

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]**

CASE NO: 030838/22

1. REPORTABLE: **YES** / NO
 2. OF INTEREST TO OTHER JUDGES: **YES** / NO
 3. REVISED.
- DATE: 02/08/2023

In the matter between:-

LELOKO HOMEOWNERS ASSOCIATION

Applicant

and

KHOPOLO PETER LETELE

First Respondent

RELEBOHILE ELIZABETH LETELE

Second Respondent

KAMOGELO MAPUTLA
(Adjudicator)

Third Respondent

COMMUNITY SCHEMES OMBUD SERVICE

Fourth Respondent

JUDGMENT

SKOSANA AJ

[1] What the applicant seeks in this application is in essence a review coupled with an application to dismiss a certain complaint and application for dispute resolution lodged with the fourth respondent. The latter part of the relief constitutes a substitution of the decision under review. The rest of the prayers in the notice of motion are either superfluous or have been overtaken by events.

[2] The review concerns a decision taken by the third respondent (“adjudicator”) on 17 July 2022 in which the adjudicator found in favour of the first respondent that the applicant must recalculate the second respondent’s levies with the exclusion of the construction liability, the legal fees and interest. He also directed the applicant to allow contractors to perform work at the property in question. The adjudicator adjudicated under the auspices of the Community Schemes Ombud Service (“CSOS/fourth respondent”) and on the basis of the CSOS Act 9 of 2011.

BACKGROUND

[3] The applicant is a Homeowners Association and a non-profit company whose purpose is, among others, to promote, advance and protect the communal interests, safety and welfare of its members by applying and enforcing rules which have been accepted by such members. It also collects levies from members in accordance with such rules.

[4] The first respondent (“Mr Khopolo Letele”) is the father to the second respondent (“Ms Relebohile Letele”). Ms Relebohile Letele is the registered and sole owner of Erf 8[...], Kosmos Ext.7 Township, Registration Division JQ North West province (“the property”), which is part of the properties falling within the

control of the applicant and its rules. She therefore is a member of the applicant in terms of the applicant's memorandum of incorporation.

[5] Ms Relebohile Letele defaulted in the payment of levies to the applicant leading to the applicant seeking and obtaining judgment against her in the Magistrates' court on 24 February 2021 for R67 624-77 plus punitive costs which were taxed in the amount of R26 526-91("the judgment").

[6] Later, an application for sequestration of Ms Relebohile Letele was instituted by the applicant and culminated in her final sequestration on 22 May 2023 by order of Makhoba J. In the meantime, Mr Khopolo Letele lodged a complaint and an application for dispute resolution with the fourth respondent which culminated in the adjudication order by the third respondent on 17 July 2022. It is that adjudication order which is the subject of the present review application.

GROUND OF REVIEW AND FINDINGS

[7] I do not intend to deal with each and every ground of review in detail as almost each one of them is adequate to justify the review and setting aside of the adjudication order.

[8] But before dealing with such grounds, it is important to clarify the following jurisdictional matters:

[8.1] Although the applicant relied on the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), to review the adjudication order, it was equally entitled to appeal against it in this court by virtue of section 57 of the CSOS Act, though such appeal would have been limited to questions of law.

[8.2] I mention this because about all the grounds of review relate to questions of law. In any event, the applicant has satisfactorily shown that it is entitled to rely on the PAJA for the present review. The difference is rather academic than practical, any way.

[9] The first and perhaps the main ground of review relates to the *locus standi* of Mr Khopolo Letele primarily at adjudication. He signed the dispute resolution form without any proven authorization by his daughter. It is common cause that the relationship between Ms Relebohile Letele and the applicant is contractual and makes her a member of the applicant. It follows that Mr Khopolo Letele had no *locus standi* in the adjudication proceedings and I doubt if he has it in the present proceedings.

[10] It is also clear that the dispute related to the payment of levies in relation to the particular property of Ms Relebohile Letele. The liability to pay levies is attached only to and could only be enforced against her. No legally valid ground was proffered by Mr Khopolo Letele in this regard. He appeared in person.

[11] The ground was duly raised before the adjudicator (third respondent) who appears to have taken cognizance of it but failed to make a ruling thereon. Instead, in the ruling, the adjudicator simply assumes that the application has been brought by Ms Relebohile Letele and orders that she has been successful against the applicant.

[12] I am of the view that this ground alone renders the adjudication order unlawful, unreasonable and procedurally unfair.

[13] The other equally insurmountable ground is that the adjudication took place notwithstanding the existence of the Magistrates' court judgment contrary to the jurisdictional requirements for such adjudication. This was confirmed by an email from the CSOS itself dated 27 June 2022 that relief cannot be sought in respect

of a matter for which judgment has been granted. This in turn is taken from clause 21.5.7 of the Practice Directive on Dispute Resolution. The Directives are passed under section 36 of the CSOS Act.

[14] It is also a matter of logic and jurisprudence that such a statutory adjudicative tribunal must submit to the power of a court of law. The adjudication order indirectly reverses and contradicts the Magistrates court order. That is legally impermissible. This ground therefore also justifies the setting aside of the adjudication order.

[15] Another fatal defect is the issue of the adjudication order before all the submissions had been filed with the adjudicator. The adjudication order is dated 17 July 2022 while the applicant's submissions were given to the adjudicator on 18 July 2022, as requested by the adjudicator. This is exacerbated by the fact that the adjudication was decided on the basis of written submissions of the parties, without hearing oral submissions.

[16] Accordingly, this ground also warrants the review and setting aside of the adjudication order.

[17] As stated earlier, Ms Relebohile Letele has been sequestered. Her estate, including the property is now under the control of a curator. That means Ms Relebohile Letele no longer has ownership nor has Mr Khopolo Letele ever had it.

[18] It is my view that not only is the adjudication order unlawful and unreasonable but also there are exceptional circumstances which justify the substitution thereof, in that:

[18.1] All the facts associated with the grounds of review above are already before me. Those facts have not been nor can they be disputed. In effect, only

the law had to be decided in relation to the three points referred to above, being *locus standi*, the effect of the existing judgment and adjudication before receipt of the applicants' submissions.

[18.2] Further, the sequestration of Ms Relebohile Letele has made it impractical to remit the matter for adjudication again as she is no longer in control of her estate. The curator of her estate, whom I have been assured he is aware of the present proceedings, has decided not to oppose this application taking into account that the final sequestration order was granted a few months ago.

[19] In the light of the above, it is my view that the adjudication award is reviewable on the basis of lawfulness, reasonableness and procedural fairness. Further, the adjudication order must be substituted with an order that the application for adjudication dispute by Ms Khopolo Letele is dismissed on the basis of section 8(1)(c)(ii)(aa) of the PAJA.

[20] As to costs, the application was not opposed by the adjudicator, the CSOS and Ms Relebohile Letele. Only Mr Khopolo Letele opposed it. However, his opposition and in person appearance was limited to the issue of the recalculation of the levies as well as the non-inclusion of construction liability fee. I have made no direct findings in that regard nor do I find it necessary to do so. He made no meaningful submissions in relation to the legal issues at hand.

[21] Mr Khopolo Letele was clearly misled and given false hope by the adjudication order, understandably as a lay person. His actions are at least to some remarkable degree motivated by the fatherly instinct to protect his offspring. In all the circumstances of the case, I am not inclined to grant costs against him.

[22] In the result, I make the following order:

[22.1] The third respondent's adjudication order dated 17 July 2022 is hereby reviewed and set aside.

[22.2] The order by the third respondent is substituted with an order that the application for dispute resolution is dismissed.

[22.3] There is no order as to costs.

DT SKOSANA
Acting Judge of the High Court
Pretoria

Date of hearing: 26 July 2023

Date of Judgment: 02 August 2023

APPEARANCES

Counsel for the Applicant: Advocate Roos

Instructing Attorneys: Linda Erasmus Attorneys

For the Respondent: Mr Letele (In person)