BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2055/21

In the matter of :-

Kervin Kumarsing Basenoo

Appellant

v/s

District Council of Flacq

Respondent

DETERMINATION

1. This is an appeal against the decision of the Respondent ["the Council"] for having rejected the application of the Appellant for the construction of a reinforced concrete building at ground floor for residential purposes at Quatre Cocos, Flacq. The grounds for refusal communicated to the Appellant vide letter dated 28th September 2021 are:
   "1. Site lies outside settlement boundary by approximately 1.3 km and does not comply with SD4 of the Moka-Flacq Outline Planning Scheme.

   2. Subject site is also found within 1 km buffer of mineral resource site- MR1

   3. Rejected by CWA."

2. The grounds of appeal as per the Appellant's statement of case are as follow:
   "1. The Respondent, that is, the Council failed to consider the application for BLUP on a hardship basis.
   2. The Respondent could have considered the application irrespective of the view of the CWA.
   3. With reference to the email sent to the Appellant dated24th September 2021, the Council erred in considering the address of the site to be developed at Quatre Cocos, Flacq, when same is actually at Providence, Flacq.

"1. A small owner is one who owns not more than one hectare (i.e. 10,000m²) in the aggregate and which may be made up of more than one portion located in different places in Mauritius;

2. If a small owner is seeking residential property for himself, none of the properties should be located within settlement boundaries;

3. If he is seeking residential property for his close kin, he should have no other land for that purpose (except his own private residential property) within settlement boundaries;

4. Close kin is defined to include ascendants or descendants (Parents and their children, grandparents and grandchildren) up to the level of first cousin (i.e. a cousin, an uncle or an aunt, a nephew or a niece) who do not own any plot of land and who would benefit from the sale or donation.;

5. The plot to be released should not normally exceed 422m² (10 perches) per beneficiary. And the land in question

(a) Should be located in an area where development is permissible in accordance with the policies of the Outline Scheme or Development plan, as the case may be, of the relevant Local Authority;

(b) Should not be located within a gazetted irrigation area;

c) Should have been owned as at 30 September, 2005.

Consideration may be given to land accrued through donation/inheritance after 30th September 2005, subject to a Land Conversion Permit being obtained from the Ministry of Agro-Industry and Food Security and provided parent property was acquired/in possession of original owner prior to 30 September 2005."

5. In the present case, the Appellant failed to apply for his development proposal to be considered as a hardship case. As procedure demands, he should have filed an affidavit setting out how he qualifies as a hardship case, which he failed to do. In any event, even if he were to have submitted such an affidavit, he would not have met the criterion for a Hardship case since he should have owned the plot of land prior to 30th September 2005. He only acquired the land in 2019 as evidence by his title deed, Doc D. In addition, there is no evidence of availability of utilities. The application therefore cannot *ab initio* be considered under the hardship ground.

(iii) Under ground 4

8. Ground 3 having been considered under paragraph 3, we now turn to the last ground of appeal, ground 4. It is the contention of the Appellant that the Respondent erred by stating in its refusal letter the words "to operate at" to when the BLUP application was in fact to develop part of the land for residential purposes. The Respondent's witness, produced the application made by the Appellant on the National E-licensing system ('NELS'), marked Doc D, whereby under the subheading "Description of Nature of Development", the description inserted is "construction of a reinforced concrete building at ground floor for residential purposes" and the letter of refusal re-iterates the same description. According to the testimony of the Respondent's representative, the application was assessed on the planning merits of the construction of a residential building and reference was made to the title deed of the Appellant which was attached to his application form and there is nothing on record to suggest that it was assessed for anything other than development for residential purposes. We understand from the explanations of the Respondent's representative that the refusal letter is an automatically generated document which comes in a standard and specific format, the words used in the refusal letter "to operate at" cannot be taken to mean that the application was assessed as an "activity of operation". We find no merit in this ground and it therefore fails.

9. For all the reasons set out above, we find that the Respondent correctly applied the relevant policy to reject the application. The appeal is set aside. No order as to costs.

Determination delivered on 4th April 2022 by

Mrs. J. RAMFUL-JHOWRY	**Mr. SUFFEE**	**Mr. ACHEEMOOTOO**
Vice Chairperson	**Member**	**Member**