

SOUTH AFRICAN RENTAL HOUSING TRIBUNALS: ENFORCEMENT OF ORDERS

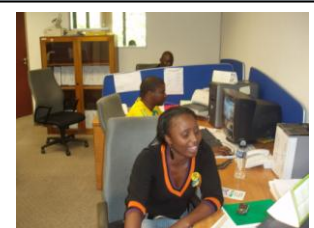
sayed iqbal Mohamed



The RHTs are said to have no “teeth”, a “useless” body, “a kangaroo court” - since it cannot enforce its rulings; cannot (after serving a subpoena) compel a witness to attend or to have a party produce documents.

Six years after the establishment of at least three Rental Housing Tribunals [RHTs], enforcing its rulings still poses the greatest challenge. If a party is affected by non-compliance of 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. The doctrine means that the parties are prevented from having the same matter adjudicated.

- What is an order of a magistrate's court?
- Who enforces judgment of magistrates' courts?
- Who enforces orders of the Small Claims Court (SCC)
- What are the powers of Sheriffs and how are they appointed?
- Small Claims Court Act 61 of 1984 and Rules (SCC)
- Possible scenarios for the enforcement of the RHT orders
- Unintended Consequences



Mpumalanga RHT 2007



Hearing room -WC RHT 2007



NC RHT launch Aug 2007

If a party ignores a summons to appear before the RHT, there is no recourse to hold the party in “contempt of court” and to compel the party to attend a hearing or to comply with any of its order or ruling. The additional powers to be given to the RHTs such as attachments, interdicts and spoliation will result in matters being heard *ex parte* in certain instances and an interim ruling will be served on the absent party for compliance. The need for enforcement is therefore critical.

The recent amendments, particularly regarding section 13 of the Rental Housing Act 50 of 1999 [“the RHA] needs to be examined to find a practical solution. Amendment of section 13 of the RHA: -

1. makes a ruling of the RHT an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) – [“the MCA”]
2. and, is enforced in terms of that Act.

What is an order of a magistrate's court?

A judgment of a magistrate's court in civil cases “includes a decree, a rule and an order”¹.

Who enforces judgment of magistrates' courts?

A sheriff² enforces a decree, a rule and an order of a magistrate's court

Who enforces orders of the Small Claims Court (SCC)?

The sheriff executes orders issued by the SCC after the case is transferred to the magistrate's court for the execution procedure to be followed to enforce the judgment or order of the SCC.

¹ s 1 Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

² s 13-15 Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

“Sheriff”³

4. (1) *Subject to the provisions of sections 29(2) of the Act, all process of the court shall be served or executed through the sheriff. The sheriff shall be under an obligation to render a service only if the party who desires the service has remunerated him beforehand for the said service.*

(2) *Service or execution of process of the court shall, after payment of the remuneration, be effected without any avoidable delay, and the sheriff shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably expected, have power to call upon any member of the Force as defined in section 1 of the Police Act, 1958 (Act 7 of 1958), to render him aid.*

(3) *The sheriff to whom process is entrusted for service or execution shall –*

(a) in writing notify the clerk of the court and the party who sued out the process that 7”

“Process in execution

17. (1) *The process for the execution of any judgment for the surrender of property whether movable or immovable, or for ejection shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff.*

[Subrule (1) amended by Government Notice No. 851 of 19 April 1991]”

What are the powers of Sheriffs and how are they appointed?

In terms of the Magistrates' Courts Act, a sheriff is empowered to carry out certain functions emanating from ss 14-17 and R 8 of the MCA: -

Rule 8 reads: Sheriff of the Court

(1) *Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the sheriff.*

³ Subordinate legislation in respect of the Small Claims Courts Act, 1984 (Act No. 61 of 1984)

Appointment of Sheriffs

Sheriffs are appointed in terms of section 2 of the Sheriff's Act 90 of 1986⁴. The Minister of Justice appoints a sheriff for lower or superior court as sheriff of that court⁵. The sheriff is independent and does not work for the courts but serves documents or executes orders issued by a lower or superior court⁶.

There are at least two possible scenarios for the enforcement of the RHT orders

1. Enforcement through sheriff
2. Conversion into magistrate's court order

1. Enforcement through sheriff

1.1 The following provisions of the Sheriff's Act needs to be amended (possible amendment in italics, bold, underlined] : -

Section 2. Appointment of sheriffs –

- (1) Subject to the provisions of subsection (2), the Minister may appoint in the prescribed manner for a lower or superior court [**or the Rental Housing Tribunal of a province**] a person as sheriff of that court.
- (2) The same person may be appointed as sheriff of both a lower and a superior court [**and the Rental Housing Tribunal of a province**] and two or more persons may be appointed as sheriffs of the same court [**and the Rental Housing Tribunal of a province**]

Section 3. Performance of functions by the sheriff. –

- (1) Subject to the provisions of this section, a sheriff shall perform within the area of jurisdiction of the lower or superior court [**and the Rental Housing Tribunal of a province**] for which he has been appointed the functions assigned by or under any law to a sheriff of that court [**or that Rental Housing Tribunal**].

⁴ s 5- 6 in respect of acting and deputy sheriffs respectively (of the Sheriff's Act 90 of 1986)

⁵ s 2 (of the Sheriff's Act 90 of 1986)

⁶ Mohamed S. I. 2004; 2008

1.2 The following amendment is required in RHA

After section 13 (13), inclusion of a section relating to **Sheriff**–

2. Conversion into magistrate's court order

Since a ruling of the RHT is deemed to be a an order of a magistrate's court and the amendment of the RHA would make a ruling enforceable in terms of the Magistrates' Courts Act, a ruling could be transferred to the Magistrates' Courts to be converted into a magistrate's court order.

The clerk of the magistrate's court would then number the RHT's ruling with a consecutive number for the year during which it is filed⁷.

The process for the execution of any ruling of the Rental Housing Tribunal for the surrender of property whether movable or immovable, shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff.

Conclusion

The Ministers and department heads of Housing and Justice have to acknowledge the serious collapse of the RHTs' orders. There must be an undertaking to effect the necessary changes in the relevant legislations, including the Procedural Regulations of the RHA within a short period. Failure to do so will further humiliate members of the RHTs and support staff and the public will have no confidence at all in the RHTs. Parties seeking relief from the RHT will be prejudiced by the delay due to implementation problems regarding rulings and compliance of other orders, resulting in financial loss and frustrations.

Unintended Consequences

- Jurisdiction relating to area: a province : –

⁷ Rules 3-4 Magistrates' Court Act



For magistrates' courts, these would be the district, subdistrict and area for which such court is established.

The RHT would be the province in which it established.

- There is also the jurisdiction of persons detailed in s28 of the MCA one needs to investigate in relation to the RHT.
- Jurisdiction relating to causes of action : –
The RHT gives a ruling in a matter where more than R100, 000.00 (which is presently the upper limit of the magistrates' courts⁸) is awarded to a party. How is this enforced if the ruling is deemed to be a magistrate's court order?

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⁸ Government Notice R1411 in Government Gazette 19435 of 30 October 1998