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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

Case no: A26/2026

In the matter between:

**OBINNA OBIORAH**

**Appellant**

**and**

**TRUSTEES OF ILSMA COURT**

**First Respondent**

**BODY CORPORATE**

**ADVOCATE M.A. MAVODZE**

**Second Respondent**

Coram: JUSTICE N RALARALA et ACTING JUSTICE N MAYOSI

Heard: 15 MAY 2026

Delivered electronically: 22 May 2026

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**ORDER**

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1. Condonation is granted for the late filing of this appeal.

2. The appeal is dismissed, with no order as to costs.

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## JUDGMENT

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**Mayosi AJ (Ralarala J concurring)**

### **Introduction**

[1] This is an appeal against a portion of an order made by the second respondent in the capacity of adjudicator under the Community Schemes Ombud Services Act 9 of 2011 (**the Act**). The first respondent is a community scheme established to administer a sectional title development and community scheme at Ilsma Court which is situated at 5[...] M[...] E[...] Road in Diepriver near Cape Town (**the Scheme**). The appellant is the registered owner of a unit at Ilsma Court, and as such is a member in the Scheme.

[2] A dispute arose between the Scheme and the appellant after the latter had been in arrears for over 10 years with the payment of his levies. After several determinations, the appellant was found to be indebted to the Scheme in the amount of R61 164.89.

[3] In an earlier order handed down by the second respondent (**the adjudicator**), the appellant was ordered to pay off the outstanding debt in the following manner, within 30 days of receipt of the order:

[a] R750.00 per month over a period of 12 months; and

[b] thereafter, to pay the balance owing (an amount of R52 169.84) over a period of three months in equal instalments of R17 389.95 per month.

[4] The appellant appealed to this Court against this mode of payment, amongst other issues he raised with the adjudicator's order, and the matter was

remitted to the adjudicator respondent for adjudication (**the second adjudication**).

[5] In the second adjudication, the appellant requested the adjudicator to reconsider his order because the appellant's financial position and challenges had not improved. He proposed that the adjudicator vary the order in the following terms (**the appellant's proposal**):

[a] That the appellant be ordered to pay an amount of R750.00 in equal instalments over twelve months; and

[b] That he thereafter pay an amount of R850.00 per month until the balance owing was settled in full.

[6] On 19 August 2025, and after considering, *inter alia*, the appellant's financial situation, the adjudicator made the orders set out below that form the subject matter of this appeal:

[a] That the appellant shall continue paying an amount of R750.00 per month over a period of twelve months.

[b] Thereafter, the appellant shall pay the balance due in the amount of R52 169.84 in equal instalments of R4 347.49 over a period of twelve months commencing immediately after settling the twelve-monthly instalments of R750.00.

[c] In the event that the appellant defaults on any one payment ordered above, the full amount due to the Scheme shall become due and payment by the appellant.

[7] In this appeal, the appellant seeks the setting aside of the orders set out in sub-paragraphs [b] and [c] above; the variation of the monthly payments of R4 347.49 and their replacement with monthly payments of R850.00 increased annually by 10% until the balance due to the Scheme is fully paid by him.

[8] This appeal is not opposed by the respondents. The appellant appeared in person at the hearing of the matter.

### **The merits of the appeal**

[9] This appeal is brought in terms of section 57 of the Act; Rule 42 of the Uniform Rules and what the appellant terms “the common law principle of variation.”

[10] Section 57(1) stipulates that any affected person who is dissatisfied by an adjudicator’s order may appeal to the High Court, but only on a question of law. In terms of section 57(2), an appeal against an adjudicator’s order must be lodged within 30 days after the date of delivery of the order.

[11] According to the appellant, he received the adjudicator’s order on 15 December 2025 and this appeal was launched in February 2026, well outside the stipulated 30-day period. The appellant sought condonation for the late filing of the appeal, and it was duly granted.

[12] The appellant was asked upfront during the hearing what the question of law is upon which he brings this appeal. It became apparent from his response that there is none. Unlike his previous successful appeals to this Court, the present case is not one where the adjudicator is said to have made an incompetent order; or that he failed to observe legal principles that he ought to have observed. The appeal is brought purely because the appellant disagrees with the adjudicator’s order, and is of the view that the adjudicator ought to have made an order that accorded with the appellant’s proposals that served before him.

[13] The fact that there is no question of law involved in this appeal as required by section 57 of the Act is but one of the flaws that are fatal to this appeal.

[14] Rule 42(1) of the Uniform Rules provides as follows:

- (1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:
  - (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
  - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
  - (c) an order or judgment granted as the result of a mistake common to the parties.

[15] Apart from the fact that the order sought to be varied by the appellant in this appeal is not an order of this Court, none of the instances where this Court could vary its orders under the subrule are present in this case. Rule 42 therefore is of no assistance to the appellant.

[16] The common law grounds upon which this Court can vary its orders or judgment are equally of no application to this appeal. At common law a judgment can be set aside on the grounds of: (a) fraud; (b) *justus error*; (c) in certain exceptional circumstances when new documents have been discovered; (d) where the judgment had been granted by default; and (e) on the grounds of *justus causa*.<sup>1</sup> None of these grounds are present, or even alleged in this case, and the order sought to be varied is in any event not one emanating from this Court.

[17] In support of what he terms “the common law principle of variation,” the appellant relies on principles that apply to maintenance orders, and asserts that

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<sup>1</sup> Erasmus, Superior Court Practice; 2<sup>nd</sup> ed; Vol 2; page D1-562D

in general a court will only order variation of an existing maintenance order where there has been a change in conditions. Relying on **Roos v Roos 1954 TPD**, the appellant submits that “variation will be ordered not only in cases of breach by either party, but because there has been such a change in the conditions that existed when the order was made, that it would now be unfair that the order should stand in its original form.” The cases from which the appellant extracted these principles, i.e., **Roos** and **Reid v Reid 1992 (1) SA 443 (E)** were concerned with the variation and discharge of maintenance orders in a matrimonial context. This appeal is self-evidently not concerned with a maintenance order and therefore the principles espoused therein find no application in this case.

[18] I can see no legal ground upon which to disturb the adjudicator’s order, which appears *ex facie* to have been arrived at after the adjudicator:

[a] accepted the appellant’s submissions regarding his financial situation; and  
[b] performed an exercise of balancing two conflicting interests, i.e., those of the Scheme on the one hand, and the appellant’s on the other. In this regard, the adjudicator considered that the appellant’s prolonged default in his statutory duty and obligation to pay levies placed the other owners and members of the Scheme in a huge financial strain in that they continue to sponsor him whilst he continues to enjoy the benefits offered by the Scheme, but the prejudice to the other owners was enormous. Furthermore, the adjudicator considered that over one hundred thousand rands of the appellant’s arrears had been written off to accommodate him and his financial circumstances, again at the expense of the other paying owners. The adjudicator found that no scheme can survive if no serious action is taken to recoup arrear levies, a principle which the appellant did not dispute the validity of during the hearing of this appeal.

[19] The appellant’s feigned ignorance about what informed the adjudicator in making the impugned orders is not borne out by the facts that he has placed before this Court, which include the reasons for the adjudicator’s order.

[20] For all of the above reasons, the appellant's appeal cannot be upheld.

**This appeal is both premature and speculative**

[21] According to the appellant, he brings this appeal for two reasons: (a) his financial situation is such that he cannot afford to pay the monthly instalments set out in the order; and (b) he does not want to be in contempt of the adjudicator's order.

[22] It is not necessary, for the purposes of determining this appeal, for this Court to make a finding regarding the appellant's financial situation save to say that, on his own version, his financial means do not appear to me to be as constrained as he makes out to be the case. The appellant was unemployed when the second adjudication occurred, and when the order was made on 19 August 2025 that he is seeking the variation of. He is now employed and has been so since October 2025. Furthermore, during this period when he is required to be paying R750.00 per month in terms of the order, he is paying more than that - R850.00 per month - clearly because he can afford to pay more than what he has been ordered to pay.

[23] This then begs the question that was put to the appellant: why has this appeal been brought now, to vary an order that he is complying with? The appellant's answer is that he brings this application because he does not want to be in contempt of the adjudicator's order at some later stage, i.e., when he becomes obliged to pay the monthly instalments of R4 347.49. It is this answer that reveals the speculative reasons behind this appeal.

[24] According to the appellant, the nature of his work is such that his earnings fluctuate. What he is paid in one month could double or triple in other months and if he has the cash on hand, he will definitely pay even more than what he is required to pay on a monthly basis.

[25] The essence of it then is that although the appellant is presently complying with the order, he fears a time when he may not be able to do so hence his approach to this Court. His approach to this Court is based on an apprehension of a day when he might not be able to comply with the adjudicator's order. In the final analysis then, the appellant wishes this Court to disturb the adjudicator's order based on a situation that has not eventuated and may never do so; and on facts that have not as yet come into existence and may never do. These speculative reasons behind this appeal render it even more untenable at this time.

### **Conclusion**

[26] In the circumstances, the following order is proposed:

- [a] Condonation is granted for the late filing of this appeal.
- [b] The appeal is dismissed, with no order as to costs.

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**N MAYOSI**  
**Acting Judge of the High Court**

**I agree.**

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**N RALARALA**

## **Judge of the High Court**

### Appearances

For appellant: In person

For respondent: No appearance