

WHY LEGAL STANDING MATTERS WHEN APPROACHING CSOS

SUMMARY OF THE HIGH RULING ON THE APPEAL BY THE BODY CORPORATE OF SWEETWATERS

Court Information

- **Court:** High Court of South Africa, KwaZulu-Natal Local Division: Durban
- **Case No:** 11936/23
- **Date of Hearing:** 5th November 2024
- **Date of Judgement:** 5th December 2024

Parties Involved

- **Applicant:** The Trustees of the Body Corporate of Sweetwaters
- **First Respondent:** Luxmi Devi Chetty
- **Second Respondent:** Community Schemes Ombud Service KZN
- **Third Respondent:** Sugandhini Rajaruthnam N.O. (Community Schemes Ombud Adjudicator)

Order Issued

- The late lodgement of the applicant's appeal is condoned.
- The appeal in terms of section 57 of the Community Schemes Ombud Service Act 9 of 2011 is upheld.
- The adjudication order dated 28 June 2023 is set aside.
- The first respondent is directed to pay the costs of the suit on scale B.

Key Events

The applicant, the Body Corporate of Sweetwaters, appealed against an adjudication order granted by the Community Schemes Ombud in favor of the first respondent, Luxmi Devi Chetty. The first respondent had lodged a dispute alleging various grievances against the Body Corporate, which resulted in a default adjudication order due to the Body Corporate's non-response.

Notes

- The first respondent acted on a power of attorney from her husband, Dhesigan Gounden, who owned a unit in the Body Corporate.
- The adjudicator issued an order that included provisions for calling a general meeting to finalize the 2022 AGM, declaring previous resolutions void, and providing access to financial statements.
- The Body Corporate became aware of the adjudication order only on 18 July 2023 and filed a rescission application, which was not acknowledged, leading to the appeal being filed on 25 October 2023.

Issues for Determination

- Whether the late lodgement of the appeal should be condoned.
- Whether the adjudicator erred in law regarding the standing of the first respondent to lodge the dispute.

Findings of the Court

Condonation

- The court found that the late lodgement was justified given the circumstances. The applicant's delay was attributed to the lack of communication regarding the adjudication order and their subsequent attempt to seek rescission.
- The court accepted the amendment to include a request for condonation, allowing the appeal to proceed.

Standing of the First Respondent

- The court ruled that the first respondent lacked the necessary standing to lodge the dispute as she was neither the owner of a unit nor materially affected by the community scheme.
- The adjudicator failed to verify the standing of the first respondent before proceeding with the dispute, which constituted an error of law.

Conclusion

The court concluded that the adjudication order was not valid as the first respondent did not have the requisite authority to lodge the complaint. As a result, the appeal was granted, and the adjudication order was set aside.

Final Remarks

The judgment emphasizes the importance of adhering to the legislative requirements concerning standing in disputes within community schemes. The ruling seeks to uphold the integrity of the Community Schemes Ombud Service Act and ensure that disputes are resolved lawfully and justly.



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