REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A288/2025

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

29/6/2026 [redacted]
DATE SIGNATURE

In the matter between:

TSENGAYI CHANYANYA	Appellant
and	
THE TRUSTEES OF SUNSET VILLAS BODY CORPORATE	First Respondent
ADV. LIHLE HLOPHE N.O. (Adjudicator appointed by the Community Schemes Ombud Service)	Second Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 29 June 2026.

JUDGMENT

POTTERILL J

Introduction

[1] Before us is an appeal against the decision of the second respondent, the Adjudicator appointed by the Community Schemes Ombud Service. The appeal is brought under section 57 of the Community Schemes Ombud Service Act 9 of 2011 [the Act]. Neither the first nor second respondent opposed the application with the second respondent abiding the Court's decision. The appellant was not legally represented, he appeared in person.

[2] In terms of section 57 (1) of the Act an applicant "may appeal to the High Court, but only on a question of law."

The Adjudicator's decision

[3] Prior to the Adjudicator issuing the decision she in terms of section 51(1)(a)(i) of the Act sought from the appellant the summons issued, proof of the payment of the outstanding levies and the current levy statement indicating the legal fees levied against the appellant's account.

[4] The decision was adjudicated on the documents provided by the appellant as the first respondent did not provide any documents. The appellant did however not provide any further documents when requested to do so.

[5] The Adjudicator set out that the appellant is the registered owner of unit 4 of the first respondent's sectional scheme. He received an email reminder from debt collectors pertaining to his outstanding arrear levies. He settled the levies on 25 November 2022. However, on the same day he received a summons claiming the arrear levies without following the proper procedures; where payment plans were accepted or rejected. He knew that payment plans had to be accepted or rejected, this has been the norm with other units. He knows this because he previously functioned as a Trustee for the first respondent.

[6] The Appellant complaint thus that the summons was issued prematurely; i.e. before the timeframe communicated to settle the debt had elapsed.

[7] The relief sought was in terms of clause 39 (1)(e) of the Act in that he sought an order for the reversal of the summons costs that was levied on his account. He also sought the reversal of the interest levied associated with those costs.

[8] The Adjudicator did not accept into evidence correspondence of the owner of unit 35's legal representative as it was privileged information. She did so in terms of section 50(c) of the Act. The letter was obtained by the appellant during his tenure as a trustee and it could not be used for his personal benefit. She also found the evidence in the letter to be irrelevant as it did not prove a procedure before issuing a summons but related to settlement negotiations between parties.

[9] The appellant submitted that the body corporate did not have a debt recovery policy as averred by the debt collectors. A policy can only be laid down by the body corporate's Management Rules or the STSMA legal framework. Settlement negotiations concluded with one party are not binding on other parties.

[10] The appellant was served with a letter of demand before the summons was issued. The appellant refused to sign an acknowledgement of debt [AOD] because he did not dispute he owed the amount claimed.

[11] The attorneys could not be faulted for issuing a summons despite his undertaking to pay in November 2022. This is so because the appellant refused to sign an AOD.

[12] The correspondence attached by the appellant showed a cavalier and combative approach towards the attorneys of the first respondent.

[13] Despite a request by the Adjudicator for the summons to be provided, the appellant failed to do so.

[14] The first respondent was entitled to the legal costs incurred. Management rule 25(4) was qualified by the Supreme Court of Appeal in that recovering arrear amounts need not be taxed for inclusion to the levies and other charges. Management Rule 25(4) and (5) read as follows:

> "(4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by

the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.

(5) The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator."

[15] The Adjudicator found the costs needed not to be taxed as untaxed legal costs formed part of the monies due by a member. She relied for this conclusion on the judgment of *Body Corporate, Marsh Rose v Steinmuller and Others* 2024 (2) SA 270 (SCA) and *Barnard NO v Regspersoon van Aminie and Another* 2001 (3) SA 973 (SCA), also mentioned the enunciation in *SS Glen High v Kruger NO (2023/055133) [2024] ZAGPJHC* 1059 (10 September 2024) that:

"[28] In this matter the conduct rules of the Body Corporate determine "if a Body Corporate or Trustees instruct a Firm of attorneys in connection with or arising out of any infringement by an Occupant of any provision of these rules, such Occupant shall be liable to reimburse the Body Corporate on demand for all its legal costs incurred in respect thereof on an attorney and client basis." [Own Emphasis]. The emphasis placed on reimbursement of costs incurred on an attorney and client scale. *The Conduct Rules are rules that the Respondent consented to upon becoming a member. There is an underlying agreement to be bound by it"*.

Furthermore, the costs were already incurred. These costs were paid by the Body Corporate and need not be taxed because it is not attorney's fees."

Reasons for this Court's decision

[16] The first ground raised was that the Adjudicator erred in law by adjudicating the dispute under section 39(1)(c) of the Act. This section relates to financial issues: "an order for the payment of a contribution or any other amount." It was argued that the correct inquiry concerned governance processes of the first respondent in issuing the summons, including the improper delegation of authority to debt collectors, the failure

to follow established procedures for approving or rejecting plans. The dispute should have been decided in terms of section 39(3) of the Act.

[17] Section 39(3) reads as follows:

"In respect of scheme governance issues:

(a) an order requiring the association to record a new scheme governance provision consistent with a provision approved by the association;

(b) an order requiring the association to approve and record a new scheme governance provision;

(c) an order declaring that a scheme governance provision is invalid and requiring the association to approve and record a new scheme governance provision to remove the invalid provision; or

(d) an order declaring that a scheme governance provision, having regard to the interests of all owners and occupiers in the community scheme, is unreasonable, and requiring the association to approve and record a new scheme governance provision –

(i) to remove the provision;

(ii) if appropriate, to restore an earlier provision;

(iii) to amend the provision; or

(iv) to substitute a new provision."

[18] The appellant's argument is flawed and is bad in law. When interpreting section 39(3) it does relate to governance issues, but the appellant is not seeking to approve or record a new governance scheme or provision. He is not seeking to declare a scheme governance provision invalid, or unreasonable. The appellant's relief sought is repayment of an amount which he based on an averred existing governance issue, not a new or invalid one. The Adjudicator correctly applied section 39(1)(e).

[19] The crux of the appeal evolved around the submission by the appellant that there existed a policy that debt collectors did not have the right to determine settlement

schedules or issues without the trustees' approval. The issuing of the summons also had to be approved by the Trustees. The appellant had refused to sign the AOD because it was not provided to the Trustees.

[20] The core of this argument flows from his averred prior knowledge of such a policy as confirmed by the letter pertaining to unit 35. The Adjudicator was correct in disallowing this evidence due to confidentiality and relevance. A letter to one unit, which in fact relates to negotiations is not a precedent for other parties' negotiations. At the hearing of the appeal, the appellant conceded that he did not provide proof of the policy that he avers he has knowledge of and must be followed. He requested that he be afforded an opportunity to provide the proof.

[21] The appellant cannot get a second bite at the cherry. He could have provided it in his many, quite hostile emails to the attorney for the first respondent. He could have provided it when he sought adjudication in terms of the Act. He could have provided it when he was requested by the Adjudicator to provide further documents. He did not. But in any event, this is not a legal dispute but a factual one.

[22] There was no procedural irregularity due to the first respondent's non-participation in this matter. The mere fact that a party does not participate is not an irregularity. The Adjudicator did seek participation from the first respondent. She did ask further documents from the first respondent. She did not need to investigate any further and *Kilbourn v Zwemstra NO and Others* [2023] ZAGPPHC 1938 (14 November 2023) is not a precedent for this submission. It does not deal with an adjudicator's investigative duties.

[23] The appellant submitted that the Adjudicator erred in law by placing undue emphasis on the appellant's failure to provide a copy of the summons, which is immaterial to the substantive governance issues. It was argued that the contents of the summons were irrelevant as the dispute centred on the procedural invalidity of its issuance. The appellant submitted that the summons was by law not invalid.

[24] A letter of demand was sent and received prior to issuing the summons. The appellant, for obstinate reasons refused to sign the AOD. He had admitted he owed the monies and made different payment arrangements. The first respondent needed certainty and was legally entitled to seek signature of an AOD. When that was refused

the attorney was entitled to proceed to issue a summons. The appellant did not prove before the Adjudicator that the Trustees first had to grant permission. The main issue raised was that the summons was issued before the repayment period had lapsed. The managing agent confirmed in the email that the Managing Agent was appointed and given a mandate to collect the arrears as one of the key functions of being a Managing Agent. The summons was issued in line with the instructions of the Trustees. If there is no AOD then there was no payment agreement. The appellant had in fact stated he would pay the balance of the arrears in November and December; although he had paid in November, the summons was issued in November.

[25] One can understand that the appellant is disgruntled because he made a payment and on that date the summons was served, but his refusal to sign an AOD had caused the legal fees, not the unlawful actions of the Managing Agent.

[26] The appeal is dismissed. No order as to costs.

[redacted]

S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree

[redacted]

N.V. KHUMALO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: A288/2025

HEARD ON: 7 May 2026

FOR THE APPLICANT: IN PERSON

FOR THE 1ST RESPONDENT: NO APPEARANCE

FOR THE 2nd RESPONDENT: NO APPEARANCE

DATE OF JUDGMENT: 29 June 2026