

Powers of Sectional Title Body Corporate Regarding Levy Collection and Compromise/Write-off

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19 June 2025

INTRODUCTION

Trustees and managing agents in sectional title schemes often find themselves caught between legal obligation and practical reality—particularly when unit owners fall behind on levy payments. While a reduced settlement or debt write-off may seem like a quick solution to avoid prolonged litigation, recent case law has confirmed that sectional title bodies corporate are bound by strict statutory duties when it comes to levy collection.

The Sectional Titles Schemes Management Act 8 of 2011 (STSMA) and the Prescribed Management Rules (PMRs) impose a clear, mandatory obligation on bodies corporate to recover all amounts lawfully due, including levies, interest, and legal costs.

This legal obligation is so strict that attempts to accept less than what is owed or to write off arrears altogether often raise serious legal concerns and may be declared *ultra vires* (unlawful).

This article examines the limits of a sectional title body corporate's powers in this context, with reference to key decisions such as *Zikalala v Body Corporate of Selma Court*¹ and *Body Corporate of Fish Eagle v Group Twelve Investments*².

POWERS OF TRUSTEES IN RELATION TO LEVY COLLECTION

The case of *Zikalala v Body Corporate of Selma Court and Another* concerns a dispute over unpaid levies in a sectional title scheme. The appellant, a unit owner, failed to pay levies and offered a settlement amount which was initially accepted by the body corporate's trustees but later revoked. The legal issue revolved around whether the trustees had the authority to compromise the debt (meaning accept less than what was owing, in settlement) under the governing legislation.

The court determined that the trustees acted beyond their powers in accepting the offer because the STSMA

and the PRM's impose a mandatory legislative duty on the body corporate and its trustees to collect the full amount of levies, contributions, interest, and legal costs due. The court's reasoning in *Zikalala* is premised on the statutory nature of the body corporate.

According to the court body corporates are creatures of statute. The court emphasized a body corporate is a juristic person created by statute, specifically section 2(1) of the STSMA. As such, it is bound by the principle that a statutory body may exercise only those powers expressly conferred by the enabling statute or those necessarily implied to give effect to its functions. An act performed outside this framework is *ultra vires* and *void ab initio*.³

THE LEGAL FRAMEWORK FOR TRUSTEES WHEN COLLECTING LEVIES

Collecting levies and contributions from owners is a statutory duty and function of the body corporate under section 3(1)(f) of the STSMA. This function must be performed by the trustees in terms of section 7(1) of the STSMA. Section 3(1)(f) uses the word "must", indicating a mandatory obligation.⁴ The trustees have no discretion to forgive or reduce any debt due by an owner. PMR 25 grants the body corporate the power to impose levies and contributions and to take action to recover them, including interest and costs. PMR 25(2)(c) states that if money owing is not paid, the body corporate must send a final notice and intends to take action to recover the amount due, including overdue contributions, charges, and any applicable interest. Furthermore, Management rule 25(4) specifies that a member is liable for and must pay to the body corporate all reasonable legal costs and disbursements incurred in the collection of arrear contributions or other arrear amounts.⁵ These rules, when read with section 3 of the STSMA, show that not only levies, but also interest and legal costs, form part of the amounts that must be recovered. There is no statutory or regulatory discretion to waive these amounts.

STATUTORY POWERS OF TRUSTEES RELATING TO WRITE OFFS, SETTLEMENTS OR COMPROMISES

To determine whether an implied power exists to compromise or write off debt, the court applied the test from *Lekhari v Johannesburg City Council*.⁶ According to the *Lekhari* test an implied power must be reasonably necessary for the purpose of exercising an express power, not merely “reasonably ancillary or incidental” or useful. The test is one of necessity, not convenience. An implied power must not be extended beyond the requirement of the occasion. Additionally, what can be dispensed with without defeating the object of the express power or preventing its reasonably effective exercise is not to be implied.⁷

Applying this test, the court found no basis to infer the existence of an implied power given to the body corporate to compromise a claim for levies due.

Such a power could not be construed as merely ancillary to the express powers to collect levies or as a reasonable consequence of those powers.

The STSMA imposes a positive obligation on the body corporate to collect levies and contributions. This mandatory language reinforces the conclusion that a power to compromise is not necessary for performing this function. The duty to collect is a statutory duty that cannot be circumvented, even by a resolution.⁸ Thus, the court was unable to find any power in the PMRs or the STSMA that permits the body corporate to compromise on its obligation to collect these amounts.

The court discussed the argument that there is also no provision permitting a body corporate not to collect interest and legal costs incurred on outstanding amounts. There is no express or implied power in the PMRs or the STSMA that permits the body corporate to compromise its obligation to collect these amounts. The use of the word “must” in the relevant sections/rules suggests these functions are mandatory and cannot be compromised.⁹

The court highlighted that allowing a settlement for less than the full amount would prejudice the remaining sectional title owners, as they would effectively have to share in the financial burden for the recovery of outstanding contributions from the errant owner. The court noted that modifying the basis of liability for other owners would typically require their written consent or a unanimous resolution of all members, which was not present in the case.¹⁰

In the court *Zikalala* referred to *Body Corporate of Fish Eagle v Group Twelve Investments*¹¹ whereby the court a quo mentioned that the STSMA imposes a duty on the body corporate to raise amounts by levying contributions on owners in proportion to their quotas.

These functions, including the determination, levying, and collection of contributions, are performed by the trustees. Contributions levied are due and payable on the passing of a resolution by the trustees and may be recovered by the body corporate by action in court.

The Court in the Body Corporate of *Fish Eagle v Group Twelve Investments* considered a resolution allegedly passed at a meeting of the body corporate to the effect that the body corporate would not continue with litigation against a member regarding arrear levies and electricity charges, and that the dispute would be settled amicably. The Court found any such resolution to be *ultra vires* the body corporate. The reasoning was that such a resolution prevents the body corporate from carrying out its duties imposed by the Act, specifically the duty to raise amounts by levying contributions as required by section 37 read with section 39 of the Sectional Titles Act. The reasoning was that such a resolution prevents the body corporate from carrying out its duties imposed by the Act, specifically the duty to raise amounts by levying contributions as required by section 37 read with section 39 of the Sectional Titles Act.

In *Zikalala* the court confirmed that a resolution by a body corporate not to pursue litigation or to settle a dispute about levies is *ultra vires* because the duty to raise and collect contributions is a statutory obligation that cannot be circumvented. This legal principle confirms that even resolutions supported by a majority of members cannot override the statutory duty to collect the full amounts owed.

CONCLUSION

The collection of the full amount lawfully due is deemed a mandatory statutory duty. There is no power within the statutory framework to deviate from this obligation. Compromising or writing off debt, being a form of accepting less than the full amount, would be *ultra vires* and void. In accordance with *Zikalala* a sectional title body corporate does not have the legal power to conclude a settlement agreement with an owner for an amount less than the full payment due for levies, contributions, interest, and legal costs. Such an agreement would be *ultra vires* the body corporate's statutory powers and therefore void. Moreover, a sectional title body corporate does not have the power to write off any outstanding levies and ancillary charges.

This is effectively a form of compromising the debt, which the body corporate lacks the legal authority to do, as its statutory duty is to collect the full amount owed. There are no circumstances identified in the source where such a write-off would be permissible under the STSMA and Regulations.

¹*Zikalala v Body Corporate of Selma Court and Another* 2022 (2) SA 305 (KNP) (23 September 2021)

²*Body Corporate of Fish Eagle v Group Twelve Investments (Pty) Ltd* 2003 (5) SA 414 (W)

³*Zikalala v Body Corporate of Selma Court and Another* Para 19

⁴*Zikalala v Body Corporate of Selma Court and Another* Para 36

⁵*Zikalala v Body Corporate of Selma Court and Another* Para 26

⁶*Lekhari v Johannesburg City Council* 1956 (1) SA 552 (A)

⁷*Zikalala v Body Corporate of Selma Court and Another* Para 35

⁸*Zikalala v Body Corporate of Selma Court and Another* Para 36

⁹*Zikalala v Body Corporate of Selma Court and Another* Para 21

¹⁰*Zikalala v Body Corporate of Selma Court and Another* Para 11

¹¹*Body Corporate of Fish Eagle v Group Twelve Investments (Pty) Ltd* 2003 (5) SA 414 (W)



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