Mandate to negotiate must be valid

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LANDLORD-TENANT disputes can be resolved between parties themselves and should be encouraged. Where an "agent" (e.g., an attorney, community organisation, estate agent) acts for a party, it is incumbent that the agent places the interest of the client above its own. It must have a clear mandate or instructions within which decisions can be taken to end a dispute.

What happens when an agent represents a party without proper authorisation enters into negotiations and even concludes an agreement? Authorisation or a mandate must be examined within the context of *locus standi*. Does the agent have the right to represent a party or to carry out an instruction? Let us look at a few examples to understand the serious implications in the event of an incorrect mandate or a fraudulent misrepresentation.

Example one: A body corporate terminates a lease agreement and then proceeds to evict the tenant. The landlord who is an owner of one of the unit (flat), was informed that the tenant has become a nuisance and the other owners and tenants have had enough. However, the landlord does not terminate the lease agreement neither does she instructs the body corporate to act on the landlord's behalf.

While the landlord should have taken action, firstly by placing the tenant on terms, allowing the tenant to rectify the breach, and thereafter to proceed with cancellation because of the tenant's failure to remedy the breach, the body corporate cannot act as the landlord, unless specifically mandated to do so. The body corporate can take action against the landlord / owner for not adhering to the provisions of the Sectional Titles Act.

Example two: An organisation represents a group of tenants regarding a maintenance and rental dispute.

After concluding an agreement, the landlord is unable to enforce the terms because not all of the tenants mandated the organisation to act for them. During negotiations the landlord should have requested from the organisation's spokesperson proof of representation.

Often, a written document with an instruction from the tenants, with their details and signature may suffice. The extent of the mandate is also important, that is to say, parties are informed that the representative can take decisions and even finalise a settlement agreement or the restrictions under which the representative is mandated.

Take the above examples as being played out before a court or better still, at the provincial Rental Housing Tribunal. A party that appeared before the Tribunal subsequently informs the Tribunal that during the hearing proceedings ("trial"), the person who claimed to have represented the party was not mandated or authorised to act. The Tribunal is asked to hear the matter again or to change its ruling based on "evidence" to be presented by the party itself.

Unfortunately for the aggrieved party, the ruling (judgment) cannot be reviewed or new information examined because once the Tribunal gives its ruling, it becomes *functus officio*. In other words, the case is closed and the Tribunal has no authority to re-examine the case and to give a new judgment.

The party has to approach the High court in terms of section 17 of the Rental Housing Act to have the proceedings of the Tribunal reviewed. A proper mandate and the Tribunal itself asking for one at the commencement of the hearing will assist parties in the finalisation of their case.