

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 24576/2020

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

2nd to 102nd Respondents

LODGE SECTION TITLE SCHEME

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

**THE MINISTER OF HUMAN SETTLEMENTS
OF SOUTH AFRICA**

108th Respondent

JUDGMENT

MAKUME, J:

1. This matter came before me as a review in which the applicant sought an order setting aside certain decisions of the adjudicator who had been appointed in terms of section 48 of the Community Schemes Ombud Services Act (The CSOS Act).
2. The applicant also sought an order declaring section 39 (1) (c) read with section 39 (1) (e) of the CSOS Act unconstitutional as it affords an adjudicator powers 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 of a contribution pursuant to a declaration that a contribution levied is “unreasonable.”
3. In my judgment handed down on the 10th August 2023 I dismissed the review application as well as the prayer to declare section 39 (1)(c) & (e) unconstitutional.
4. In dismissing both applications I decided that the applicant pays the taxed party and party costs of all the respondents including costs of senior Counsel where two Counsels were involved.
5. It is common cause that the review application mainly concerned the first to 102nd Respondents whilst the attack on the constitutionality of the CSOS Act concern the rest of the Respondents.

6. The applicant seeks leave to appeal against the whole of the judgment granted against it on a number of grounds set out in the notice of leave to appeal.
7. In particular the Applicant contends that the judgment does not deal with the review raised in connection with the following:
 - 7.1 contributions levied in respect of the 2019 and 2020 financial year.
 - 7.2 The charging of interest.
8. A further ground of appeal is that I erred in my finding that the 101 owners of Units in Riverside lodge Sectional Title Scheme were not members of the Applicant.
9. Lastly the appeal is also directed at my finding about the constitutionality of Section 39(1)(c) of the CSOS Act including the cost order.
10. Section 17 (1) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that:
 - a. (i) The appeal would have a reasonable prospect of success.
 - b. There is some other compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.
11. As I have indicated there are two issues in this judgment. The first being the review application. I am satisfied that the grounds of appeal in respect of the review are fairly arguable. The resolution of the original application was by no means free from difficulty the issues raised therein were to some extent *res nova*. In the result it is my considered view that the appeal in respect of their review including whether the 101 Unit owners are members of the applicant has reasonable prospects of success.
12. As far as the attack on the Constitutionality of Section 39 (1) and (e) is concerned I am not persuaded that the Applicant has succeeded in demonstrating that it has reasonable prospects of success.
13. In the notice of motion the applicant sought an order to declare those sections unconstitutional and now in this application for leave to appeal the applicants now also contends that the section should be interpreted in a way which

complies with the constitution of the Republic of South Africa 1996 besides declaring same unconstitutional.

14. Section 39 (1)) (c) is written in clear and unambiguous language and can never be misunderstood to mean anything else than what it says. To read something into that section would be to attack the whole purpose of this CSOS Act. The application for leave to appeal the constitutionality finding falls to be dismissed.

15. In the results I make the following order:

Order

1. Leave to appeal against the finding in the review is hereby granted.
2. Leave to appeal against the constitutionally finding is dismissed.
3. Leave to appeal against the costs order is dismissed.
4. The cost of this application shall be the cost in the appeal of the review order.

Dated at Johannesburg on this 27 day of February 2024

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

Appearances

Date of hearing	:	23 February 2024
Date of Judgement	:	27 February 2024
For Applicant	:	Adv M Oosthuizen
For 2 nd to 102 nd Respondents	:	Adv S Jackson
For 104 th to 107 th Respondents	:	Adv T Manchu

For 108th Respondent

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Adv Makamu