

OCR NEWSLETTER

Organisation of civic rights

July 2012 - September 2012 Volume 2 Issue 2

Trusts complicate proceedings

A company is a separate legal entity that can sue and be sued in its own name. A trust as an entity does not have a legal personality. "Strictly speaking it is incorrect to refer to a trust as a 'separate legal entity'" (Badenhorst v Badenhorst [2006] 2 All SA 363 (SCA)).

When a company or a trustee starts legal proceedings or defend a legal action, the director or trustee must show that she or he has the necessary authority to act for the entity.

When several men removed the front door to Hassan Bukuru's flat in June this year, the only contact detail he had was a telephone number of a Mrs. Cassim and a person known as EB.

"EFH Trading Trust–Trustees" was the only information on the written lease under the landlord's name. A deeds search showed the trust as the owner in a sectional titles scheme, owning all the units.

Bukuru, a Burundian resides at flat 8 in the same building took occupation two years ago with his wife and two children. He approached the Organisation of Civic Rights (OCR) which then contacted Cassim and EB. It was alleged that a month's rental was outstanding but both acknowledged that the removal of the door was unlawful and undertook to replace it immediately. That did not happen. Bukuru then produced a deposit slip for the month in dispute and Cassim agreed that the alleged rental arrear that led to the forced removal of the front door would be dealt with legally. The door was still not replaced.

A few days later, an attorney contacted the OCR and said that he was approached by EB from Pomeroy, northern KwaZulu Natal whom he acted for previously. He said that he was not acting officially in the Bukuru matter and undertook to inform EB that the action was unlawful and any dispute about unpaid rental should be dealt with legally. While he acknowledged that the action was inhumane, he could not provide EB's full names or any other details for Bukuru to take legal action.

The front door was replaced a week later but without a lock. Questions sent to EB and later to attorneys Ayoub Kadwa & Co. another firm of attorneys who were officially acting for the landlord, remained unanswered eleven weeks later. These related to:-

- ownership of the flat and names of the trustees



Landlord takes law into own hands

- Cassim and EB's relationship to the Trust and the building
- why receipts were not issued as required by law
- Why no contact details were given to the tenant of the landlord or its representative
- Why the Trust and Trustees applied different policy/tactics to different tenants based on their ethnicity, citizenship or nationality since no legal action was taken against Bukuru to recover the alleged arrear rental. Yet, this was done in the matter of EFH Trading Trust vs Dirk Gestaves van der Merwe (Case No. 5148/2010) through attorneys Ayoub Kadwa & Co. acting for the Trust/landlord.

The master of the high court responded promptly providing the trust deeds, according to which, the trustees of the EFH Trading Trust–Trustees are FATHIMA HATTIA and EBRAHIM HATTIA for the trust created in November 2003.

Maulana resorts to unlawful eviction –

Attorneys & Maulana refuse to talk – Details of landlord or trustees crucial on contracts

NAMES and contact details of parties to a lease are important when legal action needs to be taken. In fact, there is a legal duty to disclose these in terms of the Rental Housing Act. Such information becomes critical if urgent action is needed.

The landlord can take possession of the tenant's personal property for rentals owing by perfecting his right to seize it (hypothec or lien) through the courts. Since the tenant lives in his dwelling, the landlord can approach the court to have her evicted on valid grounds.

What if the landlord or owner is a trust or an entity such as a company, which is the only information stated on the lease? The rental is deposited into a banking account or paid to an agent. How does a tenant bring an urgent legal application without the details of the trustees or the name and address of the director of the company or that of its auditors?

Abitha Thangavalu was physically removed from her flat at New Era House 366 Felix Dlamini (Brickfield) Road and her belongings thrown out onto the pavement. She needed the director's details to take legal action but the name of the company was all that was stated on the lease.

Since an attorney was acting for the company and the name of the director was mentioned in the summons and he deposed to an affidavit to the summary judgment application there was still hope to launch an urgent application to get a court order to be placed back into the flat.

When Fathima Rajah of Fathima D Rajah & Company the attorney involved in the matter was asked to respond to questions regarding the director of New Era, she refused to answer any question. Desai and Associates were the previous attorneys who represented the company and operate from the same building Thangavalu was evicted. When contacted for comments, the response was that they did not have instructions from the maulana.

Research on the company showed up Desai Jadwats Incorporated were the auditors but the latter responded that the company was not their client, ignoring other enquiries.

Finally, when the maulana was traced to a Westville residence he answered the telephone call and confirmed that he was maulana Yunoos Desai but he said that all enquiries regarding Thangavalu had to be directed to his attorney-senior Ridwaan Yunoos Desai of Desai and Associates.

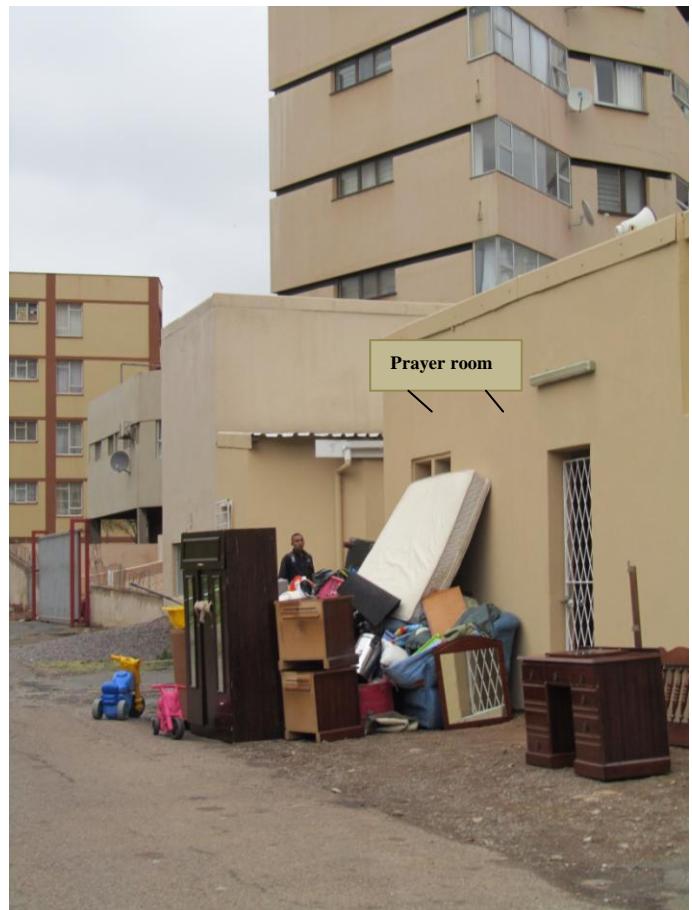
Desai and Associates failed to respond despite several extended deadlines. The law firm acts legally against tenants and as an agent for New Era Property (Pty) Limited by collecting rentals on its behalf and concluding leases.

The following questions to Desai and Associates remain unanswered while Thangavalu with her two year old daughter remain without shelter:-

- Thangavalu claimed she was forcibly removed from her flat and her personal belongings thrown onto the pavement adjoining a 'mosque' on the instructions of their client maulana Yunoos Desai on Tuesday August 21, 2012.
- She also claimed that in March this year the maulana walked into her flat demanding his rental and later disconnected the electricity supply to her flat.
- Confirmation was required that the maulana was the director of Bergreen Investments and Newberg Properties and a member of Desai and Associates.

The above information was confirmed from the Companies and Intellectual Property Commission (CIPC) that also shows the maulana as a member of the legal firm. The law society confirmed that Ridwaan Yunoos Desai was the only person registered as an attorney for Desai and Associates.

However it is understood that there was no court order to have Thangavalu evicted. Therefore the forced eviction was unlawful and a violation of the constitutional rights. In terms of section 26(3) of the constitution, no one may be evicted without a court order made after considering all of the relevant circumstances. Court rules are clear that only the sheriff is empowered to carry out a court order and under a warrant of execution.



GAUTENG RENTAL HOUSING TRIBUNAL – tale of bias rental mediation

LAST week we looked at the fact that Rental Housing Tribunals (RHTs) are independent of the provincial Department of Human Settlements, the latter being subject to the RHTs jurisdiction as landlords.

At the successful conclusion of mediation, parties sign an agreement together with the mediator, which is separate from and independent of the mediator's note or certificate of outcome.

The mediator is neutral, unbiased and an objective party who “merely acts as a facilitator in trying to resolve the dispute” and the mediator must inform the parties that ‘the decision to be arrived at will be the decision of the parties and not that of the mediator’” (Judge Cameron in Maphango (now Mgidlana) and Others v Aengus Lifestyle Properties (Pty) Ltd (CCT 57/11) [2012] ZACC 2)).

An adequate notice period must be given to parties to allow for any preparation and request for further information regarding the complaint.

The Gauteng Rental Housing Tribunal served David Willem Jacobs with a notice for mediation dated May 24, 2012, asking him to appear the following morning at the Akasia office in Pretoria.

Biased

Jacobs alleged that the mediator was biased by commenting that he was being difficult to a beautiful lady (the tenant) and he was cautioned not to say anything or face a two year imprisonment if he did speak.

Jacobs family were extremely upset about the way the Gauteng Tribunal dealt with a complaint lodged by his tenant. Seventy-one year old Jacobs has 32 percent use of his heart following multiple heart attacks and was recently hospitalised with a blood clot (between July 2-6, 2012).

Medical reports confirm his state of health.

Many attempts later - and only after indicating that the Human Settlements minister and portfolio committee would be asked to comment to the questions forwarded to the Pretoria and Johannesburg offices of the tribunal - was an official response given through the mediator.

Many questions remained unanswered such as the comment about the tenant being a beautiful lady, written reference to the Tribunal Act (that does not exist), the absence of a confidentiality and mediation agreement and the mediator's note that appeared to Jacobs as a ruling or judgment.

According to the mediator Linda Skosana of LP Skosana Attorneys, Jacobs insisted that the matter be put on the Roll for the 25 May 2012. “Mr Jacobs stormed into the Mediation office breathing very high (sic) and informed me that he wants the matter to be finalized today as he is very sick,

I asked him as to whether he is sure that he wants the matter to be disposed of today. He replied in the affirmative for a moment I got scared thinking that he will collapse because of what I have been told that he is due for a heart operation.”

Jacobs denied asking for mediation date since he was served with a notice dated Thursday May 24 and served on him that same afternoon to appear the following morning, which he did.

When served with the notice he was informed that failure to appear would lead to imprisonment. Was it a hearing or mediation because a hearing requires at least three members according to the Rental Housing Act? Jacobs was called to a mediation as was obvious from the notice, that one person represented the tribunal and from the mediator's note.



Response

In the response, Skosana states: “Both parties were called in Mr Jacobs insisted that he wants his wife to be present during the hearing. I allowed that.”

On for the matter of imprisonment, Skosana response was: “It was brought to the attention of the Respondent that in terms of Regulation 12 (1) (a) and Regulation 14(1) (g) the landlord is obliged to furnish the tenant with these receipts. The said Regulations were read to both parties. It was only then that the Respondent agreed that the complainant must be furnished with receipts. During this time I noticed that Mr Jacobs is now breathing nicely and does not present the signs of as very sick man” said Skosana.

In the numerous fax, e-mails and telephone calls from June 18, 2012, it was clearly stated that Jacobs had made certain allegations for which a response was required and this article, together with last week's one were delayed repeatedly until Skosana could respond to the allegations.

Daily News Tuesday July 24 2012.

Incompetence delays property title deeds for 3 years



Tenants' representatives for the Refurbishment of Sydenham Heights

In June 2012 we looked at the tardiness of the eThekwin municipality's officials that resulted in several years of inconvenience and frustration for the Kings of Sydenham Lodge body corporate in Durban.

The municipality converted its rental stock into sectional titles ownership by refurbishing each flat or unit and writing off tenants' arrears.

The upgrade of the 360 flats as well as the entire three buildings in Sydenham was commendable and, in fact, one of the best projects for struggling tenants, particularly the poor. As tenants opted for taking ownership of their dwellings, the process of transfer of the dwellings into their own names on the title deeds began. It started with tenants signing the purchase and sales agreements (deed of sale) and the attorney with special expertise and skills (conveyancer) lodging the necessary documents with the deeds office to have the property registered in the name of the new owners.

In July 2009 Feranah King and her husband Charles King signed the purchase and sales agreement but had to wait three years to become owners. This was due to incompetence and negligence on the part of some officials. After many intervention and public exposure was the property finally transferred.

According to Nina Brune of Kruger Ngcobo Inc. (the conveyancing attorney), "it would appear that levy clearance figures are requested, but that by the time the municipality pays they have expired, alternatively, they pay the one and not the other. She said that the only time both levies were paid simultaneously was in December, and then there was insufficient time to register the transfer before the levy clearances expired.

The other hurdle that was sorted out was the incorrect information; a wrong block number given to the attorneys leading to the first delay in the Kings' getting the title deed.

Numerous attempts later, the municipality's officials could not say when the transfer would take place. They could not answer why the levy payment at a particular date due to the municipality's monthly scheduled payment system was not rectified with Wakefields, their managing agent.

Pressed for answers from Wakefields, a Jean Visser from the compliance department of Propell entered the fray. Propell, it was explained, was the levy financier for the body corporate appointed by Wakefields and the trustees to handle the levy financing of the sectional titles scheme. They were not aware of the situation until questions were posed to Wakefields. After the June's article there were still delays on the part of the municipal officials with one irate official chiding Mrs. King for enquiring about the protracted delay. Brune on the other hand worked relentlessly to make sure that the Kings received their title deed.

The Kings were skeptical when they were informed in October that it was a done deal; they would be receiving their title deed. The first response was disbelief because in the past it appeared that the title deed was just a formality, later it was just a matter of days and then the whole process started full swing for the Kings. And so it happened for three years until last week when the actual title deed was handed over to the Kings.

Government bound by eviction laws



Aurora Flats situated at 133 Dr. Hoosen Haffajee (Graypark) Road, Brighton Beach, Durban

The Promotion of Administrative Justice Act 3 of 2000 (PAJA) is part of Administrative law that affects all tiers of government in the performance of its administrative actions. It informs government officials and members how to conduct themselves in exercising their duties, they may be required to give reasons for their actions and to provide remedies including the right to review or appeal a decision.

How does PAJA affect a lease contract; the relationship between tenant and landlord? In a unanimous judgment of the Supreme Court of Appeal (SCA) in May last year, PIE and PAJA were the main basis for the appeal. In the case of *the Minister of Safety & Security v Moodley* (429/10) [2011] ZASCA 93 (31 May 2011), the SCA expressed its doubts about the relevance of PIE in this particular case but stopped short of making any pronouncement.

As for PAJA, the court found that the *Minister of Safety & Security* did not lawfully terminate the lease of the police quarters occupied by a South African Police Services (SAPS) employee Devarajh Moodley by failing to comply with fair procedure in terms of section 3(2) of PAJA. This section requires that adequate notice of the nature and purpose of the proposed administrative action must be given to an affected person. This was not done.

Moodley occupied Aurora Flats situated at 133 Dr. Hoosen Haffajee (Graypark) Road, Brighton Beach, Durban for approximately nine years being granted two extensions on the occupation time cycle limit of three years. In 2005, a new housing allocation policy was introduced and SAPS members occupying police quarters provided by the State had to re-apply. Moodley's application was unsuccessful and upon representations to remain in his quarters. He was granted an extension. It was understood by the SAPS to be an extension of time within which to vacate.

Moodley obtained an interdict in 2007 preventing the renovation of his dwelling, followed by a contempt application. A settlement agreement was reached whereby Moodley was given alternative accommodation during renovation and to be allowed back to his dwelling after renovations were done.

The SAPS refused Moodley to move back and he made another application to the High court with the Minister bringing a counter-application to have him evicted since, it was alleged, the tenancy was lawfully terminated. The minister argued that the accommodation to SAPS members were linked to their employment. PIE did not apply since the accommodation were of a temporary nature.

Judge Sishi of the Durban High Court disagreed and refused to grant the eviction. The SCA held that Sishi J had erred regarding PIE but the judgment not to grant the eviction was not changed since there was no lawful termination. The SCA dismissed the Minister's appeal with costs and made the following judgment that confirmed the agreement between the parties:-

1. The respondent is to make representations with regard to the correctness or otherwise of the decision taken on 6 February 2006 that because the respondent had already been in occupation for five years he could not qualify for the allocation of housing.
2. The said representations are to be made within 30 days of the date of the order.
3. The Provincial Commissioner is to consider the said representations and make a decision thereon within 30 days and is to give written reasons for the decision within 30 days thereafter.
4. The respondent is thereafter entitled to pursue any internal remedy or take any steps under PAJA that he may be entitled to.'

Poor need politicians to assist Inner city residents in need

The first Monday in October is observed throughout the world as World Habitat Day and has been since 1986. This year's theme is "Changing Cities, Building Opportunities, which calls on governments to provide better shelter and to change systems, policies and attitudes that lead to poverty housing.

It is also intended "to remind the world of its collective responsibility for the future of the human habitat".

The SA government has made many positive changes and continues to provide housing. It must be complimented for 'demolishing' numerous unjust laws and introducing progressive policies.

Much more could have been accomplished without the insatiable greed and corruption of some politicians, officials and their partners in the private sector however.

The government is failing the poor while the corrupt are shamelessly enriching themselves at the expense of the poor. The recent Lonmin mine labour strike and ensuing Marikana massacre reminds us that little has really changed. The poor work in the mines at great risk to themselves; living in dreadful conditions while their labour improves the lives of the affluent.

Recent crime statistics, taken at face value, is a further reminder that it is not only about the living conditions of tenants, owners and occupants, but also about the dangerous streets and neighbourhoods.

World Habitat Day provides for introspection and "reflecting on the state of human settlements and the basic right to shelter". Will our politicians and technocrats make any qualitative difference in the lives of people?



Zimbabwean tenants living in shipping containers and bunks in overcrowded rooms in Durban

The eThekweni Municipality has failed to provide adequate shelter for the inner city residents who are exploited by slumlords and then victimised by the municipality as they shut down these accommodation. Enormous amounts of ratepayers and taxpayers money were spent on drafting and showcasing policies. Yet, environmental issues continue to plague poor neighbourhoods and poverty increasing rapidly.

The road to freedom was long and painful and having buried apartheid with such deftness, the road ahead should not be longer and agonising. In 18 years, the global slum population is estimated to reach 2 billion; the majority will be in Africa and Asia. What will become of the poor in SA? How many more families will live in informal settlements and what of the homeless who sleep in the streets or the refugees living in shipping containers? What about tenants who are entitled to human rights, but who live without respect to their dignity? Discrimination, greed and disregard for human dignity cannot be changed by the constitution. We must all work collectively to make the change for a better life for all.