

Are CSOS Adjudicators Legally Obliged to Investigate Disputes?

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Two High Court judgments delivered nine months apart have reached apparently conflicting conclusions about an important aspect of the **Community Schemes Ombud Service**'s dispute resolution process: whether adjudicators are legally obliged to investigate the disputes referred to them.

These judgments have brought the issue into sharp focus once again, particularly because, in our experience, the failure of CSOS adjudicators to properly investigate disputes is a recurring problem that we encounter when representing clients in CSOS proceedings and High Court appeals. We therefore consider it important to revisit the statutory framework and relevant case law to clarify precisely what is required of adjudicators, in the hope that greater awareness of these obligations will encourage their proper application and ultimately contribute to a fairer, more effective dispute resolution process for all parties involved.

The two judgments in question

In *Zoned Earth Dev Co (Pty) Ltd and Others v Body Corporate of 6[...] L[...] Drive and Others* [2026] ZAKZDHC 10, delivered on 13 February 2026, the KwaZulu-Natal High Court held that there was no obligation on a CSOS adjudicator to undertake an investigation.

However, on 9 November 2026, the Western Cape High Court delivered judgment in *Roux v Community Schemes Ombud Service and Others* [2026] ZAWCHC 671, holding that an adjudicator's failure to discharge the investigative obligations imposed by the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act) constituted a material error of law.

Although the judgments concern different disputes, they raise an important question about the nature of CSOS adjudication and the obligations imposed upon those entrusted with resolving community scheme disputes.

In our view, the answer lies in the distinction between the mandatory duty to investigate a dispute and the discretionary powers available to an adjudicator when carrying out that investigation.

What does the CSOS Act require?

Section 50 of the CSOS Act expressly provides that an adjudicator ***must*** **investigate an application** to determine whether an order should be made.

In conducting that investigation, the adjudicator must observe the principles of due process, act expeditiously and with as little formality and technicality as is consistent with properly considering the application, and consider all relevant evidence.

Section 51, on the other hand, provides that an adjudicator ***may*** **exercise various investigative powers**, including requesting additional documentation, obtaining statements, interviewing relevant persons and inspecting scheme records or property.

The distinction is significant.

Section 50 imposes a mandatory duty to investigate, while section 51 affords adjudicators discretion in determining how that investigation should be conducted.

An adjudicator is therefore not necessarily obliged to request additional documents or interview witnesses in every dispute. However, this does not mean that the adjudicator can dispense with the investigation required by section 50.

This distinction lies at the heart of the apparent conflict between the two recent judgments.

The KwaZulu-Natal High Court's approach in Zoned Earth

The dispute in *Zoned Earth* arose from a body corporate's installation of a solar photovoltaic system and ancillary equipment on common property.

Certain owners challenged the installation, contending that the trustees had failed to comply with the procedures prescribed by **management rule 29(2)** for improvements to common property.

As part of their CSOS application, the owners sought extensive documentation concerning the project, including trustees' resolutions, quotations, costs, engineering specifications and reports.

The adjudicator ordered the body corporate to provide certain documents but declined to order the production of everything requested. The owners challenged that decision, arguing, among other things, that the adjudicator had failed to discharge the investigative obligations imposed by sections 50 and 51 of the CSOS Act.

In paragraph 38 of its judgment, the High Court reasoned that section 51 affords adjudicators discretionary powers and concluded:

There is no obligation for the adjudicator to undertake an investigation.

The Court also found that the additional documents sought by the applicants were not required to be maintained under the relevant prescribed management rules. It concluded that the adjudicator had not erred in refusing to order their production.

There is an important distinction between those two findings.

The conclusion that an adjudicator is not obliged to compel the production of every document requested by an applicant is consistent with the discretionary nature of section 51.

However, the broader proposition that an adjudicator is under no obligation to investigate is difficult to reconcile with section 50, which expressly requires an investigation.

While the judgment itself reproduces the provisions of section 50 in a footnote, the Court's reasoning in paragraph 38 focuses on the discretionary wording of section 51 without adequately distinguishing it from the mandatory obligation imposed by section 50.

The Court also observed that the applicants had not specifically requested the adjudicator to undertake an investigation. That consideration is, with respect, immaterial to the existence of the statutory duty. An adjudicator's obligation under section 50 arises by operation of law and does not depend upon a party requesting that it be performed.

Nevertheless, it is important not to overstate the implications of *Zoned Earth*. The particular dispute concerned whether the adjudicator was obliged to obtain additional documents, and the Court found that those documents fell outside the applicable record-keeping requirements.

The refusal to compel their production could therefore be justified without concluding that the adjudicator had no obligation to investigate the application itself.

The Western Cape High Court takes a different approach in Roux

The facts in *Roux* were materially different.

The applicant disputed the administration of her levy account by a homeowners association. She alleged that certain payments had not been credited, questioned the validity of the payment method she had tendered and challenged legal fees and other charges debited to her account.

The adjudicator dismissed the relevant relief principally because the applicant had failed to produce sufficient documentary evidence demonstrating that payments had been made and not properly allocated.

On appeal, the Western Cape High Court considered whether the adjudicator had misconstrued the nature of the dispute and failed to discharge the obligations imposed by section 50.

The Court accepted that the applicant bore an evidentiary burden. Section 38(3)(c) of the CSOS Act requires applicants to set out the grounds upon which relief is sought, and the adjudicator was entitled to consider whether the applicant had provided sufficient evidence to substantiate her claim.

However, the Court held that this did not relieve the adjudicator of the obligation to investigate the substance of the dispute.

The applicant's complaint was not confined to whether particular payments had been made. It also concerned the accuracy of the levy account, the charges reflected in it and the legal basis upon which those charges had been imposed.

By concentrating on the absence of proof of payment without adequately considering these additional issues, the adjudicator had adopted an unduly narrow approach to the enquiry required under sections 39 and 50 of the CSOS Act.

In paragraph 40, the Court made an important distinction: although an adjudicator is not required to construct a case on behalf of an applicant, the adjudicator must nevertheless engage with the substance of the dispute and the material placed before them.

The Court concluded that the failure to do so constituted a material error of law for purposes of section 57.

The appeal was upheld, the adjudication order was set aside and the dispute was remitted to CSOS for determination afresh by a different adjudicator.

Importantly, the Court did not determine whether the disputed payments had been made, whether the payment instruments were valid or whether the challenged charges were unlawful. Those matters remained for the adjudicator to investigate and determine.

The significance of *Roux* is therefore not that adjudicators must find in favour of applicants who present insufficient evidence. Rather, an adjudicator cannot dismiss an application on the basis of one perceived evidentiary deficiency while overlooking other material issues that form part of the dispute requiring determination.

What have the courts previously said?

Although *Roux* and *Zoned Earth* were delivered by different divisions of the High Court, the question of an adjudicator's investigative obligations is not new.

Several earlier judgments provide important guidance.

Naidoo v Chicktay: Investigation is a statutory obligation

In *Naidoo v Chicktay NO and Others* [2022] ZAGPJHC 929, the Johannesburg High Court considered a dispute concerning the installation of a pergola at a sectional title scheme.

The adjudicator had dismissed the owner's application without properly investigating whether the disputed installation contravened the scheme's conduct rules or fell within the statutory provision relied upon.

Wilson AJ held that section 50 imposed a positive obligation to investigate and that the adjudicator had failed to discharge it.

The Court emphasised that CSOS adjudicators frequently deal with unrepresented parties who cannot be expected to formulate legal arguments with the precision of experienced practitioners.

Consequently, the statutory scheme requires adjudicators to engage actively with the relevant facts and legal issues rather than confining themselves strictly to the arguments advanced by the parties.

The Court found that the failure to investigate constituted non-compliance with a mandatory statutory requirement and an error of law under the **Promotion of Administrative Justice Act 3 of 2000** (PAJA).

The adjudication order was reviewed and set aside.

Although *Naidoo* concerned judicial review under PAJA rather than an appeal under section 57, its interpretation of the duty imposed by section 50 is directly relevant.

In our view, *Naidoo* supports the approach subsequently adopted in *Roux*.

Rapallo Body Corporate v Dhlamini: The investigation must remain within the dispute

The obligation to investigate is not, however, unlimited.

In *Rapallo Body Corporate v Dhlamini NO and Others* [2020] ZAWCHC 97, the Western Cape High Court explained that although CSOS adjudication is inquisitorial, the investigation must be confined to the dispute identified in the application.

Binns-Ward J emphasised that the nature and extent of the relief sought must be ascertainable with reasonable certainty so that the opposing party knows the case it is required to meet.

This reflects an important principle of procedural fairness.

An adjudicator cannot use the inquisitorial nature of CSOS proceedings to investigate and determine an entirely different dispute from the one placed before them.

The Court explained that where an application is inadequately formulated, the Ombud should seek clarification under section 40. Where the deficiency cannot be remedied, the provisions governing amendment or rejection of applications must be considered.

The principle was subsequently reaffirmed in *Gonen v Trustees for the Time Being of the Melville Body Corporate and Others* [2023] ZAGPJHC 363, where the Johannesburg High Court recognised the informal, inquisitorial nature of CSOS proceedings while emphasising the need for reasonable clarity concerning the dispute and relief sought.

These judgments establish an important limitation: the duty to investigate does not authorise an adjudicator to formulate a new claim, enlarge the dispute beyond its proper scope or grant relief unrelated to the application.

Silver Lakes Homeowners Association v Leonard: Adjudicators must actively engage with material issues

A further example is *Silver Lakes Homeowners Association v Leonard and Others* [2024] ZAGPPHC 115.

The dispute concerned disciplinary penalties imposed by a homeowners association.

On appeal, the Gauteng High Court found, among other things, that the adjudicator had failed to determine a material preliminary defence raised by the association and had failed to observe procedural requirements relating to the exchange of submissions.

The Court emphasised that adjudicators play an active role in the adjudication process and have statutory powers to obtain further information and documentation where necessary.

The appeal succeeded because the adjudicator had failed to comply with material requirements of the CSOS Act and the applicable practice directive.

This judgment illustrates that an adjudicator's investigative obligations extend beyond gathering evidence. They also require proper consideration of material issues and defences raised by the parties.

What, precisely, must a CSOS adjudicator do?

Read together, the legislation and the judgments establish several principles governing the adjudication process.

First, an adjudicator must identify the dispute requiring determination.

This involves considering the relief sought under section 39, the grounds advanced in support of that relief, the applicable scheme governance documentation and the material factual and legal issues arising from the application.

The adjudicator is not necessarily confined to the legal arguments formulated by the parties, but must remain within the scope of the dispute and relief properly placed before CSOS.

Second, an adjudicator must investigate the material issues.

Section 50 requires more than a superficial consideration of the parties' submissions. An adjudicator must meaningfully engage with the issues necessary to determine whether the relief sought should be granted.

Where a material issue cannot properly be determined on the evidence available, the adjudicator must consider whether further investigation is necessary.

Section 51 provides the mechanisms through which additional evidence may be obtained. The selection of those mechanisms remains discretionary, but the discretion must be exercised consistently with the statutory duty to investigate.

This does not mean that every missing document must be requested. If the existing evidence is sufficient to determine the dispute fairly, further investigative steps may be unnecessary.

Conversely, where a material factual or legal issue remains unresolved and further information is reasonably necessary for its determination, an adjudicator cannot simply disregard the issue without properly considering whether additional investigation is required.

Third, the adjudicator must observe procedural fairness.

Section 50 expressly requires compliance with the principles of due process.

Among other things, this requires that affected parties receive a reasonable opportunity to address the case against them, that material evidence and submissions are dealt with fairly,

and that an adjudicator does not rely on undisclosed information in determining the dispute.

The obligation is reinforced by the CSOS Consolidated Practice Directives 1 of 2025, which require adjudicators to act impartially, ensure that parties receive copies of written submissions and adopt procedures consistent with fairness.

For example, paragraph 15.116.7 specifically addresses disputes involving updated arrear-levy claims and requires the respondent to be afforded an opportunity to address an increased or different amount before an order is made.

Procedural fairness must therefore inform both the investigation and the eventual decision.

Fourth, the applicant retains the responsibility to establish a case for relief.

The inquisitorial character of CSOS proceedings does not reverse the ordinary evidentiary burden.

As the Court confirmed in *Roux*, an applicant must place sufficient factual material before the adjudicator to substantiate the grounds upon which relief is sought.

An adjudicator is not required to search indefinitely for evidence that might support an inadequately formulated or unsubstantiated claim.

However, the applicant's evidentiary burden cannot be used as justification for failing to consider other material issues properly raised in the application.

The distinction is between assisting the determination of a dispute and constructing a party's case. Section 50 requires the former, not the latter.

Finally, an adjudicator must make a reasoned determination.

Section 53 permits an adjudicator to dismiss an application on specified grounds *after investigation*.

Where an application is not dismissed under section 53, section 54 requires the adjudicator to make an order granting or refusing each part of the relief sought and to provide reasons for the decision.

These provisions reinforce the investigative obligation.

An adjudicator must conduct the enquiry necessary to determine the application and must provide reasons demonstrating how the material issues were resolved.

This does not require an exhaustive discussion of every allegation or document. It does, however, require meaningful engagement with issues that are material to the outcome.

What about the CSOS Practice Directives?

An interesting additional consideration arises from the CSOS Consolidated Practice Directives 1 of 2025.

Paragraph 15.116.1 states that an adjudicator *may investigate* a dispute in terms of sections 50 and 51 of the CSOS Act.

That wording is potentially misleading because section 50 expressly imposes a mandatory duty to investigate.

The Practice Directive must be read subject to the Act and cannot convert a mandatory statutory obligation into a discretionary power.

The preferable interpretation is that the directive recognises the adjudicator's discretion concerning the investigative measures available under section 51, rather than suggesting that an adjudicator may dispense with the investigation required by section 50.

Nevertheless, clearer wording would avoid uncertainty about the distinction between the obligation to investigate and the powers available to discharge that obligation.

Are the two judgments irreconcilable?

In our view, the judgments are not necessarily irreconcilable in their outcomes, although their reasoning reveals a material difference in the interpretation of the statutory framework.

In *Zoned Earth*, the Court was principally concerned with whether the adjudicator was obliged to compel the production of additional documents. That enquiry falls primarily under section 51, which affords adjudicators discretion concerning the evidence they require.

In *Roux*, the Court considered whether the adjudicator had properly investigated and determined the substance of the application. That enquiry directly engages the mandatory obligation imposed by section 50.

These are different questions.

It is entirely possible for an adjudicator to discharge the duty under section 50 without requiring additional documents under section 51.

Equally, an adjudicator may obtain extensive documentation but still fail to discharge the statutory duty if material issues are ignored or the dispute is determined by applying an incorrect legal test.

Accordingly, the refusal to order additional document production in *Zoned Earth* does not necessarily conflict with the outcome in *Roux*.

However, insofar as *Zoned Earth* is interpreted as establishing that adjudicators have no legal obligation to investigate applications, that proposition cannot, in our view, be reconciled with the express wording of section 50 or the reasoning in *Naidoo* and *Roux*.

The decisions of the different divisions do not establish a single binding precedent resolving the issue for all courts. Nevertheless, the approach in *Roux* is supported by the statutory language and earlier authority.

What are the consequences of failing to investigate?

The distinction has important consequences for parties dissatisfied with CSOS adjudication orders.

Section 57 of the CSOS Act permits an appeal to the High Court, but only on a question of law.

An appeal cannot ordinarily be used merely to challenge the weight attached to evidence or to invite the High Court to reconsider factual findings because the appellant disagrees with the result.

However, as *Roux* demonstrates, an adjudicator's failure to discharge a mandatory statutory duty may constitute an error of law.

Where an adjudicator misconstrues the scope of the dispute, fails to apply the correct statutory test or fails to undertake the investigation required by section 50, the resulting decision may be susceptible to challenge under section 57.

A material failure to investigate may also, in appropriate circumstances, provide grounds for judicial review under PAJA, as demonstrated in *Naidoo*. The distinction between the statutory appeal and judicial review procedures remains important and should be considered when identifying the appropriate remedy. **Refer to our previous article** for more on the distinction between an appeal and a review.

Crucially, not every failure to request a particular document or conduct a specific enquiry will constitute a reviewable or appealable error. The issue is whether the adjudicator failed to perform a material aspect of the statutory function, rather than whether another adjudicator might have investigated the matter differently.

Where the failure is established, the High Court may set aside the adjudication order and remit the dispute to CSOS for determination afresh.

That is precisely what occurred in *Roux*.

Conclusion

The obligation imposed upon CSOS adjudicators is clear in principle, even if its application depends upon the circumstances of each dispute.

Section 50 imposes a mandatory duty to investigate. Section 51 confers discretionary powers to determine how that investigation should be conducted.

An adjudicator is not required to act as an attorney for either party, gather every conceivable document or investigate matters beyond the scope of the application. However, the adjudicator must identify and meaningfully engage with the material issues, observe procedural fairness, consider relevant evidence and provide a reasoned determination.

The recent judgment in *Roux* reinforces these obligations and confirms that a material failure to perform the investigative function may constitute an error of law capable of being challenged under section 57.

While the outcome in *Zoned Earth* may be defensible on the narrower issue of compulsory document production, its broader suggestion that adjudicators are not obliged to investigate applications is, in our view, inconsistent with the statutory framework.

Ultimately, the purpose of CSOS adjudication is not merely to provide a less formal forum for resolving disputes. It is to provide an accessible, fair and legally effective mechanism for determining disputes within community schemes.

That purpose can only be achieved if adjudicators discharge the investigative responsibilities that the legislature has expressly entrusted to them.

If you require any assistance with a CSOS application, or would like to better understand the dispute resolution process, feel free to contact us at **info@theadvisory.co.za** for a no-obligation quotation.