

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 382/13

In the matter of:

Roland Haus Co. Ltd

Appellant

v/s

Minister of Environment and Sustainable Development

Respondent

IPO:

- 1. Globe Prism Ltd**
- 2. The Permanent Secretary, Ministry of Housing and Lands**
- 3. District Council of Riviere du Rempart**

Co-Respondents

RULING

1. Following an earlier ruling in the matter, counsel appearing for the appellant decided to move this Tribunal for leave to add three new grounds of appeal to the present case outside the prescribed time frame. This is an appeal lodged before the defunct Environment Appeal Tribunal on 19th May 2010 against the decision of the respondent for having granted an Environment Impact Assessment ("EIA")

Licence to the co-respondent for the construction of a hotel. The case was subsequently transferred before this Tribunal following the proclamation of the Environment and Land Use Appeal Tribunal Act 2012.

2. The three new grounds are couched as follows:

“16 (a) Proponent has failed to seek and/ or obtain an EIA licence required under the EPA, section 15 (2)(b), and Part B.12 of the fifth schedule thereto, in respect the desalination plant referred to in chapter 12 of the EIA; nor has the Proponent complied or sought to comply, whether in the form or in substance, with the EIA Guidelines for the Proposed Desalination Plants dated May 2005, issued by the Department of Environment, Ministry of Environment and National Development Unit,

(b) It is an offence punishable with both a fine and imprisonment under the EPA, Sections 15 (2) (b) & (8) and 85 (2) for a proponent to proceed with the construction or installation of a desalination plant without an EIA licence to that effect, an, accordingly, any decision by the Tribunal to uphold, validate or ratify an EIA licence for an undertaking, which includes the construction or installation of a desalination plant without an EIA licence to that effect, is nugatory, unenforceable and contrary to law, and, from the proponent's perspective, a continuing source of legal jeopardy.

(c) It is an offence punishable with both a fine and imprisonment under the EPA, Sections 15 (2) (c) & (8) and 85 (2) for a proponent to proceed with an undertaking more than 3 years after the issue of the EIA licence unless the

Minister otherwise determines in respect of the undertaking, having regard to the circumstances deemed beyond the control of the proponent, and accordingly, any decision by the Tribunal to uphold, validate or ratify an EIA licence for an undertaking more than 6 years after its issue, without such a determination having been made or such circumstances proven in respect of the undertaking, is speculative, open to abuse and contrary to public policy, from the proponent's perspective, a continuing source of legal jeopardy."

3. The argument put forward on behalf of the applicants for this Tribunal to exercise its discretion to allow the appellant to file its additional grounds of appeal outside the statutory delay stems from the contention that they "are important for the Tribunal to be able to determine the rights and obligations of the parties, to determine the justice of this case as is stated in the jurisprudence." Counsel for the appellant however acknowledged that the motion came very late in the day without giving any reason for it and apologized for the delay that it was likely to cause to the proceedings. Learned Counsel submitted a number of cases on amendment of pleadings and enumerated all the guiding principles to show that an amendment of the pleadings was justified even at this late stage.
4. The motion of the appellant was resisted by the respondent and co-respondents 1 and 2 whose argument mainly revolved around the fact that the motion for additional grounds of appeal to be allowed came at a very late stage, six years after the appeal was lodged and hence well outside the delay prescribed by statute and as such no sufficient justification has been provided for the delay

which would qualify the appellant to fall in the category of exceptional circumstances.

5. We do not intend to overburden this ruling with the lengthy submissions of each counsel except where we deem it necessary to do so, it suffices to say that we have duly considered the submissions of all counsel.
6. The present appeal was lodged under **section 54 (2) of the Environment Protection Act 2002** contesting the decision of the Minister's decision for having granted an Environment Impact Assessment ('EIA') Licence to the co-respondent no.1. The statutory delay provided for appeals against EIA licences is 30 days from the date of the Minister's decision. The evidence shows that the appeal was lodged in May 2010, a month after the EIA licence was granted.
7. The appellant is now, after 6 years, seeking to add new grounds of appeal for which notice was given to the parties one day prior to the motion being made last month. This can only be done if the Tribunal exercises its discretion to grant leave which cannot be obtained by the mere asking of it. The Tribunal will have to look at the circumstances and the test to be applied to see how to exercise its discretion.
8. The issue at hand, rather than being one of amendment of pleadings generally as submitted by Counsel for the appellant, was in our view more specifically an issue of allowing additional grounds of appeal outside the statutory delay. Indeed

there is no explanation from the appellant as to why the motion comes at such a late stage.

9. An accepted test in deciding whether or not the Courts should exercise their discretion to allow applicants to appeal out of time is that they must be satisfied that there is 'sufficient justification' warranting the exercise of that discretion:

Ramtohul v The State [1996] MR 207.

10. The record speaks for itself as far as the delay is concerned but there is no plausible explanation for the delay in seeking to lodge these additional grounds of appeal, the more so as the appellant has been assisted by legal advisors from the outset. In **Ramtohul** (*supra*) this issue was considered and the Court said "*...the Court may exceptionally allow an applicant who has appealed outside delay due to his own laches or that of his attorney where there is, in the Court's view, sufficient justification for such exercise of discretion.*"

11. If we were to accept the justification given by the appellant's counsel that the additional grounds go to "the rights and obligations of the parties", the proposed ground of appeal 16 (a) and (b) relate to the EIA of the desalination plant, which according to the appellant, was not sought and obtained in the present instance. From the pleadings, it would appear that this is not a new fact which has just emerged. The statement of case of the appellant at page 196 of the brief under Ground 13 addresses the issue plant at close range:

"(13) The Respondent was wrong to issue the EIA licence in as much as

- (i) *The proposed desalination or composting plant and other back of house services and public areas, built in high density in front of the Appellants' property will additionally deprive the Appellant of the calm, tranquility and pristine environment that is is reasonably entitled.... Copy of EIA Guidelines for Proposed Desalinization Plants as Publicized by the Co-Respondent No.1 at May 2005 is annexed and Marked at Annex 8.."*

12. The appellant failed to explain what was it that they are now in presence of but not at the material time when the ground of appeal were filed that warrants our intervention to allow the ground to be lodged outside the prescribed delay. Afterall, as rightly submitted by counsel appearing for the respondent, there is an objective behind a time frame prescribed by statute. The raison d'etre of the statutory delay is to provide finality to the procedure to prevent undue delay. In Lagesse v C.I.T [1991] MR 46 the Court said that "*at some stage the finality of judicial decisions should be certain and procedural requirements governing appeals from those decisions should not be disregarded so as to prolong uncertainty and the holding up of the execution of a judgment....unless....non-compliance is shown not to be due to acts or more frequently, the omissions of the appellant or his legal advisers.*"

13. In the present instance, allowing the additional grounds would mean undue delay for exchange of pleadings and the risk of further objections being raised to be adjudicated upon since it would in a way imply a 'trial within a trial', although we hasten to add that we are using the term very loosely and not within the legal jargon of criminal law. It would not be in the interest of justice. An EIA licence for

a desalination plant, which in itself requires a ministerial decision, may be the subject matter of an appeal, a separate appeal altogether. It is distinct from the impugned decision under appeal before us.

14. As regards Ground 16 (c) as couched, it would appear to be premature at this stage since it concerns the criminal sanction attached to any offence that may be committed in the future if **the proponent decides to proceed with the undertaking.**

15. The string of cases submitted by the appellant's counsel seems to revolve around the amendment of pleadings to introduce a new cause of action. We do not find their application in the present instance. The issue is the allowance of additional grounds beyond the statutory delay. For reminders, the jurisdiction of this Tribunal is to make a finding on the **decision** of the Minister in relation to the EIA licence. In other words, at the end of the day it is this Tribunal's duty to decide whether the proposed development is worthy of having an EIA licence or not.

16. We have not been persuaded by the submissions of learned counsel for the appellant and we see no compelling reasons put forward that would warrant the exercise of our discretion to allow the appellant's motion to file additional grounds of appeal outside the prescribed timeframe. The motion is accordingly set aside.

Ruling delivered on 27th May 2016 by

~~_____~~
Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

~~_____~~
Mr. MOTAH

Assessor

~~_____~~
Mr. BUSAWON

Assessor