BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1995/21

In the matter of:-

1. **Nourendre Sujeeun**
2. **Khemraj Sujeeun**
3. **Shakoontala Devi Sujeeun (born Bunoomally)**

Appellant

v/s

District Council of Riviere du Rempart

Respondent

RULING

1. This is an appeal against the decision of the Respondent ["the Council"] for having refused the granting of a Building and Land Use Permit ["BLUP"] for the construction of a one-storeyed residential building at Beau Plateau, St. Antoine, Goodlands. The Council's sole ground of refusal posted on the National E-Licensing System ['NELS'] is "Site is not build up."

2. At the sitting of the 9th May 2022, Me. Luttoo, Counsel for the Respondent re-iterated preliminary objections in law as raised in the Statement of Defence of the Respondent filed on the 22nd January 2021 and set out as follows, which was resisted by Me. Choonucksing, Counsel appearing for the Appellant:
"a. The Respondent avers that the present appeal was lodged before the present forum outside the statutory time limit of 21 days;
b. The Respondent avers that the present appeal has been made in violation of Section 5[4][a] of the ELUAT Act 2012 in as much as the Appellants have failed to set out their ground[s] of appeal concisely and precisely in their Notice of Appeal;

c. The Respondent avers that the ground[s] of appeal is/are couched in general, vague and uncertain terms and in effect, amount to no ground[s]of appeal."

We have duly considered the submissions in law of both counsel and their submissions ex-facie the pleadings. We will not reproduce their submissions save where we deem it fit to do so. The first ground of objection will be addressed on its own while the second and third grounds of the preliminary objections will be dealt with together as they are related and were argued as such by both Counsel.

I. <u>APPEAL LODGED OUTSIDE STATUTORY TIME FRAME</u>

3. From the record, it appears that there are 2 sets of the Notice of Appeal and two sets of Statement of case were filed before the Tribunal, one set was filed on the 7th January 2021 and a copy of it was filed on the 11th January 2021. Upon close inspection of the record, it appears that the usher's return is attached to the set of documents, served on the Respondent and filed at the Tribunal on 11th January 2021, which were meant to be an exact copy of the Notice of Appeal, Statement of case and all annexures to the statement of case. The confusion stems from the fact that they were the same documents save for the Notice of Appeal. It would appear that on the 11th January 2021, the usher filed a fresh Notice of Appeal at the Tribunal instead of filing a copy of the original Notice of Appeal bearing the stamp of the Tribunal as evidence of the fact that the Notice of Appeal had already been lodged at the Tribunal on the 7th January 2021. This resulted in two Notices of Appeal being on record, for the same case with both bearing the stamp of the Tribunal but one dated 7th January 2021 by the Tribunal and the other dated 11th January 2021 again by the Tribunal. Be it as it may, we are ready to give the benefit of the doubt to the Appellant and accept that the appeal was lodged on the 7th January 2021, which renders the appeal within the statutory time frame of 21 days as provided by **section 5 (4) (a)** of the **Environment and Land Use Appeal Tribunal Act 2012 ["ELUAT Act"]**, from the date of notification of the impugned decision, which is the 18th December 2020. The first preliminary objection is therefore set aside.

II. GROUNDS OF APPEAL NOT SET OUT PRECISELY AND CONCISELY AND ARE COUCHED IN GENERAL, VAGUE AND UNCERTAIN TERMS

4. The proceedings of the Tribunal are regulated under **section 5** of the **Environment and Land Use Appeal Tribunal Act 2012 ["ELAT Act"]. Section 5 (4) (a)** provides "*Every appeal under section 4 (1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal.*" [The underlining is ours]

5. The grounds of appeal are set out at paragraph 9 of the Statement of case, reproduced hereunder, which in fact appears to be one ground of appeal with 8 sub-paragraphs to it:

   "*9. The Appellants are aggrieved by the decision of the Respondent not to grant the Appellants with a Building and Land Use Permit (BLP1) for the following reasons:*
   The Respondent's decision is wrong, unlawful, unreasonable, unjustifiable and baseless, particularized as follows:

   (i) *The Appellants aver that they have made the necessary amendments and provided the necessary information and clarifications, in line with the requests made t them by the Respondent through e-licensing platform (reference is made to Annex D1 and D2 thereto.) The Appellants have also, to the best of their knowledge, made the necessary application and amendments thereto, in such form and manner as the Respondent may require;*

   (ii) *The reason set forth by the Respondent in its letter (marked as Annex E hereto), has come at a very late stage, i.e, at the time when the application was rejected. It is only then that the Appellants became aware that the intended developments works could not be carried out, in much as the portion of land did not fall with in a residential zone. The Appellants wish to bring to the*

attention of the authorities concerned that the portion of land in lite is surrounded by residential buildings, and it is questionable as to why they have not been granted with the BLP1 while their neighbours are able to construct their residential houses within the same zone.

(iii) *The Appellants Nos 2 and 3, aver that they were, on the 17th March 2015, informed that the no Land Conversion Permit was required for plot of land of 1A40Ps. A copy of a letter dated 17th March 2015 is herewith annexed and marked as Annex F.*

(iv) *The Appellants aver that although the bigger plot of land of 1A40Ps, were subdivided into two plots of land, one of which is the portion of land in lite mentioned at paragraph 1 above, the same exemption from Land Conversion applies to the present portion of land in lite as it applies to the plot of land of 1A40Ps, in asmuch as the owners, being Appellants Nos 2 and 3, are still the same, and this, since the year 1982.*

(v) *The Appellants further aver that no development works will be carried out on the surplus land after construction of the residential building) and surplus land will remain an agricultural land.*

(vi) *The Appellants therefore aver that the decision of the Respondent to set aside the application of the Appellants on the ground that "site not buildup", is therefore wrong, unlawful, unreasonable, unlawful, unjustifiable and baseless.*

(vii) *The Appellants further aver that they were not even given any opportunity to attend any meeting before the Respondent and/or the Permits and Business Monitoring Committee, in order for them to be allowed to clear any further discrepancies or to provide any further information, for the authorities concerned to properly assess their application.*

(viii) *The Appellant No1 avers that he has been authorized by his parents, the Appellants Nos 2 and 3 to stay on the land in lite. The Appellant No.1 requires the said portion of land in order to construct his residential house and start family life. The decision of the Respondent is causing much prejudice to the Appellants, more especially to Appellant No.1, in as much as they have already incurred costs and expenses in relation to its application. They have also incurred additional costs and expenses when the Respondent requested for additional information and documentation. They have also already appointed such professionals to start and carry out the development works once the Building and Land Use Permit is granted to them."*

6. Counsel for the Respondent relied on the case of **Holiday Villages Management Services (Mauritius) Ltd v/s Chan Yuk Hun [2020] SCJ 153** in support of the Respondent's contention that the grounds of appeal have been drafted in such general, vague and uncertain terms that they do not amount to any grounds of appeal. Having gone through the grounds of appeal, we are of the view that sub-paragraphs (i), (iii), (iv) and (v) clearly amount to no ground of appeal in that they are mere averments and do not convey in any way whatsoever particulars of how the Respondent's decision was wrong, unlawful, unreasonable, unjustifiable and baseless. The Appellants' contention under paragraph 9 qualifies the decision of the Respondent in 5 different terms and the sub-paragraphs are meant to particularize the decision. We fail to understand whether the Tribunal is being called upon to cherry-pick which of the five adjectives best qualifies the decision of the Respondent or that they are all lumped into one as regards the decision taken by the Respondent. Be it as it may, the ensuing particulars in these sub-paragraphs did not make mention of any decision of the Respondent. At best some are averments of facts but not particulars of the Respondent's decision.

7. As regards sub-paragraph (ii) of paragraph 9, it appears that the particulars provided by the Appellant for the decision of the Respondent being wrong, unlawful, unreasonable, unjustifiable and baseless is that the reason set down by the Respondent in its refusal letter has come to the knowledge of the Appellants at a very

late stage, that is, at the time that the application was rejected. We fail to see in what way a reason for refusal simply on the basis of the time it took to reach the Appellant, can de facto make it a wrong decision, unlawful, unreasonable, unjustifiable and baseless. Again, it is unclear whether the Appellants seem to be suggesting that the decision of the Respondent to communicate its decision at that point in time is a combination of all these adjectives or any one of them or a combination of two or more of them. It is far too unclear for the Tribunal to gauge what is the real issue that it is being called upon to determine under this limb especially with averments, which do not amount to particulars of the decision, such as *"The Appellants wish to bring to the attention of the authorities concerned that the portion of land in lite is surrounded by residential buildings"*. Even as far as the Respondent is concerned, it is unclear what case it has to meet with regards to averments such as *"it is questionable as to why they have not been granted with the BLP 1 while their neighbours are able to construct their residential houses within the same zone."* This ground also does not amount to any ground of appeal for lack of precision and vagueness.

8. Under sub-paragraph (vi), the sentence starts with "The Appellants <u>therefore</u> aver that the decision of the Respondent to set aside the application..." (stress is ours) on the basis that "Site is not build up" is being challenged for being wrong, unlawful, unreasonable, unjustifiable and baseless. While the basis is unclear and uncertain as to how the word "therefore" at the beginning of the paragraph provides particulars of the decision hence sufficient ammunition for challenging the decision of the Council, the more so as there seems no correlation with this sub-paragraph and the previous ones to offer an insight or explanation as to why, according to the Appellants, the Council in so doing took a decision that was wrong, unlawful, unreasonable, unjustifiable and baseless. Albeit infelicitously drafted, we can glean from this sub-paragraph that the Appellants seek to challenge the decision of the Council for setting aside their application on the planning basis that the "site is not build up". We are therefore ready to give the benefit of the doubt to the Appellants and hear evidence on this ground solely on the basis that it appears to be the only ground that seeks to challenge the decision of the Respondent.

9. As regards sub-paragraphs (vii) and (viii), these are averments in relation to not being given to opportunity to be heard by the Council in order to offer clarification as regards the proposed development and as regards expenses incurred by the Appellants with regards to the development proposal respectively. These do not in any way whatsoever seek to offer particulars for challenging the Council's decision, that the site is built up, as being wrong, unlawful, unreasonable, unjustifiable and baseless. It is unclear what the challenge of the Appellants or their contentions are in relation to the decision of the Council for refusing the application on the basis that the site is built up. In any event, the Council has a discretion to decide whether or not to offer any hearing to an applicant. Their decision not to offer a hearing to an applicant cannot be challenged before this forum. These grounds are very general, vague and unclear.

10. For all the reasons set out above, we find that the second and third preliminary objections have been well taken and that the grounds of appeal have indeed not been drafted precisely and concisely but are couched in rather general, vague and uncertain terms such that they amount to no ground of appeal. Save and except for paragraph 9 (vi) where we are willing to be flexible and allow the Appellants to adduce evidence to substantiate their appeal on this sole ground for the reasons we have provided. The case is therefore to proceed on its merits solely on ground of appeal set out at paragraph 9 (vi). The motion of the Respondent as regards to costs is set aside. The case is accordingly fixed pro-forma.

Ruling delivered on 23rd May 2022 by

Mrs. J. RAMFUL-JHOWRY **Vice Chairperson**	**Mr. S. MOOTHOOSAMY** **Member**	**Mr. R. SEETOHUL** **Member**