BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 755/14

In the matter of :-

Baboo Amal Rye Ramdhonee

Appellant

v/s

Municipal Council of Quatre Bornes

Respondent

IPO:

Super Unic Co. Ltd

Co-respondent

RULING

1. The present case is an appeal against the decision of the respondent, the Council, for having granted a Building and Land Use Permit ("BLUP") to the co-respondent company for the conversion of part of a commercial building in Quatre Bornes into a bakery and pastry shop with the installation of some motors and engines. A preliminary objection in law was raised by the respondent in their statement of defence as follows:

   "Respondent moves that the appeal be set aside as the Appellant has no locus standi to enter the present appeal in as much as he has been given the opportunity to express his concerns in a hearing heard on Thursday 31st October 2013 along with other objectors but failed to attend the hearing."

   We have duly considered the submissions made on behalf of the parties.

LOCUS STANDI

2. The motion of the respondent as couched is based on the *locus standi* of the appellant. *Locus standi* is the ability of a party to demonstrate sufficient relevant interest or connection to the action challenged. There is an array of case law on the issue. On the facts of the present case, it appears that the appellant lives in close proximity to the site of the proposed development. It stands to reason that any change or nuisance in the area may potentially affect the lives of those who are exposed to it. The proposed development, being a bakery, requires the operation of machinery and engines with a noise generating risk that is normally associated with it. As with any increase of activity a risk of traffic intensification also exists. This therefore does bring the appellant within the realm of a person who has *locus standi.*

3. This being said, the respondent's argument in essence was not whether he qualifies as a person who has *locus standi* per se but whether by not attending the hearing at the Council he is subsequently precluded from entering the present action. Therefore, the issue which is of concern is whether the appellant has the right to bring an action before this Tribunal given the present circumstances.

THE LAW

4. Whether a party has a right to bring in an action or not, cannot depend on circumstances. It is a purely legal issue. The legislation of relevance here is the **Environment and Land Use Appeal Tribunal Act 2012 (ELAT Act 2012).Section 4 (1) (a) (ii)** stipulates that *the Tribunal shall hear and determine appeals from a decision of a Municipal City Council, Municipal Town Council, or District Council under* ***section 117 (14)*** *of the* ***Local Government Act 2011.***

Section 117 (14) of the Local Government Act 2011-

"Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections (7) (b), 8 (b) or (12) may, within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal established under section 3 (1) of the Environment and Land Use Appeal Tribunal Act 2012." (the stress is ours)

5. A proper reading of the law clearly shows that a party has a right to appeal against the **decision taken** by the Council. The hearing of the developer and objectors normally takes place at the Council prior to the committees of the Council taking a final decision. But once the final decision is taken by the Council and this has been notified to the appellant, the law confers this right upon any aggrieved party to appeal against the said decision. Therefore, whether the BLUP guide makes provision for the Council to offer a hearing to objectors or not, has no bearing on an aggrieved party's legal right to eventually enter an appeal. This is a right given under the law, the reasoning being that developer himself may be aggrieved by the decision of the Council, in case of a refusal. His right to appeal against the decision of the Council is thus ensured. And that is why the Council has a duty to notify interested parties of the **decision** once it has been taken. We, therefore, do not subscribe to the contention of the respondent that the appellant in this case could have possibly waived his right to lodge an appeal against the impugned decision, since it is a right conferred by law. Should such a waiver exist, it would have clearly so been stipulated in the law and the circumstances under which such a waiver applies. For reminders, the BLUP guide is merely a guide for the public to gain an understanding on due process of application and processing of BLUPs. It is by no means a legal document by which the legal rights of people can be determined.

6. The wording of the primary legislation, the **Local Government Act 2011**, being clear in its application and interpretation, we believe we need not dwell on any other issues submitted, all being factual. For all the reasons set out above, we believe that the preliminary objection in law is devoid of merit. It is accordingly set aside. The case is to proceed on its merits. The matter will be called proforma.

Ruling delivered on 20th April 2016 by

Mrs. J. RAMFUL	**Mr. S. Karupudayyan**	**Mrs. B. Kaniah**
Vice Chairperson	**Assessor**	**Assessor**