

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 751/14

In the matter of:

MR. MARIO P. S. THELEMAQUE & OTHERS

Appellants

v.

DISTRICT COUNCIL OF MOKA

Respondent

In presence of:

MRS. SHANNON LOUISE NURSIMULU

Co-Respondent

RULING

Fourteen Appellants have lodged the present appeal on the 11th August 2014. Two of the Appellants, Mr. Mario Thelemaque and Mr. Syet Chow Chan Wan Thuen (represented by Mr. Eric Chan Wan Thuen) have received letters from the Respondent one dated 7th July 2014 (Document B) and one dated 15th July 2014, which is said in the to have been received on the 24th July 2014 (Document E). The Co-Respondent has raised a preliminary point which is to the effect that the appeal is time barred, for having been lodged outside the statutory delay of twenty one days.

When does the statutory delay start to run?

The issue to be determined is which of the two letters should be taken as the notification of the Appellants (then Objectors), being given that the statutory delay to lodge an appeal will run from that date.

The letter addressed to Mr. Thelemaque, if considered as formal notification, indeed brings the appeal outside the statutory delay. The evidence adduced by the representative of the Respondent however unveils some disturbing features: A notification of the same decision bearing the date of the 15th July 2014 was sent to another Appellant, Mr. Eric Chan Wan Thuen, representative of Mr. Syet Chow Chan Wan Thuen, , which the latter states having received on 24 July 2014 (Annex 2A to the Statement of Case of the Appellants gives credence to this date of reception). This date, if taken, brings the appeal within the twenty one days delay.

The Co-Respondent contends that the notification cannot be sent to Mr. Eric Chan being given that he is not even an Appellant. We find no difficulty in accepting that Appellant Mr. Syet Chow Chan has been duly represented by Mr. Eric Chan, this representation having been declared as from the lodging of the appeal (in Annex I to the notice filed). The letter dated 15th July 2014 from the Respondent is therefore deemed to be a notification of Mr. Syet Chow Chan.

Annex III to the notice of appeal indicates that fourteen persons have lodged the appeal. Before this Tribunal, we are in presence of only two notification letters, those sent to Mr. Thelemaque and Mr. Chan. The representative of the Council stated that the letter sent to Mr. Chan is in effect similar to the one sent to Mr. Thelemaque, and had been sent following a query from Mr. Chan on the outcome of his objection. What he could not explain was why the same letter sent to Mr. Thelemaque had not been copied to him in response to his query. The propriety of this decision can be questioned. Clearly, the Respondent could only communicate one decision, which is the same decision as that sent to Mr. Thelemaque in the earlier letter. By choosing to issue a standard letter, the Respondent indicated to Mr. Chan that he may appeal as well.

Legitimate expectation

There is no doubt that the letter dated 15th July creates a legitimate expectation that Mr. Chan can lodge an appeal against the Council's decision, and the right of appeal of Mr. Chan has been clearly stipulated at the last paragraph of the letter. However, it can be questioned whether the statutory delay to appeal can run from different dates for each of the Appellants? Besides, this letter is addressed only to Mr. Chan. We are not in presence of any evidence that Mr. Chan is the representative of the other Appellants. Furthermore, the notice of appeal has been lodged by 'Mario Paul Stenio Thelemaque & Ors'.

We take note of the fact that in convening the hearing attended by the objectors, the Respondent had indicated in its letter addressed to Mr. Thelemaque (Document B) that he should inform other complainants of the said hearing, such request being based on the contents of Document A. Therefore for all intents and purposes, there is clear

indication that the Respondent recognised Mr. Thelemaque as the representative of the objectors, hence the relevance and importance of the notification dated 7th July 2014.

The finality issue:

We are of the view that there must be finality in the decision making process and this includes the period during which any decision is appealable. The power to appeal cannot be by installments. The delay should not differ for each objector, failing which the implementation of any decision will not be possible. This takes particular significance being given that fourteen objectors had filed objections by way of letter dated 9th June 2014 (Document A) and the notice of appeal has been lodged on behalf of 'Mr. Thelemaque and others' (the list of fourteen persons being annexed).

The Tribunal is in presence of notification letters sent to only two objectors, namely Mr. Thelemaque and Mr. Chan. The explanation of the Council was sought as to why no letter had been sent to the fourth objector (Mr. Vayapouri). The simple reply was that his name had not been clearly written. We have no indication as to the intention of other objectors and assume that they have not been notified. Should any of the remaining objectors, including Mr. Vayapoury, query from the Council on their objection and receive a letter in reply, be construed as being a fresh notification that triggers the statutory delay to run anew? This cannot be the case. The need for finality in administrative decisions and processes requires that appeals in respect on a decision cannot be open ended, nor should notifications be made by installments. Since the onus to notify the objectors rests on the Council, their reply should bear one particular date, and any subsequent letter of notification in relation to the same decision should maintain the same date.

The issue of 'mandat':

Lengthy submissions were made on whether Mr. Thelemaque held a 'mandat' from the other objectors in relation to the follow up of the appeal. The letter sent to the Council by the objectors, Document A, stipulates in no uncertain terms that Mr. Thelemaque is their representative and the contact details of the latter are given. In addition, the appeal is lodged in the name of Mr. Thelemaque and others. We find no basis to question this declaration of the objectors on this issue. There is no indication as to the limitations of his mandate to being a mere representative or empowered to do an 'acte juridique'. However, the issue concerns notification letter sent by the Council. We find ~~no~~ that the extent of the mandate has no relevance in assessing the delay.

On the basis of the above, the preliminary point raised by the Co-Respondent is upheld. The appeal has been lodged outside delay and cannot proceed.

Delivered by:

Mrs. V. Bhadain, Chairperson—

Mr. V. Reddi, Assessor

Mr. S Karupudayyan, Assessor

Date: 30th June 2016