

SOUTH AFRICA / JUDGMENT

Achuko v Rozanne Close Body Corporate and Others (2023/05508) [2024] ZAGPJHC 323 (28 March 2024) [2024] ZAGPJHC 323

COURT

South Gauteng High Court, Johannesburg

BEFORE

Makume, Wadee

CASE / FILE NUMBER

2023/05508

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
JOHANNESBURG

CASE

NO: 2023-05508

1. REPORTABLE:

2. OF

INTEREST TO OTHER
JUDGES:

3. REVISED.

In the matter between: ERIC
 ACHUKO
 Appellant/Plaintiff
 and
 ROZANNE
 CLOSE BODY CORPORATE
 1st
 Respondent
 ADJUDICATOR
 2nd
 Respondent
 CSOS
 3rd
 Respondent

JUDGMENT

MAKUME J:

- [1] The Appellant is the registered owner of Units 1[...] and 2[...] within the Sectional Title Scheme Rozanne Close situated at 2[...] H[...] Street, K[...] P[...], Gauteng Province.
- [2] The first Respondent is a community scheme defined in the Community Scheme Ombud Service Act Number 9 of 2011 (the CSOS Act).
- [3] The first Respondent manages the scheme in terms of the Sectional Titles Scheme Management Act number 8 of 2011 (STSMA).
- [4] The second Respondent is the Adjudicator appointed in terms of the CSOS Act to attend to dispute resolution between unit owners and the first Respondent.
- [5] On the 30th December 2022 the Applicant lodged a dispute in terms of Section 38 of the CSOS Act against the first Respondent.
- [6] The dispute, that the Appellant sought intervention on is in connection with charges that the first Respondent levied against the Appellant. In particular the Appellant complained about a levy that appears on his statement of account which is described as “cash deposit fee.”
- [7] The Appellant says that such charges levied against him are unfair and unlawful. He requested to be refunded what he had already paid to the first Respondent. In the complaint he prays for the following relief:
 - (i) That the conduct of the Body Corporate be declared unfair and unlawful
 - (ii) An order directing the Body Corporate to refund him all the amounts described as cash deposit.

- [8] Attached to his complaint form is a series of statements of account issued by the property management company called White House on behalf of the Body Corporate. The statement dated 1st January 2017 indicate that on 7th December 2016 an amount of R45.04 was debited as cash deposit fee. The next statement attached is dated 1st August 2021 issued by Jawitz and shows a cash deposit of R54.25. The next statement dated 1st November 2022 does not have such an amount levied.
- [9] On the 3rd November 2022 the Appellant in an email raised the issue of cash deposit fee and demanded refund of R10 000.00 (Ten Thousand Rand) from the Body Corporate. This was refused.
- [10] On receipt of the complaint the Body Corporate manager explained how this cash deposit fee item came about. It was explained that unit owners were advised that the bank charges on the account of the Body Corporate were exorbitant and this was as a result of Unit owners making direct bank deposit instead of using EFT.
- [11] The Body Corporate informed CSOS that a resolution was unanimously adopted in the year 2014 that bank charges incurred as a result of Unit owners making direct bank deposit would be passed on to the Unit owner hence the charges. It was agreed that this amounted to “exclusive use expense” which should remain the liability of the individual unit owner and not to be charged as a commercial expense.
- [12] In response to the explanation given by the Body Corporate the Appellant Mr Achuko could only say that the resolution adopted by the AGM in 2014 was unlawful and inconsistent with the laws of the Republic as well as the Common Law of fairness including Section 100 (2) of the National Credit Act of 2005. The Body Corporate is not a credit provider as defined in the NCA therefore reference to this Act is misdirected.
- [13] The Adjudicator made a finding dismissing the complaint and reiterated that the resolution was passed at a properly constituted meeting of the Body Corporate and by the Trustees and the Appellant as a member of the Body Corporate was bound by that resolution.
- [14] The Appellant is now appealing against that ruling. Section 57 of the CSOS Act provides that any affected person who is dissatisfied by an Adjudication order may appeal to the High Court but only on a question of law which appeal must be lodged within 30 days after delivery of this order by the Adjudicator.
- [15] The Adjudicator delivered his finding on the 24th April 2023. The Appellant filed his notice of appeal on the 11th May 2023 which was within time.
- [16] In paragraph 6 of his heads of argument the Appellant says the following:
- “in order for a fine or penalty to be enforceable by a Body Corporate it must be lawfully adopted by the Body Corporate after the taking of the appropriate resolution.”*

[17] The Adjudicator in dismissing the complaint correctly found that the resolution to recover the bank charges from individuals Until owners who did not convert to EFT payment was unanimously adopted at a properly constituted meeting of the Body Corporate as well as at a meeting of the Trustees.

[18] In the result the appeal is dismissed with costs.

DATED at JOHANNESBURG this the day of MARCH 2024.

M A MAKUME

JUDGE OF THE HIGH COURT

I agree,

WADEE

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

DATE OF HEARING: 14 MARCH 2024

DATE OF JUDGMENT: MARCH 2024

FOR APPLICANT:

IN PERSON

FOR RESPONDENT: ADV

INSTRUCTED BY:

MESSRS

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