

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1692/18

In the matter of:

**Adriel House of Prayer
(Represented by George Gaietan Carver)**

Appellant

v.

Municipal Council of Curepipe

Respondent

In the presence of:

- 1. Mr. Paul Camoins**
- 2. Mr. Lindsay Nagapen**
- 3. Ms. Nancy Croupe**

Co-Respondents

Ruling

The Appellant has moved to put Co-Respondent No.3 out of cause. This was objected to by counsel representing Co-Respondent No.3.

The ground in support of the motion of the Appellant is as follows:

“The Appellant has the carriage of proceedings and states that the Municipality is the party designated under the statute as the relevant party whose decision is being challenged and subjected to scrutiny.

The case will then proceed as per the provisions of the statute governing the present application in lite.

The present stand is now covered by case law.

Therefore, the Appellant moves that the amendment be allowed to correct an unnecessary addition by deletion as per his motion.”

The stand of Co-Respondent No.3 is as follows:

“The Co-Respondent No.3 is objecting to the motion of the Appellant to be put out of cause on the ground that the Tribunal does not have jurisdiction to hear the matter in as much as the Appellant is not a legal entity.”

We agree with the position of the Appellant that it has the carriage of its proceedings, the more so that it was the Appellant that put the Co-Respondents into cause initially. The

rationale for doing so was that the Co-Respondents were objectors at the level of the Municipal Council, whose objections had been retained by the latter. Now, even if the objectors were entitled to place their objections at the level of the Council, their presence in the present proceedings is questionable in the light of the recent developments in case law. The Supreme Court Judgment of Baumann v The District Council of Riviere du Rempart [2019] SCJ 311 has drawn attention to the fact that only a recipient of a decision notifying him that his application for a BLUP has not been approved is considered as 'an aggrieved party' for the purposes of lodging an appeal before this Tribunal.

This was followed by the more recent amendment to the Local Government Act (Act 7 of 2020) which defined an "aggrieved party" as being 'a person whose application for an OPP or BLUP has not been approved by a Municipal City Council, Municipal Town Council or District Council'.

The judgment of Baumann further stated that "*any other person, a neighbour....who feels aggrieved by the granting of a BLUP may have recourse before another court, but certainly not before the Tribunal which does not have jurisdiction to consider and determine complaints from persons who are not 'aggrieved persons' within the definition of the Local Government Act 2011*".

Objectors at the level of the local authority would not be able to be Appellants before the ELUAT in the light of the above judgment and amendment to the Act. Therefore, *a fortiori*, an objector will not have any standing to be a party to, and, even less, to dictate the conduct of an appeal. As per the judgment in the case of Baumann (supra), objectors would seek relief before other jurisdictions. For this reason, we find that the Appellant is entitled to move that the Co-Respondent be put out of cause.

In addition to the above, we note that the ground of objection raised by Co-Respondent No.3 goes at a tangent to the real question in issue. The challenge of the jurisdiction of the Tribunal for the reason given by her can only be considered if, and only if, the Co-Respondent remains as a party in the appeal. The stand of Co-Respondent is not substantiated by any reason that would justify its continued status as a party to the appeal. The motion to put Co-Respondent No.3 out of cause is granted. The appeal is to proceed against the Municipal Council of Curepipe, the Respondent.

Delivered by:

Mrs. V. Phoolchand-Bhadain, Chairperson

Mr. Moothoosamy Shanmoogum, Member

Mr. Pravin K. Manna, Member

Date:

28th October 2021