



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

CASE NO: 027002/2024

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 25 July 2025

Signature: _

In the matter between:

MIDSTREAM HOMEOWNERS' ASSOCIATION NPC

Plaintiff

And

ENOCK NGOBENI

Defendant/Excipient

JUDGMENT

NYATHI J

A. INTRODUCTION

- [1] The applicant herein is the defendant in the action against him. The defendant is before court for the hearing of an exception which he has filed against the plaintiff.
- [2] The defendant alleges in his exception that the nature of the particulars of claim falls within the ambit and pivot of the Community Schemes Ombud Service (CSOS). In his “notice of exception” the applicant raises grounds of Jurisdiction, Nature of the dispute, Incorrect forum, Prejudice to defendant and Additional costs and complexity. He then prays that this court uphold the exception and direct the plaintiff to seek resolution through the Community Schemes Ombud Service (“CSOS”).
- [3] This application is opposed by the plaintiff in the action. For clarity and consistency, I shall refer to the parties as in the action respectively.

B. BACKGROUND

- [4] Summons was issued by the plaintiff against the defendant on 14 March 2024 and served on the defendant on 20 March 2024. the defendant served his notice of intention to defend on 8 April 2024. The defendant served his notice of exception on the plaintiff on 7 May 2024.

C. THE LAW ON EXCEPTIONS

- [5] Rule 23 provides for two kinds of exceptions, namely:

(a) an exception on the basis that a pleading is vague and embarrassing;

and

(b) an exception where a pleading lacks averments which are necessary to sustain an action or defence.

[6] An exception on the ground that a pleading is vague and embarrassing must be preceded by a notice affording the opponent an opportunity of removing the cause of complaint. It is a rule of etiquette that, before an exception is filed on the basis that a pleading lacks averments which are necessary to sustain an action or defence, the opponent must be given an informal notice of the intended exception.¹

[7] It is trite that whenever an exception is taken to any pleading, the grounds upon which the exception is founded must be stated clearly and concisely.²

The defendant's case for the exception

[8] Since the commencement of the CSOS Act (Act 9 of 2011), all common law ceased to apply and all disputes within community schemes must be adjudicated over by the CSOS as the forum of first instance.

[9] Defendant refers to and places reliance on the matter of *Heathrow Property Holdings No. 3 CC v Manhattan Place Body Corporate*, 2021 (3) All SA 527 (WCC), where the High Court per His Lordship, Sher J, struck the application from the roll with punitive costs, after considering an objection to the jurisdiction

¹ LTC Harms - Amler's Precedents of Pleadings 5th ed - p193 / 9th ed P 6.

² *Ibid.* Uniform Rule 23. See also Commissioner for Inland Revenue v *Viljoen* 1995 (4) SA 476 (E).

of the courts in a CSOS dispute as raised by the plaintiff. The court emphasized that the Community Schemes Ombud Service (CSOS) is the primary forum for such disputes, and approaching the High Court directly should only be done in exceptional circumstances. Judge Sher however, did not decide what those exceptional circumstances were.

[10] The court held that an application such as this is one that should be dealt with in terms of the dispute resolution procedures which have been established by the CSOS Act, and not by a Court.

[11] The defendant further referred to *Wingate Body Corporate v Pamba and Another* (33185/2021) [2022] ZAGPPHC 46 (21 January 2022), the High Court; Gauteng Division, Pretoria; where my learned brother Mbongwe J, dismissed the application with costs, after considering the CSOS jurisdictional issue raised in limine by the respondents. The court followed Sher J's reasoning in the *Heathrow* matter.

Respondent's contentions

[12] The defendant has not specified the ground of his exception. The plaintiff has to make an inference that the notice of exception by the defendant is in fact an exception raised against the particulars of claim, due to the fact that the defendant prays that the exception be upheld with costs.

[13] The above is because the defendant did not furnish the plaintiff with a notice in terms of Uniform Rule 23(1), allowing the plaintiff an opportunity to remove the cause of complaint within 15 days of such notice and, furthermore, the defendant also did not, within 10 days from the date upon which such a reply should have been due, delivered the exception.

- [14] In *Standard Bank of South Africa Limited and Others v Mpongo and Others*, 2021 (6) SA 403 (SCA), the Supreme Court of Appeal reaffirmed that courts should hear matters within their jurisdiction, even if specialised dispute resolution mechanisms are available. The Court held that where a statute offers alternative fora, it is a matter of sheer practicality that the initiating party may choose one or the other.
- [15] In *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* 2023 (3) SA 36 (CC), Madlanga J writing for a unanimous Constitutional Court, upheld the views of the Supreme Court of Appeal in *Mpongo* and endorsed the position in *Agri Wire* that “*our courts are not entitled to decline to hear cases properly brought before them in the exercise of their jurisdiction*” remains good law.
- [16] In the matter of *Coral Island Body Corporate v Hoge* [2023] ZAWCHC 58 (unreported) handed down on 23 May 2019, Binns-Ward J held that courts may not refuse to hear community scheme issues but should use their discretion regarding costs to discourage inappropriate use of the courts for matters better suited for the ombud.
- [17] The decision in *Bogatsu and Another v 108 on 8th Street Homeowners Association* [2024] ZAGPJHC 611 is a recent decision handed down on 28 June 2024 where Her Ladyship Mdalana-Mayisela J (Judge Strydom concurring) provided a detailed critique of section 38(1) of the CSOS Act. The court noted that section 38(1) of the CSOSA provides that any person *may* make an application if such person is a party to or affected, materially by a dispute. The court correctly held that when the word “*may*” is read in the context of section 38(1), it affords any person who is a party to or affected, materially by a dispute, an election to make an application to CSOS. The wording of this section is not

peremptory. It does not expressly state that the exhaustion of CSOS remedies is an indispensable condition precedent to launching an application to court.³

[18] The court in *Bogatsu* applied the principles of interpretation as propounded by the SCA in *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 ALL SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012) para [18].⁴

D. ANALYSIS

[19] Whilst the defendant's exception may be afflicted by procedural non-conformity as highlighted by the plaintiff, that is not all. It is further afflicted by the legal substance underpinning it. The weight of legal authority is against excluding jurisdiction of the courts as shown above.

E. CONCLUSION

[20] The exception accordingly cannot succeed. The procedural steps can therefore not be interrupted thereby.

³ A.F. dos Santos – The Advisory: Community Schemes Specialists – 07 August 2024. [Acknowledged with thanks].

⁴See *Bogatsu* para [13] to [16].

[21] The exception is dismissed with costs on the party and party scale, taxable at scale B in terms of Rule 67A.



J.S. NYATHI

Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 07/03/2025

Date of Judgment: 25 July 2025

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 25 July 2025.