

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

ELAT 1658/18

**In the matter of:**

Mr. Krishna Kumar Hawabhay

**Appellant**

**v.**

The Morcellement Board

**Respondent**

**In the presence of:**

1. Mr. Chandraduth Rambaran
2. Mrs. Vijaya Lakshmi Dawaking
3. Mr. Harish Dawaking
4. Mrs. Meenakshi Dawaking

**Co-Respondents**

**Ruling:**

An e-mail dated 2<sup>nd</sup> October 2021 and retrieved by the Tribunal on the 4<sup>th</sup> October 2021 from the Appellant prays for his appeal to be 'resumed at the point he had stopped'. The Appellant states in this e-mail that he had decided to stop the proceedings due to a deterioration of his health. The Appellant also states that his appeal was initiated in 2018, over three years ago and that it would be a considerable loss of time and resources plus great regret that he did not bring his case to a conclusion.

A perusal of the record shows that the Appellant's decision not to proceed with his case was communicated to the Tribunal by an e-mail dated 13<sup>th</sup> September 2021, where he stated that he had also verbally informed Mr. N. Appajala S.A., who had represented him, of his decision. This was followed by copy of the National Identity Card of the Appellant to be sent to the Registry of the Tribunal, as requested by the latter and in accordance with the *cursus* followed when cases are withdrawn. This had been done on the 17<sup>th</sup> September 2021. It is upon receipt of these documents that the motion made in the letter of 13<sup>th</sup> September 2021 was granted and all parties were informed.

The present request is now being made more than two weeks after the file was closed and the Tribunal became *functus officio*. The motion of the Appellant amounts to a reinstatement of his appeal. This Tribunal is guided by the Rules of the Supreme Court on the matter. Rule 9 (3) of the Supreme Court Rules provides as follows:

*“Rule 9(3)(a): The defendant or any other party may apply to the court to have any judgment entered against him recalled and the case reinstated.*

*(b): The court may, where the application under sub paragraph (a) is made on the day the judgment is entered and, on good cause shown, recall the judgment and reinstate the case”.*

The present motion for the case to continue is being made more than two weeks later. The reasons put forward by the Appellant in this matter are his ill health, regrets and loss of time. We note also that the Appellant was represented by his attorney, whom he had taken the pain to inform of his decision to withdraw. This is an indication that the decision had been a well-thought one and not a spontaneous or impulsive one. These, like any change of hearts of parties, do not amount to ‘good cause shown’ as required by the above-mentioned section.

The application of Rule 9(3) of the Supreme Court Rules has been amply stressed in the recent judgment of *Koushmalee Tour v. Early Childhood Care and Education Authority 2021 SCJ 51*, which relied on the authorities of *Assemblée de Dieu v Sawmy & Ors. 2002 SCJ 325A*, *De Poitray v Goplasing & Others 2004 SCJ 146*, *P.Luchun v. The State of Mauritius 2017 SCJ 340* and *F. Barles v The Mauritius Commercial Bank Limited 2018 SCJ 315* in which Rule 9(3)(b) has been applied: Any application for reinstatement of the case must be made on the day that the judgment is entered against the party and good cause must be shown. The prayer of the Appellant for continuing with his case from the point he had stopped amounts to asking that the case be reinstated being given that the motion to withdraw, once granted, amounts to a judgement.

In view of the above, we did not deem it necessary to seek the stand of the other parties. The Tribunal, *proprio motu*, declines to grant the motion made by the Appellant.

Delivered on 7<sup>th</sup> October 2021 by:

Mrs. V. Phoolchand-Bhadain, Chairperson

.....

Mr. Pravin K. Manna, Member

.....

Mr. Radhakrishna Acheemootoo, Member

.....