

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 Respondent's representative, Mrs Chadee, is being cross-examined by Counsel appearing for the Appellant regarding the public comments received by the Respondent in relation to the undertaking of the Co-respondent no.1. The question was particularly geared to comments from an organisation named MRU 2025 which the proponent was requested to address. Following confirmation from the witness, Counsel then asked the witness to refer to a letter dated 10th June 2024 and confirm whether it was received by the Respondent from the proponent in relation to the comments of MRU 2025.

2. Counsel for the Respondent and Co-Respondent No. 2 objected to the reference and production of the letter, arguing that it contains comments not made by the Appellant and therefore falls outside the scope of the present appeal. She emphasized that MRU 2025 is not a party to the case, and since the Appellant's representative confirmed he does not represent MRU 2025, the Appellant cannot rely on that organization's public comments in these proceedings. Counsel appearing for Co-respondent no.1 joined in these submissions. Counsel for Co-respondent no.3 stated that it will be abiding by the decision of the Tribunal.

3. Counsel for the Appellant argued in favour of the production of the letter on the basis that it contains overlapping comments to those received and it addressed disputed yet relevant issues- namely matters relating to the source of water, the desalination plant- to which the proponent has responded. She submitted that the Appellant is entitled to place the letter before the Tribunal to enable it to assess whether the Ministry properly addressed the comments. She further submitted that the letter incorrectly refers to Eco-Sud as having been consulted, which, according to Mr. Sauvage, was not the case. Furthermore, the letter would assist the Tribunal in understanding the information provided by the proponent, particularly in light of exchanges between the promoter and the authorities that were not disclosed to the public but raise matters that cannot be overlooked. Finally, she argued that since the Respondent and Co-respondent no. 2 relied on these comments in their pleadings, they were under an obligation to disclose the relevant documents to the Appellant in accordance with the procedure for Disclosure of Documents.

4. We have duly considered the submissions of all counsel. The rule on admissibility of evidence as set out in our previous ruling dated 13th February 2026 is-

The admissibility of evidence depends on 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.

5. The Tribunal understands the Appellant's case to be that the EIA licence was granted on the basis of an inadequate application in which significant gaps existed especially in the EIA report. It appears that these issues of deficiency, considered important by the Appellant, were also raised by other pressure groups, such as MRU 2025, following which the Co-respondent no. 2 brought them to the attention of the promoter for response.

6. This position, in part, is borne out by the pleadings. In the Appellant's Amended Statement of Case ("A.SOC"), at paragraphs 4.7 and 4.8, it is averred that, in addition to the Appellant, other groups, including MRU 2025, submitted comments on the EIA application of the Co-respondent no. 1. These averments were specifically admitted by the Respondent and Co-respondent no. 2 at paragraph 15 of their Amended Statement of Defence ("A.SOD"), together with details of the date and mode of receipt. At paragraph 18 of the A.SOD, the Respondent and Co-respondent no. 2 further aver that, according to their records, during the consideration and processing of the EIA application, the Co-respondent no. 1 was requested to provide additional information on at least seven occasions. The dates of each request, as well as the dates on which the corresponding information was received from the proponent, are also specified.

7. The Tribunal observes that, in the exercise of its adjudicative function, it is not strictly confined to the Appellant's Statement of Case and is entitled to consider all environmental issues that are relevant to the determination of the appeal at hand. This may, where appropriate, include matters identified by other stakeholders or even entities which have a rather in-depth knowledge in the field of environment. Adducing documentary evidence in support of facts as borne out in the paragraph above- that are admitted by the Respondent and Co-respondent no.2 -may not be objectionable in principle. However, the Appellant is not entitled to appropriate or rely upon third-party comments as forming part of its own grounds of appeal. To do so, could potentially prejudice the Respondent in the preparation of its defence.

8. What needs to be ascertained is the scope of the Appellant's position on the production of the letter-whether it seeks to challenge the adequacy with which the Respondent addressed objections raised by other groups or to show the adequacy or inadequacy of remedial actions proposed based on the gaps identified by others. In that respect, it was not clear from the submissions of counsel for the Appellant the purpose or aim for which the letters from the third parties were sought to be adduced
9. The proper course open to the Appellant, in our view, is to put it to the Respondent that comments and objections were indeed raised by other groups, and whether these were duly considered and adequately addressed in the decision-making process. In that context, the Appellant may seek to highlight any alleged gaps or deficiencies in the application, including the EIA report and inquire whether those concerns were brought to the attention of the promoter and satisfactorily resolved. One of the key issues here is whether the Respondent in the presence of all relevant information thereby allowing it to come to an informed decision in accordance with the law.
10. There exists a fine line of distinction here. Bearing in mind that we are not privy to the letter that the promoter has sent in response to comments made by MRU 2025 on the undertaking, we believe, the focus must remain on the Respondent's and Co-respondent no.2's duty of consideration, not on the merits of third-party submissions themselves; afterall, it is the mandate of the Co-respondent no.2 to process applications of EIA Licences. The Appellant's case must stand on its own pleaded grounds. It cannot advance the case of non-parties.
11. In so far as there being an overlap between the comments submitted by the Appellant and those advanced by other pressure groups, such as MRU 2025, the Tribunal sees no necessity for the production of the promoter's letter, as the alleged deficiencies are already encompassed within the Appellant's own case. Conversely, to the extent that the letter seeks to address novel issues raised by such third parties, the purpose for their production needs to be clearly ascertained. If it is for the limited purpose of

showing that these third party concerns were indeed raised and addressed by the proponent, the Tribunal is of the view that their production may be permissible but as mentioned in paragraph 10, the Appellant cannot co-opt these third-party objections as its own and introduced these into the proceedings under the guise of the Appellant's case. To do so, could potentially offend the exclusionary rules.

12. The Tribunal further considers however that given that the comments in question were disclosed to the Appellant and its wide jurisdiction to ensure general compliance with the environmental laws beyond what may be contained in a statement of case, allowing third party comments may provide the Tribunal with a clearer, more rounded view of whether indeed EIA considerations and standards have indeed been met. The potential prejudicial effect is mitigated by the limited purpose for which these pressure-group comments would be adduced namely to ascertain whether they have indeed been adequately dealt with to the Respondent's satisfaction and in accordance with the law in granting the EIA. For these limited purposes, the Tribunal rules that the third-party comments may be adduced for the limited purposes set out above.

Ruling delivered on 3rd April 2026 by

Mrs. J. RAMFUL-JHOWRY
Ag. Chairperson

Dr. B. MOTAH
Member

Mr. S. BEEHUSPOTEEA
Member

