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APPEALS HIERARCHY FOR OTHER SPECIALISED COURTS

1. SPECIAL INCOME TAX COURTS

The Special Income Tax Courts sit within divisions of the High Court and consists of a judge of the High Court assisted by an accountant of not less than 10 years' standing, and a representative of the business community.

This court deals with any disputes between a taxpayer and the South African Revenue Service, where the dispute involves an income tax assessment of more than R100 000. In terms of section 86A of the Income Tax Act:

- 1) The appellant in a tax court or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court.
- 2) Such appeal shall lie--
 - a) to the provincial division of the High Court having jurisdiction in the area in which the sitting of the special court was held; or
 - b) where-
 - i) the President of the tax court has granted leave under subsection (5); or
 - ii) the appeal was heard by the tax court constituted in terms of section 83(4B), to the Supreme Court of Appeal, without any intermediate appeal to such provincial division.¹

Tax disputes involving an assessment of less than R100 000 go the Tax Board. The Tax Board is chaired by an attorney, advocate or accountant who works in the private sector and is specifically appointed by the President to assist as chairman of the Board.

Interestingly, in June 2011 Satchwell J in the case of *P Rossi and Others v Commissioner for the South African Revenue Service* (Case no: 2010/34417) in response to a submission by the applicants that the jurisdiction of the High Court is never ousted responded as follows:

- The legislature would not have conceived of a Special Tax Court if every tax dispute could be brought in either that court or the High Court at the taxpayer's election.
- It is inconceivable that the legislature intended to create competing and concurrent fora for resolution of tax disputes with resulting confusion as to selection of forum.
- It would not be possible to establish any useful body of precedent for the benefit of both taxpayer and SARS if different fora developed different law on the same issues.
- The role of the High Court has already been identified in the Act – it is to provide a judge as a member of the specialised Tax Court to hear appeals and not matters of first instance.

¹ Income Tax Act, 1962 (Act 58 of 1962) Chapter III: General Provisions Part III: Objections and Appeals 86A. Appeals against decisions of a tax court



- Our courts should be alert to the dangers of forum shopping.

2. LABOUR COURT AND LABOUR APPEAL COURT

The Labour Court has exclusive jurisdiction over many employment matters. It is of the same status as the High Court, follows principally the same procedures and judges are appointed in roughly the same way.

Appeals from the Labour Court go to the Labour Appeal Court, which has exclusive appeal jurisdiction over the Labour Court. Although the Labour Appeal Court has the same status as the Supreme Court of Appeal, one can appeal from the former body to the latter.

In the 2005 case of **NUMSA v Fry's Metals**² the SCA³ held that the Labour Relations Act (LRA) provisions conferring finality on the Labour Appeal Court have to be read with the appellate powers the Constitution creates. In the words of the Court, 'the Constitution vests the SCA with power to hear appeals from the LAC in constitutional and non-constitutional matters and the provisions of the LRA that confer final appellate authority on the LAC must be read subject to the appellate hierarchy created by the Constitution. This follows from the subordination to the Constitution that the LRA itself mandates.

The court went on to say that 'the constitutional typology of final appellate courts is exhaustive. It does not envisage other appellate courts with authority equivalent to that of this court or the Constitutional Court. If despite the provisions of 168(3) of the Constitution, the LRA creates a final court of appeal in labour-related matters to the exclusion of this courts appellate power, it would have to follow that the legislature could create final courts of appeal in other areas. The list is theoretically endless. The entire jurisdiction of this court could on this approach be assigned piecemeal or wholly to one or more other appellate tribunals of similar authority.⁴

However, the SCA held that applications for leave to appeal from the LAC must be through special leave to appeal and must show that the appeal has a reasonable prospect of success and that there are special considerations why - having already heard an appeal before a specialist tribunal - there should be a further appeal to this court and on that basis show some 'additional factor or criterion' such as that the matter is of such importance to the public or the party.

3. LAND CLAIMS COURT

The Land Claims Court specialises in dealing with disputes that arise out of laws that underpin South Africa's land reform initiative. These are the Restitution of Land Rights Act, 1994, the Land Reform (Labour Tenants) Act, 1996 and the Extension of Security of Tenure Act, 1997.

² NUMSA v Fry's Metals (Pty) Ltd (026/2003) [2005] ZASCA 39; [2005] 3 All SA 318 (SCA)

³ Mpati DP and Cameron JA

⁴ NUMSA v Fry para [26]



The Land Claims Court has the same status as the High Courts but is independent of the High Court. It was established in 1996 and hears cases dealing with the return of land taken away during apartheid (land reform cases). The Land Claims Court has its own rules and is allowed to conduct its proceedings informally and inquisitorially

Appeals go to the Supreme Court of Appeal unless the appeal is on a constitutional question, in which case it would go to the Constitutional Court. The Land Claims Court can hold hearings in any part of the country if it thinks this will make it more accessible and it can conduct its proceedings in an informal way if this is appropriate.