

2ND CSOS INDABA 2024



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LESSONS FROM SOME RECENT COURT DECISIONS

All of the cases discussed involve Section 57 appeals save for one which was a review of a CSOS decision to accept and application for dispute resolution.

CASES CONSIDERED:

- **Stone River Management Association NPA v Mashoko and Others (A2023/035929) [2024] ZAGPJHC 800 (23 August 2024)**
- **Montrose Mews Body Corporate v Moela (2023/019308) [2024] ZAGPJHC 198 (7 March 2024)**
- **Reddy and Another v Cedar Lakes Homeowners Association NPC and Others (A018904/2022) [2024] ZAGPJHC 468 (17 May 2024)**
- **Eagle Canyon Golf Estate Homeowners and Another v Groenveld and Others (59207/ 2021) [2023] ZAGPJHC 468 (12 May 2023)**



*Stone River Management Association
NPA v Mashoko and Others
(A2023/035929) [2024] ZAGPJHC 800 (23
August 2024):*

- This case concerned the imposition of late building penalties by the HOA and the CSOS Adjudicators decision not to grant the HOA an order for the recovery of such penalties on the basis that notice had not been given before the penalty was imposed.
- This case highlights the importance of having a **proper understanding of an associations' governance documents**, both in terms of the substantive obligations and processes provided for.



Montrose Mews Body Corporate v Moela (2023/019308) [2024] ZAGPJHC 198 (7 March 2024):

- This case concerned the right of access to information as it pertains to sectional title schemes.
- The court clarified that PAIA does not apply to a request by a member for “bank statements” under PMR 26(2), being the pre-existing legal right of the member/requester.
- The decision interprets what “books of account” are and, as in ***Stone River***, this case highlights the importance of having a **clear understanding of the legal rights and obligations** in place.



Reddy and Another v Cedar Lakes Homeowners Association NPC and Others (A018904/2022) [2024] ZAGPJHC 468 (17 May 2024):

- This case concerned an HOA refusing approval of a garage door and ordering its removal.
- The Adjudicator ordered the removal, but the Court held that the Adjudicator erred in not considering all of the evidence of inconsistent application of the rules by the HOA.
- The Court found this to be an error of law and held that the Adjudicator should have found the HOA to have acted unreasonably and inconsistently.
- This case highlights the importance of **presenting and considering all of the evidence** and **acting consistently**.





Eagle Canyon Golf Estate Homeowners and Another v Groenveld and Others (59207/ 2021) [2023] ZAGPJHC 468 (12 May 2023):

- The Court was tasked with reviewing a decision by CSOS to accept an application for dispute resolution in which the homeowner sought an apology from the HOA.
- The Court confirmed that the provisions of Section 42 are preemptory once the requirements of Section 39 are not met despite CSOS being motivated by a general approach to reconcile disputes between schemes and their members.
- The case highlights the importance of ensuring that the **correct relief is sought** and that it **fits under Section 39**.





IN CONCLUSION:

- Ensure that the legal framework (contractual vs. statutory) and the associations governance documents are considered, understood and applied
- Follow the correct processes
- Act consistently
- Present and consider all relevant evidence
- Be clear and ensure that the correct relief is sought and that it fits under Section 39

END