

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

REPUBLIC OF SOUTH AFRICA

CASE NO: 59207/ 2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
(4)	DATE: 12 MAY 2023
(5)	SIGNATURE: <i>ML SENYATSI</i>

In the matter between:

EAGLE CANYON GOLF ESTATE HOME

KEITH NOEL KENNEDY

and

NATASA GROENVELD

MR. ABRAHAM MASILO N.O.

COMMUNITY SCHEMES OMBUD SERVICE

ADV BOYCE MKHIZE N.O.

MR FARHAD LOCKHAT

First Applicant

Second Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Neutral Citation: *Eagle Canyon Golf Estate Homeowners & Another v Natasha Groenveld & Others* (Case No: 59207/2021) [2023] ZAGPJHC 468 (12 May 2023)

Delivered: *By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.*

JUDGMENT

SENYATSI J:

A. INTRODUCTION

- [1] This is an application opposed by the third respondent, the Community Scheme Ombud Service ("the CSOS"), to review and set aside its decision to accept the dispute resolution application brought by the first respondent, Dr. Natasha Groenveld ("Dr Groenveld") for referral to adjudication. The applicant is the homeowners association ("the Scheme") registered as a non-profit company and has voting members who are property owners within the estate. It is registered and incorporated in terms of the laws of the Republic. This judgment deals essentially with the jurisdiction that the third respondent, the CSOS has in terms of Section 39(2) (a) of the Community Scheme Ombud Service Act, No: 9 of 2011 ("CSOS Act") whether to accept or reject the dispute resolution application brought to it by members of the Scheme. The second applicant is Mr Kennedy, the chief executive Officer of the applicant. For convenience reasons, I will refer to the applicant in this judgment as the Homeowners

Association or the Scheme interchangeably, the second applicant as the CEO and the first respondent as Dr. Groenveld and the third respondent as CSOS. Apart from the CSOS, none of the respondents oppose this application.

B. BACKGROUND

- [2] The Scheme advances and protects the communal interest and security of its members as well as residents and other users of its property over which it acts as a governing body. As a Homeowners Association, it manages the affairs of its member for the common good of them all. Its mandate includes but is not limited to devising; issuing and enforcing rules and regulations pertaining to the conduct of members; residents and other users of the golf estate; rules on the use of and maintenance of the streets within its property; sidewalks, walkways, communal property and private open spaces; movement of traffic on its property and any other internal matter which the board of the applicant deems appropriate to be regulated. It is also empowered to collect levies from its members for the upkeep of the communal property as well as payment of expenses related thereto.
- [3] The applicant can impose and collect penalties from members for violation of the rules and regulations as determined by its board from time to time. It is also empowered to act, including institution of legal proceedings in relation to the non-compliance by any member of any rule and regulation or non-payment of levies or any amount legally due by any member to the Scheme.
- [4] The first defendant and her husband are a title property owners within the property of the Scheme. She is by virtue of that ownership, a member of the

Scheme and therefore bound by the rules and regulations designed by it for its members.

[5] The third respondent is the Community Schemes Ombud Service ("the CSOS"), public entity and juristic person created in terms of s3 of the CSOS Act of 2011. As a creature of statute, its objectives are clearly spelled out in the CSOS Act and can be summarised as follows¹:

- (a) To develop and provide a dispute resolution service;
- (b) provide training for conciliators, adjudicators and other employees of CSOS;
- (c) regulate, monitor and control the quality of all sectional title schemes governance, documentation and such other scheme governance documentation;
- (d) Take custody of, preserve, and provide public access electronically or by other means to sectional title scheme governance documentation.

[6] The CSOS is required to provide a dispute resolution procedure regarding the administration of a community scheme between persons who have a material interest in that scheme. This dispute resolution procedure is an alternative dispute resolution procedure outside of the realm of the courts. It is designed to be the most cost effective and speedy way of settling disputes through methods such as conciliation and adjudication. The application by the applicant must include a statement setting out the relief sought by the applicant and the grounds upon which the relief is sought.

¹ See s4 of the CSOS Act.

- [7] The dispute before this court relates to the acceptance of dispute resolution application sent by Dr. Groenveld to the second respondent.
- [8] The scheme contends that Dr. Groenveld violated the Scheme's rules and regulations as follows:
- (a) From the 27th April 2020 to the 5th May 2020 she conducted a business from her residential premises contrary to the rules of the Scheme;
 - (b) She fed feral cats while she cycled on the common areas on 31 March 2020 contrary to the Scheme rules and regulations;
 - (c) her dogs were roaming the common areas on the 21st of January 2021 contrary to the rules of the Scheme;
 - (d) She drove over the speed limit within the estate on the 31st of July 2021 at 10:34 by driving at the speed of 48 kilometres per hour, where the speed limit was 40 kilometres per hour. A penalty was imposed because of the violation.
- [9] Following the violations, the necessary internal procedures were taken by the Scheme; a set of penalties and written warnings were addressed to Dr. Groenveld. In reaction to the violations and penalties imposed on her by the Scheme, her husband Mr. Groenveld addressed a number of emails to the Scheme and complained about the incompetence of the security officers employed by the Scheme by stating that a certain A. Nomi was working for her when they entered the details of a person at the main gate to the estate. Furthermore, Dr. Groenveld's husband sent another e-mail on the 3rd of August 2021 raising questions on how the complaints received were dealt with and why there were so many employees at the Scheme. In addition, a third email was

sent to the Scheme by Mr. Groenveld and he complained about why he was issued with speed violation fine and accused the staff of the Scheme of being intellectually inferior.

- [10] In fact, all the communications to the Scheme were offered by Mr Groenveld. Following these communications, the Scheme then sent a letter to Dr. Groenveld on the 3rd of August 2021 and advised her that it would no longer respond to the letters due to the insulting comments contained in the previous emails from her husband. However, what remains unexplained is why the Scheme reacted to the emails by Mr. Groenveld and sent a letter to Dr. Groenveld that it was no longer going to reply to the emails.
- [11] Consequently, Dr. Groenveld lodged an application to the CSOS for dispute resolution in terms of s38 of the CSOS Act. She seeks amongst others, a personal apology for the incompetence of the staff of the Scheme. The CSOS accepted the complaint in terms of s39 of the CSOS Act. It is that acceptance of the complaint which is the subject of this litigation because the Scheme contends that the application for dispute resolution ought to have been rejected in terms of s42 of the CSOS Act.

C ISSUE FOR DETERMINATION

- [12] The issue for determination is whether the acceptance of the dispute resolution application was administratively correct in terms of the CSOS legislation.

D. THE LEGAL PRINCIPLES AND REASONS FOR THE JUDGMENT

- [13] The dispute resolution application is regulated by the CSOS Act² and s38 states that any person may make an application if such a person is a party to or affected by a material dispute. The application must be made in the prescribed manner and as required by the practise directives and launched with an Ombud. The application must include a statement setting out the relief sought by the applicant, which must be within the scope of one or more of the prayers for relief contemplated in s39. "Dispute" in the act means 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 in the association, is an occupier or owner, individually or jointly.³
- [14] The prayers for relief are regulated by s39 of the Act and deals with financial issues between the person with a material interest and the Scheme and also in respect of behavioural issues such as nuisance, pets rules;⁴ governance issues⁵; meetings, management services and other general issues⁶ which will presumably be those of the same kind as the once mentioned by the section.
- [15] The Ombud in this case being the second respondent, is permitted to ask for more information and evidence that an internal dispute resolution mechanism has been unsuccessful after receiving the application.⁷ The Act also imposes time limits on certain applications within which an order relating to any decision of an Association or an Executive Committee may be challenged and declared

² See s38

³ See s1 of the Act under definitions.

⁴ See s39(2) (a)-(d).

⁵ See s39(2) (a)-(d).

⁶ See s39 (3) to (7).

⁷ See s40.

by to be void which period may not be later than 60 days after such a decision's been taken. An Ombud may, on good cause shown, condone the late submission of an application contemplated in this section.⁸

- [16] S42 of the Act states that an Ombud **must** reject an application by written notice to the applicant if *inter alia*, he is satisfied that the dispute should be dealt with in a court of law or other tribunal of competent jurisdiction.
- [17] The Scheme contends that the Ombud has no discretion to exercise if the application for dispute resolution does not meet the requirements of s39 of the Act. He is obliged by s42 to reject the application. This is the position because the relief sought by Dr. Groeneveld is of a personal nature and should be dealt with by another tribunal of competent jurisdiction. The CSOS argues that because it is permitted by s39(7) to accept any other application that is not set out in s39 it was within its rights to accept the dispute resolution application filed by Dr. Groeneveld. It argues furthermore that it cannot reject the application for dispute resolution based on technical reasons.
- [18] I do not agree with the contention raised by the CSOS. When the application was submitted for dispute resolution, it was incomplete in the sense that a significant amount of information was missing from the prescribed application form. The CSOS requested more information from Dr. Groeneveld on the information that had been omitted and the information was never supplemented. The application as at the hearing of the application remained incomplete. I struggled to cleanse more information on the last page of the prescribed form as the information had been cut off. This in my considered view

⁸ See s41(1)

was material and on not getting either an original from Dr. Groenveld or a supplemented copy of the prescribed form, the second respondent ought to have rejection the application on that ground alone.

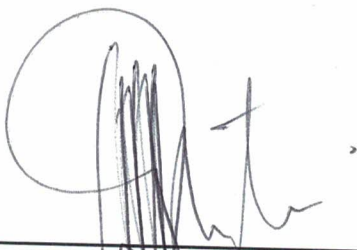
- [19] More importantly, the relief sought by Dr Groenveld was of a personal nature and not related to any of the issues covered under s39 of the Act. She stated in what could be cleansed from the incomplete application form that she required an apology from the employees of the Scheme. The dispute resolution application was not related to for instance a complaint that the penalties imposed for violations of speed limit, fines about the pets were incorrectly imposed. The apology she requires and the qualifications of the second applicant as part of the application for dispute resolution, do not fall within the issues forming the subject matter of the dispute to be resolved by the CSOS as contemplated in legislation. The relief sought is of little concern to the common interest of the members of the Scheme and in my view ought to have been rejected as required by s42 of the Act.
- [19] This court is not persuaded by the submissions made on behalf of the CSOS that the acceptance of in the application for dispute resolution was motivated by the general approach to reconcile the disputes between the Scheme and its members. Whilst there is nothing untoward about such a good gesture, se42 makes it clear when the CSOS must reject an application for dispute resolution. The provisions of s42 are peremptory once the requirements set out in s39 are not met.
- [20] Having considered the papers before me and the arguments submitted on behalf of the parties, I am of the view that the CSOS acted beyond the powers

given to it by the Act to accept the application for dispute resolution. Accordingly, the decision taken by it stands to be reviewed and set aside.

E. ORDER

[20] The order is made in the following terms:

- (a) The decision taken by the second respondent, third respondent or their delegates dated the 18th of November 2021 to accept the application for dispute resolution by the first respondent is hereby reviewed and set aside;
- (b) The decision of the second the respondent or the third respondent or their delegates is substituted with the following: **"The Application for Dispute Resolution is rejected pursuant to Section 42 of the Community Schemes Ombud Service Act, 2011"**.
- (c) The third respondent is ordered to pay the costs of this application.



ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE JUDGMENT RESERVED: 9 November 2022

DATE JUDGMENT DELIVERED: 12 May 2023

APPEARANCES

Counsel for the Applicant: Adv C Humphries

Instructed by: AJ Van Rensburg Incorporated

Counsel for the Respondent: Adv Z Ngwenya

Instructed by: Magagula George Mcetywa Inc