BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1907/19

In the matter of:

Agir Pour l'Environnement,
represented by its President Mr. Jaykissoon Nunkoo

Appellant

v.

1. **The Minister of Environment, Solid Waste Management and Climate Change**
2. **The Ministry of Environment, Solid Waste Management and Climate Change**

Respondents

In the presence of:

1. **The District Council of Black River**
2. **The Economic Development Board**
3. **Ministry of Agro-Industry and Food Security**
4. **The Ministry of Housing and Land Use Planning**
5. **Les Salines PDS Ltd.**

Co-Respondents

RULING

1. The present appeal has been initiated by the Appellant (Agir pour l'Environnement) against the decision of Respondent No.1 (The Minister of Environment, Solid Waste Management and Climate Change) under section 54 (2) of the Environment Protection Act 2002 for having issued an EIA Licence to Co-Respondent No.5 (Les Salines PDS Ltd.) for a proposed Imperia Golf Estate under PDS situated at Les Salines, Black River.

2. The Respondent raised a preliminary objection that the appeal ought to be dismissed as, ex-facie the Statement of Case of the Appellant, it fails to satisfy the requirements of section 54 (2) of the Environment Protection Act.

3. Co-Respondents No.2, 3, 4 and 5 have raised the same preliminary objection, having particularised it as 'the Appellant has no locus standi to enter the appeal inasmuch as it has failed to show that it is aggrieved by the decision and that such decision is likely to cause undue prejudice to it as provided by section. 54(2) of the EPA'. As such, they have all moved that the appeal be set aside.

4. Co-Respondent No. 1 has made a statement before the Tribunal to the effect that it will abide by the decision of the Tribunal.

5. In the replies submitted by the Appellant to the Statements of Defence of the Respondents and the Co-Respondents No. 2, 3 and 5, the Appellant averred that: (i) it has locus standi to enter the present appeal inasmuch as many of the issues raised in the appeal involve 'public' or 'community interests' rather than traditionally recognized private legal rights. (ii) Furthermore, the Appellant is a public interest organization having among its objects the protection of the environment and by entering this appeal the Appellant is in fact protecting the public interests for the present and future generations.

6. We have considered the submissions counsel for the respective parties.
The provisions governing appeals before the Environment and Land Use Appeal Tribunal (hereinafter referred to as ELUAT) are laid down in, firstly, section 4 of the ELUAT Act, which confers jurisdiction on the ELUAT to hear and determine appeals brought under section 54(2) of the EPA. Secondly, section 54(2) EPA, which provides that *"Where a Minister has decided to issue an EIA licence, any person aggrieved by the decision and is able to show that the decision is likely to cause him undue prejudice may appeal against the decision to the Tribunal"*. The two prerequisites that open the doors of the jurisdiction of the ELUAT are clearly laid down in the abovementioned provision. The Appellant has to aver that he is an aggrieved person and to show same and he has to aver and show that there is likelihood of undue prejudice.

7. It has been submitted by the Respondents that the Appellant has failed to aver and show in what way it is linked to the proposed project such that it will be affected and prejudice will be caused to him by the issuing of the EIA. For an Appellant to show that it is linked to a proposed development, it must show that it has sufficient interest in the development. In the ruling given by the ELUAT in the case of **David Sauvage & Ors. V. Minister of Social Security, National Solidarity and Environment and Sustainable Development**[1] the Tribunal stated that: *"For there to be sufficient interest an Appellant must be able to show that there is a nexus between the proposed development and him in that he must be able to demonstrate the impact that the proposed development is likely to have upon him, irrespective of whether or not it may affect other people. It may or may not affect other people but he has to demonstrate that it will affect him"*. The Appellant has failed to show likelihood of undue prejudice 'quoad' itself. This is an essential requisite as per section 54 (2)(b) of the EPA for the jurisdiction of the ELUAT to be seized. Absence of this criterion is fatal.

8. On the other hand, the Appellant seems to labour in its action for public and community interest. It has unequivocally stated in its reply to the statement of defence of Co-Respondent No.2 that it is a public interest organisation and 'by entering this appeal the Appellant is in fact protecting the public interests for the

[1] David Sauvage & Others v The Minister of Social Security, National Solidarity and Environment and Sustainable Development & Anor ELAT 1746/19

present and future generations'. Case law has time and again laid down that public interest litigation is alien to the Mauritian jurisdiction.[2] We distinguish here from the position taken by ELUAT in the consolidated cases of **AHRIM v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development & Anor i.p.o Growfish International (Mauritius) Ltd. & Ors. and The Sea Users Association & Others v. Ministry of Social Security National Solidarity and Environment and Sustainable Development & Anor i.p.o Growfish International (Mauritius) Ltd. & Ors.**[3], where this Tribunal allowed the appeal to proceed and ruled that the Appellants had locus standi on the ground that both AHRIM and Sea Users Association were acting to protect the interests of their members. In the present matter, the averments, as contained in the Notice of Appeal and Statement of Case do not disclose such a mandate. The objectives of the Appellant organisation are as stated above, which rightly raises the questioning of its locus standi.

9. The Appellant has referred to its locus standi derived from section 2 of the EPA. This section provides as follows: *"Environmental stewardship: It is declared that every person in Mauritius shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius".*
The Appellant's stand is that, firstly, section 2 of the EPA is a blanket provision and secondly, section 54(2) EPA cannot curtail the general provision contained in section 2 of the EPA. Furthermore, the Appellant contends that the recognition of the general responsibility of the citizen that this section places upon it, being an association working for the protection of the environment and for the conservation of wetlands and other natural resources, this confers to it the 'locus standi' to lodge the present appeal. Reliance was placed by the Appellant on the case of **Tacouri v. Feroze Mohamud & Ors**[4] which states that: *"Section 2 in the House Rules of the drafting of Mauritian Laws is the definition section. The legislator's decision to make an exception thereto and replace it by a national pledge and move the definition section to section 3 is indicative of the high importance he attached to the commitment. Both the citizen and the State have taken the pledge contained in section 2 that they would use their "best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius".*
What is important for us to consider is whether, as submitted by the Appellant, the general pledge as contained in section 2 of the EPA is a ground that would justify a departure from the restrictive approach to 'public interest litigation'. It has been submitted by counsel for Co-Respondent No. 5, relying on the Australian case of North Coast Environment Council Incorporated v. Minister of Resources [1994] FCA 1556

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[2] Case of S. Tengur v. The Ministry of Education & Scientific Research & The State of Mauritius i.p.o The Roman Catholic Education Authority and Y. Dinnoo v. The Ministry of education & Scientific Research & The State of Mauritius i.p.o The RCEA, The Ministry of Education and Human Resources & Anor. v. La Societe de l'Histoire de l'Ile Maurice & Others i.p.o Marbobois Ltee & Anor 2016 SCJ 445 and case of Rouben Mooroongapillay & Dr. Vinaigum Veeraragoo v. 1. The State of Mauritius & others i.p.o World Health Organisation & Larsen and Toubro Ltd. April 2021

[3] AHRIM v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development & Anor v. Growfish International (Mauritius) Ltd. & Others ELAT 1502/17 and The Sea Users Association & Others v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development & Anor v. Growfish International (Mauritius) Ltd. & Others ELAT 1507/17

[4] Mr. Preetam Tacouri & 9 Others v. Mr. Feroze Mohamud & Others 2010 SCJ 13

that *'a mere intellectual and emotional concern for the preservation of the environment is not enough to constitute such interest.'*. It has also been submitted that no public comment had been made by the Appellant at the time of public consultation.

We agree with the submission of the Respondents which is to the effect that section 2 of the EPA lays a general duty of care on citizens of Mauritius for the environment, and that this cannot be read as an extension of the specific provisions made by the legislator on who has the capacity to lodge an appeal before the ELUAT.
Section 2 also does not supersede section 54(2) of the EPA. The Appellant may have the interest of the community and the future generation, as it has spelt out in the statement of case. But it still has to meet the hurdles set out in section 54(2) EPA to be able to bring the general concerns of the citizen within the jurisdiction of the Tribunal. The Appellant has failed to do so.
For these reasons, despite the wide scope of the declaration on environmental stewardship under section 2 EPA, this does not exempt the Appellant from meeting the requirements laid down in section 54 (2) EPA.

10. In addition to all the above, we have to consider the more recent Supreme Court judgment of Baumann v. the District Council of Riviere du Rempart 2019[5], which, albeit being a judgment concerning applications made under the Local Government Act (i.e in the context of an application for a Building and Land Use Permit), has laid down the basis for a very restrictive approach to the definition of "aggrieved person". This was followed by an amendment to the Local Government Act in 2020[6] which restricted the definition of 'aggrieved person' to the recipient of an objection to an application for an Outline Planning Permission or Building and Land Use Permit. These being so, these recent legislative amendments restrict the definition of those who can appeal against decisions under the Local Government Act. In the same breath, an amendment to the Environment Protection Act[7] has added a further condition to those who can appeal against a decision of the Minister to issue an EIA licence. The new section 54 (2) of the EPA now reads as follows:

    "Where the Minister has decided to issue an EIA licence, any person who:
    (a) is aggrieved by the decision;
    (b) is able to show that the decision is likely to cause him undue prejudice; and
    (c) had submitted a statement of concern in response to a notice published under section 20
    may appeal against the decision to the Tribunal."

11. The above sub-section (c) was introduced after the present appeal was lodged. Nonetheless, the thread of case law, as referred to above, tend to show the same position taken by the Supreme Court. These tend to show that the Appellant organisation has been unable to show *ex facie* the appeal, that it has the required *locus standi* to appeal.
We therefore allow the preliminary objections raised by the Respondents and Co-respondents.

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[5] Marie Louise Isabelle Baumann v district Council of Riviere du rampart 2019 SCJ 311
[6] Act 7 of 2020 Finance (Miscellaneous Provisions) Act 2020
[7] Act 7 of 2020

The appeal cannot proceed and is set aside. No order as to costs.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson .....

Mr. P. Manna, Member .....

Mr. S. Busgeeth, Member .....

Date 20th October 2021