

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2090/22

In the matter of:

Bibi Humairah Hussein Sokeechand

Appellant

v.

Municipal Council of Vacoas Phoenix

Respondent

Ruling

This ruling is delivered at the formal stage of the case following a request made by the appellant to reinstate the appeal.

The present matter had been set for hearing on the 20th March 2023 at 10.30 a.m. The matter was maintained and subsequently called at 10.50 a.m. but the Appellant left default. A motion was made on behalf of the Respondent to strike out the appeal. The motion was granted with no order as to costs.

On the same day, an e-mail was received at the Tribunal wherein the Appellant and her father, Goolam Hussien Sokeechand, stated that they had not attended the hearing due to a confusion on the date. They were of the opinion that the hearing was scheduled for the 21st March 2023 and stated that they would appreciate if the matter could be reinstated.

The Tribunal scheduled the matter to be called on the following day, 21st March 2023, but it was rescheduled for the 30th March 2023 upon a request from the Respondent. In the e-mail the Respondent stated that their stand is that the Respondent would object to the case being reinstated and the Appellant and her father were duly informed in Tribunal on the date of the hearing.

On the scheduled date, the Appellant's father, representing the Appellant (who was also present) reiterated that their absence was due to a confusion on the date and prayed for the Tribunal reinstate the case in a spirit of fairness.

The procedure governing the reinstatement of cases before the Tribunal is contained in Rules 6 (1), (2) and (3) of the ELUAT Rules 2021, which provide as follows:

- (1) The Tribunal may, at any stage, set aside an appeal-
 - (a) in case of non-attendance of the appellant;
 - (b) where the documents required under section 5(4) of the Act are not provided; or
 - (c) where, after examination, the appeal is found to be trivial, frivolous or vexatious.
- (2) Where the Tribunal makes an order to set aside the appeal under paragraph (1), the appellant may, on the day the appeal is set aside, apply to the Tribunal in writing to have the appeal recalled and reinstated.
- (3) The Tribunal may, on good cause shown, recall and reinstate the appeal.

This procedure is derived from Rule 9(3) of the Supreme Court Rules 2000. Several Supreme Court judgments have highlighted the legal requirement that the application for reinstatement be made on the same day as the order to set aside is made (Re: F. Barles v The Mauritius Commercial Bank Limited 2018 SCJ 315, Koushmalee Tour v Early Childhood Care and Education Authority i.p.o Mrs Soobowtee Poornomansy & Anor 2021 SCJ 51). This requirement has been complied with by the Appellant.

The other fundamental requirement, as per Rule 6 (3) is that ‘good cause’ being shown by party concerned. What this Tribunal has to consider is whether the reason given by the Appellant (as represented by her father Goolam Hussen Sokeechand) has a good cause that would call for the intervention of the Tribunal akin to the equitable jurisdiction of the Supreme Court.

Although the Appellant’s representative raised the issue of fairness to call for the intervention of the Tribunal to grant the reinstatement, fairness must be exercised to both parties.

The record shows that the Appellant and her father were both present before the Tribunal on the 15th November 2022, when the hearing was fixed for 20th March 2023. They were informed of the hearing date and time. This was followed by an e-mail dated 15 November 2022 addressed to the Appellant’s representative (all communications having been made to, and the Reply of the Appellant having been sent from that very e-mail address). Neither the Appellant nor her representative can plead ignorance of the scheduled date.

This Tribunal may exercise its discretion to reinstate a case, but this has to meet the threshold of ‘a good cause’ being shown. In our view, in the absence of any other justifiable reason, a mere confusion as to the date does not meet this

threshold. Such a precedent, if granted, could give way to opening a floodgate, on one hand and may, on the other hand, leave room for an abuse of the process before Tribunal. The request for reinstatement of the case made on behalf of the Appellant is therefore declined.

Delivered by:

Mrs. V. Bhadain, Chairperson

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Date:

5 April 2023