A ruling ends jurisdiction

Case merits form no part of review procedure for a RHT finding

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A PARTY has to approach the High court in terms of section 17 of the Rental Housing Act (RHA) to have the proceedings of the RHT reviewed.

Review procedures are concerned with the conduct of the members, whether they were biased or acted prejudicially against a party.

The merits of the case cannot be appealed, although there is a view that since the ruling of the RHT is a judgment of a magistrate's court and enforceable in that court, a party should be allowed to file an appeal.

Approaching the High Court for relief is costly, whether to review the procedures or to file an appeal, if that were possible.

Functus Officio

If a party is affected by non-compliance of the RHT's ruling, there is no "Notice to Renew Proceedings" to have the matter heard. The members of the RHT are said to be *functus officio* and the doctrine of the *res judicata* rule applies.

Res judicata means that the parties are prevented from having the same matter adjudicated because the matter was already judged[1]. Once a ruling (judgment) is made and communicated to the parties, the RHT cannot review it or consider new information to re-examine the evidence or re-evaluate the case.

Once the RHT gives its ruling, it becomes *functus officio*, like the lower and higher courts[2]. In other words, the case is closed and the RHT has no authority to re-examine the case and to give a new judgment. Corbett JA's comments[3] show that even the chief justice is not excused:-

> Finally, there is the deletion from the court's judgment as originally recorded. I have no doubt that, whatever may have led the trial Judge to alter the record in this way, he should not have done so - for two main reasons.
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> In the first place, the record of the judgment in its original form correctly reflected what had actually occurred in court, and there was consequently no valid ground for the alteration thereof.
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> Secondly, it seems to me that in this instance and at the stage when he acted, the learned CHIEF JUSTICE was functus

[1] *Janse van Rensburg NO and others v Steenkamp and another; Janse van Rensburg and others v Myburgh and others* 2009 (1) All SA 539 (SCA).

[2] *S v Tengana* 2007 (1) SACR 138 (C); *Ndlovu v Director of Public Prosecutions, Kwazulu Natal, and Another* 2003 (1) SACR 216 (N); *Sefatsa and Others v Attorney-General, Transvaal, and Another* 1988 (4) SA 297 (T); *S v Smith* 1985 (2) SA 152 (T).

[3] *S v Mpopo* 1978 (2) SA 424 (A) at 428-429.

officio and had no power, *mero motu*[4], to amend the record in the way he did.

There are exceptions which may best be highlighted in the words of Ngcobo J[5]: -

> Under common law the general rule is that a judge has no authority to amend his or her own final order. The rationale for this principle is twofold. In the first place a Judge who has given a final order is *functus officio*.
>
> Once a Judge has fully exercised his or her jurisdiction, his or her authority over the subject matter ceases.
>
> The other equally important consideration is the public interest in bringing litigation to finality. The parties must be assured that once an order of court has been made, it is final and they can arrange their affairs in accordance with that order.
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> However, our pre-constitutional case law recognised certain exceptions to this general rule. These exceptions are referred to in the Firestone case.
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> These are supplementing accessory or consequential matters such as costs orders or interest on judgment debts; clarification of a judgment, or order so as to give effect to the court's true intention; correcting clerical, arithmetical or other errors in its judgment or order; and altering an order for costs where it was made without hearing the parties.
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> This list of exceptions was not considered exhaustive. It may be extended to meet the exigencies of modern times. Simple interlocutory orders stand on a different footing. These are open to reconsideration, variation or rescission on good cause shown.
>
> Courts have exercised the power to vary simple interlocutory orders when the facts on which the orders were based have changed, or where the orders were based on an incorrect interpretation of a statute which only became apparent later.
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> The rationale for holding interlocutory orders to be subject to variation seems to be their very nature. They do not dispose of any issue or any portion of the issue in the main action.

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[4] acting impulsively or out of own accord.
[5] *Zondi v Mec, Traditional and Local Government Affairs, and Others* 2006 (3) SA 1 (CC) at 11-13.