

REPUBLIC OF SOUTH AFRICA



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

CASE NO: A3034/2018

In the matter between:

STENERSON AND TULLEKEN ADMINISTRATION CC

Applicant

and

LINTON PARK BODY CORPORATE

First Respondent

COMMUNITY SCHEMES OMBUD SERVICE ADJUDICATOR

Second Respondent

and

COMMUNITY SCHEMES OMBUD SERVICE

Amicus curiae

JUDGMENT SUMMARY

Community Schemes Ombud Service Act 9 of 2011 (the 'CSOS Act') – appeal against order of adjudicator under s 57 – nature of statutory appeal in CSOS Act – procedure for lodgement of appeal in terms of s 57 of CSOS – s 57 appeal not akin to a 'judicial review' – s 57 permits an 'ordinary' appeal, but limited to a question of law – adjudicator's findings of fact cannot be re-considered on appeal – s 57 appeal to be brought by way of notice of appeal, which cites the Community Schemes Ombud Service ('CSOS') and the adjudicator.

Background

The appellant in this matter brought an appeal under s 57 of the Community Schemes Ombud Service Act 9 of 2011 by filing a notice of appeal and appeal record, and following the procedures set out in Rule 50 of the Uniform Rules of Court.

Section 57 of the CSOS Act provides as follows:

(1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.

(2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.

In the matter of *Trustees, Avenues Body Corporate v Shmaryahu and Another* 2015 (4) SA 566 (WCC), which was followed in the decision of *The Body Corporate of Duroc Centre v Singh* (AR99/18) [2019] ZAKZPHC 29 (13 May 2019), it was held that the 'appeal' referred to in s 57 in fact connoted a review. It was stated that, '[w]hat may be sought in terms of s 57 is an order from this court setting aside a decision by a statutory functionary on the narrow ground that it was founded on an error of law. The relief available in terms of s 57 is closely analogous to that which might be sought on judicial review.' The Western Cape High Court set out a procedure for the noting of a s 57 appeal, stating that it should be brought by way of a notice of motion, supported by affidavit(s).

In light of the uncertainty regarding appeals brought under s 57, the Judge President constituted a Full Court for the purposes of making a determination on the manner and procedure to be followed when noting appeals in terms of s 57 of the CSOS Act.

The Court

The Full Bench differed from the approach in *Shmaryahu* in its interpretation of s 57. Referring to the categories of appeals as set out in *Tikly and Others v Johannes NO and Others* 1963 (2) SA 588 (T), the Court held that the appeal contemplated by s 57 is an appeal in the ordinary strict sense, with the proviso that the right of appeal is limited to questions of law only. In other words, it is an appeal where there is a re-hearing on the merits, but limited to the information or evidence on which the decision under the appeal was given, and in which the only determination to be made by the court of appeal is whether the decision was right or wrong in respect of a question of law.

In making its determination, the Court considered the inquisitorial powers afforded to the adjudicator and the nature of the proceedings (where the procedure adopted is less strict than in an ordinary court). In this regard, the Full Bench found that an appeal court would have to defer to the adjudicator's findings of fact. By limiting the appeal to a question of law, the purpose of the CSOS Act, which seeks to provide an informal, cost-effective, and expeditious dispute resolution mechanism, would not be undermined.

The Court prescribed the following procedure for all appeals on the question of law contemplated in s 57 of the CSOS Act:

- (a) The appeal should be brought by way of notice of appeal where the grounds of appeal are set out succinctly.
- (b) The notice should be served on the respondent parties by the Sheriff.
- (c) Both the adjudicator and CSOS should be cited as respondents.
- (d) While the adjudicator or CSOS might be expected to abide the judgment of the court, nothing precludes them from filing a report for the court in respect of any aspect of the law which they might consider to be helpful to the court.

Coram: Matojane J, Adams J, Nobanda AJ