BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 714/14

In the matter of:

ROCHE TERRE MOBILE STONE CRUSHER CO. LTD.

Appellant

v.

MINISTRY OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Respondent

RULING:

The Appellant has filed a notice of appeal against the decision of the Director of Environment for having rejected the application for an EIA licence in respect of a proposed project for operating a stone crushing plant by the 'Roche Terre Mobile Stone Crusher Co. Ltd.' The appeal, as styled in the notice of appeal and the statement of case is directed against the Ministry of Environment, as Respondent and, as per the heading of the statement of case, "service of the notice is to be effected on its Director of Environment at Ken Lee Tower, corner Barracks and St Georges Streets, Port Louis".

The Respondent has raised a plea in limine which is to the effect that the appeal should be set aside as it has not been directed against the proper party.

In response to this plea in limine, counsel for the Appellant, conceding that the Respondent, as presently styled, is wrong, sought to correct this by moving to amend the heading of the statement of case to 'replace 'Ministry of Environment' by 'Minister of Environment'. His stand is that this Tribunal, although a quasi-judicial body, stands guided by the authorities that hold in our Courts on the general principles of amendment of pleadings, whereby such amendments have been accepted (Re: ***Marion v Development Bank of Mauritius in the presence of The Conservator of Mortgages 2015 SCJ 338, Harel and anor v Societe Jean Claude Harel and Cie and ors and Societe du Patrimoine 1993 MR 251***).

He also relied on **Rule 19 of the Supreme Court Rules 2000** which reads as follows: *"Any misjoinder or non-joinder of parties shall not defeat any cause of action and the Court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it".*

The Respondent on the other hand, viewed this proposed amendment, as having the effect of introducing a fresh cause of action against 'the Minister' in respect of which the appeal would not have been instituted within the statutory delay provided for under Section 5(4) of the Environment and Land Use Appeal Tribunal Act 2012, and this would cause prejudice for a party who had not been party to the case at the time the proceedings started.

The Appellant does not dispute that the appeal ought to have been directed against the Minister and that the Respondent, as styled in the statement of case, is wrong. Therefore we do not need to dwell on the administrative procedures prior to, and post, the decision which led to the letter sent by the Director of Environment. It is accepted that the decision is that of the Minister, who is the one who is empowered by the Environment Protection Act to grant/ or refuse/ or vary an EIA licence.

Our focus is therefore whether the proposed amendment should be granted. The Supreme Court has time and again allowed a substitution of parties on the ground that a non joinder of parties is not fatal to a case (Re: abovementioned cited cases among others). This Tribunal is guided by the same principle in the conduct of its cases, the more so that the Environmental and Land Use Appeal Tribunal Act 2012 provides that proceedings before this Tribunal should be more flexible and less technical in its approach.

However, despite the flexible approach that is provided for by the Legislator, any departure from a technical approach should be exercised with caution. The case before this Tribunal is not a plaint with summons or pleadings as those lodged by litigants in a civil case, where amendments proposed by parties have been allowed in so far as they may be necessary for the purpose of determining the real question in controversy between the parties (re rule 35 of our Rules of court based on rule 20 of the English Rules).

Here, we are in the realm of an appeal process and the Tribunal is an appellate body. A non technical approach does not mean that appeals are open ended in time and in content. This is why the Act provides for precision in the grounds of appeal and provides for a delay within which an appeal can be lodged. Such statutory delay in an appeal is not a mere technicality but provides certainty and predictability in administrative decisions.

The same rationale holds for cases where a statutory delay for actions against public officers is provided under the Public Officer's Protection Act exists. This cannot be waived by a mere amendment to the plaint. (***Re: Interlocutory Judgment H. Boodhoo v The Government of Mauritius 1995 SCJ 194).***

We have taken into account the submission of counsel for the Appellant that on the authority of ***Harel and anor v Societe Jean Claude Harel and Cie and ors 1993 MR 251:*** *"Any amendment allowed by the Court dates back in general to the time of the original issue of the claim and the action continues as though the amendment has been made ab initio"*. Yet we are of the view that although this authority may purport to 'cure' the effect of the not having the party put into cause at the start of the case, the fact remains that the amendment sought by the Appellant will have the effect of circumventing the statutory delay by allowing an appeal to be lodged against the Minister outside the twenty one days delay provided by the ELUAT Act and this would be prejudicial against the Minister who will find himself included as a party outside the delay of appeal.

We also note that the motion of counsel relates to the amendment of the heading of the statement of case. A perusal of the statement of case filed shows that the 'misnomer' is not simply at the heading of the statement of case. The grounds of appeal, which are required to be clear and concise, extensively challenge the assessment of the EIA application by the Director of Environment and the decision taken by the latter. Therefore the proposed amendment will, in substance, not meet the objective sought.

We finally note that the decision against which the appeal is lodged is dated 28th May 2014 and the notice of appeal lodged at the Environment and Land Use Appeal Tribunal (Annex A in the brief) is dated 27th June 2014. No indication whatsoever is on record as to whether the receipt of the decision may have been at a later date, which could explain for the delay in lodging the appeal. As such, we can only conclude that the appeal has been lodged on the 27th June, this date being beyond the twenty one days statutory delay.

For the above reasons, we allow the plea in limine raised. Furthermore, for having been entered outside delay, the appeal cannot proceed and is set aside.

Delivered on 10th June 2016 **by:**

Mrs. V. Bhadain	**Mr. V. Reddi**	**Mr. B. Kaniah**
Chairperson	**Assessor**	**Assessor**