IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 17685/22P

In the matter between:

AWANDE BC PROPERTIES (PTY)LTD **APPELLANT**

and

THE BODY CORPORATE OF JUNBARA SCHEME, SCHEME 136/2027 **FIRST RESPONDENT**

COMMUNITY SCHEMES OMBUD SERVICE **SECOND RESPONDENT**

THE CHAIRPERSON OF THE BOARDS OF THE COMMUNITY SCHEMES OMBUD SERVICE **THIRD RESPONDENT**

THANDEKA P QWABE N.O. **FOURTH RESPONDENT**

ORDER

---

1. The appeal is upheld

2. The order made by the Adjudicator is set aside. It is replaced with the following order:

    1. The conduct rules of the Body Corporate of Jinbara Scheme Number 136/2017 registered and approved by the Chief Ombud on 31 March 2022 are declared invalid.

    2. The Body Corporate must approve and record new conduct rules and submit such for approval and registration as prescribed, pending that the conduct rules prescribed in the STSMA Regulations rules of the Zimbali Estate Management Association shall prevail and are applicable.

    3. The first respondent is ordered to pay costs of the appeal on scale B.

JUDGMENT

Mngadi J

[1] The appellant appeals against an adjudicator's order in terms of s57 of the Community Schemes Ombud Service Act No 9 of 2011. The appeal is confined to the question of law.

[2] The appellant is Awande B C Properties (Pty) Ltd (Awande) a company duly registered and incorporated in terms of the law. The first respondent is the Body Corporate of the Jinbara Scheme, a body corporate established in terms of s2(1) of the Section Titles Schemes Management Act No 8 of 2011 (the STSMA). The second respondent is the Community Schemes Ombud Service (the SOS) a juristic entity established in terms of s3 of the Community Schemes Ombud Service Act No 4 of 2011 (the SOS Act). The third respondent is the chairperson of the Board of the second respondent. The fourth respondent is Ms Thandeka P Qwabe N. O. (the Adjudicator) an adult female in her capacity as the appointed adjudicator in terms of s48 of the CSOS Act.

[3] The first respondent opposes the appeal. The other respondents filed a notice to abide.

[4] The appellant appeals against the order of the 4th respondent upholding the decision of the Chief Ombud made on 31 March 2022 approving and registering conduct rules of the first respondent.

[5] The appellant in June 2022 referred a dispute to the SOS for dispute resolution as contemplated in s38 of SOS Act. The dispute related to the scheme governance issues as contemplated in s39(3) of the CSOS Act, more particularly the approval and registration by the Chief Ambud of conduct rules in respect of Jinbara in terms of s10 of STSMA on 31 March 2022 referred to as the March 2022 conduct rules.

[6] The appellant sought orders in terms of s39 (3) (b)and /or s39 (3) (c) of the CSOS Act, declaring the said conduct rules invalid such rules to be replaced by the rules in place prior to their approval and registration.

[7] The sectional title scheme known as Jinbara ST 137/2017 is situated at Zimbali South, KwaZulu- Natal, it was established as a sectional title scheme in terms of the Sectional Title Act no 95 of 1986 (the STA). Jinbara consists of five free standing units used for residential purposes. The appellant purchased unit 4 from its previous owner on 18 June 2021 and the unit was registered in the name of the appellant on 2 June 2021. The appellant purchased the unit by funds advanced by a bank in order to generate an income in the form of rentals. The appellant rented out the unit and in December 2021 he was told, of which he was not aware, that Jinbara's conduct rules did not allow short-term letting of the units. This resulted in the issue of reconsideration of the conduct rules of Jinbara arising.

[8] On 6 January 2022, it was established that conduct rules of March 2021 prohibited an owner of a unit to lease the unit for short term rental. O n 18 January 2022 a special general meeting was called to be held on 17 February 2022 to discuss proposed amendments to the conduct rules. On 16 February 2022 it was found that no conduct rules were approved and registered by CSOS for Jinbara. On 17 February 2022 the special general meeting resolved to attend to the creation of the new conduct rules for approval in the next annual general meeting in April 2022.

[9] On 19 March 2022 in a notice for the annual general meeting to be held on 21 April 2022 proposed March 2022 conduct rued were circulated. However, on 21 April 2022 the meeting was informed that the March 2022 conduct rules had been approved and registered by CSOS on 31 March 2022.

[10] The appellant challenged the decision for the approval and registration of the March 2022 conduct rules by the CSOS before the Adjudicator on various grounds.

[11] The Adjudicator found that the purported amendment of the conduct rules, which conduct rules have not been approved and registered, is invalid. She found that since the March 2021 conduct rules were not approved and registered no valid amendments were made to those conduct rules.

[12] The Adjudicator, further, found that the approval and registration of the March 2022 conduct rules was irregular and invalid as such approval and registration was not in accordance with the decision of meeting on 17 February 2022. In addition, prior to the approval and registration of the March 2022 conduct rules the CSOS on 2 March 2022 made proposals for certain amendments to the proposed conduct rules, which proposals although material were incorporated as amendments to the conduct rules submitted for approval and registration although they had not been considered and approved by the members of the body corporate by means of the special resolution. The Adjudicator concluded that members of the body corporate were ignores by the trustees and action taken without the mandate of the members of the body corporate.

[13] The Adjudicator found that it is clear that there was no rule that prohibited short-term letting of a unit in the scheme at the time the appellant was advised that short term lettering in the scheme was not permitted. The rules in place were the Section Title Schemes Management Act rules and those of Zimbali Estate Management Association.

[14] The Adjudicator found that CSOS worked with what was before it. The documents submitted by the trustees justified the approval and registration of the conduct rules and the issue of a certificate. As a result, the approved rules cannot be set aside. Therefore, the relief sought is misplaced. The appellant had to abide by what had been approved.

[15] The appellant contends on appeal that the only reasonable legal conclusion from the Adjudicator's factual findings is that the procedure followed for the approval and registration of the March 2022 conduct rules including the approval and registration of the rules was *ultra vires*, unlawful and in breach of s10 of the STSMA. Consequently, it is contended, based on those findings and the applicable legal principle, the Adjudicator ought to have upheld the review and setting aside of the decision of the CSOS to approve and register the March 2022 conduct rules.

[16] The Adjudicator found that the 17 February 2022 SGM took a decision for reconsideration of the conduct rules with a view to create for approval and registration a new consolidated set of conduct rules for consideration by the AGM in April 2022. It is clear that for the Trustees of the body corporate to seek approval and registration for the March 2022 conduct rules, they acted contrary to the mandate of the members of the body corporate. There were no conduct rules by the members of the body corporate to be considered for approval and registration by CSOS on 31 Marh 2022. The purported approval, registration and issue of a certificate by CSOS is a nullity, in particular, as found by the Adjudicator, it was done fraudulently by the trustees.

[17] The first respondent contends that the appellant in utilising the provisions of s39(3) of the CSOS Act which is aimed in challenging a particular conduct rule erred. The appellant, it is argued, ought to have sought to review and set aside the decision of the Ombud under s10 of the STSMA. This argument, in my view, has no merit. The provision of s39 (3) provides for seeking a relief relating to the scheme's governance issue or provision. In s1 scheme governance provision is defined to mean any rules, regulations, articles, constitution, terms, conditions or other provisions that control the administration or occupation of private areas and common areas in a community scheme, and scheme governance provision has a corresponding meaning. Therefore, in terms of the SCOS Act conduct rules form part of the scheme governance provision. The relief sought by the appellant falls within the provisions of s39 (3) of CSOS Act.

[18] The first respondent has sought in argument to question the factual findings made by the Adjudicator. He questioned the factual findings relating to what happened and what decisions were taken in the meetings of the body corporate. In addition, he sought to justify the submission for approval and registration of the conduct rules by the trustees, and the trustees effecting amendments in the conduct rules without the approval of the body corporate. The first respondent's difficulty is that it has not cross-appealed. Further, the Adjudicator's decision can only be appealed on a question of law. Section 57 (1) of the CSOS Act provides that a person dissatisfied by the Adjudicator's decision may appeal to the High Court, but only on a question of law.

[19] Section 53(1) (a) of the CSOS Act provides that the Adjudicator may make an order dismissing the application for a relief, if after investigation, considers that the application as frivolous, vexatious, misconceived or without substance. The Adjudicator reasoned that documents submitted before the Ombud indicated that approval and registration of the conduct rules was in order since no dispute had been lodged with the Ombud.

[20] The Adjudicator, in my view, failed to deal with the question submitted to her for adjudication. She misconstrued her powers. See *Littlewood v Minister of Home Affairs* 2006 (3) SA 474 (SCA) para16; *Premier of the Western Cape v Overberg District Municipality* 2011(4) SA 441 (SCA) paras 37-8. The question was whether the conduct rules when referred for approval and registration that was at the instance of the body corporate or not, if not could the Ombud approve and register the conduct rules as conduct rules of the scheme. The Adjudicator, based on her factual findings, answered the first part of the question in the negative. The second part of the question is answered by consideration of the provisions of the SCOS Act and STSMA. The provisions of STSMA, s10 makes it the responsibility of the body corporate to make management and conduct rules for the management and control of the scheme, and to submit the conduct rules to the Ombud for approval and registration. The trustees in this regard can only carry out the mandate of the body corporate. It matters not that the trustees misunderstood their task. The trustees in submitting in March 2022 conduct rules to the Ombud for approval and registration

acted without the mandate of the body corporate. They acted contrary to the decision of the body corporate. Since they had no mandate what they purported to do was of no legal significance. In essence, there were no conduct rules before the ombud for approval and registration. The purported approval and registration is of no legal significance. It is a nullity.

[21] The Adjudicator misdirected herself in relation to the legal conclusion she arrived at. It is not in accordance with her factual findings. She committed an error in law.

[22] It is ordered as follows:

1. The appeal is upheld.

2. The order made by the adjudicator is set aside. It is replaced with the following order:

    1. The conduct rules of the Body Corporate of Jinbara Scheme Number 136/2017 registered and approved by the Chief Ombud on 31 March 2022 are declared invalid.

    2. The Body Corporate must approve and record new conduct rules and submit such for approval and registration as prescribed, pending that the conduct rules prescribed in the STSMA Regulations rules of the Zimbali Estate Management Association shall prevail and are applicable.

3. The first respondent is ordered to pay costs of the appeal on scale B.

____

Mngadi J

APPEARANCES

Case Number:	17685/2022P
For the appellant:	C D Pienaar
Instructed by :	Matho Attorneys c/o Stowell & Company PIETERMARITZBURG
For the first Respondent:	MC Tucker
Instructed by:	De Wet Leitch Hands INC. c/o Massingham Seymour Attorneys PIETERMARITZBURG
For 2^{nd} ,3^{rd} and 4^{th} Respondents:	None
Instructed by;	Legal Services Section CENTURION
Heard on:	24 April 2026
Judgment delivered on:	05 May 2026