

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 984/15

In the matter of:

Heirs Hurrybah Purusram

Represented by Mrs. Bemala Kistnen

Appellant

v/s

District Council of Moka

Respondent

RULING

1. The present appeal is against the decision of the Council for having refused the Appellants a Building and Land Use Permit ('BLUP') for subdivision of a plot of land into 2 lots for residential purposes at Cremation ground Road, Melrose. The matter is yet to be heard on its merits before the Tribunal. Counsel appearing for the Respondent raised a preliminary objection in law at the sitting of the 6th October 2016 and moved for the Tribunal to dismiss the appeal in as much as it has been lodged outside the timeframe of 21 days prescribed by the law. The motion was resisted by Counsel appearing for the Appellants and the matter was argued.

CHRONOLOGY OF EVENTS

2. It is apposite at this point to set out the chronology of events to better understand the points made in submissions. The chronology as per the pleadings is as follows:

- a. As per Annex 1(a) of the statement of case of the Appellants, the application made at the Council was dated 21st July 2015.
- b. The decision of the Council was communicated to the Appellants vide a letter dated 3rd August 2015.
- c. Annex 4 of the statement of case is an unsigned copy of a letter addressed to the Chief Executive of the Council. It transpires from that letter, which is dated 24th August 2015, that a request was made by the Appellants for the Respondent to reconsider its stand.
- d. Annex 5 of the statement of case is another copy of an unsigned letter dated 1st October 2015 addressed to the Chief Executive of the Council, which is in the nature of a reminder and makes reference to the letter dated 24th August 2015.
- e. The Notice of Appeal was lodged on the 8th October 2015 at the registry of the Tribunal.
- f. The Appellants subsequently received a letter from the Council dated 5th November 2015 under the signature of Mr. I. Subratty, stating that their "request was examined by the Executive Committee at a meeting held on 28th October 2015" and that it was decided that the initial decision communicated in the letter dated 3rd August 2015 be maintained. Interestingly, in the same letter the Council informs the Appellant that it may wish to appeal against the decision at the Environment and Land use Appeal Tribunal in line with **s 117 (14) of the Local Government Act 2011**.

LAW AND FACTS

3. We have duly considered the submissions of both Counsel. The impugned decision here is the decision of the Council communicated to the Appellants vide letter 3rd August 2015 [the 'refusal letter']. It was clearly by this decision of the decision-making body that the Appellants have been aggrieved and have thereby caused a Notice of Appeal to be lodged on the 8th October 2015. This time frame within which the Appellants lodged their appeal exceeds the 21-day period from the date of notification. Although no evidence was adduced on the date of notification, in their letter dated 24th August 2015 addressed to the Council the Appellants clearly makes reference to the refusal letter.

Therefore, the inference that can be drawn from that is that as at 24th August 2015, the Appellants had already been notified of the refusal. They chose to lodge their appeal on the 8th October 2015. Their appeal was lodged outside the time frame of 21 days prescribed by law.

4. Counsel for the Appellants then argued that the Appellants had asked for a reconsideration of the matter via letters dated 24th August 2015 and 1st October 2015. They only received a reply from the Council later via a letter dated 5th November 2015 for a decision taken on 28th October 2015. The fact still remains that, in our view, as at the date when the Appellants lodged their appeal, that is, on the 8th October 2015, they were not aware of any other decision of the Council and had the clear intention of appealing against the decision communicated to them in the letter dated 3rd August 2015. As at 8th October 2015 when the Notice of Appeal was received at the registry of the Tribunal, there were no other decisions by the Council. Infact the subsequent letter dated 5th November 2015 simply confirms the fact that the matter was brought before the Committee of the Council again and that a decision was taken anew albeit the decision was ultimately the same as the earlier decision. This fresh decision infact gave the Appellants the right to lodge a fresh appeal.
5. For the sake of argument, the Council, after reconsidering its decision, could have come to one of three decisions. Either it could have come to the same conclusion as earlier that the BLUP is not to be granted, as happened here thereby giving the Appellants a fresh right of appeal, or that the BLUP is to be granted, or lastly, that the BLUP is to be granted with attached conditions, thereby again allowing the Appellants a right to appeal should they be aggrieved by the decision. Common sense dictates that it cannot be that an appeal is lodged against a decision which is yet to be taken. Therefore, we do not subscribe to the reasoning of the Counsel for the Appellant when she submits that although the appeal was already lodged on 8th October 2015, it was lodged within the delay. The Notice of Appeal was lodged on the 8th October 2015. The new decision of the Council was only taken on the 28th October 2015. There cannot be a pending appeal

for a decision that is yet to be taken by the decision-making body. This simply does not make sense. The new decision of the Council taken on the 28th October 2015 gave the Appellants a fresh right of appeal albeit for the same application.

6. This being said, although the proceedings before this Tribunal are meant to be conducted with as little formality and technicality as possible, the wording of **section 5 (4) (a) of the Environment and Land Use Appeal Tribunal Act 2012** has been drafted in mandatory terms:

*“Every appeal...**shall** be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule...**not later than 21 days** from the date of the decision under reference being notified to the party wishing to appeal.”*
(stress is ours)

7. Therefore, for all the reasons set out above, we find that the preliminary objection was well taken. The appeal was lodged outside the timeframe of 21 days from the date that the party was notified, which must have been before the 24th August 2015 because that is the date when the Appellants wrote to the Chief Executive making reference to the letter of refusal of the Council dated 3rd August 2015. The appeal is therefore set aside.

Ruling delivered on 9th December 2016 by

Mrs. J. RAMFUL
Vice Chairperson

Miss. R. Seetohul
Member

Mr. P. Manna
Member