

CASE MERITS NOT AT ISSUE IN REVIEW

No appeal against RHT ruling

Daily News Tuesday April 7 2009

THE PARTY has to approach the High Court in terms of section 17 of the Rental Housing Act 50 of 1999, as amended (the RHA), to have the proceedings of the Rental Housing Tribunal (the RHT) reviewed.

Review procedures are concerned with the conduct of the members, whether they are 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 judgement 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.

Review does not necessarily mean the court would set aside a ruling or redirect the RHT to hear the matter

de novo (from the start; afresh before a different group of commissioners).

In reviewing an application, the court may confirm the RHT's ruling.

Lichtenberg J P states¹; "I quote, with respectful agreement from Herbstein and Van Winsen, *The Civil Practice of the Superior Courts in South Africa 3rd edition* at 755, where the learned authors say the following:-

'Statutory tribunals should conduct their proceedings as follows:

"Certain elementary principles speaking generally, they must observe; they must hear the parties concerned; those parties must have due and proper opportunity of producing their evidence and stating their contentions; and the statutory duties must be honestly and impartially discharged." Their discretion must be exercised "according to the rules of reason and justice", and not arbitrarily.

"Where the tribunal directs its mind to legal issues, which it is entitled to

¹ African National Congress v Van Deventer
No and Another 1994 (3) SA 270 (EO) at 275

and bound to decide, such as the interpretation of regulations or other rules, a wrong decision in law cannot be said to prevent it from fulfilling its statutory functions or duties, and the Court will not interfere with the decision on review unless it was one which no reasonable person could have come.’

Functus Officio

If a party is affected by non-compliance with 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 that has already been finalised.²

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.³

² Pothier (Vol 1:2000). Janse van Rensburg and Others NNO v Myburgh and Two Other Cases 2007 (6) SA 287 (T).

³ 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).

In other words, the case is closed and the RHT has no authority to re-examine the case and to give a new judgment.

The comments of Corbett JA⁴ illustrate 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:

“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.

“Secondly, it seems to me that in this instance and at the stage when he acted, the learned Chief Justice was *functus officio* and had no power; *mero motu* to amend the record in the way he did.”

The RHT’s require substantive procedural rules to deal with rescission, simple alterations and grammatical or arithmetical corrections.

Dr Sayed Iqbal Mohamed is the chairperson, *Organisation of Civic Rights*.

Website: www.ocr.org.za

For tenant’s rights’ advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451

⁴ S v Mpopo 1978 (2) SA 424 (A) at 428-429.