BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2179/23

In the matter of:

Mrs. Jane Stephanie Amourdon

Appellant

v.

The Municipal Council of Curepipe

Respondent

Ruling

The Appellant lodged an appeal against the decision of the Municipal Council of Curepipe for having rejected her application made on the 24th April 2023 for a Building and Land Use Permit (BLUP) for the construction of a kennel to carry out a dog-breeding activity at Edgar Hugues Lane, Curepipe. The sole ground of refusal of the application, as communicated to the Appellant by the NELS on the 25th June 2023, is that "*The development is not in accordance with the Town and Country Planning Act, the proposed development (dog breed activity is likely to be a source of nuisance to residents living in close proximity.*"
The Notice of Appeal lodged at the Tribunal on the14th July 2023 lists six grounds of appeal as follows:

1. The rejection of the application is in breach of section 122 of the Local Government Act.
2. The Respondent has acted unreasonably and unfairly taking into account all the reasons put forward by the Appellant.
3. The Appellant is not agreeable that there will be a source of nuisance to resident(s) when only one person came forward to object and when the same person stated that he did not live at the given address next to the house of the Appellant.
4. The Respondent failed to consider that the immediate neighbours residing nearer the boundary wall where the kennel has been constructed gave a letter of consent to the said construction of the kennel.
5. The Appellant has already made an investment to the tune of Rs. 50,000.
6. And for all other reasons to be given in due course of the law.

The Respondent filed a Statement of Defence on the 29th August 2023 wherein the Respondent raised a preliminary objection which reads as follows:

"The purported Grounds of appeal Nos. 1, 2, 5 and 6 are not grounds of appeal inasmuch as these purported grounds are vague, unclear, imprecise, do not indicate what

precise case the Respondent has to meet/or do not possess sufficient particulars to enable the Tribunal to assess their seriousness, and must therefore be set aside".

In her Reply to the Statement of Defence filed by the Appellant, she maintained the averments as contained in the statement of case. The matter was fixed for arguments to be heard.

We have considered the respective submissions of the parties on the preliminary objections raised.

Section 5 sub-section 4 (a) of the ELUAT Act, an extract of which is reproduced here, provides that *"Every appeal ...shall.... 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....."* (underlining is ours).

It has been submitted on behalf of the Respondent that grounds 1, 2, 5 and 6 are not concise and precise. In addition, the Respondent has relied on a list of authorities in support of its position, extracts of which are reproduced below:

In the case of **Raj Beedasy v. The State 2011 SCJ 274**: *".....this Court repeatedly held that grounds of appeal must be drafted carefully so as to be clear and precise and to indicate to the other side what specific case it has to meet. A ground of appeal which is drafted in vague and general terms is not a proper ground of appeal and must be ignored. In fact, it amounts to no ground at all."*

In **Navin Kumar Ramkhalawon v. Maha Prakash Rambarun 2012 SCJ 348**, the court rejected a ground which avers that "the learned Magistrate misapprehended the evidence on record is too vague to amount to a valid ground of appeal".

In **Ibney Twayab Rostom v. Deokeenununsing Bheenuck & Others i.p.o Impex Ltd. 2013 SCJ 464**, the court, referring to a ground of appeal stated that: *"Ground 1 is vague and general. It is not a ground of appeal at all as it does not contain its particulars which would enable the court to assess its seriousness."*

The need for precision in the drafting of the grounds on which a decision is challenged is a statutory requirement (section 5(4)(a) (supra), as well as being a principle reiterated time and again in judgments of the Supreme Court (supra).

In the present appeal, the first ground as contained in the notice of appeal makes reference to section 122 of the Local Government Act. It has been submitted that this does not specify what case has to be met by the Respondent.

Similarly, the Respondent's submission is that the second ground does not particularise how the Appellant has been treated unfairly and unreasonably and is, thus, too vague to be considered as a ground of appeal.

The fifth ground is a statement of fact on the expenses made by the Appellant and does not indicate in what way the Respondent has erred.

The sixth ground, namely, *'for all other reasons to be given in due course of the law'*, does not disclose any reason at this stage that calls for the intervention of the Tribunal, nor gives the Respondent the opportunity to meet the case in its defence. Furthermore, such *'other reasons to be given in due course'* would not meet the statutory delay provided in section 5 (4) (a) of the ELUAT Act to lodge the appeal.

Counsel for Appellant referred to the judgment of **Toumany & Anor v. Veerasamy 2012 UKPC 13** where the Judicial Committee of the Privy Council highlighted that 'the Courts of

Mauritius need to be less technical and more flexible in their approach to jurisdictional issues and objections'.

We have given due consideration to the submissions made. We endorse the submission of the Respondent that 'less technicality' does not mean 'vagueness, unclearness and lack of precision', as it is important for the other party to know exactly what case it has to meet.

The explanations given for the drafting of the first ground of appeal, namely, the reference to a breach of section 122 of the Local Government Act (which provides for fees to be paid to the Council) and the reasons for it are not clear enough. The Respondent cannot be expected to make an inference from that provision what the Appellant was referring to. A clearer drafting of the first ground of appeal is required.

In the same manner, it has been suggested that the numbering of the third and fourth grounds of appeal be read as sub-paragraphs of ground 2. The Respondent's contention is that such a reading, which is being suggested only now, would necessarily have a bearing on its response. Not only would such a course of action defeat the purpose of having a statutory delay to lodge grounds of appeal, this would also have a bearing on the filing of its reply within delay. We agree with the Respondent on this point.

In addition, we find appropriate to refer to some observations made by the Court of Civil Appeal in the case of **Avigo Capital Managers PVT Ltd v. Avigo Venture Investments Limited (In Liquidation) 2019 SCJ MR 404**:

> "**Remarks on the combination of grounds of appeal**
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> *...The drafting of a contention as a separate ground of appeal implies, in our view, that the contention is one which is appropriately raised on its own. If two or more contentions are so intimately linked that they really form one single argument, then the proper drafting technique is to formulate that argument in a single ground of appeal. When this has not been done, the combination of grounds in skeleton arguments or in submissions will be tantamount to an admission that the grounds of appeal have not been properly drafted. Counsel should not therefore assume that the Court will endorse their decision, subsequent to the formulation of the grounds of appeal, to combine certain grounds. The Court may well find such combination inappropriate, or even unacceptable and choose to deal with the grounds separately or to treat two or more grounds as in effect amounting to one specific contention..."*

The fifth ground of appeal stating that the Appellant has already made an investment to the tune of Rs. 50,000 is, as pointed out, a statement of fact and raises no ground of appeal as such.

To the sixth ground, the Appellant's submission is that this is a blanket provision and has to be viewed with flexibility, as long as other reasons can be given before the expiry of the 21 days to appeal. Indeed, the statutory delay to lodge an appeal by depositing the notice of appeal in the form prescribed in the schedule to the Act is 21 days from the decision being communicated to the applicant. The drafting of the sixth ground is a door to uncertainty and absence of finality in the process and, as pointed out by the Respondent, does not disclose any reason that calls for the intervention of the Tribunal, at least not at this stage.

In the light of all the above, we find that the preliminary objection raised by the Respondent is well taken. We uphold the objection in respect of grounds No. 1, 2, 5 and 6 and these grounds are set aside.
The appeal based on the remaining grounds can otherwise proceed.

Ruling delivered on the 13 March 2024 by:

Mrs. V. Phoolchund-Bhadain, Chairperson .....

Mr. Mohammad Reeaz Baureek, Member .....

Mr. Radhakrishna Acheemootoo, Member .....

For Appellant: Mrs. P. Sookun-Teeluckdharry, of Counsel

For Respondent: Mr. D. Coonjan, together with Mr. M. Ajodah, of Counsel