

Real Estate Law & Conveyancing

10 February 2026

SOUTH AFRICA

- SCA clarifies forum options for community scheme disputes



For more insight into our
expertise and services



SCA clarifies forum options for community scheme disputes

In Parch Properties 72 (Pty) Ltd v Summervale Lifestyle Estate Owner's Association and Others (171/2024) [2025] ZASCA 155 (17 October 2025) the Supreme Court of Appeal (SCA) has clarified that disputes involving community schemes do not have to be taken exclusively to the Community Schemes Ombud Service (CSOS) before they can go to court.

While CSOS remains a cost-effective and accessible forum, parties retain the right to approach the courts directly (particularly for urgent, complex, or precedent-setting matters). This ruling confirms the flexibility and strategic choice available to homeowners, trustees, bodies corporate, homeowners' associations and developers when choosing how to resolve disputes.

The prevailing misconception

A widespread assumption has prevailed in the property and sectional title sector that disputes relating to the governance of community schemes – especially those contemplated in section 39 of the Community Schemes Ombud Service Act 9 of 2011 (CSOS Act) – had to be referred to CSOS as a mandatory first step (unless there were exceptional circumstances warranting the court determining the matter as a forum of first instance).

The SCA's decisive intervention

The SCA has now decisively dispelled that belief, providing legal clarity on forum choice in community scheme governance disputes. In its judgment, the court reaffirmed the foundational principle of South African law that there is a strong presumption against the exclusion of the High Court's jurisdiction. Unless legislation expressly or by necessary implication removes that jurisdiction, the courts remain open to litigants. The CSOS Act, the court confirmed, neither ousts nor restricts the High Court's authority.

CSOS as an option, not an obligation

CSOS was established to provide an accessible, efficient and cost-effective mechanism for resolving community scheme disputes. However, it was never intended to replace the courts entirely. Rather, it operates alongside them. Parties are therefore entitled to choose the forum best suited to their circumstances, taking into account factors such as urgency and legal complexity. CSOS remains a valuable resource, particularly for straightforward disputes where speed and cost-efficiency are paramount, but it is not a compulsory gateway.

Practical implications for stakeholders

The implications of this clarification are far-reaching. Trustees, bodies corporate, homeowners' associations and developers are no longer confined to a single procedural pathway. Urgent disputes can be taken directly to court without delay and matters involving constitutional interpretation or broader legal principles can be placed before a judge without first navigating the CSOS process.

Consider the following practical scenarios:

- **Urgent interdicts:** Where immediate relief is required to prevent irreparable harm – such as unauthorised construction or imminent financial prejudice – parties can now approach the High Court directly for urgent relief.
- **Constitutional challenges:** Disputes raising questions of constitutional validity or interpretation can be brought before the courts without the delay inherent in administrative processes.
- **Precedent-setting matters:** Where a legal principle requires authoritative judicial determination that will affect the broader sector, parties can elect to litigate in the High Court.
- **Complex commercial disputes:** Multi-party disputes involving developers, body corporates and third-party contractors may be better suited to the High Court's case-management procedures.

Going forward

While the SCA has confirmed that parties may choose their forum, this does not mean that CSOS should be disregarded. In many cases, it will remain the most practical and cost-effective option.

Importantly, courts retain the discretion to make adverse costs orders to discourage inappropriate resort to the courts in respect of matters that could, and more appropriately should, have been taken to CSOS (e.g. *Coral Island Body Corporate v Hoge* [2019] ZAWCHC 58, 2019 (5) SA 158 (WCC 2019 (5) SA 158 (WCC))).

Legal practitioners and parties should engage in careful strategic analysis when disputes arise, taking into consideration:

- the nature and urgency of the dispute;
- the relative costs and timeframes of each forum;
- the need for interim relief that CSOS cannot provide;
- the risk of adverse costs orders if the court determines CSOS would have been more appropriate; and
- whether the dispute raises novel legal issues deserving of judicial attention.

Conclusion

In confirming that CSOS is a valuable option, but not an exclusive one, the SCA has recalibrated the balance between administrative dispute resolution and judicial oversight, strengthening access to justice in the community schemes sector.

This judgment does not diminish the importance of CSOS. Rather, it clarifies its proper role within the broader dispute-resolution landscape. Community schemes, homeowners and developers now have the flexibility to select the forum most appropriate to their circumstances, ensuring that disputes are resolved efficiently, fairly and in accordance with the rule of law.

Samantha Kelly



OUR TEAM

For more information about our Real Estate Law & Conveyancing practice and services in South Africa, Kenya and Namibia, please contact:



Muhammad Gattoo
Practice Head & Director:
Real Estate Law & Conveyancing
T +27 (0)11 562 1174
E muhammad.gattoo@cdhlegal.com



Patrick Kauta
Managing Partner | Namibia
T +264 833 730 100
M +264 811 447 777
E patrick.kauta@cdhlegal.com



Bronwyn Brown
Director:
Real Estate Law & Conveyancing
T +27 (0)11 562 1235
E bronwyn.brown@cdhlegal.com



Simone Franks
Director:
Real Estate Law & Conveyancing
T +27 (0)21 670 7462
E simone.franks@cdhlegal.com



Fatima Gattoo
Director:
Real Estate Law & Conveyancing
T +27 (0)11 562 1236
E fatima.gattoo@cdhlegal.com



Simone Immelman
Practice Management Director:
Real Estate Law & Conveyancing
T +27 (0)21 405 6078
E simone.immelman@cdhlegal.com



Frieda Kishi
Director | Namibia
T +264 83 373 0100
E frieda.kishi@cdhlegal.com



Muriel Serfontein
Director:
Real Estate Law & Conveyancing
T +27 (0)11 562 1237
E muriel.serfontein@cdhlegal.com



John Webber
Director:
Real Estate Law & Conveyancing
T +27 (0)11 562 1444
E john.webber@cdhlegal.com



Natasha Fletcher
Counsel:
Real Estate Law & Conveyancing
T +27 (0)11 562 1263
E natasha.fletcher@cdhlegal.com



Samantha Kelly
Counsel:
Real Estate Law & Conveyancing
T +27 (0)11 562 1160
E samantha.kelly@cdhlegal.com



Hesekiel Ipinge
Senior Associate | Namibia
T +264 83 373 0100
E hesekiel.ipinge@cdhlegal.com



Lutfiyya Kara
Senior Associate:
Real Estate Law & Conveyancing
T +27 (0)11 562 1859
E lutfiyya.kara@cdhlegal.com



Sune Kruger
Senior Associate:
Real Estate Law & Conveyancing
T +27 (0)11 562 1540
E sune.kruger@cdhlegal.com



Lulama Lobola
Senior Associate:
Real Estate Law & Conveyancing
T +27 (0)21 481 6443
E lulama.lobola@cdhlegal.com



Ceciley Oates
Senior Associate:
Real Estate Law & Conveyancing
T +27 (0)11 562 1239
E ceciley.oates@cdhlegal.com



Eburn Taigbenu
Senior Associate:
Real Estate Law & Conveyancing
T +27 (0)11 562 1049
E eburn.taigbenu@cdhlegal.com



Muneerah Hercules
Associate:
Real Estate Law & Conveyancing
T +27 (0)11 562 1579
E muneerah.hercules@cdhlegal.com



Zahra Karolia
Associate:
Real Estate Law & Conveyancing
T +27 (0)11 562 1701
E zahra.karolia@cdhlegal.com



Asisipho Kozana
Associate:
Real Estate Law & Conveyancing
T +27 (0)21 405 6168
E asisipho.kozana@cdhlegal.com



Saraphina Paulus
Associate | Namibia
T +264 83 373 0100
E saraphina.paulus@cdhlegal.com



Ammaarah Shaik
Associate:
Real Estate Law & Conveyancing
T +27 (0)21 481 6401
E ammaarah.shaik@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

ONGWEDIVA

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

WINDHOEK

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

©2026 15494/FEB

