

# When Can a Community Scheme Bypass the Ombudsman in Favour of Court Intervention?

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## INTRODUCTION

In Community Schemes, such as sectional title schemes and homeowners associations ("**HOA**"), disputes often arise between the Body Corporate (or the HOA) and individual members. These disputes can range from minor disagreements to significant legal altercations.

The case of *Port O'Call Body Corporate v Verwoerdpark Liquors (Pty) Ltd*<sup>1</sup> provides a detailed examination of the circumstances under which a Body Corporate (or HOA) can approach the Community Schemes Ombud Service ("**CSOS**") and when it is appropriate to seek relief directly from a court. This judgment is helpful in clarifying the procedural pathways available to Community Schemes, ensuring that disputes are resolved efficiently and appropriately.

## CIRCUMSTANCES FOR APPROACHING CSOS

CSOS is established to provide a cost-effective and accessible forum for resolving disputes within Community Schemes.

The *Port O'Call* judgment emphasizes that CSOS should be the first point of contact for most disputes (within its jurisdiction), offering a conciliative and adjudicatory process designed to handle issues internally. The primary reasons for approaching CSOS include:

1. **Internal Resolution:** CSOS is equipped to handle a range of disputes, from financial issues to behavioural complaints, through mediation and adjudication.
2. **Cost-Effective:** Utilising CSOS is supposed to be more affordable than court proceedings, making it an attractive option for resolving disputes without incurring significant legal costs.
3. **Specialised Expertise:** CSOS adjudicators are advised to have knowledge in community scheme governance.

## CIRCUMSTANCES FOR APPROACHING THE COURT

While CSOS is the required forum for dispute resolution (for matters falling within section 39 of the Community Schemes Ombud Service Act 9 of 2011), practically it is not always desirable to approach CSOS, especially for complex or urgent matters.

There are specific scenarios where a Body Corporate or HOA can bypass CSOS and approach the court directly. The *Port O'Call* judgment outlines these scenarios as follows:

1. **Urgent Relief:** When an interdict or any form of urgent relief is required, the Body Corporate / HOA may approach the court directly. This is crucial in situations where immediate action is necessary to prevent harm or further complications.
2. **Exceptional Circumstances:** A court may be approached if there are exceptional circumstances that justify immediate judicial intervention. In the case at hand, the unauthorized alterations were significant and posed a risk to the common property, justifying the court's involvement.
3. **Permanent Alterations:** In *Port O'Call*, the Respondent's alterations were permanent and encroached on common property, making it a matter of grave concern for the Body Corporate. This situation warranted direct court intervention to prevent setting a precedent for further unauthorised building and encroachment within the scheme.

## CONCLUSION

The *Port O'Call* judgment clarifies that while CSOS is the primary forum for resolving disputes within Community Schemes, a court may be approached directly in cases requiring urgent relief or involving exceptional circumstances. This ensures that serious issues are addressed promptly and effectively.

This area of law is complex and the ability of a Body Corporate / HOA to bypass the CSOS in favour of a court will very much depend on the circumstances of the applicant, as well as the nature of the dispute.

We suggest that legal advice is sought from an attorney in instances where bypassing of the CSOS is considered.

Kindly contact the authors of this article on 011 568 8500 for more information.

<sup>1</sup> *Port O'Call Body Corporate v Verwordpark Liquers (Pty) Ltd (5187/2021)*  
[2022] ZAGPJHC 1052 (25 October 2022)



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