



ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011

Case Number: CSOS 151/WC/18

IN THE MATTER BETWEEN

JOHANNES ESTERHUYZEN

(Applicant)

And

MR AND MRS VAN ZYL

(Respondents)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category(ies) of dispute (financial, behavioural, schemes governance, meetings, management services): **Behavioural issue.**

Applicant is seeking an order for the Croydon Vineyard Estate Architectural and Landscaping Design Guidelines to be applied and for the Respondents to be ordered to remove the wooden fence with plastic mesh from the border of their premises.

Such order is in line in the provision of section 39 (2) (d) of the CSOS Act which provides that an order be issued for the removal of all articles placed on or attached illegally to parts of a common area or a private area.

The Applicant averred that the wooden fence and plastic mesh does not conform with the Croydon Vineyard Estate Architectural and Landscaping Design Guidelines and that the Respondents should be ordered to remove them.

The Respondents were not present at the adjudication and the matter proceeded in their absence.

What was common cause was the fact that the Respondents had erected the wooden fence and plastic mesh and photographs were provided to prove this.

Finding: *A provisional order is granted with a return date of 6 September 2018 for the Respondents to show why the following order should not become final: In terms of section 39 (2) (d) of the CSOS Act the Respondents are ordered to remove the wooden fence and plastic mesh from their premises within a period of two (2) weeks from the date of this order becoming a final order.*

INTRODUCTION

1. The Applicant is **JOHANNES ESTERHUYZEN (REPRESENTING THE CROYDON VINEYARD ESTATE HOME OWNERS' ASSOCIATION)**.
2. The Respondents are **MR and MRS VAN ZYL**, the owners of Erf 1378 at 8 Gemini Lane, Croydon Vineyard Estate, Somerset West, Western Cape.
3. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Western Cape Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the Applicant.
4. The adjudication hearing took place on 7 August 2018. This application is before me because of a referral sent by the Western Cape Provincial Ombud in terms of section 48 of the Act, which Notice of Referral was communicated to both parties.
5. On 7 August 2018, the Applicant and Mr R Watson (trustee) were present at the hearing. The parties entered an appearance in terms of the Notice of Set Down which was sent out to them on 16 July 2018. The Respondents were not present at the hearing.

APPLICABLE PROVISIONS OF THE ACT

6. The hearing was conducted in terms of section 38 of the CSOS Act No. 9 of 2011 which provides that –

“Any person may make an application if such person is a party to or affected materially by a dispute”.

7. Section 45(1) provides that –

“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”

8. Section 47 provides that –

“on acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation’.

9. Section 48 provides that –

“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

10. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of the Act.

SUMMARY OF EVIDENCE

11. Applicant is seeking an order for the Croydon Vineyard Estate Architectural and Landscaping Design Guidelines to be applied and for the Respondents to be ordered to remove the wooden fence with plastic mesh from the border of their premises.
12. The Applicant handed in a set of 10 photographs that clearly depict the illegal fence that was erected by the Respondents. Photographs 9 and 10 indicate the type of hedge and the type of wall that would be allowed.
13. While the Respondents were not present at the hearing I did note from an email in the file that they indicated that the fence was erected in order to support a hedge that they intended to grow. However, in my view, the type of fence that they erected is clearly not necessary in order to grow a hedge.

Applicant's Submissions

14. The Applicant submitted that the hedge clearly did not conform to the guidelines and that it should be ordered to be removed.

APPLICANT'S PRAYERS

15. The Applicant sought the following relief: *"The illegal fence and structure must be removed."*

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

16. I have perused all written submissions and taken into consideration all submissions stated before me at the day of the hearing.
17. Section 39 (2) (d) of the CSOS Act provides as follows:

"39 (2) In respect of behavioural issues—

(d) an order for the removal of all articles placed on or attached illegally to parts of a common area or a private area."
18. On the evidence submitted and the submissions made I am satisfied that the Croydon Vineyard Estate Architectural and Landscaping Design Guidelines have not been followed and that the Respondents should be ordered to remove the wooden fence with plastic mesh from the border of their premises.

POWERS AND JURISDICTION OF THE ADJUDICATOR

19. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the Applicant to the CSOS.

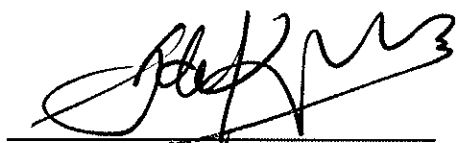
ADJUDICATION ORDER

20. Due to the fact that the Respondents were not present at the hearing I am going to grant a provisional order that, unless the respondents make any submissions, will become final as set out below.
21. I accordingly make the following order:
- a. A provisional order is granted with a return date of 6 September 2018 for the Respondents to show why the following order should not become final: In terms of section 39 (2) (d) of the CSOS Act the Respondents are ordered to remove the wooden fence and plastic mesh from their premises within a period of two (2) weeks from the date of this order becoming a final order;
 - b. no order as to costs is made.

RIGHT OF APPEAL

22. In terms of section 57 of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) a person who is dissatisfied with an adjudicator's order is entitled to appeal to the High Court, but only on a question of law. The appeal must be lodged within 30 days after delivery of the order.

Signed at Cape Town on the 8th day of August 2018.



**ADV GPC DE KOCK
ADJUDICATOR**

