Termination of leases : The Rental Housing Act, the CPA and the decision in *Maphango*

The only means by which a landlord of residential property can escape the adverse consequences of the Consumer Protection Act 68 of 2008 relating to cancellation on default, the curtailment of immediate legal action and immediate eviction is not to enter into fixed term leases but rather to adhere to month-to-month leases which are not subject to Section 14. In actual fact, from a landlord’s point of view, all fixed term leases, are for all intents and purposes on a month-to-month basis anyway and therefore only tenants can benefit from fixed term leases.

 May the landlord cancel the lease on expiry of the fixed term? See *Maphango (now Mgidlana) & others v Aengus Lifestyle Properties (Pty) Ltd*  2011] JOL 27414 (SCA); [2011] 3 All SA 535 (SCA): lessee cannot rent in perpetuity.The SCA held that the cancellation by a landlord of a lease with the intention of increasing the rent was not against public policy for being unreasonable and unfair or an infringement of the tenant’s right of access to adequate housing in terms of section 26(1) of the Constitution.

● The Constitutional Court delivered judgment in the matter of *Maphango* on the 13th March 2012 and effectively reversed the judgment of the SCA : see *Maphango (now Mgidlana) & others v Aengus* Lifestyle Properties (Pty) Ltd Case CCT 57/11 [2012] ZACC. The CC held that the termination of a lease by a landlord may be an unfair practice in terms of the Rental Housing Act even if the termination is in accordance with the terms of the lease, set aside the order of the SCA and set a timeframe during which either party may refer the matter back to the Housing Tribunal and thereafter revert it back to the CC.

 This judgment may have an important bearing on the implementation of section 14 of the CPA relating to the rights of landlords to decline from renewing leases at the expiry of the fixed term.