

Constitution is supreme

All legislation is subject to the principles of 1996 document

By Sayed Iqbal Mohamed

THE legislature is that branch of the government that makes the law, and also has the authority to amend and repeal laws. It is Parliament made up of the national assembly and the national council of provinces at the national level, provincial legislature and local municipal councils.

The president and his cabinet comprise the executive; at the provincial level, it is the premier and his or her executive council and then the municipalities at the local branch. They have the power to implement, execute and enforce legal rules.

The 1996 Constitution was not created by Parliament and is therefore not referred to as an Act. It was the Constitutional Assembly (National Assembly and Senate) that was responsible and furthermore, it had to be certified by the Constitutional Court.

The 1996 Constitution is supreme and not parliament, and the legislature, the executive and the judiciary (courts), all organs of the state, every government official and all citizens are bound by the constitution.

Every law and all legal rules, principles and values are subject to the constitution.

However, during the apartheid era Parliament was supreme, and the executive branch of government could also create laws.

Laws were created and executed with the constitution having little or no authority. Government was vested with unfettered power. As long the correct procedures were followed in passing the law, there could be no constitutional challenge.

The South African Police played a significant role in executing and enforcing certain laws, especially authoritarian and racist laws, and did so with impunity.

Some lawyers represented and defended the state even though the laws were cruel, discriminatory and against human dignity.

Seventeen years into our democracy, with a supreme constitution, there are many instances when certain individuals still have a mindset harking back to the power of the apartheid era, when laws were created to humiliate and subjugate.

In one recent case, a tenant was informed that he had ten hours to get rid of his visitor and to deposit a fine of R100.00 into his landlord's account for breaking the "house rules".

This building is not a sectional titles or share block scheme, and tenants were not given rules when they concluded leases many years ago.

(This does not mean that house rules can be applied to the different types of tenure such as sectional title.)

The tenant was also informed by the supervisor that should he fail to get rid of his visitor, the South African Police Services will assist in 'evicting' the visitor.

The supervisor's previous attempts to impose some 80-odd 'house rules' were rejected by the tenants.

In many of the supervisor's violations of the tenants' rights, unlawful and unconstitutional as they are, the legal representative supported the supervisor and continues to do so with impunity.

The tenants are fighting a battle at three levels to protect their rights, against the supervisor, the landlord and their legal representative.

The 'triad' have confused and disregarded the legal rules, principles and the application of the relevant laws and specific provisions of these laws.

Can anyone in the triad arbitrarily remove a tenant's visitor or occupant or deny him or her access to the dwelling without breaking the law?

Yes, under the apartheid state with its draconian laws, police apparatus and legal representatives.

Since 1994, under the Interim Constitution and after the introduction of the Constitution of 1996, no one in our democracy is above the law.

Everyone must obey the constitution and the rule of law. Everyone!

More specifically, in the above scenario, many laws apply and section 26(3) of the Bill of Rights in the 1996 Constitution is one of several relevant constitutional provisions.

"No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

Critically examining the other "house rules" brings into focus other constitutional provisions:

- The tenants' rights to their dignity: "Everyone has inherent dignity and the right to have their dignity respected and protected" (s10)).
- To be treated equally: "Everyone is equal before the law and has the right to equal protection and benefit of the law" (s9(1)).
- Not to be discriminated against: "No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)" . . . (s9(4)).
- In terms of section 12(1)(e): "Everyone has the right to freedom and security of the person, which includes the right
 - e. not to be treated or punished in a cruel, inhuman or degrading way."

The landlord has the right to challenge a tenant who violates the terms of the lease and enjoys equal protection of all the applicable laws and the relevant constitutional provisions.

The legal representative is legally and morally obliged to inform the landlord, his supervisor or agent of the right course of action.

Litigating through correspondence and confirming and supporting mistaken notions of the law and a ruthless approach is wasting money. It is also unproductive in building a genuine profitable relationship.