

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

**ELAT 2011/21**

**In the matter of :-**

**Sutteewontee Emritloll**

**Appellant**

v/s

**District Council of Riviere du Rempart**

**Respondent**

**RULING**

1. The present appeal is against a decision of the Council for having refused the granting of a Building and Land Use Permit ["BLUP"] to the Appellant for the construction of a boundary wall at Temple Road, L'Amitie. The reason for refusal being "No setback has been observed from the adjoining roads, existing drain not shown on site plan and proposed gate is found at a junction."
2. The Respondent raised a two-limbed plea *in limine* in their Statement of Defence but decided on the day the argument was scheduled to instead proceed with only the first limb for the time being. The *plea in limine* is as follows:

"1. The Respondent avers that the Appellant has no "*locus standi*" to lodge and prosecute the present appeal in as much as the applicant for Building and Land Use Permit (**hereinafter referred to as 'BLUP'**) and/or the person who carried out the development works was one Mr. Suraj Ray and **not** Mrs. Sutteewontee Emritloll.

1.1 The Respondent avers that the application for BLUP was submitted in the name of one Mr. Suraj Ray as '*Applicant*' [**a copy of the "acknowledgement of application letter' for BLUP in the name of Mr. Suraj Ray as Applicant is annexed and marked as Annex A];**

1.2 The Respondent avers that the letter of rejection was issued with the name of one Mr. Suraj Ray identified as the 'Applicant' [ **a copy of the letter is annexed and marked as Annex B**];

1.3 The Respondent avers that the Appellant granted to her son, Mr. Suraj Ray, an authorisation to construct the boundary *in lite* [ **a copy of the letter of authorization from Mr. Sutteewontee Emritloll is annexed and marked Annex C**]."

3. The Respondent's counsel argued that in the light of the decision of the judges of the Supreme Court in the case of **Baumann v District Council of Riviere du Rempart IPO Syndicat des Co-proprietaires de Savannah Sparrow Residence [2019] SCJ 311**, only an "aggrieved person" can lodge an appeal before the Environment and Land Use Appeal Tribunal and it has been specified by the Supreme Court that an aggrieved party is "...one who has been notified that his application has not been approved" and that "The Legislator has not provided for any other person to have the possibility of challenging the granting of a Building and Land Use Permit to an applicant before the Tribunal". She submitted that Mrs. Sutteewontee Emritloll is not an aggrieved party because from the acknowledgement was made to the applicant, who is Mr. Suraj Ray and the rejection letter was also issued in his name as per documents provided by the Respondent in its statement of Defence. Mrs. Emritloll was therefore, as per Counsel's submission, not the person who made the application nor was she the person to whom the Council notified the rejection and therefore the Tribunal cannot entertain the present appeal on the basis of what was decided in the case of *Baumann*.
4. Counsel for the Appellant sought to submit that the application was made by the Appellant's son. However, the record did not bear proof of that and was rejected by the Tribunal. Counsel for the Appellant also sought to move for a postponement following submissions made by Counsel for the Respondent in order to adduce evidence that the application at the Council was made by the son in the name of his mother and that the mother, the appellant, is the right party to this appeal. The Respondent objected to this course of action. This motion for postponement was rejected because it came at a very late stage, that is, after the full submissions on the plea was offered by the Respondent's counsel. The plea *in limine* had been raised in

the statement of defence of the Respondent. The Appellant had ample time to either file a reply to clarify matters or move for an amendment of the pleadings but these were never done. The point being that there was no averment nor advance notice given to the Respondent as regards the evidence in rebuttal that the Appellant wishes to adduce to refute the plea. Although the Tribunal is mandated to proceed with less formality and technicality, in the present circumstances, this would have amounted to unfairness towards the Respondent in that the latter would have been caught unawares and in the Tribunal's view had it been allowed it would have forestalled and defeated the plea *in limine* and rendered it obsolete. Counsel for the Appellant then chose not to make any submissions on behalf of the Appellant.

5. We have duly considered the submissions of Counsel for the Respondent. The jurisdiction of the Tribunal is set out under **s.4 of the Environment and Land Use Appeal Tribunal Act 2012** which allows the Tribunal to hear and determine appeals from decisions taken by the Councils under **s.117(14) of the Local Government Act 2011**. **Section 117 (14)** provides that any person aggrieved by a decision of a Council under **subsections (7)(b), (8)(b) or (12)** may appeal to the Tribunal. These subsections refer only to those who have made applications for an Outline Planning Scheme or for a Building and Land Use Permit. The Supreme Court had indeed in the case of Baumann *supra*, as rightly submitted by Counsel for the Respondent, made it clear who an aggrieved party was, that is, one who has been notified that his application has not been approved. Ex-facie the pleadings there is a disconnect between the person who applied for the BLUP and the person who lodged the appeal before the Tribunal. The notification of rejection indeed sets out the applicant as one Suraj Ray. The statement of case of the Appellant nor the notice of appeal makes no mention of Suraj Ray. We agree with the submissions of Counsel for the Respondent as regards the "aggrieved party" who is normally the applicant of the BLUP who has the right of appeal before the Tribunal. The disparity between the applicant of the BLUP and the one appealing against the Council's decision before the Tribunal can be gleaned from the documents on record reference of which reference were made by the Respondent's counsel. We find that ex-facie the pleadings the

appellant has no right to prosecute the present appeal as she has not made any application to the Council.

6. For all the reasons set out above, we find that the plea *in limine* was well-taken. Since the plea *in limine* was also not contested by the Appellant, the present appeal is set aside. No order as to costs. The appellant can make a fresh application in her own name at the Council.

Ruling delivered on 11<sup>th</sup> November 2021 by

**Mrs. J. RAMFUL-JHOWRY**

**Vice Chairperson**

**Mr. MOOTHOSAMY**

**Member**

**Mr. ACHEMOOTOO**

**Member**