



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No.: A2022-011659

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
11 September 2024	
DATE	SIGNATURE

In the matter between:

MEYERSDAL NATURE ESTATE HOME

Appellant

OWNER'S ASSOCIATION

and

MICHAEL LAWLOR

First Respondent

COMMUNITY SCHEMES OMBUD

Second Respondent

BANGILIZWE MNINAWA

Third Respondent

Date heard: 13 June 2024

This judgment was handed down electronically by circulation to the parties' representatives by email, being uploaded to Caselines and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 11 September 2024.

JUDGMENT

Bhengu AJ (Wanless J concurring)

Introduction

- [1] The Appellant is the Meyersdal Nature Estate Homeowners Association, a non-profit company which is responsible for controlling and managing the Nature Estate. The First Respondent (“*Mr Lawlor*”) is a registered owner of a residential property situated in the Communal Nature Estate and he is a member of the Appellant by virtue of his ownership.
- [2] This is an appeal in terms of section 57(1) of the Community Schemes Ombud Service Act, 9 of 2011 (“*the CSOS Act*”). The Appellant is seeking an order setting aside the adjudication order dated 23 April 2022 in which the Third Respondent (“*the adjudicator*”) dismissed its claim for an amount of R360 000.00 in respect of penalty charges levied against Mr Lawlor for his alleged failure to erect a palisade fence around the nature boundary area and his property. In dismissing the Appellant’s claim, the adjudicator held that it was not Mr Lawlor’s duty to erect the palisade fencing and that the fines were invalid and ought to be withdrawn.
- [3] The appeal was brought by way of a notice of appeal as prescribed in *Stenersen*¹. The parties agree that the appeal is the correct remedy. The Court is also in agreement that the appeal is the correct procedure. The appeal is opposed by the First Respondent. The Second and Third Respondents have filed a notice to abide by the court’s decision.

¹ *Stenersen and Tulleken Administration CC v Linton Park Body Corporate and Another* (A3034/2018) [2019] ZAGPJHC 387; 2020 (1) SA 651 (GJ) para 38.

Background facts

- [4] The nature estate has free roaming wildlife and a nature reserve. Mr Lawlor purchased his property in August 2012 from a previous owner. At the time when he bought the property, it was not fenced. In a letter dated 15 January 2014, the Appellant notified Mr Lawlor of the requirement to erect a palisade fence and asked him to erect the fence within seven days of the said letter. Mr Lawlor failed to erect the palisade fence during the prescribed period. After engagements between Mr Lawlor and the trustees of the Appellant, Mr Lawlor eventually erected the fence in November 2019.
- [5] The Appellant issued summons in the Magistrates' Court against Mr Lawlor claiming an amount of R360 000.00 in respect of arrear penalty charges for the period from 1 January 2017 to 31 December 2019 calculated at a rate of R10,000.00 per month including accumulated interest at a rate of 17% per annum.
- [6] The parties agreed to stay the action instituted against Mr Lawlor and to refer their dispute to the Community Schemes Ombud ("*the Ombud*") in terms of Section 38 of the CSOS Act. The issue before the adjudicator was whether Mr Lawlor was in breach of the Appellant's architectural guidelines and whether he was liable to the Appellant for the arrear penalty charges in the amount of R360 000.00 which included interest.
- [7] On 23 April 2022, the adjudicator issued an order dismissing the Appellant's claim against Mr Lawlor. The adjudication order which is the subject of this appeal reads as follows:

“...it is not the respondent’s duty to erect the palisade fencing and as such he cannot be held liable for penalties for the late erection of the fencing...the fines imposed by the appellants were invalid and should be withdrawn.”

Condonation Application

- [8] In terms of section 57(2) of the CSOS Act, an appeal against an order must be lodged within 30 days after the date of delivery of the order. It is common cause between the parties that the adjudication order was made on 23 April 2022 and was communicated to the parties via email on 3 May 2022. The notice of appeal was served upon Mr Lawlor on 5 August 2022, which is 2 months late. The Appellant filed an application for condonation for its failure to note the appeal on time. The condonation application is opposed by Mr Lawlor.
- [9] In opposing the condonation application, Mr Lawlor contended that the Court is not empowered to condone non-compliance with the time limit prescribed in section 57(2) of the CSOS Act. Counsel for the Respondent referred to the Full Bench decision of this division in *Ncala v Park Avenue Body Corporate*² where it was held that the court does not have a general power to condone non-compliance with statutory time periods and dismissed the condonation application in that matter. According to the Respondent’s Counsel the court either has the power to grant condonation or it does not. If it does not have the power, then that is the end of the Appellant’s case.
- [10] The Appellant contended that this Court has discretion to condone the late filing of an appeal. The Court was referred to the decisions of *Baxter*³, *Shakoane*⁴ and *Kobi*⁵ where the Court granted the Appellant condonation.

² *Ncala v Park Avenue Body Corporate* (A3029/2019) [2023] ZAGPJHC 390

³ *Baxter v Ocean Body Corporate*, 2023 (2) SA 205 (WCC) at 209 A-B

⁴ *Shakoane v Community Schemes Ombud Service and Others* (A23/2023) [2023] ZAGPPHC 1825

⁵ *Kobi v The Trustees for the time being, De La Rey Body Corporate*, 2024 (1) SA 174 (FB) at 177 C – 178 F)

[11] Having considered the two judgments in *Ncala* and *Shakoane* referred to by both parties the Court agrees with the reasoning in *Shakoane* that the facts of that matter are distinguishable from those in *Ncala*. The circumstances surrounding the delay in filing the appeal in *Shakoane* were adequately explained coupled with the fact that there was no proof that the adjudication order was received by Mr Shakoane.

[12] Conversely, in *Ncala*, the Appellant had lodged his appeal 65 days late and only filed his application for condonation a year later. He also failed to provide reasons for his one-year delay in launching the appeal. In condonation applications, no case is the same as the other. The court must consider the circumstances of each case in the exercise of its discretion, which must be done judiciously, having considered all the facts and evidence before the court.

[13] In *Kobi* the Court aligned itself with the reasoning relating to the purpose of the CSOS Act as stated by Binns-Ward J in *Coral Island Body Corporate v Hoge*⁶ and concluded that:

“upon a proper contextual consideration of the provisions of s 57(2) of the CSOS Act, the court does have the power, on good cause shown, to condone non-compliance with the 30-day time limit therein prescribed”⁷.

[14] This Court also aligns itself with the above reasoning as a finding otherwise would have undesired consequences whereby a right to appeal which is provided for in the legislation would be extinguished owing to non-compliance with the relevant timeframe even when there is a just cause for non-compliance. The proposition by Mr Lawlor’s Counsel, if accepted,

⁶ *Coral Island Body Corporate v Hoge* (22991/2017) [2019] ZAWCHC 58; 2019 (5) SA 158 (WCC) (23 May 2019) para 10

⁷ *Kobi v Trustees For The Time Being Of The De La Rey Body Corporate and Others* (A68/2022) [2023] ZAFSHC 128; 2024 (1) SA 174 (FB) Para 8

would be against the interest of justice as it would infringe upon the right to access to justice and flies against the purpose of the CSOS Act.

[15] This Court further finds that considering the established test for condonation which was restated by the Constitutional Court in *Steenkamp v Edcon Limited*⁸, this Court has the power to grant condonation provided that the Appellant meets the established test therefor. In *Steenkamp*, the Court held: -

“The principle is firmly established in our law that where time limits are set, whether statutory or in terms of the rules of court, a court has an inherent discretion to grant condonation where the interests of justice demand it and where the reasons for non-compliance with the time limits have been explained to the satisfaction of the court”.

[16] Having made the above observations, it is apt to state that condonation is not there for the mere asking by the defaulting party. The Appellant must make out a case for condonation. So, the question arises as to whether the Appellant has succeeded in showing good cause for the granting of the indulgence by this Court. Holmes JA, in *Melane v Santam Insurance Co. Ltd*⁹ stated the following regarding the test for good cause:

“In deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion to be exercised judicially upon a consideration of all the facts and, in essence, is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are inter-related; they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion ...”.

⁸ Steenkamp v Edcon Limited [2019] ZACC 17 para 26

⁹ Melane v Santam Insurance Company Limited 1962 (4) SA 531 (AD) at 532 C - F

Reasons for the delay

- [17] Mr Van der Nest, on behalf of the Appellant, states in the founding affidavit that he first became aware of the adjudication order on 25 July 2022 when he received an email from Mr Lawlor's attorney of record querying why the penalties in Mr Lawlor's statement of account had not been reversed in line with the adjudication order. The following extract appears from the founding affidavit: -

"...After perusing my emails on 25 July 2022, I came across the e-mail dated 3 May 2022, which e-mail, for some inexplicable reason I missed. I, as the manager of the appellant being a housing estate of more than 300 homeowners receive many emails per day. I simply have no idea how I could have missed this important e-mail. If this e-mail had come to my attention, I would have immediately acted thereon. The first time that I became aware of the adjudication order was on 25 July 2022".

- [18] In the condonation application the Appellant appears to believe that the 30-day period within which to launch an appeal started to run from the date upon which the Appellant first became aware of the adjudication order. At paragraph 14 of the founding affidavit in the application for condonation it is stated that:

"... Subsequent to the above, a notice of appeal was served and filed on 5 August 2022, well within the time limits (my emphasis) as prescribed in section 57(2) of CSOS Act, when the adjudication order came to my attention."

- [19] It is common cause that the adjudication order was delivered to both parties on 3 May 2022, via email. The Appellant's reason for the delay is that "for some inexplicable reason", he did not see the email and that if he had seen it, he would have taken steps. Counsel for the Appellant ascribed this inexplicable reason to human error. He asked the court to condone the non-compliance on the basis that the Appellant was honest and did not fabricate other fanciful reasons. It was further submitted that the Appellant

did not waste time and that it had launched the appeal 10 days after gaining knowledge of the adjudication order.

[20] This Court is not persuaded by the explanation for the delay as proffered by the Appellant. I am in agreement with the Respondent that such explanation does not qualify as a reasonable explanation to justify non-compliance with the prescribed time limit. Granting condonation under circumstances where the applicant has no real explanation for the delay can result in undesired results where time limits are simply ignored and there are no consequences. It is clear, from the ordinary interpretation of section 57(2) of the CSOS Act, that the 30-day time limit commences from the *delivery* of the adjudication order and *not* from the time when a party became aware of the order. This is in line with the objective of the CSOS Act which is to provide a cost effective and speedy resolution of disputes arising in relation to communal schemes. For this reason, the Appellant's explanation for the delay does not pass the requisite threshold in respect of an application for condonation.

Prospects of success

[21] Having rejected the explanation for the delay, the court must still consider whether there are any prospects of success in the appeal. Exclusion of the consideration of prospects of success in a condonation application on the basis that an applicant has failed to provide a reasonable explanation for the delay, is not in the interests of justice. The prospects of success cannot be evaluated without reference to the merits. In *Madinda v Minister of Safety and Security*¹⁰, the Supreme Court of Appeal stated the following: -

“Strong merits may mitigate fault; no merits may render mitigation pointless...Moreover, what can be achieved by putting the court to the task of exercising a discretion to condone if there is no prospect of success? In addition, that the merits are shown to be

¹⁰ In *Madinda v Minister of Safety and Security* [2008] 3 All SA 143 (SCA) para 12

strong or weak may colour an applicant's explanation for conduct which bears on the delay...As I interpret the requirement of good cause for the delay, the prospects of success are a relevant consideration."

The Legal Framework

[22] Section 57(1) of the CSOS Act provides that:

"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."

[23] The following grounds of appeal were raised by the Appellant: -

- 23.1 Conventional Penalties Act – that the adjudicator erred in law by appropriating for himself the power afforded by section 3 of the Conventional Penalties Act to a court whilst the adjudicator was not a court.
- 23.2 That the adjudicator erred by introducing an alleged failure by the Appellant to apply the *audi alteram partem* rule and by regarding the Appellant as subject to the Promotion of Administrative Justice Act 3 of 2002 ("*PAJA*"). The Appellant contended that the dispute between the parties was contractual and therefore the adjudicator erred by referring to the issues that were not raised in the pleadings.
- 23.3 The adjudicator erred in not allowing oral submissions in that this matter was not suitable to determine the issues without oral submissions from the parties.

Analysis

[24] In *Stenersen*¹¹, it was held that an appeal in terms of section 57(1) must be brought by way of notice of appeal where the grounds of appeal are set out succinctly. The Court further held that:

“An appeal in terms of s 57 of the Act is a re-hearing on the merits, but limited to the evidence or information on which the decision under appeal was given, and in which the only determination to be made by the court of appeal is whether that decision was right or wrong in respect of a question of law”

[25] A party instituting appeal proceedings in terms of section 57(1) must satisfy the court that the findings of the adjudicator were incorrect in law. Unterhalter J held, in *Turley Manor Body Corporate v Pillay*¹² that a section 57 appeal may not be brought to correct a mistake of fact.

[26] As to the powers of the appeal court in considering a section 57(1) appeal, these are limited to considering questions of law only. The findings of fact made by the adjudicator cannot be re-considered on appeal. The court in *Stenersen*, regarding the limited scope of an appeal in terms of section 57(1), held: -

“In essence, by limiting the scope of an appeal to questions of law only, the court of appeal is only tasked with deciding whether the conclusions of law reached by the adjudicator were right or wrong. This determination can only be made based on the facts in existence at the time the order was given, and as they appear from the record. This demonstrates not only the need to finally resolve disputes of fact at adjudication level, but also the necessity of avoiding or limiting the number of appeals brought to the High Court, thereby alleviating the burden of the High Court in dealing with matters of this nature. This ensures that cases are dealt with in an uncomplicated and expeditious manner. To conclude otherwise would defeat the purpose of what the CSOS Act seeks to achieve”¹³.

¹¹ *Stenersen* para 43

¹² *Turley Manor Body Corporate v Pillay and Others* (10662/18) [2020] ZAGPJHC 190 para 14.

¹³ *Stenersen* para 35

[27] The issue for determination before this court is whether the finding by the adjudicator that it was not the Respondent's duty to erect the palisade fence and that the fines were invalid, was correct in law. In determining this issue this Court has to look at what facts were found by the adjudicator to be proven and determine whether on those facts that were found to be proven, the adjudicator reached the correct conclusion or findings, in law.

[28] The Appellant's Counsel contended that the adjudicator was patently wrong in his interpretation of the Environmental Management Program which led to his findings. He referred this court to the matters of *KPMG v Securefin and S v Basson*¹⁴ where it was held that interpretation is a matter of law and not of fact. Counsel further contended that the adjudicator's findings are contrary to the common cause facts, alternatively, an admission made by the Respondent that it was in fact his obligation to erect the palisade fence as evidenced by his erection of the fence in 2019. The Appellant's Counsel argued further that once an admission of fact is made, it may not be disproved whilst it appears on the record. Several authorities were referred to in this regard.

[29] The Respondent's counsel, relying upon the decisions of *Conrad v Key West Body Corporate*¹⁵ and *Stenersen* submitted to this Court that the present appeal is an appeal in a "*strict*" sense, involving a consideration of whether the adjudicator's decision was right or wrong based on the material before him. He contended that the Appellant's right of appeal is limited to questions of law only and that since the adjudicator's order was premised on a factual finding they are not susceptible to being overturned on appeal. The Respondent's counsel submitted further that the decision of the adjudicator was correct in that the Architectural Guidelines only

¹⁴ *KPMG v Securefin Ltd*, 2009 (4) SA 399 (SCA) at 409 G – H; *S v Basson* 2005 (1) SA 171 (CC) at 194 E - F

¹⁵ *Conrad v Key West Body Corporate* (55262/2021) [2022] ZAGPPHC 508 (28 June 2022) para 12

provide specifications as to how the palisade fence should look and does not state that the subsequent owner must erect that fence.

[30] In considering the Respondent's contention that the adjudicator's findings are findings of fact and not susceptible to being overturned on appeal, this Court has considered the SCA decision of *National Union of Mine Workers v East Rand Gold and Uranium Company*¹⁶. In this matter, Goldstone JA, dealt with the restricted jurisdiction of the appeal court when determining appeals on questions of law only. The learned Judge highlighted the difficulty in determining what is meant by a "*question of fact*", and more particularly, whether this refers to any factual finding made by the Court *a quo* or whether it refers to the whole judgment on a question of fact. The SCA also considered the situation where the decision appealed against is comprised of both questions of fact and of law. In this regard, the Court reasoned that: -

"It would appear that we are required to determine whether, on the facts found by the Labour Appeal Court, it made the correct decision and order. That is a question of law. If it did then the appeal must fail. If it did not, then this Court may amend or set aside that decision or order or make any other decision or order according to the requirements of the law and fairness.

It will be convenient therefore to determine the facts which were common cause or not in issue before the Court a quo and then to determine what relevant findings of fact were made by that Court. It is upon the basis of all those facts that the correctness or otherwise of the decision and order of the Court a quo must then be considered."

[31] Having regard to the decisions of *Stenersen* and *Turley Manor* this Court is of the view that exclusion of questions of fact in a section 57(2) appeal means that the Appellant cannot attack the factual findings of the adjudicator on appeal. An appeal court, in deciding whether the decision

¹⁶ *National Union of Mine Workers v East Rand Gold and Uranium Company Ltd.* (57/90) [1991] ZASCA 168; 1992 (1) SA 700 (AD); [1992] 4 All SA 78 (AD) para 6 - 7

of the adjudicator was correct or incorrect, is limited to the record that was placed before the adjudicator. In other words, the conclusions of the adjudicator must correlate with the facts that he or she found to have been proven. This means that this Court therefore does have the requisite jurisdiction to hear this appeal.

The Adjudication order

[32] The adjudicator, in his award, made it clear that he did not deal with the quantum aspect of the application and found that quantum can only be dealt with after a decision on liability had been made. The adjudication order therefore related to liability only. In the premises, this Court finds that the grounds of appeal relating to the Conventional Penalty Act and the application thereof are without merit as no findings were made by the adjudicator in respect of quantum.

[33] This Court is also of the view that the Appellant's ground of appeal that the adjudicator erred in not allowing oral submissions does not qualify as a valid ground of appeal in terms of section 57(2) of the CSOS Act. Whilst an allegation that an unfair procedure was adopted by an adjudicator may render the proceedings reviewable in terms of PAJA, same does not provide a basis for an appeal in terms of section 57(2) of the CSOS Act. In the premises, this Court finds that this ground of appeal has no merit.

Was the decision of the adjudicator correct in law?

[34] The Appellant's Counsel contended that the adjudicator's findings are wrong in that they are contrary to the common cause facts, *alternatively*, an admission made by the Respondent that it was his obligation to erect the fence. This Court does not agree with this contention. Whilst it is common cause that Mr Lawlor erected the palisade fence in 2019 he was

consistent in denying that he was the one liable to do so. The following appears in Mr Lawlor's submissions made to the adjudicator: -

"I deny that I am in contravention of the Applicant's constitution and/or any of the associated rules...The duty to erect the palisade fence was imposed upon VAHL Investments 1008 (Pty) LTD..."

[35] Mr Lawlor further stated that he only erected the fence after a meeting with the Trustees after they explained to him that the Gauteng Department of Environmental Affairs was threatening to take wildlife away from the estate. It appears to this Court that Mr Lawlor reached a compromise with the trustees which cannot be misconstrued as an admission in light of, *inter alia*, the submissions made before the adjudicator. Further, it does not appear from the record that this issue of the alleged admission was raised before the adjudicator. The Court therefore cannot fault the finding of the adjudicator on the basis of this argument.

[36] From a reading the adjudication order, it is clear that the adjudicator's findings were informed by what is termed the "*record decision*" dated 13 September 2004 issued by the Gauteng Provincial Department of Agriculture, Conservation and Environmental Authorization which contained the terms of the conditional authorization for the project (Meyersdal Nature Estate) with reference number GAU G002/04-05-413 and which reads as follows.

"4. 1. Specific Conditions – 4.1.4 a palisade fence must be erected in the area West and South as prescribed in the investigation into the feasibility of the proposed Meyersdal Nature Area, dated June 2011".¹⁷

[37] The adjudicator, in subparagraph 6.22 of the award, states that the requirement for the erection of the palisade fencing originated from the planning stages of the Estate and the condition was a legal obligation

¹⁷ Para 6.21 Adjudication order – CaseLines page 02-227

imposed on the developer. It was further held that the legal obligation now rests with the Appellant. Also, the adjudicator held that there was no provision in the homeowners' associations rules, guidelines, nor constitution, that requires the owners to erect palisade fencing.

[38] The adjudicator also referred to subparagraph 4.1.33 of the approval document that provided as follows: - "*VAHI Investments 1008 Pty Ltd ("the Developer") will be held responsible for the compliance to the above unless agreed **upon differently with the department***"¹⁸. Further, the adjudicator stated that "*it is therefore very clear to the adjudicator that the duty to erect the palisade fencing has always been that of the developer. There is no agreement provided to suggest the contrary.*"

[39] It is not in dispute that the condition to erect the palisade fence was imposed on the developer. The case for the Appellant seemed to be that the responsibility to erect the fence was transferred to the owners in the communal scheme in terms of section 30.2 of the Meyersdal Nature Estate Architectural and Aesthetic Guidelines Version 2 – October 2006 which contains the requirement for the erection of the palisade fence. The adjudicator found that there is no agreement evidencing such transfer of responsibility.

[40] The Appellant failed to refer the adjudicator to any agreement or resolution stipulating that the duty to erect a palisade fence was transferred to the owners. The Appellant only referred to a trustees' resolution dated 26 January 2017 which stated the following:

"...Resolved that the schedule of fines to be supplemented to include the following: that any member in contravention of clause. 30.2 of the Architectural Guidelines by failing to have erected a boundary fence will be fined in an amount of R10 000.00 per month commencing on 1 January 2017."

¹⁸ Para 4.1.33 Record Decision – CaseLines page 02-123

[41] It does not appear, *ex facie* the resolution, that it was meant to transfer the obligations from the developer to the owners. This is in light of, *inter alia*, the proviso in the conditions of approval that stated that the developer is responsible for compliance with the conditions unless agreed otherwise with the Department. No such agreement was placed before the adjudicator.

Reference to *audi alteram partem* principle and PAJA

[42] In subparagraph 6.26 of the adjudication order, the adjudicator stated the following: -

“Even if the applicant was within their (sic) rights in fining the respondent, which they are not, the proper procedure should have been followed. The respondent should have been afforded the common law right to be heard at a proper trustee meeting prior to the fining”.

[43] The Appellant contended that the adjudicator wrongly applied the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and the principle of *audi alteram partem* instead of the parties’ contractual obligations in terms of the contract. Counsel for the Applicant argued that the adjudicator ought not to have applied legal obligations which fell outside the contract and the pleaded case of the parties. In this regard, this Court takes note that the CSOS process is an inquisitorial process which is different from civil court proceedings. Section 51(1) of the CSOS Act grants the adjudicator wide investigative powers. The adjudicator is not limited by the papers submitted on behalf of the parties and is empowered to go beyond the pleadings when investigating the claim before her or him. This includes, *inter alia*, calling for further documentation and conducting inspections which the adjudicator may deem necessary.

[44] This Court is of the view that even though the adjudicator referred to these principles, the submission by the Respondent’s Counsel is correct that ultimately nothing turned thereon. This is due to the fact that the finding

that the Appellant was responsible to erect the fence was not based on these principles but on the conditions for approval of the project as aforementioned. In any event, the procedure to be followed before a penalty could be imposed is stipulated in Rule 23.1 of the Meyersdal Nature Community Estate Participation Rules¹⁹. There is no indication on the papers that served before the adjudicator that these rules were complied with before imposing the penalty. In the premises, this Court is therefore of the view that even if the adjudicator was wrong in his finding that it was the obligation of the Appellant to erect the fence, the Appellant failed to adduce evidence that the procedure stipulated in the rules for imposing penalties was complied with.

Conclusion

[45] Having dealt with the merits of the appeal, this Court is of the view that the Appellant had no prospects of success in the appeal. This requirement, insofar as it relates to the application for condonation, has not been satisfied. In the premises, having regard thereto and the fact that the Appellant has failed to prove any of the other relevant factors in respect of an application for condonation (as dealt with earlier in this judgment), the said application must be dismissed. Even if we are wrong in refusing condonation the Appellant has failed to satisfy this Court that, considering the proven facts as found by the adjudicator, that he erred in law. We therefore find that there are no grounds to set aside the order of the adjudicator in terms of section 57 of the CSOS Act.

Costs

[46] It is trite that, unless unusual circumstances exist, costs should normally follow the result. No such circumstances have been brought to the attention of this Court. It is also trite that the issue of costs falls within the

¹⁹ Meyersdal Nature Estate Community Participation Rules, Version 2 of October 2008 CaseLines page 02-55

general discretion of the court, including the scale thereof. The Respondent asked for an order of punitive costs in terms on the notice served upon the Appellant. This Court finds that there are no real grounds for such an order and that the Appellant should pay the costs of the appeal on the ordinary scale.

[47] In the result, this Court makes the following order:

1. The Appellant's application for condonation is dismissed.
2. The Appellant is ordered to pay the costs of the First Respondent on a party and party scale.

JL BHENGU
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

For the Appellant: Adv LW De Koning SC
 Mills & Groenewald Attorneys c/o Couzyns Inc

For the First Respondent: Adv BD Hitchings
 Senekal Simmonds Inc