

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

**ELAT 1848/19**

**In the matter of:**

**Mr. Tang Yan Chin Kin, represented by Shyam Luchmun**

**Appellant**

**v.**

**The District Council of Moka**

**Respondent**

**RULING:**

The appeal is against the decision of the District Council of Moka for not favourably considering an application for an Outline Planning Permission (OPP) for residential apartments in a place called Bois Chéri, Moka. A notice of appeal was lodged on the 15<sup>th</sup> July 2019, listing out five grounds of appeal as follows:

In its Statement of Defence, the Respondent raised a preliminary objection which is to the effect that "The Appellant, as styled and couched, has no locus standi to appeal against the said decision and the appeal should be set aside outright". In a letter dated 30<sup>th</sup> July 2021, counsel for the Respondent gave notice of preliminary objections that he would argue as follows:

1. The Appellant, Mr. Tang Yan Chin Kin, cannot proceed with the present appeal in as much as he was not the applicant for the OPP which was made to the District Council of Moka. The applicant for the OPP was Boutique Apartments Co. Ltd.
2. The Notice of Appeal was not signed by the Appellant but by one Mr. Shyam Luchmun, who is not the Appellant in the present matter.
3. Ex-facie the Statement of Case on behalf of the Appellant, Mr. Tang Yan Chin Kin was acting on behalf of one Mr. Dayashunkur Luchmun, who in turn was allegedly represented by one Mr. Shyam Luchmun, who are both not interested parties in the present matter.
4. Ex-facie the Notice of Appeal, the present appeal has been lodged outside the prescribed delay. (This fourth preliminary point was subsequently dropped).

Evidence was adduced for the purposes of the arguments on the preliminary objections. What came out of this evidence is that Mr. Tang Wai Chih Kin, as per his saying, had been abroad on the day the Notice of Appeal was lodged. This had been signed by Mr. Shyam Luchmun and lodged on the 15<sup>th</sup> July 2019. He had on the 28<sup>th</sup> July 2019 given authorisation to Mr. Shyam Luchmun and Mr. Dayashunkur Luchmun to represent him and his company "Boutique Apartments Co. Ltd." in order to proceed with the appeal lodged before this Tribunal.

A perusal of the Document A shows clearly that the authorisation for Mr. Shyam Luchmun and Dayashunkur Luchmun to represent Mr. Tang Yan Chih Kin before the tribunal came after the lodging of the appeal.

This, in itself, would not have been fatal, as it is common that parties to any proceedings are represented at trials by appointees. What raises concern is that the Notice of Appeal is nothing but more confusing: it depicts Mr. Tang Yan of Boutique Apartments Co. Ltd. to be acting on behalf of Mr. Dayashunkur Luchmun, the latter being represented by Mr. Shyam Luchmun.

The Appellant, in such a scenario, is Mr. Dayashunkur Luchmun and the person acting on his behalf is Mr. Tang Yan, and the signatory of this Notice of Appeal is Mr. Shyam Luchmun.

This goes to the root of the appeal. The application for an Outline Planning Permission had been made by a corporate body, Boutique Apartments Co. Ltd. represented by Mr. Tang Yan Chih Kin. Although the owner of the land had been Mr. Dayashunkur Luchmun and he had given an authorisation to Mr. Tang Yan Chih Kin to submit an application for OPP and BLUP, as per Document A1, it is the legal person that met with a refusal from the District Council and who is authorised by virtue of section 117 (14) of the Local Government Act ('aggrieved person' being defined in section 117(15) of the same Act) to lodge an appeal to challenge the decision of the District Council. And that legal person is represented by My. Tang Yan. Yet, in the Notice of Appeal, Mr. Tang Yan purports to be acting on behalf of Mr. Dayashunkur Luchmun. The appeal is, for all intents and purposes, lodged by Mr. Dayashunkur Luchmun, who is not the aggrieved person. In addition, the latter is represented by a third party who signed the notice of appeal and whose locus standi in the appeal is more questionable.

This appeal lacks clarity and, as pointed out by counsel, is riddled with inherent defects, so much so that the locus standi of the Appellant is not tenable.

The preliminary objection raised is sustained.

This appeal cannot proceed and is set aside.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. S. Busgeeth, Member

Mr. R. Acheemootoo, Member

Date:

9<sup>th</sup> December 2021