REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	**NOT** REPORTABLE
(2)	**NOT** OF INTEREST TO OTHER JUDGES

CASE NO: 2026-044468

DATE: 16 March 2026

In the matter between:

HENRIETTE CHRISTINE MARE	Applicant
and	
COMMUNITY SCHEMES OMBUD SERVICE	First Respondent
AMANDA VILAKAZI	Second Respondent
AKARANA HOME OWNERS' ASSOCIATION	Third Respondent
INGRID HINDLE	Fourth Respondent
GRAHAM HINDLE	Fifth Respondent
LISE-ANN LIEBENBERG	Sixth Respondent
JAN FREDERICK COETZEE	Seventh Respondent
LIZELLE BRASLER	Eighth Respondent
JOHAN BRÄSLER	Ninth Respondent

Neutral Citation: *Mare v CSOS and Others (2026-044468)* **[2026] ZAGPJHC --- ** (16 March 2026)

Coram: Adams J

Heard: 10 March 2026

Delivered: 16 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 14:30 on 16 March 2026.

Summary: Civil procedure – urgent application – for an interim interdict, pending review of a CSOS Order as contemplated in section 56(2) of the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act) – the order was payment of about R745 000 by the applicant to a Homeowners' Association in respect of levies and related charges –

Urgent application opposed on three main grounds – point *in limine* of jurisdiction (dismissed) – urgency (not upheld) – no *prima facie* right for the purposes of interim relief (not accepted) - no irreparable harm and the balance of convenience (both upheld) –

Application for interim interdictory relief dismissed with costs.

ORDER

(1) The applicant's urgent application is dismissed with costs.

(2) The applicant shall pay the third to ninth respondents' costs of this opposed urgent application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. This – part 'A' of an application – is an opposed urgent application by the applicant ('Ms Mare') for interim interdictory relief against the first to the ninth respondents. Pending the determination of final relief sought in part 'B' of the notice of motion, the applicant seeks an order, on an urgent basis, interdicting the third to ninth respondents ('the respondents') from lodging in any division of the High Court a copy of the Adjudication Order, with reference number CSOS-15057/WC/23 ('the CSOS Order'), issued by the second respondent ('the adjudicator') on 8 December 2025. The CSOS Order is an order as contemplated in section 56(2) of the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act).

[2]. In the alternative, and in the event that any of the third to ninth respondents have already so lodged the CSOS Order with any division of the High Court, the applicant applies for an order interdicting and restraining the respondents from enforcing the CSOS Order as if it were a judgment of the High Court.

[3]. In part 'B' of the application, the applicant applies for an order reviewing and setting aside the CSOS Order and remitting the matter for reconsideration

by CSOS with or without directions that such reconsideration shall not be undertaken until the Court Order issued by the Western Cape High Court on 12 September 2024 under case number 11867/2020 is either amended or set aside.

[4]. In sum, in this urgent application, the applicant applies for interim relief against the respondents pending the final determination of a review application (Part B). The applicant seeks to interdict the third to ninth respondents from lodging with any division of the High Court, or enforcing, the CSOS Order issued by the adjudicator on 8 December 2025 in terms of the CSOS Act. The CSOS Order directs the applicant to pay the sum of R745 240.84 to the third respondent ('the Homeowners' Association' or the 'HOA') in respect of arrear levies and other charges. In terms of section 56 of the CSOS Act, once lodged with the Registrar of the High Court, the CSOS Order may be enforced as if it were a judgment of that court.

[5]. The applicant contends that the CSOS Order was unlawfully obtained and falls to be reviewed and set aside in part B of these proceedings. She alleges that she was denied a reasonable opportunity to make representations; that the adjudicator acted in defiance of a Western Cape High Court order, which suspended litigation between the association and its members; that the adjudicator breached section 50(a) of the CSOS Act; and that the adjudicator failed to deliver the order to her as required by section 55(1).

[6]. The urgent relief sought in part A is intended to preserve the position pending the review.

[7]. The second respondent initially gave notice of intention to oppose but has since withdrawn her opposition. The third to ninth respondents oppose the application on the basis firstly that this Court does not have the necessary jurisdiction to hear this matter. Secondly, it is contended by these respondents that the matter is not urgent and, lastly, they submit that the applicant has not met the requirements for an interim interdict.

[8]. The issue to be decided in this urgent application is therefore whether the applicant has demonstrated that she is entitled to an interdict on an urgent basis. That issue is to be decided against the facts as set out in the paragraphs which follow.

[9]. The applicant is the registered owner of a property situated within the area of the third respondent, a homeowners' association. The fourth to ninth respondents hold themselves out as the trustees of the HOA, although the validity of their appointment is disputed by the applicant. There are long-standing disputes between the applicant and the HOA concerning the validity of its constitution and the levies purportedly due by members. In 2020, the applicant and others instituted action in the Western Cape High Court under case number 11867/2020 (the High Court Action), challenging the validity of the HOA's constitutions adopted in 2005, 2010 and 2021.

[10]. On 12 September 2024, the Western Cape High Court issued an order by agreement between the parties ('the suspension order'), which provided inter alia as follows: -

'All pending litigation between first defendant [the HOA], the thirty-fourth defendant and any of their members and trustees be suspended.'

[11]. The applicant is a party to this action, which was during December 2024 postponed *sine die*. The suspension order, so it is contended on behalf of the applicant, remains extant and in force. This is however disputed by the third to ninth respondents.

[12]. On 29 February 2024, the Association lodged an application with the first respondent (the Community Schemes Ombud Service ('CSOS')) in terms of section 38 of the CSOS Act, seeking payment of arrear levies from the applicant. Between March and April 2024, CSOS officials sent multiple communications to the applicant inviting her to submit her response to the Association's claim. Importantly, on 29 April 2024 an email was sent from the Compliance and Enforcement Investigator of CSOS, affording the applicant a

final opportunity to submit written submissions by 7 May 2024. The applicant did not respond to any of these requests. She offers no explanation for her failure to respond to the request of 29 April 2024, stating only that it ‘appears to have escaped her attention’.

[13]. On 4 February 2025, the adjudicator emailed the applicant and the Association's managing agent, requesting certain documents to aid in the adjudication process. On 5 February 2025, the applicant's attorney, Mr Barendse, responded directly to the adjudicator (without copying the Association's managing agent), contending that the adjudication should be placed on hold pending the High Court Action, and alleging that the Suspension Order suspended all levy-related disputes. On 26 February 2025, the adjudicator responded to Mr Barendse (again without copying the Association's managing agent), stating:

‘We hereby acknowledge receipt of your email correspondence of 5 February 2025 and note the contents thereof. In light of the information divulged in the aforementioned email correspondence, we will pend the adjudication process indefinitely.’

[14]. On 31 March 2025, however, the adjudicator sent a further email to Mr Barendse (on the same email chain) stating:

‘This email serves as a final follow-up on the request below. We urgently request that you furnish us with the requested documents to enable the finalisation of the adjudication order.’

[15]. On 1 April 2025, Mr Barendse replied, stating that he assumed the email had been sent in error, reminding the adjudicator of her undertaking to hold the process over indefinitely, and requesting her to advise if her stance had changed. The adjudicator did not respond, but the applicant's attorney took no further steps.

[16]. On 8 December 2025, the adjudicator issued the CSOS Order in favour of the Association. At paragraph 18, the order recorded the following:

'On the 29th of March 2024, [Ms Mare] was sent a notice in terms of Section 43 of the CSOS Act, in order to afford [her] an opportunity to submit their final written submissions by the 29th of March 2024. However, [Ms Mare] failed and/or neglected to submit [her] final written submissions.'

[17]. The applicant first became aware of the CSOS Order on 18 December 2025, when the Association's erstwhile attorney informed her attorney of its existence. Between December 2025 and February 2026, the applicant's attorney engaged in correspondence with the HOA's attorneys, seeking an undertaking that the HOA would not enforce the CSOS Order pending a review. No such undertaking was provided.

[18]. On 26 February 2026, the applicant launched the present application.

[19]. The third to ninth respondents raise two preliminary objections to the urgent application: that this court lacks jurisdiction, and that the application lacks urgency. I deal with each in turn.

[20]. As regards jurisdiction, the respondents contend that only the Western Cape Division of the High Court has jurisdiction to entertain this application. They argue that the dispute was lodged with CSOS's Western Cape Regional Office, concerns immovable property in the Western Cape and involves respondents resident in the Western Cape. Enforcement of the CSOS Order, they submit, would necessarily occur in the Western Cape.

[21]. This objection is without merit. Section 6(1) of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA') permits any person to institute proceedings for judicial review in a court. 'Court' is defined in section 1 of PAJA to include a High Court: -

'… … … within whose area of jurisdiction the administrative action occurred or the administrator has his or her or its principal place of administration or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced;'

[22]. In this matter the administrative action (the CSOS Order) is recorded as having been made in Randburg, which falls within the jurisdiction of this court. The first respondent (CSOS) has its principal place of administration in Centurion, also within this court's jurisdiction. The applicant is domiciled and ordinarily resident in Pretoria, again within this court's jurisdiction.

[23]. Any one of these factors is sufficient to confer jurisdiction on this court. The respondents' reliance on the fact that the dispute originated in the Western Cape is misplaced. The definition of ‘court in PAJA is deliberately broad, and a party affected by administrative action is entitled to choose a forum that falls within any of the specified categories.

[24]. The jurisdictional objection is accordingly dismissed.

[25]. As for urgency, the respondents contend that the applicant has failed to act expeditiously, having known of the CSOS Order since 18 December 2025 but only launching this application on 26 February 2026. They point to the extremely truncated time periods afforded to them to respond, and to the applicant's filing of supplementary affidavits at the last minute, as evidence of self-created urgency.

[26]. Rule 6(12)(b) requires an applicant to set forth explicitly the circumstances rendering the matter urgent and why substantial redress cannot be obtained at a hearing in due course.

[27]. The applicant has, in my view, satisfied this requirement. The CSOS Order is immediately enforceable under section 56 of the CSOS Act. Once lodged with the Registrar, it may be executed upon without further notice to the applicant, exposing her to the risk of attachment of her bank accounts or other assets. A hearing in due course would come too late to prevent this harm.

[28]. The period between December 2025 and February 2026 is explained by the applicant's attempts to engage with the respondents to secure an

undertaking not to enforce the order, thereby avoiding the need for urgent litigation. The correspondence reveals that the applicant's attorney repeatedly sought clarity on the respondents' intentions, and was met with equivocal responses. It was only on 23 February 2026 that the HOA's attorneys confirmed that they did not hold instructions to hold over enforcement, prompting the launch of this application on 26 February 2026.

[29]. The urgency objection is accordingly dismissed.

[30]. That brings me to the applicant's application for interim interdictory relief. In that regard, the requirements for an interim interdict are well established. An applicant must show: (a) a *prima facie* right, even if open to some doubt; (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; (c) that the balance of convenience favours the granting of interim relief; and (d) that the applicant has no other satisfactory remedy. See *Setlogelo v Setlogelo*[1]; *Webster v Mitchell*[2]. The applicant bears the onus of satisfying all four requirements. Failure to establish any one of them is fatal to the application.

[31]. In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[3], the Constitutional Court affirmed the continued applicability of the *Setlogelo* test, albeit with due regard to constitutional principles, including the separation of powers and the principle of legality.

[32]. The correct approach to follow in determining whether a *prima facie* right is established was set out in *Webster v Mitchell*[4] as follows:

'[T]he right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "prima facie established though open to some doubt" that is enough. … …

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[1] See *Setlogelo v Setlogelo* 1914 AD 221.

[2] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

[3] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC).

[4] *Webster v Mitchell* 1948 (1) SA 1186 (W).

… The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant, he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.'

[33]. Where an applicant establishes a clear right, the requirement of irreparable harm may be relaxed. However, the first requirement – a *prima facie* right – remains foundational.

[34]. The applicant contends that she has a *prima facie* right to lawful and procedurally fair administrative action as guaranteed by section 33 of the Constitution, read with section 6 of PAJA and the principle of 'legality'. She relies on four specific grounds, namely: (a) She was not afforded a reasonable opportunity to make representations; (b) The adjudicator acted in defiance of the suspension order; (c) The adjudicator breached section 50(a) of the CSOS Act (due process); and (d) The adjudicator failed to deliver the CSOS Order to her as required by section 55(1).

[35]. Applying the test in *Webster v Mitchell*[5], I find that the applicant has demonstrated a *prima facie* right entitling her to interim interdictory relief. The simple point is that, by all accounts, the applicant was blissfully unaware of the fact that the adjudicator intended proceeding with the adjudication of the dispute. She was accordingly not afforded an opportunity to present her case before the adjudicator. The applicant's case, in that regard, is that she would have placed before the adjudicator the fact that there is an existing dispute between her and the HOA, which dispute is still being litigated in the Western Cape High Court. This defence, I understand the applicant to argue, would have been a complete defence in the CSOS proceedings.

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[5] Footnote 2 *supra*.

[36]. I do not, however, believe that there is merit in the applicant’s argument that the suspension order of the High Court in the Western Cape means that the adjudicator ought not to have proceeded with the adjudication. The said order was granted on 12 September 2024 in the context of settlement negotiations in the High Court Action. The matter stood down to enable the parties to pursue settlement negotiations, and the parties agreed to a postponement to continue those negotiations. The order suspending pending litigation, must be read in this context. It was a temporary measure to facilitate settlement, not an indefinite bar on all proceedings.

[37]. By December 2025, when the CSOS Order was issued, the settlement negotiations had long since failed. The parties to the High Court Action have since agreed on trial dates for August 2026. The applicant's interpretation of the Suspension Order would lead to the absurd consequence that, while the parties to the High Court Action press ahead with that matter, completely separate proceedings would be barred indefinitely. This cannot be what the order intended.

[38]. For the reasons mentioned above, I am nevertheless in agreement that the applicant may have been deprived of her right to due process of law as required by s 50(a) of the CSOS Act. Whatever the reasons for such may be, the simple fact of the matter is that she was not given an opportunity to present her case before the adjudicator.

[39]. I therefore concluded that the applicant has established a *prima facie* right entitling her to interim interdictory relief.

[40]. The same cannot, however, be said of the requirements relating to irreparable harm and the balance of convenience.

[41]. The applicant contends that she will suffer irreparable harm if the interdict is not granted, as the CSOS Order may be enforced against her, resulting in the attachment of her assets. The respondents, on the other hand,

submit that the applicant has not paid a single cent towards her share of the communal expenses, relating to the administration of the association and the running of the communal properties, since February 2020. The amount, which is presently owing, due and payable by the applicants, so the contention on behalf the respondents goes, totals the significant sum of R1 429 666,53. This is whilst the applicant has enjoyed, and continues to enjoy, the full benefits and services provided by the estate (including security, road maintenance, common property upkeep and amenities) and water, while refusing to make any payment towards her share thereof.

[42]. This means, so the argument on behalf of the respondents is concluded, that the balance of convenience favours a refusal of the interim interdictory relief. I agree with this submission. The simple fact of this matter is that the applicant does not explain anywhere why she does not pay her share of such expenses that she is undoubtedly liable for. Why does she not at least make payment of the amount that she considers to be her true share of the communal expenses? It is therefore so, as contended by the respondents, that the applicant is quite content for all the other paying members to finance and support her lifestyle and her share of the expenses, which is a most convenient way of protest action.

[43]. In *Olympic Passenger Service (Pty) Ltd v Ramlagan*[6], the Court held that:

'In such cases, upon proof of a well-grounded apprehension of irreparable harm, and there being no adequate ordinary remedy the court may grant an interdict – it has a discretion, to be exercised judicially upon a consideration of all the facts. Usually this will resolve itself into a nice consideration of the prospects of success and the balance of convenience – the stronger the prospects of success, the less need for such balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him.'

[44]. On the basis of this case authority, I conclude that, in this matter, the balance of convenience favours the respondents.

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[6] *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383E–F.

[45]. On the one hand, the applicant has not paid any levies since February 2020 – a period exceeding six years. She has accumulated arrears in excess of R1.4 million. She continues to enjoy the benefits of living in a managed estate – security, road maintenance, common area upkeep – while refusing to contribute to their cost. If the interim interdict is not granted, the applicant will be compelled to pay a debt, which she is in all probability liable to pay. This, in turn, means that the HOA would be receiving levy income on which it relies to fund its operations. The applicant's ongoing non-payment prejudices not only the Association but also the other members who bear the burden of her unpaid share. If the interdict were granted, the Association would be precluded from enforcing a Court order, while the applicant would continue to enjoy the benefits of the estate without contributing to its upkeep.

[46]. On the flipside, the applicant will pay what is due by her. But, in the unlikely event that she is ultimately held not to be liable, she would be able to claim back any amounts she would have paid pursuant to the CSOS Order.

[47]. I reiterate that, in my view, the balance of convenience favours a refusal of the application for the interim interdict.

[48]. The same applies to the requirement relating to irreparable harm to be suffered by the applicant in the event of the application not being granted. The harm the applicant fears – enforcement of a money judgment – is not irreparable. If she is ultimately successful in the review application, she may seek to recover any amounts paid. While recovery may not be guaranteed, this is a risk inherent in all money judgments. It does not justify the grant of interim relief. Importantly, and this deserves particular emphasis, whatever the applicant pays in terms of and pursuant to the CSOS Order will, in all probability, ultimately prove to by due and payable by her. This means that it cannot be said with any conviction that the applicant has ‘a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted’.

[49]. In sum, I conclude that the applicant has failed to demonstrate a well-grounded apprehension of irreparable harm. Moreover, the balance of convenience does not favour the granting of the application for interim interdictory relief, as sought by the applicant *in casu*.

[50]. Accordingly, the applicant has, in my judgment, failed to make out a case for the interim relief sought. The applicant's urgent application for interim interdictory falls to be dismissed.

Costs

[51]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[7].

[52]. I can think of no reason why I should deviate from this general rule. The applicant should therefore be ordered to pay the respondents' costs of the opposed urgent application.

Order

[53]. In the result, I make the following order:

(1) The applicant's urgent application is dismissed with costs.

(2) The applicant shall pay the third to ninth respondents' costs of this opposed urgent application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

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[7] *Myers v Abrahamson* 1951(3) SA 438 (C) at 455

[redacted]

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	10 March 2026
JUDGMENT DATE:	16 March 2026 – Judgment handed down electronically
FOR THE APPLICANT:	(Ms) C M Rogers
INSTRUCTED BY:	Cliffe Dekker Hofmeyr Incorporated, Cape Town
FOR THE FIRST AND SECOND RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance
FOR THE THIRD TO NINTH RESPONDENTS:	T Ossin
INSTRUCTED BY:	Maurice Phillips | Wisenberg, Cape Town