

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2119/22

In the matter of :-

1. Mr. Darshan Dookhy
2. Mrs. Poosawtee Bucktawor (born Dookhy)

Appellant

v/s

District Council of Moka

Respondent

RULING

1. This is an appeal against the decision of the Respondent [“the Council”] for having rejected the application for a Building and Land Use permit [“BLUP”] made by Appellant no.1 for the excision of a portion of land of an extent of 520 sq.m from 1041.94 sq.m, but found to be 1040 sq.m after survey, for residential purposes, situated off Royal Road, Nouvelle Decouverte. The Respondent raised a preliminary objection in law as follows:

“This appeal is misconceived and procedurally flawed in as much as the application for a Building and Land Use Permit was made solely in the name of Darshan Dookhy whereas the present appeal has been lodged by Mr. Darshan Dookhy and Mrs. Poosawtee Bucktawor (born Dookhy).”

2. We have duly considered the submissions of counsel appearing on both sides. It is the contention of the Appellant’s counsel in essence that the point raised by the Respondent is a matter of form and does not have any bearing on the nature of the appeal since no prejudice can be caused to the Respondent. He submits that this is an

action conservatoire whereby one heir enters a case to protect the rights of all co-heirs. He also submitted the appeal remains unchanged in substance because one of the parties has applied on behalf of both and that whatever be the outcome of the appeal, it would not matter since one applicant made the application for BLUP.

3. Counsel for the Respondent submitted that this is one of the grounds of rejection which had been raised by the Council in their refusal letter. He submits that the application should have been made in the name of both Mr. Darshan Dookhy and Mrs. Poosawtee Bucktawor born Dookhy because the title deed, which is annexed to the Statement of Case, shows that they are co-owners of the property. Since Mrs. Poosawtee Bucktawor did not make the application, she is not “an aggrieved person” within the meaning of **s.117(14) of the Local Government Act [‘LGA’]**. Secondly, the appeal is procedurally flawed because the triggering event is the application for BLUP, which was made by only Mr. Darshan Dookhy and therefore the appeal should be set aside.
4. The present appeal has been entered, following a rejection by the Council to a BLUP application, pursuant to the provisions of **s.117(14) of the Local Government Act 2011[‘LGA’]**: “(14) *Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections (7)(b), (8)(b) or (12) may, within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal.*” [emphasis is ours] It is not disputed that Mr. Darshan Dookhy and Mrs. Poosawtee Dookhy (also referred to as Poosawtee Bucktawor and as Poospawtee Dookhy in some documents) are the co-owners of the land *in lite* and that the application, subject matter of the present appeal, was made solely by Mr. Darshan Dookhy. These are evidenced by the title deed attached to the Statement of Case and the rejection letter obtained from the NELS attached to the Notice of Appeal, respectively.
5. The relevant section for the purposes of the application at hand subject matter of this appeal falls under **Section 117 (7) of the LGA**, and is reproduced hereunder in *italics* and since there has been a refusal in this case, **subsection 7(b)** is applicable.

(7) With the exception of an application under subsection (8) and subject to subsection (9), the Permits and Business Monitoring Committee shall, within 14 working days of the effective date of receipt of the application-

(a) approve the application where it is satisfied,-

(i) that the application is in accordance with the Acts and the guidelines referred to in subsection (6); and

(ii) in the case of an application for a Building and Land Use Permit relating to a scheduled undertaking, that there is, in relation to that undertaking, an approved preliminary environmental report or EIA licence under the Environment Protection Act; or

(b) notify the applicant in writing that the application has not been approved and give the reasons thereof.

6. When reading both subsections in conjunction, that is, **s. 117(7)(b)** and **s.117(14)**, it becomes evident that the PBMC will inform the applicant about the non-approval of the application, providing reasons for the refusal. The applicant, thus, becomes the aggrieved party due to the Council's decision under **subsection (7)(b)**, eligible to file an appeal with the Environment and Land Use Appeal Tribunal. This interpretation was clarified by the Supreme Court in the case of **Baumann v The District Council of Riviere du Rempart [2019 SCJ 311]** after considering the provisions of **s.117(7) (b), (8) (b), (14) of the LGA**, where the learned judges stated

“A proper construction of these provisions conveys the clear and plain intention of Parliament: only an aggrieved party can appeal to the Tribunal and an aggrieved party is one who has been notified that his application has not been approved [vide sections 117 (7)(b) and 117 (8)(b) of the Local Government Act 2011]. The legislator has not provided for any other person to have the possibility of challenging the granting of a BLUP to an applicant before the Tribunal.”

7. Ex-facie the documents on record and pleadings Mrs. Poosawtee Bucktawor (born Dookhy) did not apply for any BLUP. In the absence of her having applied for a BLUP, she is automatically disqualified from being an appellant to such an appeal that emanates from and corresponds to the application dealt by the PBMC under **s.117(7)(b) LGA**. On this score we agree with the submissions of learned Counsel appearing for the Respondent, that the triggering event is the application for BLUP which in this case was made only by Mr. Darshan Dookhy, not by Mrs. Poosawtee Bucktawor. Therefore, the only person who can enter the appeal in this particular case is Mr. Darshan Dookhy.
8. Learned Counsel appearing for the Respondent submitted two judgments of the Supreme Court, **Cheetamun v GFA Insurance Ltd [2022 SCJ 326]** and **Airway Coffee Co. Ltd v Airports of Mauritius Co. Ltd and Anor [2019 SCJ 102]** to make the point that Mrs. Poosawtee Bucktawor was an interested party to the appeal and should have been put into cause but since she has not made the application, she cannot be a party to the appeal and therefore it is procedurally flawed and should be set aside. The case law cited may be distinguished from the present scenario in that they pertain to parties who were joined to the proceedings before the lower court but were not subsequently put into cause in the corresponding appeal cases.
9. The pivotal question is whether the absence of Mrs. Poosawtee Bucktawor's inclusion in the BLUP application before the Council renders the appeal misconceived and procedurally flawed. In our view, it is in the affirmative because the application was misconceived *ab initio* since it should have been made by both Mr. Darshan Dookhy and Mrs. Poosawtee Bucktawor who are co-owners, both have an interest in the matter and hence, rights in the property *in lite*. The title deed as well as the division in kind that was made before the Supreme Court, both on record, show that they are co-owners and that the land *in lite* is for agricultural purposes.
10. For all the reasons set out above, we find that the preliminary objection has merit, we cannot allow this appeal to proceed with Mrs. Poosawtee Bucktawor (born Dookhy) styled as an appellant since such allowance will contravene the provisions of **s.117**

(14) LGA. A fresh application for BLUP may be made by the joint owners. This appeal is therefore set aside. No order as to costs.

Ruling delivered on 8th February 2024 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. S. K. SULTOO

Member

Mr. R. SEETOHUL

Member