

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**In the matter of:**

**ELAT 1975/20**

**Mrs. Phoolvassuntee Sham**

**Appellant**

**v.**

**Ministry of Housing and Land Use Planning**

**Respondent**

**Ruling**

The Appellant had moved to withdraw her appeal by way of letter dated 7<sup>th</sup> December 2020 and her motion was acceded to by the Tribunal on the 8<sup>th</sup> December 2020. In a letter dated 16<sup>th</sup> December 2020, the Appellant moved that the Tribunal exercises its discretion to allow her to reinstate the appeal on a humanitarian ground. She stated that her withdrawal had been based on a wrong advice given to 'them' and they had made a mistake by withdrawing the appeal. The Appellant also invoked that their situation was a hardship case, among other things. The Respondent objected to the motion for reinstatement and arguments were offered on behalf of the parties.

We have considered the submissions of the respective parties.

The principle governing the reinstatement of cases is clearly laid down in Rule 9 of the Supreme Court Rules 2000:

- (a) *"The defendant or other party may apply to the court to have any judgment entered against him recalled and the case reinstated.*
- (b) *The Court may, where the application under sub paragraph (a) is made on the day the judgment is entered and, on good cause shown, recall the judgment and reinstate the case".*

The process, as clearly spelt out, and as emphasised by counsel for the Respondent, is a two-phased one. The consideration to the motion, namely, the good cause having to be shown, will be triggered only if the motion for reinstatement is made on the day the decision is taken. This has been spelt out in the judgment of **Koushmalee Tour v Early Childhood Care and Education Authority i.p.o. Mrs Soobowtee Poornomansy & Anor. 2021 SCJ 51**. (Reference has been made to the line of authorities in support thereof, namely **Assemblée de Dieu v Sawmy & Ors [2002 SCJ 325 A]**, **De Pitray v Gopalsing and Others 2004 SCJ 146**), **P. Luchun v The State of Mauritius 2017 SCJ 340** and **F. Barles v The Mauritius Commercial Bank Limited [2018 SCJ 315]**). The Court has stated that "*On the*

requirement under Rule 9(3)(b) of the Supreme Court Rules that “good cause” be shown, ....this need not be considered given that there was a failure to request the reinstatement of the case on the same day”).

Counsel for the Appellant has raised the point that the decision of the Tribunal is not a judgment and that the case has not started as such. We do not subscribe to this submission being given that the Tribunal had granted the request of the Appellant to withdraw her appeal. This decision of the Tribunal has brought finality to the appeal lodged before it. Just as in the case of Koushmalee Tour (supra): “It is a final decision on the fate of the matter and the Court that takes this decision is subsequently *functus officio*”.

It has also been submitted that the Rules on the procedure should not dictate the substance, so much so that substance should not become a slave of procedure. Reference was also made to the dictum in the case of **Phillip J.L. v State of Mauritius 2017 SCJ 351**, where it was stated that “...Courts have always shown some leniency towards litigants in good faith, who for some genuine reasons have fallen foul of procedure”.

We again reiterate that the consideration of the element of ‘good cause’ comes into play after the first hurdle set out in Rule 9(1) (supra) is met. Other jurisdictions are called upon to follow same, as set out in the case of **Jhundoo v Jhuree 1981 MR 111**: “There is no relevant enactment in our Intermediate and District Courts (Civil Jurisdiction) Rule. But it has been our practice when those rules are silent, to be guided by our Supreme Court Rules, unless there is some repugnancy arising from the different nature of the Courts”.

Finally, we draw attention to the newly adopted **Rules of the Environment and Land Use Appeal Tribunal** which came into force on the 8<sup>th</sup> October 2021 by Government Notice 258 of 2021 which provides in its **section 6 sub-section 2** that “Where the Tribunal makes an order to set aside an appeal under paragraph (1), the appellant may, on the day the appeal is set aside, apply to the Tribunal in writing to have the appeal recalled and reinstated”.

The governing principle of the reinstatement to be applied on the very day of the decision has been embodied in our Rules. In the present matter, this has not been observed, the letter moving for reinstatement was sent on the 16<sup>th</sup> December 2020 whereas the initial letter moving to withdraw the appeal was made on the 8<sup>th</sup> December 2020 and this motion had been granted on the same day, that is on the 8<sup>th</sup> December 2020.

In view of the above, the motion for reinstatement is not granted.

Delivered by:

Mrs. V. Phoolchand-Bhadain, Chairperson

.....

Mr. R. Acheemootoo, Member

.....

Mr. P. Manna, Member

.....

Date:

20<sup>th</sup> January 2022