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## Unfair practices fall under RHT

Courts cannot overstep their jurisdictions

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WHEN we talk of jurisdiction, we are referring to the powers of the court to deal with a certain matter. Magistrate's court cannot hear monetary claims that exceed a certain value, a family court does not have jurisdiction over criminal matters and the labour court cannot hear a dispute between landlord and tenant.

There are many other aspects to the jurisdictions of courts like the geographical area where it can hear a matter or the High court having the power to review a decision of the Rental Housing Tribunal.

### What are the powers of the provincial Rental Housing Tribunals?

- It has jurisdiction over unfair practices;
- It can issue notice for a mediation or summons parties to a hearing;
- Its ruling is deemed to be an order (judgment) of a Magistrate's Court;
- It can impose a fine or have a person imprisoned; or do both, that is, a person can be fined and imprisoned

Kerr<sup>1</sup> (2004) draws our attention to the fact that the Rental Housing Tribunal (RHT) does not prevent the courts' jurisdiction regarding unfair practices.

"It must be remembered that although unfair practices fall within the jurisdiction of Tribunals, the Act stipulates at the beginning of subsection 5(3) that the invariable obligations it prescribes in that subsection are 'enforceable in a competent court'" (p 509).

According to Mukheibir<sup>2</sup> (2000: 343) the Tribunal has exclusive jurisdiction regarding unfair practices. Her notion of the Tribunal having exclusive jurisdiction finds "support" in at least two instances.

A magistrate's court may refer an unfair practice, at any stage of its proceedings to the Rental Housing Tribunal (RHT). "A magistrate's court may, where proceedings before the court relate to a dispute regarding an unfair practice as contemplated in this Act, at any time refer such matter to the Tribunal" (s13 (1)).

Section 13(9) states: "As from the date of the establishment of a Tribunal as contemplated in section 7, any dispute in respect of an unfair practice, must be determined by the Tribunal unless proceedings have already been instituted in any other court."

This section provides strong support for the RHT's exclusive jurisdiction over unfair practices.

Our superior courts, following the English common law principle of inherent jurisdiction, have powers to hear any matter before it unless an Act of parliament (statute) prevents it by granting exclusive jurisdiction to another court or Tribunal.

While the concept of unfair practices is unique to the RHA, it can be argued that the superior courts are not precluded from hearing unfair practices.

In fact, the magistrate's court may refer a matter to the RHT, but it is not obliged to do so. The RHA is silent about proceedings regarding unfair practices before superior courts.

The question still remains: does the RHA prevent courts from determining unfair practices disputes?

According to Kerr (2004) the court's powers are generally retained by deemed provisions or invariable obligations contained in 5(3) and also 13(10) of the RHA.

Section 13(10) allows a tenant or landlord / landlady to approach a competent court

1. for urgent relief; or, in the absence of a dispute regarding an unfair practice

2 (i) to recover arrear rentals

2. (ii) institute eviction proceedings

The RHT does appear to have "exclusive" jurisdiction regarding unfair practices.

Where a party has lodged a complaint with the RHT, it may be argued that the courts are prevented from adjudicating the complaint because the RHT must settle the unfair practices dispute. "Any other court" would include the magistrates' courts and the superior courts.

An unfair practices dispute must therefore be settled by the RHT, unless a party instituted action in any other court prior to the establishment of the RHT.

The RHT could be understood to have "extraordinary" powers to deal with unfair practices, but being a creature of statute (RHA), it does not have inherent jurisdiction.<sup>3</sup>

Courts cannot exceed their jurisdiction<sup>4</sup> and must exercise the powers conferred upon them with caution. The RHT is not a court and must exercise greater care. In resolving disputes regarding unfair practices either through its mediation process or adjudication through a hearing, the RHT must conduct itself with extreme vigilance.

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#### **Endnotes**

<sup>1</sup> The law of sale and lease. Third edition. LexisNexis Butterworths.

<sup>2</sup> The effects of the Rental Housing Act on the common law of landlord and tenant. *Obiter*.

<sup>3</sup> *Omnia Fertilizer Ltd v Competition Commission; Competition Commission of South Africa v Sasol Chemical Industries (Pty) Ltd and Others* (31/CR/May05) [2008] ZACT 45 (20 June 2008).

<sup>4</sup> *Supreme Court of Canada case: College Housing Co-operative Ltd. v Baxter Student Housing Ltd.* [1976].