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 present appeal is against a decision of the Respondent for having granted an Environment Impact Assessment Licence ["EIA Licence"] to Le Bouchon Development Company Ltd ["LBDC"] for a hotel development project at Le Bouchon. The proposed development of a "5-star 200-keys'hotel and ancillary amenities" is meant to be part of a Smart City project of the LBDC.

2. In the course of the examination-in-chief of the representative of the Appellant, Mr. Sebastien Sauvage, he was questioned in relation to ground 9 of the Appellant's grounds of appeal. In that context, he was referred to a table and to statements appearing at page 248, paragraph 6.1 of the EIA report of the LBDC, entitled "Meeting with Local Communities", namely "Meeting held on 20th April 2015 at Mon Tresor Office". He was asked to explain his understanding of that section, to which he replied that he understood the consultation exercise to relate to the Smart City Project and not to the hotel, and that it had been conducted a long time ago. Regarding his understanding of the meeting of 20th April at the Mon Tresor Office, he stated that the meeting had not been organized by the promoter of LBDC. Counsel for the Appellant further questioned him as to the identity of the organizer of that meeting, to which he answered that it had been organized by Omnicane and that it concerned a consultation exercise for the Mon Desert Mon Tresor Smart City.

3. At this stage, Counsel for the Respondent and Co-Respondent No. 2 intervened, seeking clarification as to where, in the Appellant's Statement of Case, any reference had been made to Omnicane or Mon Tresor, and whether the matter concerned the project of the LBDC or a different project. The intervention then developed into an objection on the ground that it would be unduly prejudicial for evidence relating to another project to be adduced, when the evidence ought properly to be confined to the parameters of the Appellant's pleadings and the applicable legal framework.

4. Counsel for the Co-respondent no1, also joined in the objection to state in essence that there are rules pertaining to admissibility of the evidence which have to be adhered to, for instance there was no clarity on the maker of the document and the relevance of the document that sought to be adduced and that the Appellant could not just get its representative to put in evidence without abiding by the rules of procedure for admissibility.

5. Counsel for the Appellant resisted the objection on the basis that, in reply to ground 9 of the Appellant's grounds of appeal, the Respondent had contended that it was inappropriate for the Appellant to seek to overlap the process relating to the

undertaking with that of the Smart City project, which, according to the Appellant, was precisely what the promoter had sought to do. Counsel submitted in essence that the Appellant was entitled to adduce evidence to show that the information contained in the EIA report did not substantiate the existence of wide public consultation, as testified by the Appellant's representative, and that this contention was supported by the averment at paragraph 13.2 of the Appellant's Statement of Case ["SOC"].

6. Counsel further submitted that the Appellant sought to introduce a document demonstrating that there had been neither a thorough and detailed assessment nor a careful analysis of the project's impact on the community, as the EIA report relied on information extracted from another report relating to a different project. She also referred to the Appellant's averment in its Statement in Reply to the Statement of Defence ("SOR"), wherein the Appellant denies that wide, proper, and sufficient consultations were conducted with stakeholders as part of the SIA for either the hotel project or the Smart City project, and contends that the consultant for Co-Respondent No. 1 had drafted the SIA in a manner that misled readers into believing that such consultations had been carried out. It is specifically averred that the consultant attempted to present information derived from consultations conducted elsewhere as its own. Counsel further referred to portions of the EIA report which mention a Smart City project at Mon Desert Mon Tresor, a project undertaken by Omnicane.

7. We have considered the evidence placed before us as well as the submissions of all counsel on the issue, Counsel for Co-respondent no.3 having chosen to not submit but to abide by the decision of the Tribunal.

8. The admissibility of evidence depends on the whether the evidence is relevant to the issue at hand and will be of assistance to the Tribunal in the adjudication process, and whether the evidence does not violate an exclusionary rule- which includes the scaling of the probative value of the evidential piece against its prejudicial value.

9. Mr. Sauvage testified that the Appellant's understanding was that the meeting of 20th April 2016 had been organized by Omnicane and that it concerned a consultation exercise for the Mon Desert Mon Tresor Smart City which we understand is a different project. It was, however, Counsel for the Appellant, not the Appellant's representative, who stated that the Appellant intended to put in a document showing that the consultations were done in respect of another project and that parts of that document were extracted to be used in the EIA report of the LBDC and that this evidence would be used in rebuttal of the alleged consultations conducted by the Promoter.

10. As a basic rule on admissibility of evidence, a document is normally produced by the maker of the document who is subjected to the test of cross-examination while other safeguards apply as regards to the weight to be attached to the evidence. The document that the Appellant wishes to put in which-according to its own submission-relates to another project. It is not a document made by the Appellant or its representative. There is no indication as to who the maker of the document is nor has any notice been given regarding any other witness to be called on behalf of the Appellant except for its expert.

11. As a rule of civil procedure all parties are bound by their pleadings. This ensures that real issues are identified, each party knows the case to be met by them and it also reduces the risk of anyone being taken by surprise through avoiding the danger of traversing outside the pleadings.

12. In support of this, reference is made to the english **White Book on Civil Procedure under Volume 1 of the 2015 Edition by Sweet and Maxwell**. The relevant part of **paragraph 32.5.4-**entitled **Witness statements and statements of case** is reproduced below:

Historically speaking the distinction between pleadings and evidence is well understood. The rule that, in advance of trial, parties should exchange witness statements is a modern rule. One of the consequences of its development is that the

role of pleadings (now statements of case) has been affected. Whereas previously, parties made and defended their cases through statements of claim and defences (etc), nowadays in effect pleadings can be significantly elaborated by the pre-trial exchange of witness statements and supplementary witness statements. In the pre-trial development of a case, it is not at all unusual for what is not relevant at one stage to appear to be relevant at a later stage, and especially is that likely to be true where experts dealing with technical matters are involved and their reports are exchanged. In these circumstances the court may require the parties to improve their pleadings, so that the trial judge is not faced with the task of searching through witness statements in order to discover the real issues between the parties (Stephen Hill Partnership v Superglazing Ltd 2002 WL 31599542, October 16, 2002, unrep. (Lindsay J)).

13. At **paragraph 32.4.6** (of the **White Book**) entitled **Hearsay evidence in witness statements** it is provided that under the **Civil Evidence Act 1995** "*a party proposing to adduce hearsay evidence in civil proceedings is obliged to give notice of the intention to do so".* It further stipulates that notice must also be given where the hearsay evidence is to be given by a witness called to give oral evidence. The rule is therefore to give advance notice. Furthermore, at **paragraph 32.5.1** it is provided *"…Parties are required to serve their witness statements on other parties in advance of trial (for the purposes of promoting settlement and avoiding surprise)."*

14. From the above extracts, it is apparent that the modern approach requires the exchange of witness statements at the pre-trial stage, which serve to elaborate upon and particularize those cases. The guiding principle is that each party's case, whether set out in witness statements or, as in the present matter, in their respective Statements of Case, must be clearly notified to the opposing party. Any reliance on hearsay evidence must likewise be disclosed in advance. Such notification and disclosure are to be done at the pre-trial stage to ensure fairness and procedural clarity. This is supported by requirement **Rule 4** of the **Environment and Land Use Appeal Tribunal Rules** for communication of witness statements, exchange of expert reports and disclosure of documents prior to the start of the Hearing and the **Rule28 and 29 of the Supreme Court Rules.**

15. Furthermore, there is no averment made in respect of any document emanating from Omnicane or Mon Desert Mon Tresor in the SOC of the Appellant, especially under ground of appeal no.9. We were referred to Page 24 of the EIA report where it is stated "*The site in question is within a remote region that is currently unexploited but that will eventually experience developments in the near future. There are currently property developments along the road leading to the public beach. However, the region around the closed Mon Desert Mon Tresor Sugar Factory was subject to a planned project initiated by Omnicane Ltd but which have been kept in abeyance and has been taken over by the MIC for a new Smart City application…"* We were also referred to Page 36 of the EIA report wherein it was also stated that there had been a planned property development on the left side (facing the sea) of the site initiated by Omnicane Ltd but that it has remained in abeyance. Furthermore, at Page 233 of the EIA report it is stated, "*The project consists of several components and spread over three phases and these were shared during the consultation process. The land to be developed by Curzon Mauritius is located between the approved Smart City of Mon Tresor and the village of Camp Carol and various private land owners. The land on which Curzon Mauritius would develop their project is to be acquired a JV agreement from the Sugar Investment Trust. Therefore, the proposed project that would be implemented on the SIT freehold land is very much similar to the proposed Smart City next door in terms of the proposed quality of build, delivering on the principles of live, work, play however, the Le Bouchon Smart City is not gated. The presentation of the proposed project has been facilitated through the involve of the community leaders, NGOs, religious and social organisations and the village Councilors themselves who were previously exposed to the Omnicane Smart City project and now with Curzon Mauritius…"*

16. Counsel for the Appellant submitted that the Mon Tresor Smart City project is the same project undertaken by Omnicane. However, having regard to the above passages, which state that the project initiated by Omnicane has been "kept in abeyance" and that the land to be developed by Curzon Mauritius is "next door" to the "approved Smart City of Mon Tresor", it remains unclear at this stage whether both references concern one and the same project.

17. We wish to point out that although Mr. Sauvage himself had not given evidence that he intended to produce any document, Counsel for the Appellant pre-maturely submitted that the Appellant intended to produce a document purporting to show that extracts were taken from it and incorporated into the EIA report of the promoter. Be that as it may, for the purposes of the present ruling, the determinative issue is whether the Appellant is traversing outside its pleadings in giving evidence that the meeting was organized by Omnicane and the consultation exercise was for the Mon Desert Mon Tresor Smart City project. We are of the considered view that the answer is in the affirmative. Furthermore, on the question of whether the document referred to in the Promoter's EIA report may be adduced in evidence through the Appellant's representative, in our view, it may not- for the reasons mentioned above, more specifically, it may offend an exclusionary rule – that is Hearsay- for which no advance notice was given of its intended use and the Appellant's representative is not the maker of it. If the Appellant wishes to rely on any document mentioned in the EIA report of Co-Respondent No. 1, the proper course would be to put questions in cross-examination to the consultant responsible for the preparation of that report, particularly where such document may have been used as a reference or incorporated in the drafting of the EIA report. The admissibility and weight of such matters would necessarily depend on the manner in which that witness gives evidence.

18. For all the reasons set out above, we find that the objections of the Respondent and Co-respondents nos 1 and 2 are well-taken. The matter is otherwise to proceed on its merits.

Ruling delivered on 13th February 2026 by

Mrs. J. RAMFUL-JHOWRY	**Dr. B. MOTAH**	**Mr. BEEHUSPOTEEA**
Ag. Chairperson	**Member**	**Member**