

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

**ELAT 2098/22**

**In the matter of :-**

**Mohammad Irfaan Ebrahim Napaul**

**Appellant**

**v/s**

**District Council of Moka**

**Respondent**

**RULING**

1. This is an appeal against the decision of the Respondent [“the Council”] for having rejected the application of the Appellant for the construction of a residential building at Bois Cheri Road, Chantenay, Moka. The Respondent raised a preliminary objection as follows:

*“1. The Appellant as styled has failed to put into cause all interested parties to the present appeal, namely Mr. Amna Napaul, in whose name the application for Building and Land Use Permit was also made together with the Appellant as styled [Annex A]. The application for BLUP was clearly made in the names of “Mr. & Mrs. Napaul Mohammad Irfaan Ebrahim.”*

*2. By the failure to put into cause Mrs. Amna Napaul who is thus an interested party, the present appeal is fundamentally flawed and should be set aside with costs.”*

2. We have duly considered the submissions of both counsel. It is the contention of the Appellant’s counsel that the case has been rightly entered only by the Appellant and that the latter, being legally married to Mrs. Amna Napaul, represents the

communauté de vie that they have and is therefore also acting as her representative. He argued alternatively that the fact that Mrs. Amna Napaul has not been joined in the proceedings, is not fatal to the appeal. Counsel appearing for the Council argued that since Mrs. Amna Napaul is an interested party to the present case, the fact that she is not joined renders the appeal flawed and it cannot proceed.

3. The present appeal has been entered, following a rejection by the Council to a BLUP application, pursuant to the provisions of **s.117(14) of the Local Government Act 2011[‘LGA’]**: “ (14) *Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections (7)(b), (8)(b) or (12) may, within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal.*” [emphasis is ours] It is not disputed that the Appellant and his wife, Mrs. Amna Napaul are the co-owners of the land *in lite*, upon which it is proposed to have a residential building erected. That in itself qualifies Mrs. Amna Napaul as having an interest in the matter since she is a co-owner of the property and is therefore “directly affected”, hence “aggrieved” within the meaning of **s.117(14) LGA**, by the decision of the Council as well as any decision to be taken by the Tribunal. It is a settled legal principle, a party who has an interest at stake before an instance should be joined as a party to the proceedings so that he is privy to any matter regarding his rights. The application, subject matter of the present appeal, was made by “Mr & Mrs” as per the Application Form for BLUP. This not only qualifies Mrs. Napaul an applicant for the BLUP albeit the first name of the Appellant has been inserted, but also as an appellant to the present appeal. It would have, in our view, been desirable that Mrs. Amna Napaul be added as a second appellant to the case.
4. It was argued by Counsel for the Appellant that the latter represents the communauté de vie and it was therefore not necessary to have Mrs. Amna Napaul as Appellant since she was being represented by her husband. Although it is not denied that Mrs. Amna Napaul is married to Mr. Mohammad Irfaan Ebrahim Napaul. However, there is no evidence as regards under which *regime matrimoniale* they have been married that may affect their legal rights. In any event neither could Counsel adduce such evidence from the Bar nor is the Tribunal mandated to analyse the documents in such detail.

5. We do not believe that the proceedings are fundamentally flawed since one of the two “aggrieved” persons has lodged a timely appeal and seized the Tribunal. We are guided by what **Rule 19 of the Supreme Court Rules** provides on the issue, that is, *“non-joinder of parties shall not defeat any cause of action and the Court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”* The issue is whether non-joinder would have rendered any Determination of the Tribunal ineffective as against a party who has been joined; it is not the case here.
  
6. We therefore find that although the point is well taken and it is desirable that Mrs Amna Napaul be a party to the present appeal since she has an interest in the matter as co-owner to the property in lite, we do not believe that the appeal is fundamentally flawed that would warrant it be set aside. The appeal is neither a frivolous nor vexatious one. We shall therefore adopt a less technical and more flexible approach to such an objection so that the Tribunal can proceed with the adjudication of the real issues in contest: **Toumany and Anor v Veerasamy [2012] UKPC 13**. We therefore invite Counsel appearing for the Appellant to amend the relevant documents and pleadings to join Mrs. Amna Napaul as an appellant to this case. The motion to have the appeal set aside and for costs are set aside. The matter is otherwise fixed pro-forma for the Appellant to take a stand.

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

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

**Mr. SUFFEE**  
Member

**Mr. SEETOHUL**  
Member