

RHT's areas of jurisdiction

The powers of tribunals outlined in relationship to other courts

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Our attention is drawn by Professor Kerr (2004) to the fact that the Rental Housing Act 50 of 1999 as amended (RHA) does not prevent the courts' jurisdiction regarding unfair practices.

'It must be remembered that although unfair practices fall within the jurisdiction of Rental Housing 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"' (509).

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.

According to Mukheibir (2000:343), the Rental Housing Tribunal (RHT) has exclusive jurisdiction regarding unfair practices.

Her notion of the RHT 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 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 (11)).

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

Knoll J¹ in reference to the unfair practices provision says that the RHA "[a]lso introduces the concept, previously unknown to the common law or contained in rents legislation, of the "unfair practice" (at 65) and that section 13(9) of the RHA is stated in peremptory (absolute, unconditional) terms (at 67).

Inherent jurisdiction of the courts

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 institution.

While the concept of unfair practices is unique to the RHA, it can be argued that

¹ *Kendall Property Investments v Rutgers* 2005 (4) 81 (C).

the superior courts are not precluded from hearing unfair practices. The RHA is silent about proceedings regarding unfair practices before superior courts.

RHT and the 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 the deemed provisions or invariable (unchanged) 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
2. in the absence of a dispute regarding an unfair practice
 - 2.1 to recover arrear rentals
 - 2.2 institute eviction proceedings

RHT and “exclusive” jurisdiction

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 (the RHA is an Act of parliament), it does not have inherent jurisdiction.²

Courts cannot exceed their jurisdiction³ 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.

While not a court, the RHTs perform a judicial function and have more powers than an arbitrator or an administrative Tribunal, the latter two functions are like that of a judge.⁴

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² *Omnia Fertilizer Ltd v Competition Commission; Competition Commission of South Africa v Sasol Chemical Industries (Pty) Ltd and Others* 2008 JOL 22197 (CT).

³ *Supreme Court of Canada, College Housing Co-operative Ltd. v Baxter Student Housing Ltd*, 1976 (2) S.C.R. 475.

⁴ *Knop v Johannesburg City Council* 1995 (2) SA 1 (A).