

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

**ELAT 2251/24**

**In the matter of:**

**Eco-Sud**

**Appellant**

**v/s**

**The Minister of Environment, Solid Waste Management and Climate Change**

**Respondent**

**IPO:**

- 1. Le Bouchon Development Company Ltd**
- 2. The Ministry of Environment, Solid Waste Management and Climate Change**
- 3. The Ministry of Agro-Industry, Food Security, Blue Economy and Fisheries**

**Co-Respondents**

**RULING**

1. The Appellant moved that its expert witness, Mr. Claude La Hausse de la Louviere, who works and resides with his family in Spain, be allowed to depone remotely. According to the Appellant, he has assisted them in this case and has helped them understand the EIA process, This motion was met with objections by the Respondent and the Co-respondents, save for Co-respondent no.3, who has left the matter in the hands of the Tribunal. We have duly considered the submissions of all counsel on this issue.

2. The Appellant submitted, in essence, that such an order falls within the powers of the Tribunal. It would assist in ensuring that the Appellant benefits from a fair hearing, as preventing the witness from testifying, where the necessary facilities are available, would adversely affect the Appellant's right to present its case. The evidence of the expert witness would constitute important supporting evidence for the Appellant, particularly on matters relating to the Environmental Impact Assessment [EIA]. It was also submitted that the witness has been assisting the Appellant on a *pro bono* basis and that the Appellant is not a body specifically funded for such work.
3. Counsel for the Respondent and the Co-Respondent No. 2 argued that several issues remain in dispute between the parties-scientific, legal and technical matters-hence, it is important for the Appellant's expert witness to be physically present before the Tribunal so that his credibility may be properly assessed. Such assessment forms part of the overall evaluation of the evidence, including the witness's demeanour, language and manner of expression, which may be compromised if the testimony is given through a screen. It was further submitted that considerations such as the funding of the Appellant or the availability of the witness should not be taken into account by the Tribunal. Rather, the more material consideration is the proper assessment of the witness's credibility, for which his physical presence would be required.
4. Counsel for the Co-Respondent No. 1 also submitted, in essence, that the Appellant's expert witness should be physically present before the Tribunal. It was argued that such presence would enable the Tribunal to properly assess the witness's demeanour and credibility, particularly during cross-examination. Counsel referred to **section 129 of the Courts Act 1945**, which provides that any witness may be heard in proceedings before a Court upon oath and may be subjected to examination, cross-examination and re-examination in accordance with the law of evidence. Counsel further submitted that, had the legislator intended to allow testimony through live video or television link, such provision would have been expressly included in the relevant legislation, namely the **Environment and Land Use Appeal Tribunal Act 2012**, as has been done in other enactments such as the **Bail Act 1999** and the **Children's Act 2020**.

5. Reference was also made to the **Judge in Chambers (Remote Hearing) Rules 2020** and the **Letters of Request Rules 1985**, which specifically provide for the remote hearing of witnesses. These were cited in support of the submission that appropriate regulations are normally enacted where remote testimony is permitted. Counsel further submitted that safeguards should be in place when witnesses are heard remotely, which, in the present case, remain uncertain. It was also contended that the Appellant is financially able to ensure the physical presence of its witness before the Tribunal for the purpose of giving evidence.
  
6. On behalf of Co-Respondent No. 3, it was submitted that the Tribunal is vested, under **section 5(1)(a) of the Environment and Land Use Appeal Tribunal Act 2012**, with the power to regulate the manner in which proceedings are conducted before it. However, it was argued that the Act contains no specific provision permitting the Tribunal to receive evidence remotely, a matter which the legislator would provide for where such a procedure is intended.
  
7. As a general rule, any fact requiring proof through the evidence of witnesses is established at trial by their oral testimony. The greatest weight is normally attached to evidence given by witnesses in open court on oath or solemn affirmation and subject to examination by the parties. However, it is also recognised that this is not the only form of evidence accepted by courts and tribunals in the determination of cases. Non-oral evidence may also be admitted, including written evidence where the judge determines a matter on the basis of affidavit evidence. In several jurisdictions, including before the Environment and Land Use Appeal Tribunal, proceedings may also be conducted in this manner. The **Environment and Land Use Appeal Tribunal Act 2012** [‘ELUAT Act’], for instance, provides under **section 5(4)(c)** that hearings may be conducted by way of proceipe and affidavits exchanged between the parties. Under **s.5(8) of the ELUAT Act**, even in the case of an appeal lodged, the Tribunal may decide to set it aside without hearing any evidence, after statements have been exchanged, where is of the considered view that the appeal is trivial, frivolous or vexatious.

8. With the advancement of technology and increasing digitalization, the justice system has progressively evolved to meet changing needs. It can be observed within our own judicial system that the possibility for witnesses to depone remotely has been introduced before certain courts in order to strengthen the system where particular difficulties were identified. For instance, remote hearings for child victims were not previously part of our legal framework. **Section 161B (Live Video and Television Link)** was subsequently added in the **Courts Act** to enable complainants in sexual offence cases to testify through live video or live television link system, as may be approved in writing by the Chief Justice. The rationale behind it being the protection of victims to reduce their anxiety of having to face the offender and to prevent their secondary victimization: see Parliamentary Debates No. 32 of 12-08-2003; **Muljee v The State [2011] SCJ 315.**
9. The establishment of the Children's Court following the enactment of the **Children's Act 2020** was aimed, amongst others, at preventing the secondary victimisation of children. One of the measures adopted in that respect is the practice of allowing child victims to testify remotely, thereby enabling them to depone in a more secure and less intimidating environment. Likewise, the **Judge in Chambers (Remote Hearing) Rules 2020**, which apply in addition to and not in derogation of the **Judge in Chambers Rules 2002**, were made by the Chief Justice, after consultation with the Rules Committee and the Judges, pursuant to **sections 197H and 198 of the Courts Act**, were made in response to the Covid-19 pandemic to allow a Judge in Chambers to entertain remote hearings. However, prior to the rules being made the then Chief Justice together with other judges devised and implemented certain *ad hoc* procedures to cater for the hearing of urgent applications lodged which required adjudication during the pandemic.
10. Similarly, in Western Australia, the State Administrative Tribunal have made provisions for hearings and mediation to be heard by telephone or audio link or video conferencing. This was initially made to allow social distancing but has since remained the practice in some cases. The International Criminal Court allows witnesses, experts and victims to testify remotely through secure, encrypted video conferencing, thereby

removing the need for them to travel to attend the Court. Secure virtual platforms maintain confidentiality and security. The use of video-link testimony enhances witness protection and reduces logistical constraints for parties located abroad.

11. Under English law, it is now a well-established principle that the Court may allow a witness to give evidence through a video link or by other means and this is set out in the **Guidance on the use of video conferencing (VCF) in the civil courts** found at Annex 3 to the Practice Direction 32 (Evidence)- which was added in 2002. At paragraph 2 of the Guidance it is stated:

*“ A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but also as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognized that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.” [underlining is ours]*

12. The rule requiring a witness to be physically present to give oral evidence has, over time, been somewhat relaxed. It is now well recognised that witnesses may, in appropriate circumstances, testify remotely. Within our judicial system, there are instances where remote testimony is regularly permitted, including in criminal proceedings where the conviction of an accused depends largely on the credibility of a child victim who gives evidence remotely. We, therefore, do not consider that the assessment of a witness’s demeanour, language and credibility, as raised in the present case, can invariably constitute the sole or overriding consideration in the context of remote hearings.

13. We agree with the submissions of Counsel for Co-respondent no.1 that such hearings ought to be formally regulated so as to ensure clarity as to the applicable procedures with the appropriate safeguards necessary to preserve the quality and reliability of evidence received through a live television or video link. We further agree with the submission of Counsel for Co-respondent no.3 that, although the Tribunal is empowered to regulate its own proceedings and Rules have been made under the

**ELUAT Act**, there is presently no specific rule governing remote hearings or the procedure to be adopted. We would nevertheless observe that such rules could be enacted rather expeditiously.

14. In an era marked by digital transformation and increased global mobility, where foreign investors, as in the present case, may be involved in major projects in Mauritius, and where experts in various fields do not necessarily reside or work in the country-as is the case with Mr. La Hausse de la Louviere- the use of a live TV or Video link may, in appropriate circumstances, assist in the *“efficient, fair and economic disposal of the litigation”*. This, however, should be subject to appropriate legal and procedural safeguards and must be considered on a case-by-case basis. While considerations of expediency may be relevant, they must always be balanced against other considerations including the need to ensure the quality and reliability of the evidence received through a live TV or Video link.

15. In **Polanski v Conde Nast Publications Ltd [2005] UKHL 10**, the claimant requesting a VCF order resided in France and did not want to go to England to testify for fear that he would be arrested and extradited to the USA for an offence to which he had pleaded guilty in 1977. The judge made the Order to allow him to testify remotely. This was subject to an appeal before the Court of Appeal and subsequently to the House of Lords where their lordships held that the unwillingness of the claimant to go to England under the circumstances was valid and could be sufficient reason for the judge in the lower instance to make a VCF order.

16. In this instance, the Tribunal is of the view that from a legal perspective the circumstances may have warranted video link testimony of Mr. La Hausse de la Louviere- whose wife has recently delivered a baby, we are informed- had, as mentioned, the appropriate technological infrastructure together with required procedural safeguards been available to support such digital evidence and to the standard required. Although the use of video-link testimony would be a welcome development for this Tribunal in appropriate circumstances, in the absence of the required technology and supporting provisions at this stage, the Tribunal upholds the

objection and directs that the expert witness in question be physically present to give evidence, should the Appellant wish him to testify on its behalf.

Ruling delivered on 13<sup>th</sup> March 2026 by

**Mrs. J. RAMFUL-JHOWRY**  
**Ag. Chairperson**

**Dr. B. MOTAH**  
**Member**

**Mr. BEEHUSPOTEEA**  
**Member**