

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

**ELAT 1999/21**

**In the matter of :**

**Anjaneya Naidu Sokappadu**

**Appellant**

v/s

**The District Council of Savanne**

**Respondent**

**IPO:**

**Guruduth Sawaram**

**Co-Respondent**

**RULING**

1. The present appeal is against a decision taken by the Council for having refused a Building and Land Use Permit [“BLUP”] to the Appellant for a metal structure store with CIS roof to be used for tent services at Mahatma Gandhi Road, Chamouny, Chemin Grenier (ex Dewason Road). In the course of cross-examination of the Appellant at the sitting of the 7<sup>th</sup> August 2023, counsel appearing for the Respondent, Me. A. Dayal, established that the Appellant was legally represented at the Council hearing of the 15<sup>th</sup> December 2020. Counsel then, prior to making reference to the minutes of proceedings of that hearing, stated that he undertook to produce them when his witness, the representative of the Council, would be deponing before the Tribunal. He stated that for the time being, if Counsel appearing for the Appellant had no objection, he was prepared to provide a copy of same to the Tribunal.

2. The Bench did not wish to take cognizance of any document until it became evidence before the Tribunal. Counsel appearing for the Appellant, Me. R. Bhadain, objected to the production of the minutes of proceedings as well as any questions relating to that document. His objections are grounded on the fact that, as per his instructions, the minutes of proceedings are not a faithful record of what had actually taken place at the said Council's hearing. Me. Dayal, stated that he would insist on the production of that document and moved to offer arguments. We have duly considered the submissions of both counsel.

I. **THE ARGUMENT**

3. With the Appellant being in the witness box under cross-examination, Me. Bhadain sought to call as witness the legal representative who represented the Appellant before the Council's hearing, in order to substantiate his objection "as to why the minutes cannot be produced and what happened on that particular day". This, according to him, will assist the Tribunal in taking an informed decision since he would not be able to adduce evidence as to why the document was not faithful, accurate and correct.
4. Counsel for the Appellant reiterated that since he could not adduce evidence, nevertheless explanations would have to be given "why certain paragraphs of this document is fundamentally wrong." He expatiated that the Appellant had testified to the effect that he had witnesses present at the Council- hearing waiting outside but that this was not reflected in the minutes just as they do not reflect the existence of a signed petition that all neighbours had no objection except for one. Hence, his contention that the record of the proceedings was not a true and accurate one. He went on to submit that the Appellant was denied an opportunity to have a fair hearing because the witnesses had come and had been waiting outside and had signed the authorization documents. He stated that the Appellant would have explained everything that the Council would have wanted to know as

to whether or not the road was narrow, whether or not there was an obstruction on the road, whether or not the peaceful character of the region was being disturbed or not but the Respondent refused to hear the evidence and that it deliberately omitted to reflect this fact in the minutes.

5. The Tribunal remarked that it is bound to operate within the parameters of the law and that the issue of procedural fairness or legality raised as regards to the manner in which the Council proceeded would be grounds for judicial review and such findings cannot be made by the Tribunal.
  
6. Counsel for the Appellant then stated that the Appellant's case was not only about fairness but that it also disclosed motive as to why the Council had rejected the Appellant's application after asking him to apply for it. He raised a second ground of objection that the Co-respondent was the objector but he was not heard by the Council and that the person who actually spoke at the hearing was a lady who, as we understand it, will be called as a witness on behalf of the Co-respondent. Counsel raises the question as to whether the minutes of the proceedings accurately reflect this and stated that these were the 2 grounds for objecting to the production of the document.
  
7. Me. Dayal referred us to the jurisdiction of the Tribunal under section 4(1) (a) (ii) of the Environment and Land Use Appeal Tribunal Act 2012 that the Tribunal shall hear and determine appeals from a decision of a Municipal City Council, Municipal Town Council or District Council. He submitted that from the grounds of objection raised by the Appellant's counsel, the latter seems to be appealing against a decision of the Permits and Business Monitoring Committee ['PBMC'], that is, the hearing with regard to the processing of the application. Counsel referred to the case of **Troylukho v/s The District Council of Black River IPO Banyan Square (Mauritius)Ltd [2023] SCJ 234** to make the point, from what we have understood him to be saying, that just as the Supreme Court pointed out that a judicial review can be done with regards to the decision of the District Council not that of the

PBMC similarly the grounds of objection which seem to be directed at the decision taken at the hearing before the PBMC as opposed to a decision of the Council, is not within jurisdiction of the Tribunal.

8. Counsel for the Appellant replied that the issue is not about appeal but about the production of a document which he submits is not a true, accurate and faithful record of what took place on the day.

## II. THE ISSUES

9. We are being called upon to decide on the admissibility of a document which is being done through a witness who contests the veracity of it. In this respect it is also important for us to consider the stage we have reached in the proceedings at which this objection was raised as well as the validity of the grounds.
10. It is trite law that evidence is admissible if it is relevant. This Tribunal may thus refuse to admit evidence which it considers irrelevant or without probative value. The proceedings had reached the stage where the Appellant was under cross-examination and Counsel for the Respondent made reference to a document containing the minutes of proceedings of the Council. The Appellant had attended that hearing with his legal representative. Although initially the Respondent's counsel had intended to have the representative of the Respondent produce the document whilst favouring the Tribunal with a copy while he was cross-examining the witness, he subsequently insisted on having the document produced by the witness upon the objection raised by the Appellant's counsel. Be it as it may, we are to take it that the stand of the Respondent is to produce the document at this stage. While the Appellant is not denying the hearing per se, he seems to be contesting the veracity of the record of the hearing for lack of completeness and for it not being a faithful record of everything that happened at the hearing.

11. This record of the Council is not a public document. However, since the Tribunal is to hear and determine appeals from decisions of Municipal City Councils, Municipal Town Councils and District Councils as per **section 4 of the Environment and Land Use Appeal Tribunal Act 2012**, it is imperative that the factors considered or not considered by the Council be placed before the Tribunal. This record, however, belongs to the Council hence the representative of the Council is best placed to produce it. Where a witness, who is deponing under oath, fails to recognize or identify a document or cannot testify to the veracity of it since he is not the maker of it, he cannot be forced or coaxed into producing the document. We therefore believe that the Respondent's counsel cannot insist on the Appellant producing a document emanating from the Council. It is best left to the representative of the Council to do so as either the maker of the document or the custodian of it.

12. We hasten to add, however, that the Respondent in favour of its case is perfectly entitled to put questions to the witness as regards matters relating to the hearing where he was present and of which he may have personal knowledge. The minutes of proceedings before the PBMC is a record of the Respondent which it can produce through its witness. In fact, **section 181C of the Courts Act** provides for admissibility of such records in civil proceedings as an exception to the hearsay rule, namely where documents are sought to be adduced to prove the truth of the contents contained therein. It is unclear at this stage whether the record of the Council hearing is being produced for this, that is to prove the truth of its content, or for some other purpose. Similarly, any imputation as to the completeness or accuracy of the minutes of the hearing can only go to weight and not admissibility of those minutes. It appears that the Appellant is not disputing that this is the record of the committee relating to his case but is contesting the fact that the record is incomplete or does not reflect accurately the entire proceedings as it took place. The Appellant can impugn the record by calling witnesses and cross-examining the representative of the Council.

13. Turning to the objection raised by the Appellant’s counsel, whilst the objection to the production of the document by the Appellant at this stage was legitimate, we believe that the procedure proposed by Counsel, which was to call another witness to substantiate his grounds of objection while one witness was under cross-examination, was not correct. However, the objection to the production of the document on the ground that the witness is not the maker of the document and he cannot testify as to the contents of the document, would in our view, be a legitimate reason to sustain the objection. This being said Counsel can still re-examine the witness on any related issue raised during cross-examination pertaining to the hearing. He may also choose to call other witnesses, with the leave of the Tribunal, in order to establish the Appellant’s case as per his grounds of appeal and substantiate the averments made in the Statement of Case.

14. The grounds of objection, as couched, seemed to be more in line with a case for judicial review which does not fall within the jurisdiction of this Tribunal. We have also considered the case **Troylukho** *supra* and found it not to be relevant for the purposes of the subject matter of the present ruling.

15. For all the reasons set out above, we allow the objection. The case is to proceed. All parties are to adhere to the directions given by the Tribunal in this ruling.

Ruling delivered on 14<sup>th</sup> August 2023 by

**Mrs. J. RAMFUL-JHOWRY**  
Vice Chairperson

**Mr. R. SEEBOO**  
Member

**Mr. R. SEETOHUL**  
Member