

Real Estate Law

ALERT | 8 October 2024



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**REAL ESTATE LAW
ALERT**

CSOS ombuds and adjudicator privileges and immunities from liability – *Community Schemes Ombud Service v Stonehurst Mountain Estate Owners Association (12399/2021) [2022] ZAWCHC 126 (17 June 2022)*

On 17 June 2022, the Western Cape High Court handed down a judgment in *Community Schemes Ombud Service v Stonehurst Mountain Estate Owners Association (12399/2021) [2022] ZAWCHC 126 (17 June 2022)* in terms of which it declared that the Community Schemes Ombud Service (CSOS), its staff members and its adjudicators are all immune from costs orders in respect of legal proceedings instituted against the CSOS in the High Court.

This judgment was handed down in respect of an application made by the CSOS against the Stonehurst Mountain Estate Owners Association (Association) in which the CSOS challenged a cost order against it in favour of the Association, after the Association successfully appealed an adjudication order handed down by a CSOS adjudicator.

The CSOS successfully challenged the cost order against it on the basis of section 37 of the Community Schemes Ombud Service Act 9 of 2011 (Act). Essentially, section 37 provides that: "In performing their functions in terms of this Act, the chief ombud, an ombud, a deputy ombud and an adjudicator have the same privileges and immunities from liability as a judge of the High Court."

The court confirmed that under section 37(1) of the Act, these officials are immune from costs orders. Additionally, section 33 of the Act states that the CSOS and its employees are only liable for loss or damage if they act unlawfully, with gross negligence, or in bad faith.

The judge noted that although the adjudicator may have been wrong in his ruling, the legislation mentioned above is clear, and the legislature has in fact anticipated such a situation, which brought about section 57(1) of the Act, which allows for an automatic right of appeal to the High Court on a question of law. Consequently, there was no order as to costs against the CSOS in respect of the appeal.

This judgment could be problematic as it removes any liability for the CSOS in successful appeals against incorrect adjudication orders, potentially reducing the incentive for proper administration and informed adjudication.

Mike Collins



The rise of the construction mafia in South Africa: Impact on developments and the real estate sector

In recent years, South Africa has witnessed a troubling rise in the phenomenon known as the “*construction mafia*”. This term refers to organised groups that have infiltrated the construction industry, using intimidation, violence, and extortion to force their way into lucrative projects. The impact of these groups has been profound, leading to delays, increased costs, and a chilling effect on investment in the real estate sector.

Origins and rise of the construction mafia

The construction mafia, also known as “*business forums*”, began to gain prominence around 2015. These groups often justify their actions by claiming to represent local communities seeking a share in the economic benefits of construction projects.

Initially, these groups targeted smaller projects, but their reach has since expanded to major infrastructure developments, residential complexes, and commercial properties. Their modus operandi typically involves demanding a 30% stake in contracts and when developers refuse to comply, these groups resort to violent tactics, including site invasions and equipment sabotage.

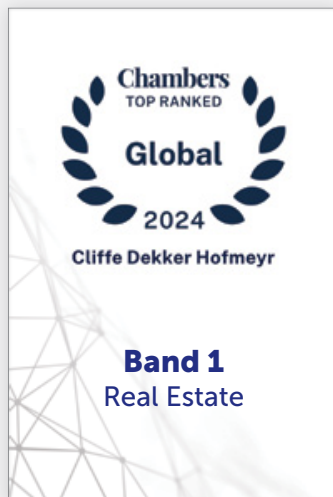
Impact on developments and the real estate sector

The activities of the construction mafia have far-reaching implications for the real estate and construction sectors, including:

1. **Project delays and increased costs:** One of the most immediate impacts of the construction mafia is the delay of projects. Developers are forced to halt construction when sites are invaded or when contractors refuse to work under threat. These interruptions lead to significant cost overruns, as delays can result in penalties, increased labour costs and the need for heightened security measures.
2. **Investor confidence:** The presence of the construction mafia has shaken investor confidence in South Africa’s real estate market. Both local and international investors are wary of committing funds to projects that may be subject to extortion or disruption. This hesitation affects the availability of capital for new developments and can slow down the growth of the sector.
3. **Legal and compliance challenges:** Developers are finding themselves caught between the demands of these groups and the legal requirements of their contracts. While some may feel pressured to acquiesce to the mafia’s demands, doing so can lead to breaches of contractual and legal obligations, exposing developers to further risks and potential legal action.

The rise of the construction mafia in South Africa: Impact on developments and the real estate sector

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4. **Impact on local communities:** Ironically, the very communities the construction mafia claims to represent are often the most negatively affected. Projects that are delayed or cancelled due to mafia activity can lead to lost opportunities for local employment and development. Furthermore, the association of violence with community-based demands can tarnish the reputation of genuine local businesses and entrepreneurs in the area.
5. **Government response and law enforcement:** The South African Government has recognised the threat posed by the construction mafia and has taken steps to address the issue. The Special Investigating Unit (SIU) has been tasked with probing instances of extortion and corruption in the construction sector. However, enforcement remains inconsistent, and many developers continue to face threats with little recourse to effective legal protection.

The way forward

Addressing the rise of the construction mafia requires a multi-faceted approach. This includes:

- **Strengthening law enforcement:** There is an urgent need for more robust law enforcement to deter criminal activity in the construction sector. This includes not only prosecuting those involved in extortion and violence, but also protecting developers and contractors who stand up to these groups.
- **Community engagement:** Developers should engage more effectively with local communities to ensure that legitimate concerns are addressed. By fostering genuine partnerships with local businesses and workers, developers can reduce the influence of criminal elements that exploit community grievances.

- **Policy and regulatory reforms:** The Government should consider policy reforms that make it easier for developers to comply with local participation requirements in a way that benefits both the community and the project. Clearer guidelines on community involvement in construction projects can help prevent the manipulation of these processes by criminal groups.
- **Public awareness and advocacy:** Raising public awareness about the destructive impact of the construction mafia is crucial. Stakeholders in the real estate and construction sectors, along with Government and civil society, should work together to advocate for stronger protections against extortion and violence.

Conclusion

The rise of the construction mafia in South Africa poses a significant threat to the real estate and construction sectors. By driving up costs, delaying projects, and deterring investment, these criminal groups undermine the potential for growth and development in the country. A concerted effort is required from both the public and private sectors to combat this scourge and restore confidence in the industry. Only through a combination of law enforcement, community engagement and policy reform can the construction mafia be effectively countered, ensuring a safer and more prosperous future for South Africa's real estate sector.

Lulama Lobola

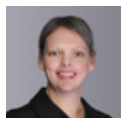


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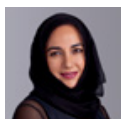
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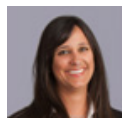
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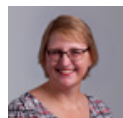
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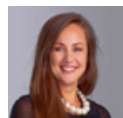
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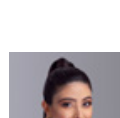
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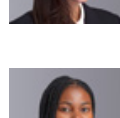
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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