

CSOS and the Standard of “Reasonableness” in the CSOS Act

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INTRODUCTION

In *Waterford Estate Homeowners Association NPC v Riverside Lodge Body Corporate and Others*¹ the Supreme Court of Appeal (SCA) recently had to decide if the law governing housing estates was too “blurry” to be fair. The case involved the Waterford Estate Homeowners Association, which tried to argue that a specific part of the law was unconstitutional because it used words that were too vague for anyone to follow.

SECTION 39 OF THE COMMUNITY SCHEMES OMBUD SERVICE (CSOS) ACT

The bone of contention was Section 39 of the Community Schemes Ombud Service (CSOS) Act. This section gives a CSOS official, known as an adjudicator, the power to step into a dispute about money. Specifically, Section 39(1)(c) allows an adjudicator to declare that a housing levy (the fee owners pay to the estate) is “unreasonable”. If the adjudicator decides a levy is unreasonable, they have the power to change it to an amount they consider “reasonable”.

WATERFORD’S COMPLAINT: THE PROBLEM OF VAGUENESS

Waterford Estate argued that this law was unconstitutional because it was too vague and uncertain. They told the court that the terms “reasonable” and “unreasonable” are like moving targets. Their main arguments were:

- The Act does not give a list of rules or criteria for adjudicators to use when deciding what is “reasonable”.
- Because there are no clear rules, a homeowners’ association doesn’t know how to set its levies in a way that guarantees they won’t be challenged later.
- Waterford argued that without strict guidelines, adjudicators might make arbitrary or random decisions, which could even lead to corruption in extreme cases.

In short, Waterford claimed the law was so vague that it was impossible for an association to “regulate its conduct” to stay on the right side of the law.

THE COURT’S VIEW: WHY THE LAW IS CLEAR ENOUGH

The Supreme Court of Appeal did not agree. In fact, the judges stated quite clearly that there was “**no merit**” to Waterford’s constitutional challenge. The court looked at the law and the facts and found that the word “reasonable” is actually a very useful and fair standard.

Here is why the court decided the law is not too vague:

1. **Adjudicators are Experts, Not Amateurs**
Waterford tried to argue that adjudicators don’t have enough guidance to make these big financial decisions. The court pointed out that by law, adjudicators are not “untrained officials”. To be appointed, they must have suitable qualifications and experience in handling housing scheme disputes. Because they are experts, they understand the context of the cases they are deciding.
2. **The Law Provides “Reasonable Certainty”**
The court ruled that a law doesn’t have to be a perfect, rigid checklist to be valid. As long as the law tells people with “reasonable certainty” what is expected of them, it is constitutional. The court found that associations and owners know well enough what the standard of “reasonableness” implies in a community setting.
3. **Built-in Safeguards (Section 50)** Even though the adjudicator has broad powers, they cannot simply do whatever they want. The court highlighted **Section 50** of the Act, which creates strict rules for how an investigation must happen:
 - The adjudicator must observe due process (act fairly to both sides).
 - They must act quickly and without unnecessary “formality”.
 - They must consider all the evidence presented to them.
 - Crucially, their decisions must be rational and can be reviewed by a higher court if they make a major mistake.

4. A Standard Used Throughout the Law The court noted that the concept of “reasonableness” is used all over South African law. It is a flexible tool that allows a decision-maker to look at the unique facts of every single case. What is reasonable for a luxury estate might be different from what is reasonable for a small complex, and the law needs to be flexible enough to handle both.

CONCLUSION

The court concluded that the powers given to adjudicators are central to the goal of the CSOS Act. The Act was created to provide a fast, cheap, and effective way to solve problems and to protect owners from “exploitative” fees.

The judges found that Waterford's challenge was “frivolous” and “without any merit”. They even suggested that Waterford only challenged the law after an adjudicator made a decision they didn't like. Because the challenge had no real chance of succeeding, the court dismissed the application to declare the law unconstitutional. Section 39 remains in place, ensuring that adjudicators can continue to protect homeowners from unfair costs by using the standard of reasonableness.

¹*Waterford Estate Homeowners Association NPC v Riverside Lodge Body Corporate and Others* (819/2024) [2026] ZASCA 03 (14 January 2026).



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