



Housing tribunals have 'no legal teeth'

27 May 2008, 14:08

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The Rental Housing Tribunals are said to have no "teeth" since they cannot enforce rulings and cannot (after serving a subpoena) compel a witness to attend or to have a party produce documents. Six years after the establishment of at least three Rental Housing Tribunals (RHTs), enforcing its rulings still poses the greatest challenge. 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. If a party ignores a summons to appear before the RHT, there is no recourse to hold the party in "contempt of court" and to compel the party to attend a hearing or to comply with any orders or rulings. The additional powers given to RHTs, such as attachments, interdicts and spoliation, will result in matters being heard *ex parte* in certain instances and an interim ruling will be served on the absent party for compliance.

The need for enforcement is therefore critical. Recent amendments, particularly regarding section 13 of the Rental Housing Act 50 of 1999 ("the RHA") needs to be examined to find a practical solution. The amendment of section 13 of the RHA reads: -

1. makes a ruling of the RHT an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);
2. and, is enforced in terms of that Act. What is an order of a magistrate's court?

A judgment of a magistrate's court in civil cases "includes a decree, a rule and an order"[1].

Who enforces judgment of magistrates' courts?

A sheriff [2] enforces a decree, a rule and an order of a magistrate's court

Conversion into a magistrate's court order

Since a ruling of the RHT is deemed to be an order of a magistrate's court, and the amendment of the RHA would make a ruling enforceable in terms of the Magistrates' Courts Act, a ruling could be transferred to the magistrates' courts to be converted into a magistrate's court order.

The clerk of the magistrate's court would then number the RHT's ruling with a consecutive number for the year during which it is filed[3]. The process for the execution of any ruling of the Rental Housing Tribunal for the surrender of

movable property shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff.

The ministers and department heads of housing and justice have to acknowledge the serious collapse of the RHTs' orders. There must be an undertaking to effect the necessary changes in the relevant legislation, including the Procedural Regulations of the RHA, within a short period. Failure to do so will further humiliate members of the RHTs and support staff, and the public will have lose confidence in the RHTs. Parties seeking relief from the RHT will be prejudiced by the delay due to implementation problems regarding rulings and compliance of other orders, resulting in financial loss and frustrations.

Unintended Consequences

Since a ruling of the RHT is ultimately a magistrate's court order and enforceable in terms of the MCA, there are certain unintended consequences, such as: -

- Jurisdiction relating to area: a province:- For magistrates' courts, these would be the district, subdistrict and area for which such court is established. The RHT is established provincially.
- There is also the jurisdiction of persons detailed in s28 of the MCA one needs to investigate in relation to the RHT.
- Jurisdiction relating to causes of action: The RHT gives a ruling in a matter where more than R100 000 (currently the upper limit of magistrates' courts[4]) is awarded to a party. How is this enforced if the ruling is deemed to be a magistrate's court order?
- Jurisdiction in respect of interdicts: Magistrates' courts have limited jurisdiction, unlike the high courts. The Amendments to the RHA do not specify the types of interdicts, nor do regulations, to be signed into law soon.

Footnotes

[1] s1 Magistrates' Courts Act, 1944 (Act No. 32 of 1944) [2] s 13-15 *ibid* [3] Rules 3-4 Magistrates' Court Act [4] Government Notice R1411 in Govern-ment Gazette 19435 of 30 October 1998

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