund, raising the annual contribution, raising a special contribution, consent for subdivision and or consolidation of sections. Trustees may also take a resolution to enter into agreements about boundaries of the common property in terms of the Land Survey Act, appoint a replacement trustee to serve while trustee is unavailable, and sign a document binding on the body corporate.

A resolution may also be taken by trustees to set dates for future trustee meetings with a standard agenda, exclude non-trustee members and others entitled to attend trustee meetings from the meeting, hold a trustee meeting using electronic communication, elect the chairperson, elect a replacement chairperson if the chairperson is removed from office, is not present or is unwilling to chair the trustee meeting.

Trustees are also empowered to take a resolution to call general meetings at short notice, call general meetings whenever they see fit, determine the agenda of general meetings except meetings called on request of members holding

at least 25% of the vote, and decide that a special resolution passed by members holding less than 50% of the vote value must be implemented immediately.

A resolution taken by trustees may delegate trustee duties, pay money from the administrative and reserve funds, adopt a report for presentation at the Annual General Meeting, consent to keep a pet, specify the type of refuse receptacle to be used and where it must be kept, consent to park a vehicle on common property, consent to member making a small change to common property, approve appearance and materials of locking and or safety devices attached to common property.

Trustees may give approval without the owners' consent to a change that has been made to external appearance of section or Exclusive Use Area (EUA), they may consent to erection of washing lines on common property, hanging washing in section or EUA if visible, consent to display of signs, store flammable materials.

There are decisions that can be taken by either the board of trustees or by ordinary resolution of members, such decisions include a decision to appoint a managing agent, appoint a replacement trustee if a trustee ceases to hold office, cancel the managing agent contract on its terms and the removal of the chairperson from office.

CASE CLOSED

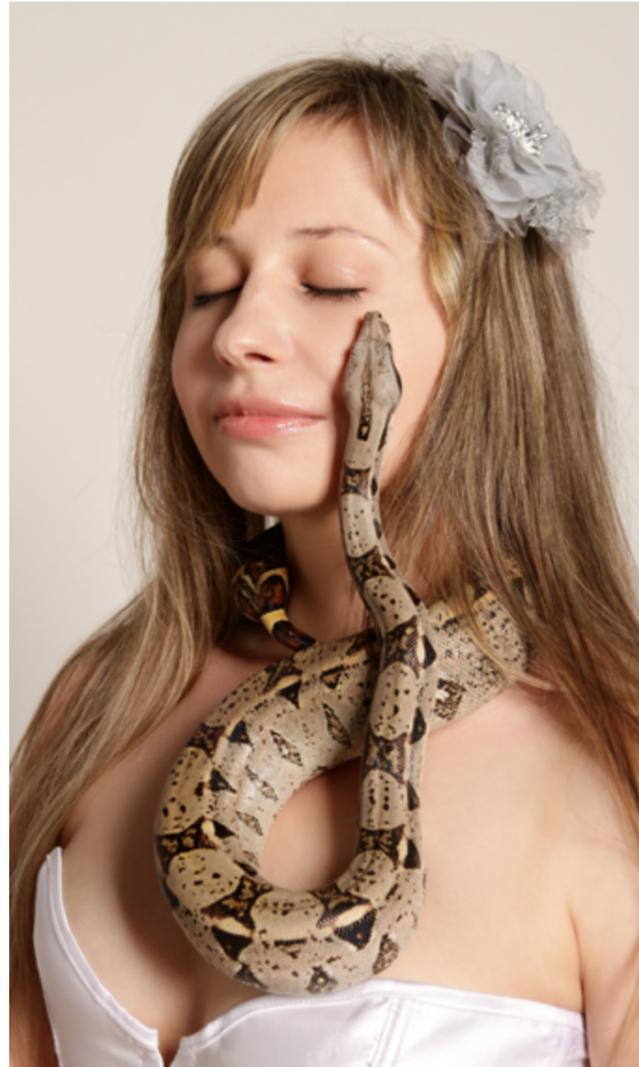
AN UNWANTED GUEST ORDERED TO LEAVE THE PREMISES WITHIN 14 DAYS

In a decisive ruling by CSOS Adjudicator Karen Bleijs, an owner has been ordered to permanently remove the snakes from his unit within 14 days. The owner is required to confirm in writing that the reptiles have been removed and to allow an inspection by a trustee and the managing agent to verify compliance. This ruling underscores the CSOS's commitment to enforcing community scheme regulations and protecting residents' interests.

The La Egoli Body Corporate, representing a sectional title scheme in Kuilsrivier, lodged a complaint against Thabi Dike, the owner of unit 54. The issue at hand was the alleged keeping of dangerous reptiles, specifically snakes, within Dike's unit. This was in direct violation of the scheme's governance documentation, which prohibits the keeping of animals without the trustees' written consent.

The complaint was initiated after multiple residents expressed concerns about the presence of snakes in Dike's unit. Reports indicated that these reptiles were not only kept in the unit but were also occasionally left unattended, causing significant distress among the neighbors. Despite several attempts by the trustees to address the issue directly with Dike, he denied the allegations and refused to cooperate.

The case was brought before the CSOS for adjudication. Adjudicator Karen Bleijs conducted a thorough investigation, reviewing all submitted evidence and considering the testimonies of



the involved parties. The evidence included communications from concerned residents, confirmation from Cape Nature that Dike had a permit for the snakes, and photographic proof of the reptiles in his unit.

The adjudicator found that Dike had indeed violated the scheme's rules by keeping the snakes without the necessary consent. The evidence presented by the La Egoli Body Corporate was compelling, demonstrating a clear breach of the community scheme's governance documentation. The adjudicator emphasized the importance of adhering to these rules to ensure the safety and well-being of all residents.

Consequently, in terms of the provisions of the STSMA, the Conduct Rules contained in Annexure



9 to the STSMA are applicable to the scheme, and read as follows:

Keeping of animals, reptiles, and birds

1. The owner or occupier of a section must not, without the trustees' written consent, which must not be unreasonably withheld, keep an animal, reptile, or bird in a section or on the common property.
2. An owner or occupier suffering from a disability and who reasonably requires a guide, hearing, or assistance dog must be considered to have the trustees' consent to keep that animal in a section and to accompany it on the common property.
3. The trustees may provide for any reasonable condition in regard to the keeping of an animal, reptile, or bird in a section or on the common property.
4. The trustees may withdraw any consent if the owner or occupier of a section breaches any condition imposed in terms of sub-rule (3).

CONTACT US!



- 1 CENTURION:** Berkley Office Park, 8 Bauhinia Street, Highveld Techno Park, Centurion
- 2 DURBAN:** 7TH Floor Aquasky Towers, 275 Anton Lembede Street, Durban
- 3 POLOKWANE:** Standard Bank Square, 49 Hans Van Rensburg St, Polokwane
- 4 BALLITO:** Suite 6; Second Floor, Regency House, 3 Douglas Crowe Drive Ballito
- 5 GEORGE:** 14 CJ Langenhoven Road, George Central
- 6 MBOMBELA:** Block 1 Riverside Office Park, 1 Aqua Street, Riverside Park Extension 24, Mbombela
- 7 BLOEMFONTEIN:** Suite 11, Hydro Park 2, 135 – 141 President Reitz Avenue, Westdene, Bloemfontein
- 8 RUSTENBURG:** New Heights, 67 Brink Street, Rustenburg