

REPUBLIC OF SOUTH AFRICA



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

24576/2021

CASE NO:

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
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DATE	

In the matter between:

WATERFORD ESTATE HOMEOWNERS ASSOCIATION NPC

Applicant

and

RIVERSIDE LODGE BODY CORPORATE

1st Respondent

**101 OWNERS OF UNITS IN RIVERSIDE
LODGE SECTION TITLE SCHEME**

2nd to 102nd Respondents

MABASO KHOSI

103rd Respondent

COMMUNITY SCHEMES OMBUD SERVICE

104th Respondent

**THE CHAIRPERSON OF THE BOARD OF THE
COMMUNITY SCHEMES OMBUD SERVICE**

105th Respondent

**THE CHIEF OMBUD OF THE COMMUNITY SCHEMES
OMBUD SERVICE**

106th Respondent

THE OMBUD FOR THE GAUTENG REGIONAL OFFICE

107th Respondent

JUDGMENT

MAKUME, J:

Introduction

[1] In this matter the applicant seeks an order in the following terms:

1.1 Declaring section 39(1)(c) read with section 39(1)(e) of the Community Schemes Ombud Services Act¹ (“the CSOS Act”) unconstitutional in so far as it affords an Adjudicator power to:

- a) declare that a contribution levied is “unreasonable”,
- b) grant an order for the adjustment of a contribution to a reasonable amount; and
- c) grant an order for the payment or repayment of a contribution pursuant to a declaration that a contribution levied is “unreasonable.”

1.2 Reviewing and setting aside certain decisions of the Adjudicator (the 103rd respondent) on the grounds as set out in section 6(2) of the Promotion of Administrative Justice Act² (“PAJA”).

The parties

[2] The applicant is a non-profit company and is the Home-Owners Association of a residential development known as Waterford Estate which comprises of 328 residential units made up as follows:

¹ 9 of 2011.

² 3 of 2000.

- a) 215 full title erven.
- b) 101 Sectional Title Units in Riverside Lodge Sectional Title Scheme.
- c) 12 Section Title Units in Waterford Villas Sectional Title Scheme.

- [3] The first respondent is a body corporate of the 101 Sectional Title Units making up the Riverside Lodge Sectional Title Scheme. Its duties are set out in Section 3(1) of the Sectional Titles Schemes Management Act³ (“STSM”).
- [4] The second to 102nd respondents are the individual owners in the Riverside Lodge Sectional Title Scheme.
- [5] The 103rd respondent is the Adjudicator appointed in terms of section 21(2)(b) of the CSOS Act. It is the latter respondent whose decisions made in terms of section 51 and 54 of the CSOS Act are sought to be reviewed by the Applicant.
- [6] The 104th to 108th respondents are the statutory functionaries in terms of the CSOS Act and other related constitutional and legislative measures for purposes of administering sectional title schemes.

Background facts

- [7] It is common cause that sometime during the year 2005 issues arose between the applicant and the first respondent regarding contributions payable by the against the first respondent claiming payment of the amount of R 160 514 plus interest and costs. A second set of summons was issued in which the applicant claimed payment of R1 027 139.39 being for outstanding levies for the period of 1 March 2006 to 1 February 2007.
- [8] A settlement agreement was concluded by the parties which agreement catered for:

- a) Settlement of historic debt.

³ 8 of 2011.

- b) The security expenses of the estate were divided as follows: 64% for the west portion and 36% for the east portion.
- c) The monthly levy to be paid by the first respondent to the applicant was fixed at R 48 970 per month.
- d) A formula was adopted which would henceforth be the only deciding factor in determining levies to be paid by the first respondent to the applicant.

[9] The first respondent is a scheme within the bigger Waterford area. The estate as a whole is divided into east and west. The first respondent is situated on the west side being on the boundary along Witkoppes Road it comprises of 24 blocks of apartments totalling the 101 Sectional Title Units.

[10] The settlement agreement was put into effect and as a result by November 2008 the first respondent's outstanding levies had been cleared. However, some years later during October 2015 the first respondent fell into arrears with payments and owed the applicant an amount of R 105 854.37.

[11] The applicant gave the first respondent notice of cancellation of the settlement agreement. The Directors of the applicant unilaterally commenced to determine contributions payable by the Sectional Title owners directly on the basis that such sectional title owners were members of the applicant. The first respondent as well as the Sectional Title owners refused to make payment.

[12] The applicant made application in terms of section 38 of the CSOS Act against the respondents for payment of the contributions levied on:

12.1 The first respondent for the period of 1 January 2017 to the 28 February

2018 plus interest.

12.2 Payment by Unit Owners for the period commencing 1st March 2018 with

interest.

[13] Ms Mabaso Khosi the 103rd respondent was duly appointed as Adjudicator in terms of the provisions of section 48 of the CSOS Act. The applicant sought relief at Adjudication in terms of Section 39(1)(e) of the CSOS Act for:

13.1 Payment of levies and contributions levied upon the respondents in accordance with the settlement agreement and/or the Memorandum of Incorporation and Articles of Association.

13.2 That such amounts to be paid by the first respondent on behalf of the Sectional Title owners.

13.3 Alternatively that each of the Sectional Title Owners being second to 102nd respondents be held liable individually in accordance with their participation quota under the Memorandum of Incorporation and Articles of Association.

13.4 Further in the alternative and in terms of section 47 of the Sectional Title Act of 1986:

a) A determination under section 39(3)(a) or (b) requiring the first respondent to record a new Scheme Governance Provisions consistent with the Memorandum of Incorporation and Articles of Association of the applicant specifically requiring the first respondent as representative of the Sectional Title Owners to collect and pay the applicant's levies payable by the owners to the applicant once a month on or before the 7th day of every month.

[14] The first respondent filed its counterclaim for adjudication seeking the following relief:

14.1 That it be declared that the contributions levied by the applicant on the respondents have been incorrectly determined and thus unreasonable.

14.2 That the contributions be adjusted to a correct or reasonable amount more specifically that the levy be varied on the proposition of gross municipal valuation of each section currently being 9.94% premised on a participation quota model.

[15] The first respondent also raised three defences to the relief sought by the applicant which defences dovetail with their counterclaim; the defences are:

15.1 That the contributions in respect of the 2017 and 2018 financial year were not calculated in accordance with the agreed formula;

15.2 The contributions levied on the unit owners since March 2018 are unreasonable; and

15.3 The Unit Owners are not members of Waterford and Waterford is accordingly not entitled to claim contributions from them directly;

15.4 Waterford is only entitled to claims contributions from Riverside for non-payment to Waterford.

The adjudicator's findings and awards

[16] On 10 March 2021 the Adjudicator made the following findings which are now the subject of this review application:

16.1 The first respondent was ordered to pay the sum of R 621 854.32 to the applicant plus interest at the prescribed rate of interest from date of delivery of the order.

16.2 As regard the counterclaim, the relief sought in terms of section 39(1) (e) of the CSOS Act is upheld and the applicant is to repay the sum of

R44 034.44 in respect of the electricity consumption plus interest thereon at the prescribed rate of interest from 14 February 2020.

16.3 The relief in terms of section 39(1)(e) of the CSOS Act is upheld and the applicant is to pay the sum of R 939 151.56 to the respondents plus interest thereon at the prescribed interest rate from date of delivery.

16.4 The amount held in security is to be refunded to the respondents with interest earned thereon.

16.5 Each party to pay own costs.

[17] It is this decision that the applicant seeks to be declared unconstitutional as well as to be reviewed and set aside on the basis that such decision amounts to administrative action as envisaged under PAJA.

The defences

The defences raised by the first, second to 102nd respondents

[18] The respondents have raised the following points in *limine*:

18.1 That the applicant has no *locus standi* on the basis that the Adjudicator's decision is not reviewable under PAJA. The respondents argue that the relief sought by the applicant is not supported by any of the provisions contained under PAJA.

18.2 The respondents maintain that the applicant has failed to establish a cause of action in that the terms of the Agreement concluded on the 14 October 2007 between the applicant and the first respondent contained a clause that in the event of a dispute such a dispute would be referred to either the Chairperson of the Eagle Canyon Home Owners Associations or the Chairperson of the Dainfern Home Owners Associates whose decision would be final. The applicant failed to refer

the dispute to agreed mediation instead referred the matter to the Ombudsman who in the interest of justice referred the matter for Adjudication. The respondents maintain that the Adjudicator's findings are final and binding on the parties.

18.3 The respondents argue that the applicant's review application is malicious, frivolous and vexatious and is nothing but a strategy to delay payment to the respondents as ordered by the Adjudicator.

18.4 That the applicant failed to exhaust internal remedies thus rendering the application premature. This argument is subject to a finding that the application has been correctly brought in terms of PAJA which the respondents dispute.

18.5 That the review application has lapsed for failure to comply with the provisions of section 7(1) or section 6(2) of PAJA.

The defence raised by 104th to 107th respondents

[19] These respondents make common cause with the defences raised by the first 102 respondents. The respondents argue that the applicant's assertion in seeking an order declaring that section 39(1)(c) of the CSOS Act is unconstitutional as well as a declaration that the words "unreasonable" and/or reasonable be severed from section 39(1)(c) is flawed.

[20] These respondents submit that the reasonableness criteria in section 39(1)(c) of the CSOS Act does not offend the constitution.

The 108th respondent

[21] The Minister of Human Settlement also opposes the granting of the relief and makes common cause with the arguments raised by the 107th respondent. It is further argued by the Minister that the applicant is conflating issues by misconstruing an interpretation of an agreement between itself and the first

respondent and an interpretation of the provisions of section 39(1)(c) of the CSOS Act.

- [22] The Minister maintains that the Adjudicator exercised his powers as provided for in section 39(1)(c) of the Act and that the applicant has not directed the Court to the provisions that it seeks to rely on in order to demonstrate that the impugned provisions are unconstitutional.

The issues

- [23] The final determination of this matter rests on two aspects. Firstly, it is whether the Adjudicator's decision is reviewable or not. Secondly, whether section 39(1) (c) read with Section 39(1)(e) of the CSOS Act are unconstitutional in as far as the Section affords the Adjudicator certain power of a declaratory nature.

Is the decision of the adjudicator reviewable?

- [24] Prayers 4,5,6,7,8,9,10,11,12 of the applicant's notice of motion set out those orders or decisions taken by the Adjudicator which the applicant says are reviewable and should be set aside.

- [25] In paragraph 17.2 of their heads of argument the applicant seeks judicial review on the grounds set out in section 6(2) of the PAJA.

- [26] The respondents maintain that the decisions of the Adjudicator are not reviewable in terms of PAJA as such decisions do not amount to administrative action as envisaged under PAJA.

- [27] Section 1 of PAJA defines administrative action as follows:

“Administrative action means any decision taken or any failure to take a decision, by–

- a) An organ of state when –

- i) exercising a power in terms of the Constitution or a provincial constitution; or
 - ii) exercising public power or performing a public function in terms of any legislation; or
- b) A natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include –
- aa) the executive power or function of the National Executive, including powers or functions in Section 79(1) and (4), 84(2) (a), (b), (c), (d), (f), (g), (h), (i) and (k), 85(2)(b), (c), (d), and (e), 91(2), (3), (4) and (5), 92 (3), 93, 97, 98, 99 and 100 of the Constitution.”

[28] If I find that the decisions are reviewable it is only logical that this Court must also determine, if the applicant has exhausted internal remedies, if not, that the application is premature.

[29] The first to 102nd respondents argue and make the point that the review of an award of an Adjudicator granted in terms of the CSOS Act does not constitute administrative Action as envisaged in PAJA. The respondents place reliance on the decision of the Supreme Court of Appeal in the *Trustees for the Time Being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Another*.⁴

[30] The facts and the final decision in the matter referred to above dealt with a decision taken by Trustees who unilaterally decided to prohibit Bae Estate from operating within the Scheme controlled by the Body Corporate in terms of their rules. Whilst the Supreme Court of Appeal found that the Trustees in taking that decision did not do so within the ambit of PAJA as their decision

⁴ 2022 (1) SA 424 (SCA).

was not administrative action it held in favour of Bae based on legality and irrationality.

[31] Makgoka JA writing for the Court at paragraph 27 said the following:

“It is important to locate the trustees’ decision to prohibit Bae Estate from operating in the Scheme, ‘within an empowering provision’. In other words, under what empowering provision did the trustees act for that decision? The High Court said that they acted in terms of the Schemes Management Act. In coming to this conclusion, the High Court failed to appreciate that the statutory powers conferred on the trustees by the Schemes Management Act, where relevant, regulate the relationship between the body corporate and the home-owners. This case is not about that relationship. It is about a body corporate’s relationship with a third party, an estate agent. There is no provision in the Act which empowers the trustees to prohibit an Estate Agent from operating in the scheme.”

[32] It was on that basis only that the Supreme Court of Appeal found that the trustees’ decision is not an administrative decision as envisaged in PAJA and was thus not reviewable in terms thereof.

[33] This is not the case in this matter. An Adjudicator and his or her functions cannot be compared to that of a trustee who operates under a completely different regulatory sphere. His Lordship Sher J in *Heathrow Property Holdings No. 3 CC and Others v Manhattan Place Body Corporate and Others*⁵ at paragraph 48 said the following:

“Thus, in terms of ss 39(1) – (7) of the Act an Adjudicator has a number of express statutory powers in respect of financial, ‘behavioural’, governance, management, regulatory and other issues pertaining to a sectional title scheme, which a court does not. In this regard, and by way of an example, in respect of financial issues an adjudicator has the power to make orders (i) requiring a scheme to take out insurance or to increase the amount thereof or (ii) to take action under an insurance policy to recover an amount, or (iii) to

⁵ 2022 (1) SA 211 (WCC).

declare that a contribution which was levied on owners is 'unreasonable' and that it be adjusted to a 'reasonable' amount, and (iv) may even grant an order requiring a tenant to pay over the rental which is payable under a lease agreement to the body corporate and not to his landlord, until an amount which is due by the landlord to the body corporate has been settled."

[34] At paragraph 49 the learned Judge continues as follows:

"Similarly, in regard to the governance issues an adjudicator has the power to make orders not only declaring a governance provision to be invalid or 'unreasonable', but directing a scheme to amend or substitute it with another provision."

[35] In *Turley Manor Body Corporate v Pillay*⁶ the court rejected the argument that the exercise of powers of an Adjudicator in terms of the Act do not amount to administrative action. At paragraph 27 of the judgement the Judge says the following:

"An Adjudicator appointed under the Act is not engaged upon private adjudication. The Community Schemes Ombud Service is a juristic person constituted under the Act. The Service operates as a national public entity listed in terms of the Public Finance Management Act, which is *[sic]* of application to the Service. The Service is funded by public moneys and reports ultimately to parliament. The functions of the Service includes dispute resolution. Dispute resolution under the auspices of the Service is clearly a public not a private form of dispute resolution. An application made under the Act and lodged with the Ombud if referred to Adjudication, does not permit a person against whom an order is sought to opt out of the process. If the Adjudication makes an order it is binding and enforceable, as if a judgement of the Court. Adjudicator under the Act is thus not the result of bilateral consent. It is a compulsory form of public disputes resolution."

[36] In the financial analysis, I find that the first point in *limine* raised by the respondent that the Adjudicator's decision is not reviewable under PAJA on the basis that it is not an administrative decision is dismissed. The

⁶ 2020 JDR 0430 (GJ).

Adjudicator's decision has correctly been brought under the governing principle of PAJA. This now brings me to the second, fourth and fifth points in *limine* raised by the respondent.

Second and fourth points in limine

[37] In the second point in *limine* the respondents maintain that the applicant has no *locus standi* in that the Settlement Agreement signed on the 14 October 2007 made provision that any dispute between the applicant and first respondent would be referred to either the Chairperson of Eagle Canyon Home Owners Association or the Chairperson of the Dainfern Home Owners Association which decision would be final and binding on the parties. Similarly, that the applicant having decided to refer this dispute to the Ombud had in mind the finality of the dispute which decision would be binding.

[38] The fourth point in *limine* which is closely associated to the second point in *limine* is effectively that the applicant should have first exhausted all the internal remedies as prescribed by PAJA prior to launching this review application in terms of PAJA.

[39] I have already made a finding that the applicant was correct in bringing this review application under PAJA as a result section 7(2) of PAJA becomes relevant in as far as the first respondent maintains that the applicant has failed to exhaust internal remedies. Section 7(2) of PAJA reads as follows:

“(a) subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or tribunal may in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.”

[40] In this matter the respondents rely on the provisions of clause 3.10 of the Settlement Agreement concluded in 2007 which reads as follows:

“Should Waterford and Riverside not reach consensus on matter dealt with in paragraph 3.9 above then the dispute shall be referred to the Chairman of Eagle Canyon Home Owners Association alternatively Dainfern Home Owners Association for adjudication provided that the parties, members, trustees and their respective duly appointed management agents do not serve or have not served on the board of Eagle Canyon Home Owners Association. The decision of the Chairman shall be final and binding.”

[41] The respondents say that the applicant chose not to approach the chairs of both Eagle Canyon and Dainfern and preferred the route of the CSOS Act, in the result, the applicant should have realised that the decision of the adjudicator would also be binding and final in the same spirit as expressed in the Settlement Agreement.

[42] In reply the applicant says that clause 3.10 of the Settlement Agreement cannot on any conceivable basis oust the jurisdiction of this Court to deal with this review application. The applicant maintains that the parties had agreed not to implement clause 3.10 as that Settlement Agreement had been cancelled with effect the 28 February 2018. The respondents dispute this.

[43] The Constitutional Court in *Koyabe and Others v Minister of Home Affairs and Others*⁷ strongly supported a duty to exhaust internal remedies describing it as a valuable and necessary requirement of our law. Mokgoro J held that an aggrieved party must take reasonable steps to exhaust available internal remedies she however, also stated that the requirements should not be rigidly imposed.

⁷ 2010 (4) SA 327 (CC).

[44] Hoexter in *Administrative Law in South Africa*⁸ writes as follows:

“In the application of S 7(2), much depends on how the Courts interpret the adjective ‘internal’ and the phrase ‘any other law’. In my view these terms ought to be read restrictively to include remedies specifically provided for in the legislation with which the case is concerned, and to exclude optional extras.”

[45] In the matter of *Van der Westhuizen v Butler*⁹ the court by citing Hoexter with approval said:

“I agree with this contention by the learned author. In this case, were one to give the section the meaning contended for by the respondents, it would be a very wide interpretation of the section to include remedies which do not appear clearly from the wording of the section, and thereby would result in the subversion of applicants’ right of access to a court as constitutionally enshrined.”

[46] The phrase “any other law” in this matter is reference to the CSOS Act and in reading the words restrictively such remedy is not provided for in the CSOS Act. In the result I have come to the conclusion that the applicant was not compelled to have referred the matter to Chairperson of Dainfern or Eagle Canyon. Having said that, it now brings me to the issue raised in the point in *limine* that is whether the finding of the Adjudicator was final and binding.

Is the adjudicator’s decision final and binding?

[47] The respondents contend that the parties having agreed that a decision of the Chair of Dainfern and Eagle Canyon would have been final and binding it therefore goes without saying that the same principle should apply to a finding by an Adjudicator more so that the applicant withdrew its appeal.

[48] In this regard the applicant rely once more on the fact that the Settlement Agreement was cancelled with effect from 28 February 2018. However, what

⁸ Hoexter *Administrative Law in South Africa* 2ed (Juta & Co Ltd.) at 540-541.

⁹ 2009 (6) SA 174 (C) at 188 B – C.

is before this Court and was also before the Adjudicator is an application by the applicant seeking relief based on the Settlement Agreement.

[49] I have not been referred to any authority on this issue save to say that the respondents rely on the principle of *pacta sunt servanda*. In the matter of *Mozart Ice Cream Franchises (Pty) Ltd v Davidoff and Another*¹⁰ that case dealt with a restraint of trade. I say nothing more about that.

[50] Once more there is nothing in the CSOS Act which gives the Adjudicator the right of finality and binding effect. The fact that the applicant withdrew its appeal does not mean that it has no right to approach the High Court on review. In the matter of *Kingshaven Homeowners' Association v Botha and Others*¹¹ the court in dealing with this aspect said the following at paragraph 25–

“The right of appeal in terms of s 57 is not exclusive of the right of an aggrieved party also to impugn the adjudicator's decision on review grounds that might not involve ‘questions of law’ within the meaning of that term in s 57.”

[51] Adjudication orders or rulings have at all times been taken on review in a number of cases in this division and in none of them that I have been referred to raise the objection that the Adjudicator's decision is final and binding and therefore not capable of being assailed on review save on PAJA requirements. Wilson AJ as he then was in the matter of *Naidoo v Chicktay N.O. and Others*¹² held as follows at paragraph 7–

“There is no dispute between the parties that the Adjudicator's order constitutes “administrative action” within the meaning of Section 1 of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) and that it is susceptible to judicial review. That accords with the prevailing authority in this Division, which holds that the narrow appeal against Adjudication orders permitted under section 57 of Community Schemes Ombud Services Act 9 of

¹⁰ 2009 (3) SA 78 (C).

¹¹ 2020 JOL 48430 (WCC).

¹²2022 JDR 3522 GJ.

2011 (“the CSOS Act”) does not exclude PAJA’s application (*Turley Manor Body Corporate v Pillay* 2020 JDR 0430 (GJ) paragraph 8 to 30).”

[52] These decisions serve to strengthen my resolution to dismiss this point *limine* I have also had regard to the provisions of section 56(1) and (2) of the CSOS Act which read as follows:

“ENFORCEMENT OF ORDERS

56 (1) If an adjudicator’s order is for payment of an amount of money or any other relief which is within the jurisdiction of a magistrate court, the order must be enforced as if it were a judgement of such Court and a clerk of such a Court must on lodgement of a copy of the order register it as an order in such Court.

(2) If an adjudicator’s order is for payment of an amount if money or any other relief which is beyond the jurisdiction of the magistrate’s court, the order may be enforced as if it were a judgement of the High Court, and a registrar of such a Court must, on lodgement of a copy of the order register it as an order in such Court.”

[53] There is a clear distinction between orders of Adjudicators which fall within the ambit or jurisdiction of a Magistrate Court and those that fall within the jurisdiction of the High Court. In subsection 56(1) the words used are “the order must be enforced” whereas in 56(2) the words used are “the order may be enforced.” This in my view says that the Adjudicator having made the order same was not final and stands to be challenged on appeal or review.

[54] I have also come to the conclusion that the review application is not malicious, frivolous or vexatious. The Body Corporate is acting on behalf of owners of property at Waterford and has a duty which is imposed on them in terms of section 3(1) of the STSM. I have also come to the conclusion that the review application is not premature for reasons set out above. The points *limine* raised by the first 102 respondents are dismissed.

[55] This now brings me to the question whether there are any grounds justifying the decision of the Adjudicator to be reviewed and secondly sections 39(1)(c) read with Section 39(1)(e) of the CSOS Act is unconstitutional.

The review

[56] The decisions that the applicant seeks to have reviewed are encapsulated in prayers 4 to 12 of the notice of motion. The decisions pertaining to orders for payment, repayment and refund from one party to the other including interest accrued therein. The applicant relies to a large extent on the provisions of the Settlement Agreement concluded on the 14 October 2007.

[57] The dispute that served before the Adjudicator related to the determination of reasonable levies to be paid by the first respondent to the applicant relating to the estate as a whole. It is common cause and not in dispute that second to 102nd respondents are members of Riverside and as such are expected to contribute to the running expenses of the estate being Waterford as well as to the running expenses of the body Corporate Riverside Lodge.

[58] In the Settlement Agreement dated the 14 October 2007 the monthly levies to be paid by the first respondent to the applicant was fixed at R 48 970. On 10 November 2017 the Directors of the applicant arbitrarily cancelled the Settlement Agreement with effect from 1 March 2018 and started to determine the contributions payable by Riverside Lodge residents directly to Waterford on the basis that the Riverside Lodge members were also members of Waterford. The arbitrary determination of levies increased from R 48 970 per month to R121 790. It was on the basis of that increment that the first respondent raised its counterclaim that the increment was unreasonable. The Adjudicator upheld that counterclaim and this is what the review is all about. Was the Adjudicator wrong in upholding what the CSOS Act empowers her to do?

Are the unit owners of the Sectional Title Units members of Waterford

[59] This issue has been a long standing one since the first action instituted which resulted in the 2007 settlement. It has always been the view of the applicant that the second to 102nd respondents are by virtue of their ownership automatically members of Waterford this is denied by the first to 102nd respondents.

[60] The Adjudicator in dealing with this vexed question referred to Section 11(3) (b) of the Sectional Titles Act¹³ and said that the conditions of title are clear and that there is no need for an extensive interpretation. In her finding the Adjudicator said the following:

60.1 That it is the Body Corporate that is to become a member of the applicant (Waterford).

60.2 There is nowhere in the conditions of title where it is stated that the Sectional Title Owners should also become members of the applicant. All that is stated is that the Sectional Title Owners should be made aware that it is the Body Corporate that is a member of the applicant.

60.3 Ownership of the Units in Riverside was not made conditional on the Sectional Owners becoming members of the applicant. This is true as it appears nowhere in the Sale Agreement nor in the Deeds of Transfer.

60.4 Referring to the 1973 Companies Act as well as the 2008 Companies Act the Adjudicator concluded that only persons who are signatories to the Articles of Association or who elect to subscribe to the Memorandum of Association become members and shareholders of that company. None of the second to 102nd respondents have contractually bound themselves to become members of the applicant.

¹³ 95 of 1986.

60.5 The applicant is a Voluntary Association and Membership created through its Article and Memorandum of Association can only be by agreement and not by law.

[61] The Adjudicator concluded that the Sectional Title Owners are not members of the applicant. He found that it is the first respondent who is a member of the applicant and is bound by the Rules of the applicant that had been lawfully passed and adopted. The Adjudicator found that the first respondent bears the responsibility of ensuring that the Sectional Title Owners comply with the Rules of the applicant and that all amounts owed by the respondent are only payable by the first respondent.

[62] In response to the findings by the Adjudicator that members of Riverside Lodge are not automatically members of Waterford, the applicant says that the Adjudicator's finding is bad in law.

[63] The applicant refers firstly to section 2(a)(b) and (c) of the Sectional Title Act in which reference is made that owners of Units in the Sectional Title Scheme also own common property in a scheme in undivided shares in accordance with the provisions of this Act. It is contended that the Sectional Title Owners are also owners of Erf 645 and accordingly became members of Waterford.

[64] It is common cause that Erf 645 is a consolidated Erf comprising of Erf 380 and 381 and in the Township Establishment Condition which the applicant has made reference to in reliance to condition 4(f) the requirements that each and every "owner of an Erf in the Township shall become a member of a Residents Association upon transfer of the subdivided portion." Such association shall have full responsibility for the proper functioning and proper maintenance of the access Erf and the essential services contained therein.

[65] It is important to note that clause 4(9)(f) is specific to erven 431 and 432 which according to the conditions is zoned special for access purpose. In my view it does not refer to the consolidated erven 380 and 381.

[66] Secondly, this clause is in conflict with conditions of title and with specific reference to section 11(3)(b) of the Sectional Title Act. As the Adjudicator correctly found there is nowhere in the condition of title which indicates that unit owners shall become members of the applicant all that the document says is that it is the body corporate that becomes a member of the Home Owners Association and all that is required is that unit owner be made aware of that situation. I accordingly find that the second to 102nd respondents are not members of the applicant.

Requirements of a review application in terms of PAJA

[67] It is a well-known principle of our law as enshrined in the Constitution which requires that administrative action be lawful, reasonable, and procedurally fair. The three components are codified in section 6 of PAJA.

[68] It is not in dispute that the Sectional Title Unit Owners are obliged to make payment of contributions towards the expenses of the applicant. This was settled and agreed upon when the Settlement Agreement was signed in the year 2007. In that agreement a formula was agreed upon as to how Waterford was to calculate what the members of Riverside had to pay.

[69] It was accordingly not surprising that when the applicant laid a complaint with the office of the Ombud, the first respondent raised three main defences namely, firstly, that the contributions in respect of the 2017 and 2018 financial years were not calculated in accordance with the formula secondly, that the contributions levied on the Unit Owners since the 1 March 2018 were unreasonable and lastly, that the Unit Owners were not members of Waterford accordingly that Waterford had no right to claim contributions from them directly.

[70] The onus fell on the applicant to demonstrate and indicate how and in what instances did the Adjudicator act unlawfully, unreasonably and without following fair procedure.

[71] The applicant contends that the decision that fell to be reviewed in terms of section 6(2) of PAJA are the following:

- a) The decision in respect of the contributions levied in respect of the 2017 and 2018 financial year.
- b) Contributions levied in respect of the 2019 and 2020 financial year.
- c) The membership of Waterford.
- d) The charging of interest.

[72] It is the Settlement Agreement that the Adjudicator applied in this dispute hence it was agreed that the scope of the dispute covered the following aspects:

- a) Had Waterford raised the levy in accordance with the formula in the Settlement Agreement.
- b) If not had the parties followed the consultative processes set out in clause 3.9 of the Settlement Agreement and
- c) The Adjudicator should determine the aforesaid dispute to avoid the necessity of having to refer dispute to the chairperson of Eagle Canyon Home Owners Association or the Chairman of the Dainfern Home Owners Association.

[73] The central and critical portions of the Settlement Agreement read as follows:

3.8 The formula provides for no contributions to be made on the part of Riverside to Waterford if and in respect of certain expenses or capital expenditure that are and may be incurred by Waterford.

3.9 However, to the extent that expenses or capital expenditure have to be budgeted for or incurred which expenses and or expenditure are not provided for in the formula, then both parties shall:

3.9.1 first determine the necessity of such expenses

3.9.2 the costs of and relating to such expenses and then

3.9.3 the contribution to be made by Riverside, if any;

3.10 Should Waterford and Riverside not reach consensus on matters dealt with in 3.9 above then the dispute shall be referred to the Chairman of the Eagle Canyon Home Owners Association for Adjudication. The decision of the Chairman shall be final and binding.

[74] At paragraph 48 of its Founding Affidavit the applicant says that the parties agreed that the Adjudicator was called upon to decide the following issues:

- a) Whether the disputed line items in the 2017 and 2018 budgets (the disputed line items) were contained in or covered by the formula.
- b) In the event that the Adjudicators were to find that one or more of the disputed line items were not contained in or covered by the formula whether Waterford and Riverside complied with the process as set out in clause 3.9.1 to 3.9.3 of the Settlement Agreement (the dispute resolution process).
- c) Whether Riverside is in the alternative estopped from disputing the correctness of the levies for the 2017 and 2018 financial years.
- d) In the event that the Adjudicators were to find that:

- One or more of the disputed line items were not contained in or covered by the formula
- Waterford and Riverside did not substantially comply with the dispute resolution process and
- Riverside is not estopped from disputing the correctness of the levies for the 2017 and 2018 Financial years.
- The Adjudicator should decide whether Riverside should contribute towards such expenses.

[75] It is perhaps useful at this stage to make reference to the findings and directives made by the Adjudicator. In particular, on the 11 June 2020 the Adjudicator issued what she termed the “Third Interim Award.” In that award she affords the applicant and the first respondent an opportunity to attempt to reach an agreement in respect of any dispute pertaining to their respective calculations. The Adjudicator concluded with the order that in the event that the applicant and the first respondent failing to submit figures then she will proceed to make an order in terms of section 53(1)(b) of the CSOS Act. That section reads as follows:

“The Adjudicator may make an order dismissing the application if after investigation (b) the applicant fails to comply with requirements in terms of section 51.”

[76] Section 51 which deals with powers of an Adjudicator reads that “When considering the application, the Adjudicator may require the applicant....to give the Adjudicator further information or documentation.”

[77] The Adjudicator is setting out what was required of her by the parties also referred to clause 3.7 of the Settlement Agreement which reads as follows:

“13.7 The Formula shall henceforth be the only deciding factor determining the amount of the levy to be paid by Riverside to Waterford.”

[78] The Adjudicator dealt with all the disputed items and made a finding that the disputed items were not part of the agreed formula and secondly that the parties did not engage in the consultative process as envisaged in clause 3.9 of the Settlement Agreement.

[79] The relevant clauses in the Settlement Agreement are clause 3.7, 3.8, 3.9 and 3.10. I have already made reference somewhere in this judgement and quoted clauses 3.8 and 3.9 and 3.10. I however now use clause 3.7 which is critical and it reads as follows:

“The formula shall henceforth be the only deciding factor determining the amount of the levy to be paid by Riverside to Waterford.”

[80] The applicant’s case is that the disputed line items formed part of the formulation and that they were agreed between the parties through the internal budgetary process in compliance with the provisions of the Settlement Agreement.

[81] The evidence presented before the Adjudicator does not support this contention by the applicant. It is therefore the respondents’ case that the question of levies was arbitrarily decided upon by the Directors of Waterford without consulting the first respondent contrary to what had been agreed upon.

[82] The argument by the applicant that the process of consultation followed the internal budgeting meetings is belied by the undisputed fact that the members of Riverside were not allowed to vote at the two AGMs that of the 15 November 2016 and that of the 23 November 2017 because their levies were in arrears. It is at those meetings where the disputed items were voted by the remaining members. This was arbitrary and the Adjudicator correctly made a

finding in favour of the respondents having followed the provisions of the Settlement Agreement.

[83] As an example the applicant's first witness Mr Donaldson in his evidence testified that the disputed item "General internet fees" was not in the Settlement Agreement and should accordingly not have been included in the levy calculations. He further conceded that the item "Printing and Stationery" is a no contribution item in the formula and should also not have been included in the levy calculation. Mr Donaldson went on to testify that the items "Ad Subscription" is not an item in the formula and should not have been included in the levy calculation. He also conceded that the item "Ad Property Rates" should not have been included in the levy calculation as it was specifically excluded in the formula. The same applies with the item "Refuse Removal" this was excluded in the formula.

[84] There is an item titled "Repair and Maintenance Building." The buildings refer to two guard houses one on the East and the other on the West as well as Gazebo in the park. The complaints had been that the formula only referred to the two guard houses and not the Gazebo.

[85] The second witness for the applicant Mr Erasmus testified that the "agreed formula" was applied every year and the only thing that changed was just the "item figures which he says were informed by the yearly budgeted figure. He continued to say that circumstances changed between 2007 and 2015 as a result the approved budgets contained adjustments to the formula which he says were approved by members in the annual general meeting. This argument is untenable, there is evidence that members of the first respondent were excluded from voting on the disputed budget items at the AGM. This can therefore not have been a consultation process, it was unilateral.

[86] Interestingly the Adjudicator made a note that Mr Donaldson testified that the 2007 agreement was never amended in writing and that there were no minutes of any meetings where the items were debated and agreed upon.

[87] Mr Noir who testified for the respondents in respect of items “General interest Fees” said that the Settlement Agreement provides that if a new item arises it has to be added to the formula by agreement between the parties and that this was not complied with. Mr Noir also stated that the items sundry expenses does not occur on a monthly basis. This was not challenged. It was put to Mr Noir by Counsel for the applicant that there is no difference between “grounds and gardens” to this Mr Noir responded that if that is the case why are both items in the budget. There was no response to that. Hardware was also not covered by the formula, so is the internet communication portal, secretarial fees, subscription, website maintenance, legal expenses, garden service company, property rates, refuse removal, printing and stationery, repairs and Maintenance of building, repairs and maintenance of grounds, repairs and maintenance sundry, major expenses, security cameras and major hardware expenses.

[88] Mr Jacobs also testified for the respondents and whilst conceding that the Settlement Agreement was 12 years old and that things have changed still maintained that it does not mean that there should not have been consultation before determining the levies payable by members of the first respondent. He remarked that the major item of expenditure was just added on the budget by the applicant without having consulted the first respondent. This was indeed arbitrary and oppressive behaviour for example when first respondent demanded to see the quote for the 4 security cameras which amounted to R370 000 this was denied.

[89] As regards the consultative process which the applicant says was done via the budget discussion this was disputed by Mr Jacobson. He told the Adjudicator that the Board of Waterford never involved him in any budget discussions nor give him the sight of the drafted financials until it was emailed to all members and Sectional Title Owners a month before the AGM. He says no discussion took place prior to the AGM. The AGM was only there to explain budget item and not to change the items. He never approved any of the disputed items on the budget.

- [90] It was put to Mr Erasmus for the applicant that Mr Jacobson denied that there was any consultative process prior to approval of budget items he told the hearing that each portfolio Director made submissions to the Financial Director on Portfolio needs for the following year and that Mr Jacobson was involved in the process leading up to the approval of the budget in the year 2016. Mr Jacobson reiterated that there was never a meeting between the Directors of Waterford and of Riverside to consider the necessity of items. He referred to an email dated the 20 November 2016 wherein the Directors responded to a query as follows: “We will deal with it in the New Year we can’t deal with it now.”
- [91] Several other witnesses testified and in the end the issue was crystallised into one namely that the disputed line items were never subjected to a process of consultation prior to them being voted at the AGM. It was on that basis that the Adjudicator correctly found that there was no consultative process followed.
- [92] The applicant maintains that the Adjudicator’s decision was materially influenced by errors of law within the meaning of section 6(2)(d) of PAJA but has failed to set out any errors of law in the finding.
- [93] It is trite law that the judicial review for lawfulness of the exercise of discretion is unlike the remedy of appeal not concerned with the merits. In the matter of *Rustenburg Platinum Mines Ltd v Commission for Conciliation, Mediation & Arbitration*¹⁴ the Court observed that in a review the question is not whether the decision is capable of being justified but whether the decision maker properly exercised the powers entrusted to him or her. The focus is on the process and on the way in which in the decision maker came to the challenged decision.
- [94] The applicant further alleges that the decision was not rationally connected to the information before the Adjudicator within the meaning of section 6(2)(f)(ii)

¹⁴ 2007 (1) SA 576 (SCA) at 31.

(cc) of PAJA and also not rationally connected to the reason given for it by the Adjudicator within the meaning of Section 6(2)(f)(ii)(dd) of PAJA.

[95] It is trite law that administrative action that fails to pass the threshold of rationality is unlawful. The Supreme Court of Appeal in *Minister of Home Affairs and Others v Scalabrini Centre Cape Town and Others*¹⁵ at paragraph 66 said the following:

“Whether a decision is rationally related to its purpose is a factual enquiry blended with a measure of judgment. It is here that Courts are enjoined not to stray into executive territory.”

[96] The setting of this standard does not mean that the Courts can or should substitute their opinions as to what is appropriate for the opinion of those in which the power has been vested. The Adjudicator in my view expressed her position rationally by taking into consideration not only the long history of dispute between the parties that led to a Settlement Agreement but also analysed the evidence before her before making a finding. The Adjudicator took into consideration the submissions by both the applicant and the first respondent into consideration before she made her findings.

[97] The applicant contends that the Adjudicator made irrelevant considerations into account and disregarded relevant consideration as an example at paragraph 157 of the Founding Affidavit, the applicant states that the Adjudicator failed to deal with the Waterford argument that it was in terms of the schedule implied law that owners of the units in the scheme would be obliged to become members of Waterford. This is not true because in the respondents Answering Affidavit reference was made to section 11(2) of the Sectional Titles Act as well as to Clause 3 of the Articles of Association of Waterford which clearly indicates that it is the Body Corporate of Riverside which is a member of Waterford and not the individual Unit Owners. Similarly, reliance on the Settlement Agreement to argue that the Unit Owners are members of Waterford is countered by the fact that the applicant cancelled

¹⁵ 2013 (6) SA 421 (SCA).

the agreement. This in my view confirms that even the applicant never considered the Unit members as members of Waterford. It must also recall that in one year Unit Owners were refused the right to vote or participate at the AGM of Waterford.

Is section 39(1)(c) and 39(1)(e) of the CSOS Act unconstitutional

[98] The applicant seeks an order to declare both sections unconstitutional on the basis that the sections were never intended to vest the Adjudicator with the authority to declare a payment or levy unreasonable.

[99] Section 39 deals with the prayers for relief and read as follows:

“An application made in terms of section 38 must include one or more of the following orders: (1) in respect of financial issues

c) an order declaring that a contribution on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;

e) an order for the payment or repayment of a contribution or any other amount.”

[100] The challenge to constitutionality of the clause was brought about by the Adjudicator having found in favour of the first respondent on its counterclaim. In paragraph 129.23 and 129.4 of her finding the Adjudicator concluded as follows:

“129.23 With regard to 1 March 2018 to 28 February 2019 levies the Applicant decided to adopt the formula in determining the Respondents contribution. As this was the formula successfully applied for more than 10 years, I find that the application thereof was fair and reasonable to the extent that only the line items in the formula were

levied. My findings on the line items above should thus be applied in calculating how much is owed to the Respondents in this regard

129.24 With regard to the 1 March 2019 to 29 February 2020 levies I find that the calculation of the RSL's contribution based on the entire Estate's expenses on a 1:1 basis was unreasonable and unfair. This is irrespective of the Directors discretionary discount of 45%. The said levies should thus be recalculated based on the Municipal valuation method proposed by Mr Leonard which is 9.94% of the Estate expenses."

[101] The respondents in their statement setting out their counterclaim said the following:

- d) However, at the outset it is placed on record that the respondents are not adverse to paying levies to the applicant.
- e) what is disputed and has been disputed for a significant amount of time is the legitimacy and quantum of the levies that the applicant seeks to impose on the respondents and which the applicant now seeks to claim.
- f) As will be detailed below the levies have been imposed arbitrarily and in breach of an agreement reached between the applicant and the first respondent.
- g) It is for this reason that the respondents seek an order declaring that a contribution levied on the respondents has been incorrectly determined or is unreasonable and an order for the adjustment of the contribution to a correct of reasonable amount.

[102] In their response to this portion the counterclaim all that the applicant stated in their Replying Affidavit is the following:

“The Adjudicator has no jurisdiction to declare that a contribution which was levied before the date of the commencement of the CSOS Act (7 October 2016) was incorrectly determined or unreasonable.”

[103] There was never a challenge that the clause was unconstitutional. It is brought for the first time in this review application. The CSOS Act specifically sets out that the Adjudicator is entitled to make an order in terms of section 39(1)(c) which is an order declaring that a contribution levied on owners or occupiers or the way it is to be paid is incorrectly determined or unreasonable and to make an order for the adjustment of the contribution to a correct or reasonable amount.

[104] It is worth noting that the words “reasonable” and “unreasonable” appear also in section 39(3)(d); section 39(4)(d) and (e); 39(6)(d) and (f). The applicant is not challenging the constitutional validity of the power or the relief that an Adjudicator is entitled to make in those sections. I agree that to make bold submissions that the Adjudicator was not empowered to reduce the contribution is without valid basis. Prayers 1 and 2 of the first respondents’ counter application shows that the findings made by the Adjudicator fall within the scope of the dispute that she was required to rule on in terms of the empowering statute.

[105] The challenge to constitutionality of section 39(1)(c) and (e) is opposed by the 104th to 108th respondents as well. Counsel for those respondents made common cause in their heads with the second to 102nd respondents.

[106] The writer Herbstein and Van Winsen in *Civil Practice of the High Court of South Africa*¹⁶ write as follows:

“The Constitution also makes provisions in Section 172(1)(a) for its own special form of declaratory order in that once it finds a law to be inconsistent with the Constitution, it has no discretion, it must declare such law to be invalid to the extent of its inconsistency. It differs from the conventional

¹⁶ Herbstein and Van Winsen *Civil Practice of the High Court of South Africa* 5ed. (Juta & Co Ltd.) at 1446 – 1447.

declaratory order in that the purpose of the latter is limited to an order that will be binding on the litigants, in the sense of it being *res judicata* between them, whereas in relation to a questions of constitutional validity an objective approach is taken.”

[107] This logic was espoused by the Constitutional Court in *Ferreira v Levin N.O. and Others; Vryenhoek and Others v Powell N.O. and Others*¹⁷ at paragraph 26 as follows:

“The answer to the first question is that the enquiry is an objective one. A statute is either valid or ‘of no force and effect to the extent of its inconsistency’. The subjective positions in which parties to a dispute may find themselves cannot have a bearing on the status of the provisions of a statute under attack. The Constitutional Court, or any other competent Court for that matter, ought not to restrict its enquiry to the position of one of the parties to a dispute in order to determine the validity of a law. The consequence of such a (subjective) approach would be to recognise the validity of a statute in respect of one litigant, only to deny it to another. Besides resulting in a denial to equal protection of the law, considerations of legal certainty being a central consideration in a constitutional state, militate against the adoption of the subjective approach.”

[108] This is precisely what the applicant seeks to achieve in its flawed submission of unconstitutionality of section 39(1)(c) and (e). It is common cause that the CSOS Act was promulgated to *inter alia* regulate Community Schemes and provide for a dispute resolution mechanism scheme.

[109] Section 4(1) describe what the CSOS hopes to achieve, which is to:

“(a) develop and provide a dispute resolution service in terms of this Act;

(b) provide training for conciliators, adjudicators and other employees of the Service; [and]

¹⁷ 1996 (1) SA 984 (CC).

(c) regulate, monitor and control the quality of all sectional titles scheme governance documentation and such other scheme governance documents as may be determined by the Minister by notice in the *Gazette*.”

[110] Section 4(2) provides that in performing its function the CSOS:

“(a) must promote good governance of community schemes;

(b) must provide education, information, documentation and such services as may be required to raise awareness to owners, occupiers, executive committees and other persons or entities who have rights and obligations in community schemes, as regards those rights and obligations; [and]

(c) must monitor community scheme governance.”

[111] All that the applicant says in paragraph 117 of their heads is that section 39(1) (c) affords the Adjudicator an unguided and unfettered discretion which renders the section unconstitutional.

[112] The applicant’s assertion is self-contradictory in that it concludes that despite a constitutionally compliant reading of the section being possible it still requires some interpretative work which the Adjudicator according to the applicant did not perform.

[113] This to me does not make sense. The Adjudicator is not required to interpret the section it is clear what her powers are. The Applicant’s constitutional attack is based on the allegation that the CSOS Act is vague because it does not provide a definition on how to determine “reasonable”.

[114] The argument by the applicant is also flawed in that the parties had between themselves decided on a formula which they all agreed was reasonable and to now argue that the Adjudicator has an extra task of determining reasonableness is in my view far-fetched.

- [115] The word “reasonable” is not new to the legislation in this country it is found in almost all statutes where an organ of state or bodies have to take action or exercise discretion. Examples of such legislation is section 33(1) of the Constitution also section 24(b), 25(5) and 32(2). I have also earlier in this judgement pointed out to other section of the CSOS Act in which the word “reasonable” is used. There is therefore nothing strange or magical about the use of that word.
- [116] An Adjudicator is required to make a determination not based on his or her subjective assessment but rather on what is reasonable applying the objective test (See: *Ferreira v Levin N.O.* supra).
- [117] The Minister as well as the CSOS respondents make the point that the provisions of section 39(1)(c) are clear and the correct interpretation thereof will be to understand the thinking of the legislature which they say is to have a mechanism to resolve disputes. The Minister makes a valid point that the Adjudicator does not use his own method to determine the contribution to be paid but rather he or she is required to analyse the facts and evidence provided to enable him or her to determine what is reasonable or unreasonable. In this matter there was also an agreed formula.
- [118] The applicant has not directed the Court to the provisions that it seeks to rely on in order to demonstrate that the impugned provisions are unconstitutional. The Adjudicator in his or her investigation is guided by the provisions of section 50 of the CSOS Act. He or she must observe the principles of due process of law, act quickly and with as little formality and technicality as is consistent with a proper consideration of the application and lastly must consider the relevance of all evidence. It is once an Adjudicator has followed that process that it can be safely concluded that they acted reasonably and as guided by the merits of each case.
- [119] I have come to the conclusion having read the evidence in the hearing and analysed the submission in this review application that the Adjudicator acted within the four corners of the provisions of the Act. In the result the

applicant's contention that section 39(1)(c) read with section 39(1)(e) is unconstitutional falls to be dismissed.

Costs

[120] The applicant pursued a challenge on the Constitutionality of Section 39(1)(c) and 39(1)(e) on weak and unsubstantiated basis and is accordingly not spared the issue of costs as in (*Biowatch Trust v Registrar, Genetic Resources, And Others*¹⁸). That challenge had no merits and was bound to be vehemently opposed by all parties and correctly so.

Order

[121] The Application to review the finding of the Adjudicator is dismissed.

[122] The applicant is ordered to pay the taxed party and party costs of all the respondents including the costs of Senior Counsel where two Counsels were involved.

Dated at Johannesburg on this day of August 2023

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

DATE OF HEARING	:	15 MARCH 2023
DATE OF JUDGMENT	:	AUGUST 2023
FOR APPLICANT	:	ADV FH OOSTHUIZEN
WITH	:	ADV DJ SMIT
INSTRUCTED BY	:	WARRENER DE AGRELA & ASSOCIATES

¹⁸ 2009 (6) SA 232 (CC)

FOR 1ST TO 102ND RESPONDENTS : ADV S JACKSON
INSTRUCTED BY : MESSRS EUGENE MARAIS
ATTORNEYS, SANDTON

FOR 104TH TO 107TH RESPONDENTS : ADV T MANCHA
INSTRUCTED BY : MESSRS SEANEGO ATTORNEYS

FOR 108TH RESPONDENT : ADV MAKAMU
INSTRUCTED BY : THE STATE ATTORNEY