

SCA Settles Jurisdiction Debate: CSOS is Not a Prerequisite Before Going to the High Court

Parch Properties 72 (Pty) Ltd v Summervale Lifestyle Estate Owner's Association and Others (171/2024)[2025] ZASCA 155 (17 October 2025)

INTRODUCTION

For years, community schemes in South Africa have faced uncertainty over whether certain categories of disputes are required to be referred to the Community Schemes Ombud Service ("**CSOS**") as a mandatory forum of first instance, instead of or prior to approaching Court. Conflicting judgments created confusion, leaving community schemes (including body corporates and homeowners' associations) unsure of the correct legal position.

The Supreme Court of Appeal ("**SCA**") in its recent judgment of *Parch Properties 72 (Pty) Ltd v Summervale Lifestyle Estate Owner's Association and Others (171/2024)[2025] ZASCA 155* has now settled this debate.

SALIENT FACTS OF THE CASE

A dispute between the parties resulted in Parch Properties (Pty) Ltd seeking declaratory relief in the High Court against Summervale Lifestyle Estate and others. The High Court entertained the matter as a Court of first instance. The judgment handed down by the High Court found, amongst other things, that the Court had the necessary jurisdiction to entertain the application. The judgment was subsequently taken on appeal and came before the SCA.

One of the issues raised before the SCA was whether the High Court correctly asserted its jurisdiction without requiring prior referral of the matter to the CSOS. In order to address this issue, the SCA had to answer the question of whether the CSOS Act 9 of 2011 ("**CSOS Act**") ousts the jurisdiction of the High Court as a Court of first instance in matters involving community schemes.

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COURT'S FINDINGS

The SCA judgment outlines that the purpose of the CSOS Act is to provide for:

1. the establishment of the CSOS;
2. the mandate and functions of the CSOS;
3. a dispute resolution mechanism for community schemes; and
4. matters connected therewith.

It further stated that the CSOS Act was established for the purpose of providing an expeditious, informal and cost-effective mechanism for the resolution of disputes. As Section 38 (1) of the CSOS Act states that an affected party may apply to the CSOS for relief, the SCA determined that the discretionary wording of the section is a clear indication of a choice of forum being provided for the subject party.

The SCA then reaffirmed the strong presumption against ousting High Court jurisdiction. It held that the mere fact that a statute grants jurisdiction to one forum does not imply exclusion of another. It concluded that the High Court did not need exceptional circumstances to entertain the matter as the Court of first instance and held that the CSOS Act was intended to complement and not replace the judicial system.

IMPORTANCE OF THE JUDGMENT

This judgment creates a legal precedent and provides essential clarity for community schemes (and their attorneys) as it serves to resolve years of uncertainty and contradictory rulings on whether the CSOS is the mandatory forum of first instance for certain community scheme disputes.

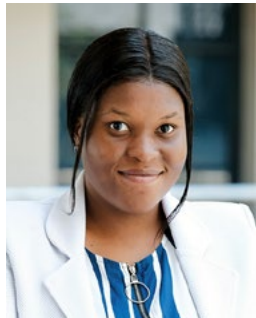
This judgment additionally re-affirms that the High Court's jurisdiction cannot be ousted unless expressly excluded by statute.

This clarity is crucial for body corporates, homeowners' associations and all other community schemes within the Republic of South Africa (and their attorneys) and is welcomed after years of uncertainty.

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