

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 995/15

In the matter of:

GEORGES CHEN FEE AH YAN

&

BRUNO SAVRIMOOTOO

Appellants

v.

THE DISTRICT COUNCIL OF GRAND PORT

Respondent

In the presence of:

LE CHALAND HOTEL LIMITED

Co-Respondent

RULING:

1. The Appellants sought to call an expert witness, Dr. Janoo, to adduce evidence in the present matter. Objection was raised by the Co-Respondent to his testimony on two grounds, firstly, that the report on Cultural Heritage Impact Assessment on which Dr. Janoo is questioned has no relevance being given that cultural aspects of the site do not form part of the grounds of appeal. In addition, the Co-Respondent contends that ground 6, among others, is too vague. Secondly, the qualifications of Dr. Janoo were challenged, the Co-Respondent having raised the point that this expert witness has no competence to depose on the matter for which he is called to testify.
2. The Respondent did not raise objection to this witness being called but when asked as to its position, counsel representing the District Council of Grand Port stated that she agrees with the point raised by the Co-Respondent.

3. The ground of appeal being vague

The ELAT Act provides that grounds of appeal have to be precise and concise. Paragraph 1 of the Statement of Defence of the Co-Respondent avers that '*at the outset, Le Chaland Hotel Limited submits that ground 6 (among other grounds) is so vague....*'. It was open to the Co-Respondent to address this issue as a preliminary point. This was not done. The hearing has already started and several witnesses have deposed. The issue that ground 6 is vague cannot now be used to prevent evidence from being adduced, the more so that the party will have the latitude to address this in submission.

4. The competence of the expert witness

The objection raised relates firstly to evidence being adduced on the Cultural Heritage Impact Assessment Report, on the ground that this is not within the scope of ground 6, and, secondly, on the qualification of the witness to depose on matters relating to ground 6.

In relation to the latter part, it is appropriate to look at the summons served on the witness: The request for the summons to issue was for Dr. Janoo, Paleontologist, University of Mauritius to give evidence on behalf of the Appellants and to bring and produce: (a) Letter dated 24th March addressed to the Prime Minister regarding Mare aux Songes site, (b) the same letter addressed to the President of the Republic of Mauritius and (c) the Cultural Heritage Impact Assessment Report dated 5th May 2011 in regards to Le Chaland Resort Village.

It has been submitted that ground 6 relates to the ecological impact of the project, on the porosity of the soil at the site, the existence of sand dunes and their potential destruction as well as atmospheric pollution. These concern the environmental aspects and ecological impact and, according to the Co-Respondent, the credentials of Dr. Janoo do not qualify him to depose on such matters, his expertise being in another field altogether.

Dr. Janoo stated that he is a senior lecturer of the University of Mauritius. He holds a Phd. in paleontology from the University of Paris, 'Musée d'Histoire Naturelle de Paris' and as his professional background, he stated that he is an Ornithologist and a Paleontologist and he does Archeology. He is also a member of Heritage Research Indian Ocean, a Non Governmental Organisation.

Since the competence of the witness has been questioned on the basis of the exact scope of his expertise, we have turned to Oxford Dictionary which gives the following definitions: 'Ornithology is the scientific study of birds', 'Paleontology is

defined as the study of life in the geological past', and 'geology' is defined as the science of the earth including the composition, structure, and origin of its rocks. Research on the web also shows how paleontological data can be used in ecology and conservation science and how the addition of data from the fossil record can lead to novel insights. The Tribunal is of the view that the appropriate person to explain the relevance of his qualifications to the grounds of appeal would be the witness himself. The Tribunal is equipped to sift and prevent the adducing of evidence which may be mere speculation or assertions not founded on any scientific data.

Dr. Janoo responded to questions that were put to him in relation to his professional qualifications. We have not had the opportunity of hearing from this witness about his skills, experience or training, other than his professional qualifications. Although it is a well settled principle in common law that expert opinion evidence is admissible where the expert has relevant expertise, it is also recognized that the individual claiming expertise must have acquired by study or experience sufficient knowledge of the relevant field to render his opinion of value.

The assessment of the ecological impact of the proposed project calls for knowledge and expertise that cut across different scientific disciplines. We do not find that the ruling out of the testimony of Dr. Janoo at the very outset will help this Tribunal to do a complete assessment. Besides, the summons served on this witness is also for the production of certain letters, for which there does not seem to be any prerequisite in terms of qualification.

5. The relevance of the evidence of the expert witness

It has been lengthily submitted that the expert witness seeks to adduce evidence in respect of a cultural heritage report and that neither is this report relevant for ground of appeal 6, nor has cultural expertise been within the credentials of the witness. On the latter point, the witness stated that he is member of an NGO called Heritage Research Indian Ocean. We are yet to be informed of the areas of activity or interest of this NGO and the exact scope of his role within this NGO. We are also not in a position at this stage to pronounce on the relevance of the letters dated 24 March 2016 sent to the Prime Minister and President of the Republic respectively, which is part of the mandate of this potential witness to produce before this Tribunal.

The 'irrelevance' of the Cultural Heritage Impact Assessment Report has been raised as it is said not to have been part of ground 6. We are not informed (except by the objection of the Co-Respondent) if this report is in any way connected to ground 6. However, we concur with counsel for the Co-

Respondent that the 'cultural issue', per se, is not part of any of the grounds of appeal, save that the BLUP issued contains a special condition that the applicant should comply with clearance from the National Heritage Fund.

We are of the view that it cannot be said outright that any evidence that this witness is called to adduce should be discarded as being irrelevant. Safeguards are provided in assessing the evidence, namely that the expert's opinion must be relevant to a matter in issue. However, if the prejudicial effect outweighs the probative value the judge has a discretion to exclude the evidence (Re: R v Elliott (unreported NSW SC 6 April, 1990, Hunt, J); R v Tran (1990) 50 A.Crim.R. 233)..... The ultimate decision in each case is for the tribunal of fact and courts have been jealous to guard that territory. They do not like it being usurped by expert witnesses...."

After considering the above, we find that this witness should not be debarred from giving his expert testimony in so far as it relates to matters which are within the scope of the grounds of appeal as contained in the notice of appeal. We note the remark made by counsel on the duty of confidentiality binding the witness. This is not part of the objection raised here, nor part of the present argument.

The objection raised is overruled and the testimony of witness Janoo is to proceed within the abovementioned parameters.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson, _____.

Prof (Dr) Toolseeram Ramjeawon, Assessor.

Mr. Pravin Manna, Assessor _____.

Date: 14th June 2016 _____