



NATIONAL ASSOCIATION
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NAMA Notice Board

Issue 3/2019

Thursday, 31 October 2019

**Stenersen and Tulleken Administration cc // Linton Park
BC and CSOS document attached to this email**

TO ALL NAMA MEMBERS

CONFUSION OVER APPEALS AGAINST CSOS AWARDS REACHES RESOLUTION

In terms of Section 57 of the Community Schemes Ombud Service Act :

- (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 by the adjudicator;
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

This short clause has caused consternation of late. Various courts interpreted the clause in different ways and divergent practices emerged in the different provincial divisions.

The word "appeal" can have different connotations:- in the wide sense it means that there must be a complete re-hearing of the merits with additional evidence. In a strict sense it means a re-hearing on the merits but limited to the old evidence. The third interpretation is that an appeal can be a judicial review which is a limited and more informal process.

Due to all these different interpretations, on the 26th of March 2019, the Gauteng High Court issued a practice directive to allow a Full Bench of the High Court to make a final decision. This decision would then be implemented across all the courts. The Full Bench heard the matter on the 13th of June 2019.

During October 2019, the final outcome was publicized -

The judges submitted that:

In essence, by limiting the scope of an appeal to questions of law only, the court of appeal is only tasked with deciding whether the conclusion of law reached by the adjudicator was right or wrong. This determination can only be made based on the facts in existence at the time the order was given and as they appear from the record. This ensures that the cases are dealt with in an uncomplicated and expeditious manner. To conclude otherwise would defeat the purpose of what the CSOS Act seeks to achieve.

They ordered that the following appeal process be followed consistently:

- (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) The CSOS are welcome to file any report which may be helpful;
- (e) No transcribing for the record is necessary (Helpful in keeping costs down)

Community Scheme industry stakeholders have welcomed the clarity which the judgement brings.

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