

Community Title Schemes and the Accommodation of Residents With Disabilities

Ncala v Park Avenue Body Corporate and Others (813/2023) [2026] ZASCA 16

INTRODUCTION

The Supreme Court of Appeal (hereafter “the SCA”) in *Ncala v Park Avenue Body Corporate and Others*,¹ dealt with whether the Johannesburg High Court (“the High Court”) could grant condonation for the late filing of an appeal based on section 57(2) of the Community Schemes Ombud Service Act 9 of 2011 (“the CSOS Act”). The CSOS Act provides that an appeal against an order of the Adjudicator must be lodged in the High Court within 30 days after the date of delivery of the order.²

The SCA noted that, despite this wording, section 57 of the CSOS Act does not expressly provide whether the High Court has the power to condone the late filing of an appeal after the 30-day period has elapsed.³

The SCA further considered whether the Body Corporate’s failure to accommodate Mr Melusi Ncala (“Mr Ncala”), a homeowner with a visual impairment, amounted to unfair discrimination. The SCA overturned the decision of the High Court.⁴

BACKGROUND OF THE CASE

Mr Ncala purchased an apartment on the ground floor (“the Property”) in the Body Corporate. As a visually impaired person, prior to purchasing the home, the estate agent informed him that he was permitted to effect alterations to the washing area outside the Property, as it formed part of his Property. This information was not accurate, as that washing area was actually part of the common property.

When Mr Ncala took occupation, he made changes to the Property to accommodate his disability, to avoid injury and to secure his belongings. The changes made included inserting a washing machine, along with its accompanying pipes and tap. With an intention of protecting the machine from elements and theft, he installed a plastic roof sheet together with a security gate to the washing area outside the Property.

The Body Corporate did not approve these alterations as they were found to be in contravention of the Body

Corporate’s Conduct Rules (hereafter “the Conduct Rules”). The Conduct Rules prohibited anyone from making changes to the common washing area and advised Mr Ncala to remove all alterations to the area and return it to its original state. Mr Ncala asked to be exempted from the Conduct Rules, highlighting that the exemption was necessary because of his disability. The Body Corporate refused his request, and the matter was then referred to CSOS for adjudication.

In her order dated 29 November 2018, the CSOS Adjudicator held that the Conduct Rules of the Body Corporate applied fairly and equally to all occupiers. She ordered Mr Ncala to relocate the washing machine inside his home, remove the piping and restore the washing area. The security gate was to be restored, while the roof sheeting was not to be restored. This order was granted despite Mr Ncala’s assertion that the Body Corporate had violated his right to equality and dignity as a disabled person as enshrined in the Constitution of the Republic of South Africa, 1996 (hereafter “the Constitution”).

Aggrieved by the CSOS order, Mr Ncala relied on section 57(2) of the CSOS Act to appeal to the High Court. However, he failed to lodge his appeal within the prescribed 30-day period and subsequently applied for condonation, having lodged his appeal 67 days after the date of the CSOS order.⁵

Mr Ncala’s application for condonation was itself brought approximately one year after the appeal had been lodged.

THE HIGH COURT DECISION

The High Court held that the determination of Mr Ncala’s condonation application involved two inquiries. Firstly, the High Court had to determine if it had the appropriate jurisdiction to condone Mr Ncala’s late appeal.

The second inquiry was whether Mr Ncala had made out a case for condonation to be granted. The High Court held that Mr Ncala did not make out a case for condonation. The High Court held that Mr Ncala’s reliance on an alleged violation of his constitutional rights did not, in itself, justify condonation of the late filing of the appeal.⁶

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The High Court then went on to consider whether Mr Ncala's constitutional rights to equality and dignity were infringed by the Body Corporate. Mr Ncala submitted that the Body Corporate should take reasonable steps to accommodate his needs which were to allow Mr Ncala to make changes to the washing area that was within the common property. The High Court held that, as the Body Corporate Conduct Rules apply to everyone equally and do not allow the owner of a unit to make alterations to common property, the same applies to Mr Ncala. He cannot be allowed to make changes to the common property, despite his disability, as the Conduct Rules do not permit its members to make alterations to common property. Accordingly, the application before the High Court was dismissed.⁷

THE SUPREME COURT OF APPEAL DECISION

Before the SCA, Vally AJA delivered the first judgment, in which he concluded that section 57(2) of the CSOS Act did not empower the High Court to condone the late filing of the appeal. Mbatha JA thereafter delivered the second judgment, with Makgoka JA, Keightley JA and Tolmay AJA concurring. The second judgment constituted the majority judgment, and the appeal was accordingly upheld:

1. The SCA relied on the reasoning in *Mohlomi v Minister of Defence*,⁸ to find that the 30-day period in section 57(2) of the CSOS Act regulates a procedural aspect of pursuing an appeal. In such circumstances, finding that an implied power to condone the late filing of an appeal exists is a better route to protect an individual's right of access to court. Such an interpretation must be preferred over one that excludes the court's power of condonation.
2. The SCA held that, although the power to condone must be found in the legislation, that power may be expressly or impliedly conferred. Relying on *Steenkamp and Others v Edcon Limited*,⁹ the SCA reiterated that the court has a discretion to grant condonation if the interests of justice require it and the reasons for non-compliance are satisfactory to the court. This discretionary exercise was supposed to be undertaken by the High Court.
3. The SCA went on to find that there were sufficient reasons to condone Mr Ncala's late filing of the appeal. These reasons included:
 - Firstly, the appeal raised important questions implicating the rights to human dignity and equality as envisaged in the Constitution.
 - Secondly, the appeal concerned the intersection between conduct rules and constitutional rights.
 - Finally, the outcome of the appeal could have an impact on people situated in similar circumstances to Mr Ncala.

4. The SCA proceeded to consider whether Mr Ncala's constitutional rights to equality and dignity had been infringed and whether the application of the Body Corporate's Conduct Rules to him amounted to unfair discrimination. The SCA noted that section 9 of the Constitution provides for the right to equality and prohibits unfair discrimination, including discrimination on the basis of disability. To give effect to section 9 of the Constitution, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) was enacted. It provides a legislative framework for addressing unfair discrimination and requires reasonable accommodation of persons with disabilities in appropriate circumstances.¹⁰ The court also considered section 10 of the Constitution that grants a right to dignity which must be respected and protected.
5. In considering Mr Ncala's case, the SCA recognised that he has a visual impairment and that discrimination against persons with disabilities can occur in various spheres of life. In this case, it impacted Mr Ncala's safety. His visual impairment created particular safety risks in relation to the placement and use of the washing machine. If he were required to have the washing machine inside his home, it would pose a safety risk to him. This would not only pose a safety risk to him but would also limit his use and enjoyment of the Property. The Body Corporate could have accommodated his disability by permitting him to place the washing machine in the common area.
6. The SCA added that a Body Corporate should take reasonable steps to accommodate persons with disabilities so that they are able to enjoy the equal use and enjoyment of their Property. In considering reasonable accommodation, regard must be had to whether the accommodation would impose an undue burden or prejudice on the Body Corporate or other members. If one fails to accommodate them, it amounts to unfair discrimination. Mr Ncala relied on the prior information from the estate agent who informed him that he can make alterations to the Property to accommodate his disability if necessary. For safety reasons, he made such modifications. Moreover, it was found that his neighbours had not objected to the alterations and that the alterations did not cause any issues for other members of the Body Corporate. On this basis, the Body Corporate's failure to accommodate Mr Ncala was deemed to have been unjustified.
7. The SCA held that Mr Ncala was treated unfairly and unreasonably by the Body Corporate. As a result, he was entitled to relief under the CSOS adjudication process. The SCA concluded that the High Court erred in dismissing the appeal from the CSOS order. The SCA held that Mr Ncala was entitled to a relief that permitted him to find reasonable accommodation in the common property because of his disability. Accordingly, in terms of the majority judgment's findings above, the appeal was upheld by the SCA.¹¹

The minority judgment, delivered by Vally AJA, dismissed the appeal on the following conclusions:

1. The minority judgment relied on *Pizani v Minister of Defence*¹² and *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service*.¹³ Based on these cases, the minority judgment found that the statute in question must expressly or impliedly empower the High Court to grant condonation where there has been a late filing of an appeal. If it does not, the High Court does not have jurisdiction to entertain the matter that is brought before it. The reasoning was that the power of condonation has to be found in the legislation when it is properly interpreted. On this, one has to regard the intention of the Legislature through the language used in the legislation, the context and scope of the section dealt with. Interpreting section 57 of the CSOS Act, the minority judgment found that the Legislature did not intend to confer on the High Court a power to condone the late filing of an appeal.
2. The minority judgment went on to say that implying that the High Court has the power to grant condonation would contradict the wording used in the CSOS Act. It will also contradict the purpose of the CSOS Act. The minority judgment found that the CSOS Act seeks to facilitate the resolution and finalisation of disputes between a Body Corporate and its members. This finalisation must be 'inexpensive, inquisitorial, informal and expeditious.' The minority judgment then concluded that the words of section 57(2) of the CSOS Act are clear and not ambiguous.
3. With regard to the right of access to courts in section 34 of the Constitution, the minority judgment held that the CSOS Act does not infringe this right because it does grant the right to appeal but only puts it within a time limit of 30 days. The aggrieved party must exercise their right within that 30-day period. Furthermore, the minority judgment held that the courts do not have the power to ignore the language used by the Legislature "in favour of a general resort to values underlying the Constitution."¹⁴
4. Finally, the minority judgment concluded that the High Court has no power to grant condonation against the CSOS Act. The minority judgment considered the use of the word "must" in section 57(2) and found that the provision requires compliance with the 30-day period. Accordingly, the minority judgment would have dismissed the appeal.¹⁵

The majority judgment therefore constituted the judgment of the Court, and the appeal was upheld.

CONCLUSION

The fundamental takeaway from this SCA judgment is that, where section 57(2) of the CSOS Act is applicable, the High Court has an implied power to condone the late filing of an appeal where the interests of justice require it and the reasons for non-compliance are satisfactory. Furthermore, Body Corporates should promote the right to equality and dignity to all its members. Where a member of a Body Corporate has a disability, the Body Corporate should consider whether its conduct rules unfairly discriminate against that member and, where appropriate, take reasonable steps to accommodate the member's disability. Therefore, Body Corporates are advised to take reasonable steps to accommodate members with disabilities to ensure their proper use and enjoyment of their Property.

¹ *Ncala v Park Avenue Body Corporate and Others* (813/2023) [2026] ZASCA 16.

² S57 of the CSOS Act.

³ *Ibid* para 38.

⁴ *Ibid* para 96.

⁵ *Ibid* para 8.

⁶ *Ncala v Park Avenue Body Corporate* 2023 JDR 1318 (GJ) para 10.

⁷ *Ibid* 53.

⁸ 1997 (1) SA 124 (CC).

⁹ 2019 (7) BCLR 826 (CC)

¹⁰ s9(c).

¹¹ *Ibid* para 98.

¹² 1987 (4) SA 592 (A)

¹³ 1996 (3) SA 1 (A).

¹⁴ *Ibid* para 30.

¹⁵ *Ibid* 33.



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