BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2122/22

In the matter of:

Mr. Igor Alain Monique Van Nuwenborg

Appellant

v.

District Council of Black River

Respondent

And in the matter of:

Alain Robert Talbot

Applicant

v.

Igor Alain Monique Van Nuwenborg

Respondent

In the presence of:

The District Council of Black River

Co-Respondent

Ruling

The Appellant has lodged an appeal against the decision of the Respondent for having declined to grant a Building and Land Use Permit applied for by the Appellant for extensive alterations, additions and conversion of a residential building into a commercial one.

Mr. Alain Robert Talbot, the Applicant, has submitted, by way of proecipe, an application for leave to intervene as a third party in the proceedings bearing Cause Number 2122/22 (the Main Case) lodged by Mr. Igor Monique Van Nuwenborg before this Tribunal.

Counsel for the Respondent in the Main Case indicated that he has no objection to the application for the third party to intervene in the appeal.

The Appellant, Mr. Nuwenborg, has objected to the application made for the third party, Mr. Alain Talbot, to intervene on the following grounds:

1. The application for third party intervention does not disclose any personal and legitimate interest of Mr. Talbot in the appeal. Mr. Talbot is thus not an interested party to the present appeal; Mr. Talbot has already made representations concerning the subject matter of the present appeal before the Permits and Business Monitoring Committee and the Respondent was agreeable with his representations on the issues of parking and noise. Given that the Respondent has adopted Mr. Talbot's representations and is defending them during the course of the appeal, there is no reason for Mr. Talbot to intervene as his presence will not be material to the present appeal and is not required for the purpose of determining the present appeal. In the circumstances, the application is not warranted.
2. The Tribunal has jurisdiction to only hear and determine appeals brought by aggrieved parties under section 117(subsection 14) of the Local Government Act 2011. It is not to hear the representations from objectors who by law had been provided the forum of the Permits and Business Monitoring Committee to do so.

We have considered the submissions made on behalf of the Applicant and the Respondent as styled in the proecipe.

It has been submitted by counsel for the Applicant that there is nothing in the ELUAT Act which govern incidental matters such as joinder of parties, reinstatement of cases, amendment of pleadings or an application for third party procedure. We draw attention to the Rules of ELUAT (Government Notice 258 of 2021) which came into force on the 9th October 2021, of which Rule 6 (2) and (3) set out the procedure for reinstatement of cases. Prior to the adoption of the Rules of ELUAT, reference was made to the Rules of the Supreme Court in matters of reinstatement of cases, namely, Rule 9 of the Supreme Court Rules 2000 which was applied in the case of Phoolvassuntee Sham v. Ministry of Housing and Land Use Planning [ELAT/1975/20], highlighting the principle set out in Jhundoo v. Jhuree 1981 MR 111).

Reference to Rules of the Supreme Court was also made in rulings delivered by the Tribunal in the cases of Yan Hookoomsing & Others v. The District Council of Grand Port i.p.o Le Chaland Hotel Limited ELAT/1007/15 and in Sea Users Association & Others v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development & Anor. i.p.o Growfish International (Mauritius) Ltd. [ELAT/1507/17]. This is to show that in the absence of rules on specific matters, it has been the cursus of this Tribunal to refer to Rules of the Supreme Court.
Counsel for the Applicant referred to rulings and determinations given by the Tribunal, wherein based on the 'audi alteram partem' rule, this Tribunal allowed objectors to become parties to appeals lodged before it. The rulings in the case of Lady Marie Claude Series & Others v. Municipal Council of Curepipe i.p.o Mr. M. P. A. Arnaud de Baritaud [ELAT/305/12] and in the case of Mrs. Artee Seeruttun v. Moka District Council [ELAT/482/13] are indeed based on the principle of natural justice which the Tribunal relied upon. These date back to the years 2012 and 2013 respectively.

A major change has occurred through the Supreme Court Judgment of **Marie Louise Isabelle Baumann v. The District Council of Riviere du Rempart i.p.o Syndicat des Co-Proprietaires de Savannah Sparrow Residence [ELAT 2019/ 311].** This judgment has laid down that:

> *"a proper construction of these provisions conveys the clear and plain intention of Parliament: only an aggrieved party can appeal to the Tribunal and an aggrieved party is one who has been notified that his application has not been approved [vide sections 117 (7 (b) and 117 (8)(b) of the Local Government Act 2011. The legislator has not provided for any other person to have the possibility of challenging the granting of a BLUP to an applicant before the Tribunal".*

This was followed by the legislative amendment brought by section 35 of the Finance (Miscellaneous Provisions) Act 2020 (Act 7/ 2020), which introduced a new definition of "aggrieved person", in section 117(15) of the Local Government Act 2011 as follows:

> *"Person aggrieved" means a person whose application for an OPP or BLUP has not been approved by a Municipal City Council, Municipal Town Council or District Council".*

Therefore, based on Baumann (supra) and Act 7/2020 (supra), the fact that the Applicant is an objector, he does not have a right of appeal before this Tribunal. The case of Baumann has clearly spelt out that:

> *"Obviously, any other person, a neighbour, like the present appellant for instance, who feels aggrieved by the granting of a BLUP may have recourse before another court; but certainly not before the Tribunal which*

*does not have jurisdiction to consider and determine **complaints** from persons who are not aggrieved persons within the definition of the Local Government Act 2011"* (emphasis is ours).

The same position was reiterated in the more recent judgment of **Jaggarnath Peerthy v. Municipal Council of Vacoas Phoenix & the ELUAT i.p.o A. Chinatamby Co.Ltd and Iqbal Beeharry v. Municipal City Council of Port Louis i.p.o. Jaami'ah Na'eemiah Association 2022 SCJ 166** where a full bench of the Supreme Court stated that :

> *"Our inescapable conclusion is that an appeal to the ELUAT is restricted to an applicant whose application for a BLUP has been rejected by the Municipal City Council, Municipal Town Council or District Council as clearly provided by section 117(14) and who has been duly notified under section 117(7)(b) or section 117(8)(b) of the Local Government Act 2011. The law does not provide for unsuccessful objectors such as neighbours of an applicant for BLUP. An objector is therefore not the "person aggrieved" contemplated by section 117(14) of the Local Government Act 2011 and section 4(1)(a)(ii) of the Environment and Land Use Appeal Tribunal Act".*

We have addressed our mind to the subtlety of the position of Mr. Talbot, who, as submitted by his counsel and, as contained in his affidavit, wished to intervene and make representations in the main case. This placed him in a position which differs from the facts of Baumann, namely that he was not an Appellant *per se*, but his application was for purely an intervention. Mr. Talbot wishes to appear, take a stand and file pleadings in the Main Case.

Rules 38(5) and 47 of the Supreme Court Rules 2000 make provision for Third Party Procedure as follows:

Rule 38 (5): "Any person not a party to an action before a Court or in Chambers may intervene in the action provided he has obtained leave to do so from a Judge on good cause shown".

Rule 47 Meaning of Judge: "Any reference in these Rules to a Judge shall, unless the context otherwise indicates, mean a Judge in Chambers."

Mr. Talbot may have expressed his 'interest' by the reasons listed down in the application to show 'good cause' as required by the Supreme Court Rules. The Respondent in his submission disputed these and stated that they do not show 'good cause'. We do not propose to go into the qualification of his interest at this stage.

We cannot obliviate that the jurisdiction of this Tribunal has been clearly defined in the Baumann case (supra), and that the judgment of Baumann specifically refers objectors to other avenues should they wish to make complaints.

The Applicant has had the opportunity to express his objection to the proposed development before the Permits and Business Monitoring Committee of the Respondent. It appears that his views have been taken on board by the Respondent and a decision to reject the application was taken by the Respondent in the Main Case. The Appellant has now appealed against that decision and the Appellant has the carriage of its proceedings.
The Respondent in the Main Case is at liberty to call witnesses in support of its decision, and this includes the Applicant.

We subscribe to the submission that the principles of fairness and rule of natural justice must be applied when considering the present application. It is our view that in order to exercise fairness in relation to this application, the Tribunal must first have jurisdiction. The judgment of Baumann has made a pronouncement on the issue of jurisdiction to entertain appeals from objectors, and the rationale being: "*It is clear that the legislator, in his wisdom, did not intend to allow any interested person to challenge the granting of a BLUP as this would have significantly affected the business climate in Mauritius*".

We reiterate the position taken on the matter in a ruling given by this Tribunal in the case of **Adriel House of Prayer v. Municipal Council of Curepipe i.p.o Mr. Paul Camoin & Others ELAT 1692/18**, where it stated that:

> "*Objectors at the level of the local authority would not be able to be Appellants before the ELUAT in the light of the above judgment [Baumann] and the amendment to the Act [Act 7/2020]. Therefore, a fortiori, an objector will not have any standing to be a party to, and even less, to dictate the conduct of an appeal*".

By granting the prayer of the Applicant to intervene (by allowing him to appear, to take a stand and to file pleadings) this would tantamount to introducing the objector into the proceedings through the backdoor, albeit in the capacity as Co-Respondent. This would not be in line with the rationale in the Baumann decision and the intention of the legislator as clarified in the latest amendment brought to the Local Government Act (Act 7/2020). The judgment in the case of **Peerthy** (supra) confirmed that "*ELUAT rightly set aside the appeals by virtue of the doctrine of stare decisis... ELUAT had no choice but to follow the determination of the Supreme Court in Baumann*".

Based on the above, we decline to grant leave to the Applicant to intervene as a third party in the proceedings of the Main Case.

Ruling delivered on 24th February 2023 by:

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

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

Mr. R. Acheemootoo, Member .....